



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

R. P. No. 6 of 2016
in
O. P. Nos. 6 and 7 of 2016

Dated 15.07.2017

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

Between:

M/s. Salasar Iron and Steel (P) Limited,
Flat No. 101, 1st Floor, Satya Sarovar Complex,
High Court Road, Hyderabad – 500 002.

... Review Petitioner

And

1. M/s. Southern Power Distribution Company of
Telangana Limited, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
2. M/s. Northern Power Distribution Company of
Telangana Limited, Corporate Office, Nakkalgutta,
Hanamkonda, Warangal – 506 001.

... Respondents /
Original petitioners.

This petition came up for hearing on 20.06.2017. Sri.N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing Counsel for the Respondents / Original petitioners alongwith Sri. B. Vijay Bhaskar, Advocate are present on 20.06.2017. The review petition having stood for consideration to this day, the Commission passed the following:

ORDER

M/s. Salassar Iron and Steel Limited (review petitioner) has filed a petition under clause 32 of Conduct of Business Regulation, 2015 seeking review of the order

dated 23.06.2016 in O. P. Nos. 6 and 7 of 2016 filed by the licenses for determining the cross subsidy surcharge.

2. The review petitioner stated that it is a consumer with Southern Power Distribution Company of TS Limited (TSSPDCL) having service connection in HT No. MBN 1088. It is stated that the TSSPDCL had filed on 08.03.2016 its annual revenue requirement (ARR) including proposals for cross subsidy surcharge and additional surcharge (CSS) for open access consumers for the Financial Year 2016-17. Basing as per clause 8.5 of national tariff resolution dated 28.01.2016 in clause No. 9.2.2 at page No. 84 of ARR which is extracted in the petition.

3. The review petitioner stated that the Commission conducted public hearing on 06.04.2016 and 07.04.2016 at Hyderabad. It is stated that the Commission passed an order dated 23.06.2016 in the matter of determination of CSS under section 39, 40 and 42 of the Electricity Act, 2003 (Act, 2003) for the financial year 2016-17 for the period from 01.07.2016 to 31.03.2017. It is stated that the Commission approved the CSS for FY 2016-17 in table 2 for TSSPDCL in the order dated 23.06.2016 in O. P. No. 6 of 2016. The same is reproduced in the petition.

4. The review petitioner stated about the ground of review petition. It is stated that the Ministry of Power (MoP), Government of India (GoI) has issued the tariff policy resolution dated 28.01.2016 in which clause No. 8.5 prescribed the formula for computation of CSS and additional surcharge for open access. The same is reproduced hereunder.

“8. 5. 1 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.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not

constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.

Surcharge formula:

$$S = T - [C/(1-L/100) + D + R]$$

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Provided further that the Appropriate Commission, in consultation with the Appropriate Government, shall exempt levy of cross subsidy charge on the

	(Page No. 130)	(Page No. 244) Rs. / KWH	ble purchase obligation (Page No. 155) Rs. / KWH	voltage level (As mentioned in CSS Order dt. 23.06.2016) Rs. / KWH	the relevant voltage level Rs. / KWH	Rs. / KWH	(Rate of Sl. No. 3 x 20%)
(1)	(2)	(3)	(4)	(5)	(6) (3 X 2%)	(7)(3-4-5-6)	(8)
1	11 KV (8.72%)	6.65	4	0.65	0.58	1.42	1.33
2	33 KV (10.94%)	6.15	4	0.31	0.67	1.17	1.23
3	132 KV (12.60%)	5.65	4	0.14	0.71	0.80	1.13

8 The review petitioner has sought the following prayer in the petition

“a) to review the CSS order dated 23.06.2016 passed in O. P. No. 6 of 2016 in respect of TSSPDCL for the period from 01.07.2016 to 31.03.2017 duly taking into consideration the above said facts as per Annexure III;

b) to set aside the order dated 23.06.2016 of O. P. No. 6 of 2016 passed in respect of Cross Subsidy Surcharge issued for FY 2016-17 with effect from 01.07.2016 to 31.03.2017 to the extent of rates applicable to HT – I Industry category of 11 KV, 33 KV and 132 KV of TSSPDCL;

9. The respondents filed their counter affidavit on the following lines.

a) The review petitioner M/s. Salasar Iron and Steel (P) Ltd., herein is consumer of Sothern Power Distribution Company of Telangana Limited having HT service connection No. MBN 1088.

b) In reply to averments made in para No. 9, it is submitted that the computation of cross subsidy surcharge is done as per the formula prescribed in clause No. 8.5 of National Tariff Policy Resolution dated 28.01.2016.

Further, it is stated that T in the above formula reflects the tariff payable by the relevant category consumer for the relevant year including reflecting the Renewable Purchase Obligation. It is stated that in the Tariff payable by the consumer includes the fixed /

demand charges, the energy charges and customer charges as determined by the Commission.

As per the Commission's Tariff Order for FY 2016-17, the tariff payable by the consumers include demand / fixed charges and energy charges as specified in Annexure – A (pg 242-246) of Retail Supply Tariff Order for FY 2016-17 alongwith customer charges (pg 236). The relevant part of Tariff Order is extracted below.

