

**BEFORE THE HON'BLE TELANGANA STATE ELECTRICITY
REGULATORY COMMISSION**
AT ITS OFFICE AT IVTH FLOOR, SINGARENI BHAVAN, RED HILLS, HYDERABAD

I. A. No. 22 of 2017

In

O. P. No. 22 of 2016

**In the matter of: Determination of additional surcharge to be levied for the
FY2017-18 in respect of the open access consumers by
TSSPDCL under section 42 of the Electricity Act, 2003.**

OBJECTIONS

M/s. Astrix Laboratories Limited,
(Presently merged with M/s Mylan Laboratories Limited)
having its factory at Survey No. 10 & 42,
Gaddapotharam Village, Kazipally Industrial Area,
Jinnaram Mandal, Medak District.

TSERC, HYDERABAD
INWARD
06 SEP 2017
No. 988 Signature
7 of 7
.....Objector

1.The licensee has come-up with present I.A No. 22 of 2017 in O.P No. 22 of 2016 claiming additional surcharge levyable on open access consumers for the FY 2017-18 to be determined under section 42 (4) of the Electricity Act, 2003. The licensee has by referring to section 42 (2), 43 & clause 8.5.4 of National Tariff Policy, 2016 laid the claim for determining additional surcharge independently without substantive data/material.

2.The Public Notice for these proceedings were not given by publication in newspapers in the manner or procedure as applicable for the original tariff petitions. The Objector was surprised know only a of the proceedings having been notified only on the website of the Commission and that too with short response time (I am not sure of this, since the time limit seems reasonable). Consequently, the Objector herein is making brief submissions. Further objections /submissions will be submitted if the Hon'ble Commission grants further time and/or at the time of the hearings. It is further submitted that certain

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clarifications and explanations, and also further information are required from the licensees to enable a more complete understanding and for filing further objections.

3. The basis of proposed methodology falls afoul of section 42 (4), in as much as the obvious object behind additional surcharge as mentioned in O.P. is an assumption that licensee could retain open access consumers, which approach itself is in clear violation to the legislative mandate to allow indiscriminate open access. The additional surcharge is therefore targeted to repatriate open access consumers back to licensee, indirectly by making open access completely unviable. The sales projection made have no rationale and further the licensee stated that the sales would be higher had the open access consumers retained, which goes to show the unrealistic assumptions and the clear design behind the proposed method (to see that consumers are forced back only to licensee).

4. The section 42 (2), 43 of Electricity Act, 2003 & clause 8.5.4 of National Tariff Policy, 2016 which are relevant are extracted hereunder:

Section 42 (2)

The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

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Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use: 3

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

Section 43. (Duty to supply on request): ---

(1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

(2) Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(3) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

The clause 8.5.4 of National Tariff Policy states that

"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 the 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"

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5. The licensees have ill-advisedly and/or unfortunately found themselves with surplus power and fixed cost commitments which are not necessary, prudent or reasonable to meet the actual obligations to supply to consumers within the State. To the extent that the PPAs with fixed cost obligations are beyond the actual requirements of the consumers in the State, the fixed cost obligations arising from such contracts cannot be said to be arising from the licensee's obligation to supply. The licensee's obligation to supply is only to the extent that consumer supply agreements exist and applications for supply of additional power may reasonably be expected to arise, having regard to reasonably forecasted increase in energy requirements.

6. The licensee's obligation to supply cannot be presumed to extend to open access or consumption from other sources already known to be pre-existing and/or estimated from historical data. There cannot be any consideration of stranding of any fixed cost to such extent. If a consumer has not at all contracted with the licensee and has actually contracted elsewhere for its requirement of electricity, then such energy was never the obligation of the licensee to supply and cannot be considered as such. Long standing arrangements for sourcing of power from elsewhere cannot be considered as part of the licensee's obligation to supply.

7. 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 2134 MU termed as "actual open access sales". The issue of additional surcharge would arise only when the State Commission permits a person to receive supply from a source other than the licensee. Where there is no permission required to be given by the Commission to avail/receive

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supply from elsewhere, there cannot be any question of additional surcharge. The licensees may be called upon to provide specific and detailed data with respect to the the composition of such “actual open access sales” as considered in the proposal.

