



## MS AGARWAL FOUNDRIES PRIVATE LIMITED

(AN ISO 9001-2000 CERTIFIED COMPANY)

Off: 23447321 / 22, 27543803, Fax No:091-40-27543804.

E-mail: [msthermex@gmail.com](mailto:msthermex@gmail.com) Website: [www.msthermex.com](http://www.msthermex.com)

### WORKS:

Survey No: 169,  
P.O. Chetla Gowraram – 502 334.  
Toopran Mandal, Dist. Medak, A.P. INDIA  
Mobile: 09391016122, 09396993700

### OFFICE:

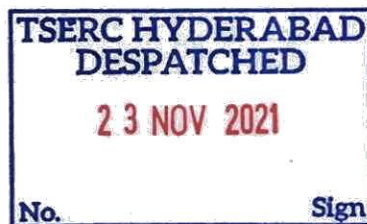
Rama Towers, 2nd Floor,  
5-4-83, TSK Chambers,  
M.G. Road, Secunderabad – 3.  
A.P. INDIA

Ref: PA/MSAF/

To

Dt.22.11.2021

The Chief General Manager (IPC & RAC),  
TSSPDCL, Corporate Office,  
6-1-50, Ground Floor, Mint Compound,  
Hyderabad-500 063.



Respected Sir,

Sub: "Comments & Suggestions on Application of Southern Power Distribution Company of Telangana Ltd., (TSSPDCL), for filing Correction to the petition for determination of Additional Surcharge (AS) to be levied on Open Access Consumers

\*\*\*

This is in reference to the above cited application of Southern Power Distribution of Company of Telanga Limited (TSSPDCL) for Filing correction to the petition for determination of Additional Surcharge (AS) to be levied on Open Access consumers in accordance with the provisions of Electricity Act, 2003 and National Tariff Policy, 2016.

We, M/s. MS Agarwal Foundries Pvt Ltd., Toopran Mandal, Medak Dist. We are open access consumer. Our objections & suggestions on the said application are enclosed herewith for your kind consideration in ANNEXURE-1.

We hunble request to consider the same.

Thanking You,

Yours faithfully,  
For MS Agarwal Foundries Pvt Ltd.,

Authorised Signatory.



✓ Cc to: The Secretary, The Electricity Regulation Commission, Red hills, Hyd

## ANNEXURE-1

1. The surcharge proposed by TSSPDCL and TSNPDCL (hereinafter “Applicant(s)/DISCOMs”) for H1 and H2 is Rs. 2.01 and Rs. 2.34 per unit respectively on Open Access Consumers in their application is very high and against the very intention of the Electricity Act, 2003 (the Act), National Tariff Policy (“NTP/ Tariff Policy, 2016”) wherein it is specifically provided that Open Access Consumers are allowed to receive electricity from other sources. The Act allows Open Access by the Consumers and it is the inadequacy of the Applicant(s) that any difficulties are arising in giving effect to the provisions of the Act. The Consumers are within their right to buy cheaper power from wherever viability permits and imposing such high additional surcharge on such consumers would discourage them from buying open access power and would be against of the provision of the Act and NTP, 2016 as it will lead to elimination of competition.
  
2. Section 8.5 of the NTP, 2016 provides following provisions that deal with applicability of additional surcharge to be paid by open access consumers:

*"National Electricity Policy lays down that the amount of cross subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access under Section 42(2) of the Act. Further, it is essential that the surcharge be reduced progressively in step with the reduction of cross subsidies as foreseen in section 42(2) of the Electricity Act 2003."*

Further, Section 8.5.4 of the Tariff Policy, 2016 provides;

*"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"*

NTP 2016, emanates that Additional surcharge is payable by Open Access Consumers if the below mentioned stipulations are fulfilled and established:-

- i. If the consumer is receiving supply of power other than its DISCOM to the extent of the fixed charges payment obligations which is unavoidable and which is in addition to the charges for usage of network assets recoverable through wheeling charges.
- ii. NTP 2016 and the Regulations clearly put the onus on DISCOMs to conclusively demonstrate that the power purchase commitments have been and will continue to remain stranded.
- iii. Further, it has to be establish that there is an unavoidable obligations and incidence to bear fixed charges on DISCOM, consequent to such Open Access contract
- iv. And such additional surcharge which are to be levied on Open Access Consumers should not become onerous that it eliminates competition.

Therefore, to impose additional surcharge on open access consumers the above mentioned four conditions should be established and proved by the DISCOMs.

It should be noted that as per NTP 2016, that additional surcharge to be levied on Open Access consumers should not be onerous that it eliminates the competition. The additional surcharge determined by the Applicant(s) in their applications of 2.01 and Rs. 2.34 per unit are not only onerous but is also wrongly computed.

Under para 6 of the Application, the Applicant(s) while calculating the Additional Surcharge has not deducted the revenue gained by the DISCOMs through Open Access sales, which is a profit for the DISCOMs and which will have an positive impact on the cash flow of the DISCOMs. Last one year data of revenue earned by TSSPDCL through Open Access sales is missing in the Application which makes it impossible for the stakeholder to verify the computation done by the DISCOMs for Additional Surcharge. It is necessary that TSSPDCL clearly provide its profit earning through Open Access sales for the clear picture.

Furthermore, it should be noted that DISCOMs may also surrender power due to reasons like seasonal variations, purchases from Power Exchange, incorrect demand forecasting, RTC short term power purchases of DISCOMs etc. In some cases, additional renewable capacity may have been added to ensure compliance to RPO and not to meet demand. The burden of surrender of

power to that extent should not be imposed on Open Access Consumers alone. Further, costs due to stranded long term PPAs, physical assets can also be attributed to the DISCOMs inefficiencies in planning, capacity addition, revenue recovery and capitalisation. No data has been provided in the present applications w.r.t fixed charge arising due to DISCOMs surrendering power. Without complete data, it would be difficult to ascertain how much of the fixed costs figure shown by Applicants are attributable to the migration of sales due to open access. The Applicant(s) have provided no conclusive evidence that the stranded capacity is solely due to Open Access Consumers. From the data furnished by Applicant(s), it cannot be said whether the amount of MUs backed down are solely and conclusively due to power purchase through open access and the fixed costs for the same. The total amount of stranded power procurement cost is required to be worked out periodically to be apportioned amongst Open Access Consumers.

Further, Applicants have not provided 15 min block wise data of the stranded capacity due to Open Access consumers and the back down quantum from each source of generator for the same.

Applicants have provided Average Stranded capacity due to Open Access consumers for April to September 2020 considering 15 min block for (H1) is 276.17 MW and for (H2) is 219.76 MW. Applicants also needs to show surrendered or back down power by the DISCOMs for various blocks from each generation source in comparison to the power being scheduled by Open Access Consumers for that 15 min time block.

3. In the Applications, Fixed Charges paid by DISCOMs for H1 and H2 are Rs. 5110.2 Cr and Rs. 5462.49 Cr. respectively and long term Availability is 8210.18 MW and 8574.88 MW respectively.

DISCOMs need to show conclusive data w.r.t declared capacity of each source, power scheduled from each source and fixed cost per unit of each source.

It is well known that Central Generating Stations (CGS) have been allowed to sell (Unrequisitioned surplus-URS) arising due to surrender of power by the states/DISCOMs on power exchange and earn additional revenue. As per CERC Grid Code Regulations (Sixth Amendment) 2019, revenue earned by CGS by selling the surrendered power on power exchange/ open access has to be shared with the DISCOMs on 50:50 basis Provided that the share of CGS

in the gains shall be restricted to a ceiling of 7 paisa/kWh and the gains over and above 7 paisa/kWh shall be to the account of the DISCOMs. Under such circumstances, the additional revenue earned by generators and the DISCOMs in excess of energy charges needs to be reduced from Fixed Charges payable by DISCOMs while computing the average fixed cost/MW. The data of this additional revenue earned by the beneficiaries/State has not been shown by the Applicants in their correction Application. Furthermore DISCOMs themselves have the option to sell surplus quantum on day ahead and real time market considering the generation availability and demand forecast including the Open Access quantum on Power Exchanges which serves as an additional revenue for the DISCOMs thereby compensating both the stranded quantum and the fixed costs.