8. When the consumer is not require to pay Wheeling Charges, the question of additional surcharge under section 42 (4) does not arise. So from data furnished, it is not known whether such of those transactions / consumers within distribution area of licensee, availing power from other sources without payment of Wheeling Charges have been excluded from the so called Open Access sales.

9. The question of fixed cost being stranded would arise only when a particular transaction under open access is actually undertaken and depending on the actual availabilty from tied up sources at that particular time. There cannot be a prior determination for all cases for any and all times. This would result in situations where even if there is no stranding or substantially less stranding at a particular point of time when open access is availed, and yet the consumer is called upon to pay a compensatory surcharge just because there is likely to be some stranding at other times. That would be unjust and unreasonable. Even according to the licensee it is alleged that the stranding occurs sometimes to varying extents and not always.

10. The question of additional surcharge is to be considered with respect to existing PPAs (subject to what has already been stated supra). 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 been availability of any energy. The fixed costs considered in these cases are without any basis and

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also incorrect / 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 that it cannot in toto be said that there is demonstrably any stranded fixed cost.

11. The fixed cost per unit of approved power purchase even according to the data stated by the licensees is Rs 6.65/- 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 1.95 proposed is wholly misconceived and misleading.

12. Where consumers have CMD with the licensees for the whole of their energy requirements, they are required to pay demand charges on 80% of the CMD irrespective of whether or not they draw and consume energy from the licensees. Fixed costs are embedded in the demand charges and the minimum charges payable by such consumers. If consumers take part of their energy requirement from other sources, they nevertheless pay the minimum demand and energy charges. The licensees' proposals tantamount to double-counting and double-charging on the same account which is capricious, irrational, wholly unjustified and unreasonable. There has been no consideration or application of mind to this aspect at all. In addition, the consumers availing open access are paying transmission and wheeling charges on the open access quantum. Once again, the licensees' proposals tantamount to double-counting and double-charging. There is no application of mind or consideration of this issue at all.

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13. When faced with a prospect of surplus energy contracted and fixed cost thereon, more particularly when the situation is foreseen to be sustained for some times to come, the licensee must either take measures to contract out of its obligations, or the licensee must trade the surplus on its own account and suffer/enjoy the eventual outcome. The licensees cannot do neither and merely pass the burden to consumers in some way and another. In any event, no additional surcharge can be levied for all time; .

14. In so far as the electricity generated from renewable sources of energy is concerned, the provisions of the Act contained in the preamble, section 61(h) and 86(1)(e) requiring promotion of such sources of energy has to be given due consideration. There has to be special consideration shown by way of exemption from surcharges in respect of such energy. Further, RPPO obligation is imposed upon various categories of obligated entities including licensees, captive consumers and open access consumers. The fulfillment of such obligation cannot be unreasonably coupled with the burden of surcharges, more so on the ground of stranding of licensee's fixed cost. There is no justification in imposing an RPPO obligation on one hand and mulcting the discharge of such obligation by surcharges on the other. All electricity from renewable energy sources ought to be exempted from additional surcharge.

15. Section 42(2) read with the 5th proviso of the Act provide for a mandatory introduction of open access in phases considering all relevant factors. The facility of open access itself is a cornerstone policy of the Act to promote competition as is evident from the preamble to the Act and as observed by the Hon'ble Supreme Court in the PTC case. It is implicit therefore that the mandate requires that the surcharges should not be so onerous as to inhibit

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competition or simply, let the consumers suffer to the extent of finally being required to buy power only from licensee. When the Act mandates that the State Commission shall introduce open access within a specific time frame, it necessarily follows that the open access so introduced shall be workable and fair. Open access cannot be defeated indirectly by raising prohibitive tariff barriers by determining additional surcharge at onerous, unreasonable and impractical levels. If the magnitude or the unreasonableness of such surcharge is such as to defeat open access and to restrict competition and to make open access a mere illusion, it will be undermining the objects, purposes and the mandate of the Act. The consumer is not expected, by legislative policy, to be deprived of a choice of the source of energy merely by reason of any prohibitive or excessive surcharges.

In view of the above, the objector herein prays the Hon'ble Commission to reject the claim of the licensee to levy additional surcharge and / or determine the Additional Surcharge to be 'nil' for proposed period of FY 2017-18 & pass such order or orders as deem fit.

Hyderabad

Date: 06.09.2017

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Objector