The quantum sold by the DISCOMs during the calculation period needs to be shown as per Regional Energy Account issued by SRPC and it needs to be considered while arriving at the unavoidable stranded capacity solely due to Open Access and the fixed costs arising out of it.

4. In the present Application, the Applicants have adopted an incorrect approach to claim Additional surcharge from Open Access Consumers which is quite apparent.

The Applicant(s) should have submitted and considered the actual units which were backed down/surrendered from each different generating stations and then determine the fixed cost liability of Applicants for the actual energy surrendered for open access. In the present Application, the Applicants have not submitted or considered any such data. The "*generating station wise back down/surrendered*" data is a critical component for recovery the fixed cost from Open Access Consumers which should have been considered but is missing in the computation done by the Applicants. Applicants should have utilized the source wise details of backed down energy to compute weighted average cost of energy backed down and effective fixed cost per unit of stranded power.

The individually station wise back down/surrendered data should be equal to open access quantum granted by Applicants while computing the fixed charges.

ground for levying the additional surcharge is not demonstrated in terms of NTP 2016, Para 8.5.4. In the event of the applications of DISCOMs are allowed and any retrospective effect of the same would entail huge amount of expenditure.

Therefore it is suggested the actual figures of April – Sep 2021 should be considered in order to arrive at a true figures.

7. Additionally, the Applicant(s) has included even the transmission cost for computing the stranded fixed costs.

The NTP, 2016 evidently states that additional surcharge for obligation to supply shall 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. The NTP, 2016 also clearly states that the fixed costs related to network assets would be recovered through wheeling charges. Hence, in accordance with NTP, 2016 considering the transmission charges for computing the stranded costs is not at all correct when NTP, 2016 explicitly provides that the stranded cost of power purchase commitments is to be considered for additional surcharge. The power purchase commitments mean only the amount payable to Generation Companies based on Power Purchase Agreements with them and by no imagination transmission charges can be considered as part of power purchase commitments. The cost of stranded physical assets should be recovered through wheeling charges.

As stated above, the Additional surcharge is applicable only if capacity is stranded due to Open Access availed by consumers. In case of Transmission System as far as utilization of the system concerned, there is no difference between consumers procuring power through Open Access or DISCOMs as in both case same transmission system is used.

Since, Transmission cost is payable only on scheduled quantum not on surrendered/back down quantum. Therefore, considering of transmission cost as stranded cost for determination of Additional Surcharge is an incorrect approach and should thus be excluded from the computation.

8. As per current practice in Telangana, the wheeling charges are recoverable by the DISCOMs on full NOC Quantum and not on actual energy scheduled. The difference amount is not refunded to

The Generation surrendered by Applicant(s) due to open access should be considered while calculating average fixed cost on per unit basis from each of the stranded power plants otherwise the basic contention of the licensee(s) that was a stranded capacity would not exist.

Further, how the figures of Actual Energy Schedule of 29779.43 MU and 35769.61 MU for H1 and H2 respectively have arrived in the calculation is not clear in the Application of the Applicants. It is requested that complete break up of Actual Energy Schedule and breakup of individual fixed cost of each generating station is required in order to draw any conclusion for calculating the total fixed cost.

Furthermore, why in the calculation transmission and distribution charges paid by Open Access consumers have been deducted from the demand charges is not clear. On what quantum the demand charges have been recovered from the consumers is also not clear. Whether DISCOMs are adjusting the demand charges on Open Access quantum or on the total quantum. –

Clarification on methodology adopted for “Net stranded charges recoverable” figures and “Demand Charges adjusted by the DISCOMs” is requested.

5. It is critical before the computation of additional surcharge that capacity which is stranded wholly due to open access sale should be classified, based on the figures for such time slots where the generating capacity was available but not scheduled solely due to consumers availing power via open access. Only after identifying such stranded power and establishing that there is indeed such deserted capacity, the calculations towards additional surcharge should be made by considering the total fixed costs paid by the Applicant(s). It only looks like that the Applicant through its present application seeks to recover the fixed costs of its surplus power as additional surcharge from Open Access Consumers.
6. Open Access sales considered by Applicants for H1 868.04 MUs (from last FY2020-21) and for H2 844.11 MUs. These Open Access sales figures have been taken from previous year for projection of current FY which is not appropriate and fair to the Open Access consumers since last year the impact of Covid-19 lockdown have resulted in lesser Open Access volume which may be higher this FY pertaining to less restrictions and more or less all industries running. The projections made are based on the assumptions that have no effective backing. Therefore, the

the consumers. The access income generated should be adjusted and needs to be reduced from Fixed Charges payable by DISCOMs while computing the average fixed cost/MW. Further, we seek clarity on the how much NOC quantum was issued from April – Sept. and how much is actually scheduled? Whether the Applicants are adjusting the same is not clear.

9. At the outset, it is submitted that the present Application is not maintainable, and is a gross abuse of process. It is submitted that the period for which Additional Surcharge has been calculated by the Applicants i.e. April 2020– Sep 2020 is already over. Further, the said additional surcharge as calculated by the Applicants has been sought to be levied in the April 2020– Sep 2020 of FY 2020-21. Therefore, even the period for levying this additional surcharge is now over. In the circumstances, there cannot be any retrospective levy or correction of Additional Surcharge on the open access consumers which if imposed would be unfair, arbitrary and is completely unjustifiable. Retrospective applicability of surcharge would have significant adverse impact on the business of the industrial consumers of the State of Telangana as they had already suffered huge losses due to imposition of Nation-wide lockdown and in the State by Government of Telangana (GoTS) due to spread of pandemic COVID-19. Hence, the retrospective applicability of surcharge is a clear violation of principles of natural justice on the consumers of the State of Telangana. Any additional surcharge if corrected and increased by the Commission should be applicable only on prospective basis on open access consumers.
10. In the data and information submitted by the Applicant, it is not clear whether the back down has been for round the clock basis or for some specific duration. The Hon'ble Commission is requested to examine the generation back down data of each of the 15 min time block period along with the reason of such back-down as the back down could be on account of other reasons as well such as economical, operation and technical considerations other than open access.
11. It is submitted that when the consumer procures power from open access instead of procuring from its DISCOMs, the DISCOMs should schedule power on merit order basis i.e. lowest variable cost generation should be procured first then the second lowest variable cost generation and so on. From the present application it is not clear whether DISCOMs has properly followed the merit order.



Furthermore, the Para 8.5.4 of NTP, 2016 provides that Additional Surcharge is applicable only when capacity 'continues' to be stranded. The continuous period for which certain capacity has been stranded due to Open Access should be construed as the period for which Additional Surcharge is claimed by the Applicants. Therefore, in the present applications the DISCOMs should conclusively demonstrate that there was no power shortage in any of the 15 min time block between April 2020- September 2020 and the capacity was stranded/backed down primarily on account of open access. Similarly, for forthcoming years also it needs to be proved. In other words Additional Surcharge can be claimed only when DISCOMs are able to meet its peak demand for the concerned FY and did not do any load shedding during such peak demand period. The Applicant(s) have not been able to demonstrate continuous stranded capacity as per above mentioned principle. Furthermore, before levy of Additional surcharge for future period also it should be noted that the quantum of stranded power does not remain constant throughout the year or a month or a week or even a day. Therefore, it is submitted that Levy of additional surcharge without establishing "continuous" stranded capacity for FY 21-22 and for future years would be a jump in the dark and would infringe the rights of the Open Access Consumers provided under the Act, Regulation and NTP, 2016. Therefore, highly unfair and discriminatory.

We request Hon'ble Commission to kindly consider the above mentioned comments/objections and suggestions for determination or correction of the Additional Surcharge on Open Access Consumers and further, direct DISCOMs to submit additional data and information including in relation to generating station wise back down/surrendered units, details of backing down due to force outage, congestion in transmission network due to which backing down be carried out etc. to establish that stranded capacity due to open access consumers.



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**WORKS:**

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To

Dt.22.11.2021

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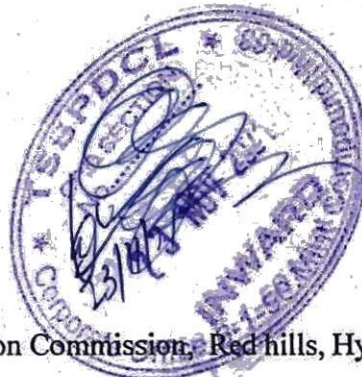
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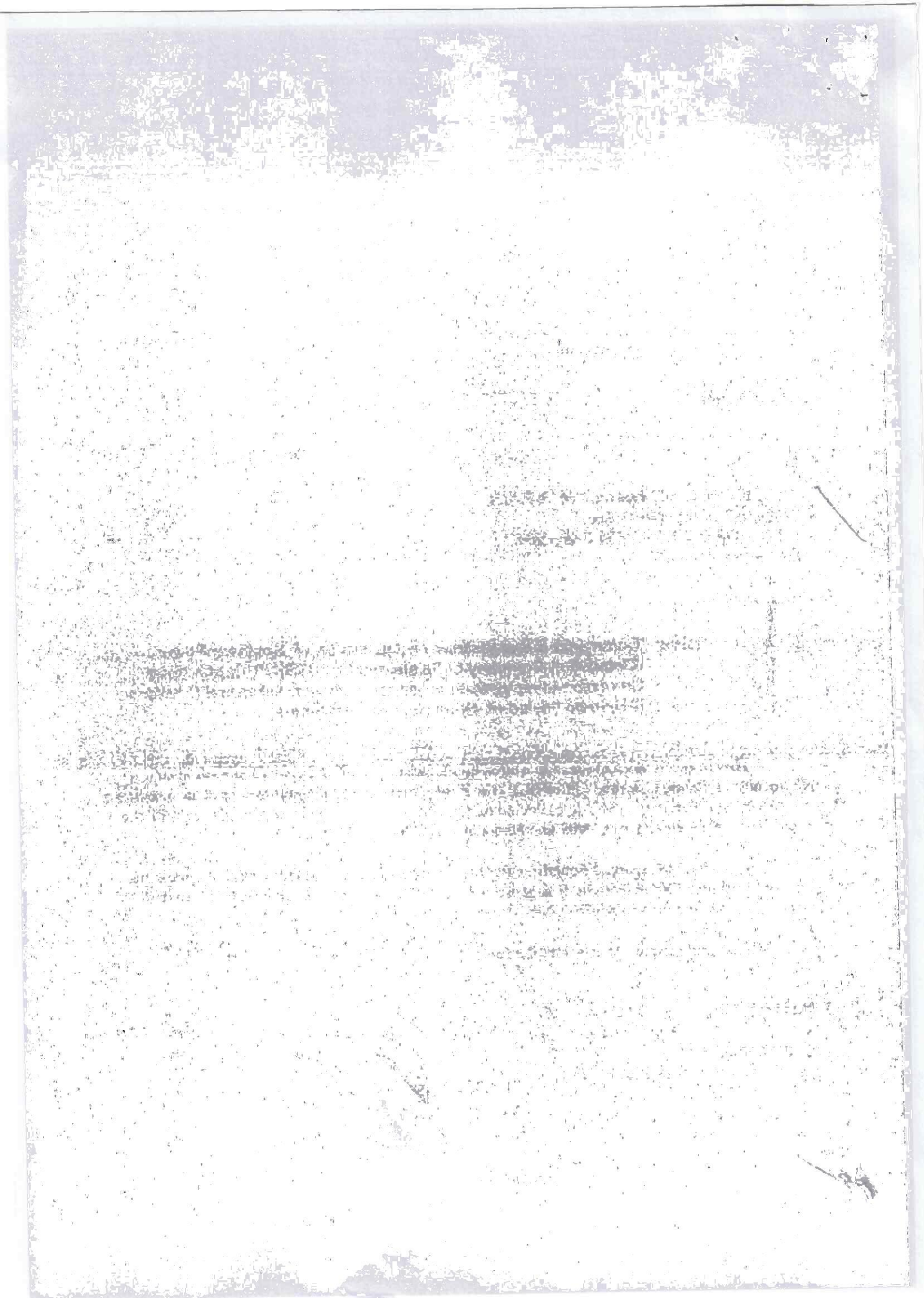
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Yours faithfully,  
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Cc to: The Secretary, The Electricity Regulation Commission, Red hills, Hyd



## ANNEXURE-1

1. The surcharge proposed by TSSPDCL and TSNPDCL (hereinafter "Applicant(s)/DISCOMs") for H1 and H2 is Rs. 2.01 and Rs. 2.34 per unit respectively on Open Access Consumers in their application is very high and against the very intention of the Electricity Act, 2003 (the Act), National Tariff Policy ("NTP/ Tariff Policy, 2016") wherein it is specifically provided that Open Access Consumers are allowed to receive electricity from other sources. The Act allows Open Access by the Consumers and it is the inadequacy of the Applicant(s) that any difficulties are arising in giving effect to the provisions of the Act. The Consumers are within their right to buy cheaper power from wherever viability permits and imposing such high additional surcharge on such consumers would discourage them from buying open access power and would be against of the provision of the Act and NTP, 2016 as it will lead to elimination of competition.
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Further, Section 8.5.4 of the Tariff Policy, 2016 provides;

*"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"*

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- i. If the consumer is receiving supply of power other than its DISCOM to the extent of the fixed charges payment obligations which is unavoidable and which is in addition to the charges for usage of network assets recoverable through wheeling charges.
- ii. NTP 2016 and the Regulations clearly put the onus on DISCOMs to conclusively demonstrate that the power purchase commitments have been and will continue to remain stranded.
- iii. Further, it has to be establish that there is an unavoidable obligations and incidence to bear fixed charges on DISCOM, consequent to such Open Access contract
- iv. And such additional surcharge which are to be levied on Open Access Consumers should not become onerous that it eliminates competition.

Therefore, to impose additional surcharge on open access consumers the above mentioned four conditions should be established and proved by the DISCOMs.

It should be noted that as per NTP 2016, that additional surcharge to be levied on Open Access consumers should not be onerous that it eliminates the competition. The additional surcharge determined by the Applicant(s) in their applications of 2.01 and Rs. 2.34 per unit are not only onerous but is also wrongly computed.

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The quantum sold by the DISCOMs during the calculation period needs to be shown as per Regional Energy Account issued by SRPC and it needs to be considered while arriving at the unavoidable stranded capacity solely due to Open Access and the fixed costs arising out of it.

4. In the present Application, the Applicants have adopted an incorrect approach to claim Additional surcharge from Open Access Consumers which is quite apparent.

The Applicant(s) should have submitted and considered the actual units which were backed down/surrendered from each different generating stations and then determine the fixed cost liability of Applicants for the actual energy surrendered for open access. In the present Application, the Applicants have not submitted or considered any such data. The "*generating station wise back down/surrendered*" data is a critical component for recovery the fixed cost from Open Access Consumers which should have been considered but is missing in the computation done by the Applicants. Applicants should have utilized the source wise details of backed down energy to compute weighted average cost of energy backed down and effective fixed cost per unit of stranded power.

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6. Open Access sales considered by Applicants for H1 868.04 MUs (from last FY2020-21) and for H2 844.11 MUs. These Open Access sales figures have been taken from previous year for projection of current FY which is not appropriate and fair to the Open Access consumers since last year the impact of Covid-19 lockdown have resulted in lesser Open Access volume which may be higher this FY pertaining to less restrictions and more or less all industries running. The projections made are based on the assumptions that have no effective backing. Therefore, the

the consumers. The access income generated should be adjusted and needs to be reduced from Fixed Charges payable by DISCOMs while computing the average fixed cost/MW. Further, we seek clarity on the how much NOC quantum was issued from April – Sept. and how much is actually scheduled? Whether the Applicants are adjusting the same is not clear.

9. At the outset, it is submitted that the present Application is not maintainable, and is a gross abuse of process. It is submitted that the period for which Additional Surcharge has been calculated by the Applicants i.e. April 2020– Sep 2020 is already over. Further, the said additional surcharge as calculated by the Applicants has been sought to be levied in the April 2020– Sep 2020 of FY 2020-21. Therefore, even the period for levying this additional surcharge is now over. In the circumstances, there cannot be any retrospective levy or correction of Additional Surcharge on the open access consumers which if imposed would be unfair, arbitrary and is completely unjustifiable. Retrospective applicability of surcharge would have significant adverse impact on the business of the industrial consumers of the State of Telengana as they had already suffered huge losses due to imposition of Nation-wide lockdown and in the State by Government of Telangana (GoTS) due to spread of pandemic COVID-19. Hence, the retrospective applicability of surcharge is a clear violation of principles of natural justice on the consumers of the State of Telengana. Any additional surcharge if corrected and increased by the Commission should be applicable only on prospective basis on open access consumers.
10. In the data and information submitted by the Applicant, it is not clear whether the back down has been for round the clock basis or for some specific duration. The Hon'ble Commission is requested to examine the generation back down data of each of the 15 min time block period along with the reason of such back-down as the back down could be on account of other reasons as well such as economical, operation and technical considerations other than open access.
11. It is submitted that when the consumer procures power from open access instead of procuring from its DISCOMs, the DISCOMs should schedule power on merit order basis i.e. lowest variable cost generation should be procured first then the second lowest variable cost generation and so on. From the present application it is not clear whether DISCOMs has properly followed the merit order.

Furthermore, the Para 8.5.4 of NTP, 2016 provides that Additional Surcharge is applicable only when capacity 'continues' to be stranded. The continuous period for which certain capacity has been stranded due to Open Access should be construed as the period for which Additional Surcharge is claimed by the Applicants. Therefore, in the present applications the DISCOMs should conclusively demonstrate that there was no power shortage in any of the 15 min time block between April 2020- September 2020 and the capacity was stranded/backed down primarily on account of open access. Similarly, for forthcoming years also it needs to be proved. In other words Additional Surcharge can be claimed only when DISCOMs are able to meet its peak demand for the concerned FY and did not do any load shedding during such peak demand period. The Applicant(s) have not been able to demonstrate continuous stranded capacity as per above mentioned principle. Furthermore, before levy of Additional surcharge for future period also it should be noted that the quantum of stranded power does not remain constant throughout the year or a month or a week or even a day. Therefore, it is submitted that Levy of additional surcharge without establishing "continuous" stranded capacity for FY 21-22 and for future years would be a jump in the dark and would infringe the rights of the Open Access Consumers provided under the Act, Regulation and NTP, 2016. Therefore, highly unfair and discriminatory.

We request Hon'ble Commission to kindly consider the above mentioned comments/objections and suggestions for determination or correction of the Additional Surcharge on Open Access Consumers and further, direct DISCOMs to submit additional data and information including in relation to generating station wise back down/surrendered units, details of backing down due to force outage, congestion in transmission network due to which backing down be carried out etc. to establish that stranded capacity due to open access consumers.