“9.115 Customer charges

Every HT consumer shall pay customer charges as applicable to them, in addition to demand and energy charges billed.”

Further, it is stated that as per the Regulation No. 7 of 2013 (Second Amendment to 'Electricity Supply Code' Regulation) issued by the erstwhile APERC, the tariff payable by the consumer for consumption of electrical energy includes energy charges, demand / fixed charges, customer charges etc. The relevant part of the regulation is extracted below for reference:

“2. For clause 2 (c) the following shall be substituted:

“Consumption Charges” means energy charges for consumption of electrical energy (calculated on the basis of kWh or kVAh rate as applicable), and includes Demand / Fixed Charges. Fuel Surcharge Adjustment (FSA) Charges, customer charges, wherever applicable.”

Hence, it can be construed from Commission's Tariff Order and the aforementioned Regulation that the tariff payable by the consumers include demand / fixed charges, energy charges and customer charges as applicable.

Further it has not been specifically defined in the Electricity Act, 2003 or in the National Tariff Policy that the Tariff “T” shall be confined to the Energy charges of particular category of consumer.

Further, Sec 42 (2) of the Electricity Act, 2003 which reads as follows.

“(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

.....

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

Fundamentally, the surcharge has been levied to meet the requirements of the current level of cross subsidy by the licensee. Hence the principle underlying the levy of cross subsidy surcharge is to recover the cross subsidy portion from the Open Access Consumers for the consumption from open access which otherwise would have been recovered from those consumers in the form of levy of tariffs on the consumption from the distribution licensees. Such mechanism as an accepted practice under law is in place so as to balance the revenue loss to the distribution companies which supply power at lower tariffs below cost of service primarily to domestic and agriculture consumers as a social responsibility. The Commission while fixing of tariffs will include cross subsidy component in the revenues of the DISCOM from the subsidizing consumers over and above the average cost of service of the DISCOM. This cross subsidy will be essentially used to meet the revenue loss from subsidized consumers whose tariffs are lower than cost of service. Hence if any subsidizing consumer opts for open access the DISCOM will have a revenue loss to the extent of cross subsidy and fixed costs commitment (if any).

Thus such revenue loss can be arrived only by considering the actual revenue the DISCOM would have earned (average revenue realization per unit) if the consumer takes supply of such open access units entirely from the DISCOM less the cost of service (per unit) as defined in the NTP formula to such category of consumer.

Hence under no assumption, the Tariff, "T" mentioned in the NTP cross subsidy surcharge formula cannot be restricted to energy charges which is a partial recovery of revenue from the consumers.

Hence, the T implies the combination of fixed / demand charges, energy charges, customer charges which forms part of the revenue to be payable by a particular category of consumer. Hence, the computation of cross subsidy surcharge is based on the Average Realization Rate per KWH of relevant category. The same has been affirmed by Appellate Tribunal for Electricity (APTEL) in Appeal No. 181 of 2015.

Further, it is stated that the T has been calculated in terms of Rs. / KWH which is in congruence to the other components of the formula that is power purchase cost, wheeling charges, etc. which are in Rs. / KWH.

c) It is also stated that the contention of the appellant in para No. 9 that the aggregate AT & C loss percentage taken are not as per the percentage approved in Retail Supply Tariff Order dated 23.06.2016 by the Commission is not correct. The

approved aggregate losses as mentioned in Retail Supply Tariff Order dated 23.06.2016 for FY 2016-17 (Table 11 at page No. 130) has been considered for computation of cross subsidy surcharge and the approved percentage of losses is shown below:

Voltage level	Approved loss (in %)
LT	5.5%
11kV	4.5%
33 kV	3.99%
132kV	3.12%

d) It is stated that the computation of cross subsidy surcharge as presented in Annexure III of para 10 is highly inappropriate and the percentage losses considered in column 2 is not correct. Further, it is stated that the aggregate AT & C losses applicable decreases with the increase in voltage level. The aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level “L”, by taking transmission charges approved for FY 2016-17 in the Transmission Tariff Order for the third control period (FY 2014-15 to FY 2018-19) dated 9th May, 2014 by the erstwhile APERC and distribution charges approved voltage-wise for FY 2016-17 in the Distribution Tariff Order for the third control period (FY 2014-15 to FY 2018-19) dated 27th March, 2015 approved by Commission is calculated below:

Voltage level	Approved loss (in %)	Aggregate AT & C
LT	5.5%	16.06%
11kV	4.5%	11.17%
33 kV	3.99%	6.99%
132kV	3.12%	3.12%

Further, it is mentioned that “C” indicates the per unit weighted average cost of power purchase by the licensee at the generator’s ex-bus. Hence, the aggregate AT & C losses applicable to the relevant voltage level, “L” considered in the surcharge formula is to be computed with respect to the generator’s ex-bus. In this regard, the losses are calculated from transmission to consumer end.

e) Further, it is stated that as per the cross subsidy surcharge formula prescribed in National Tariff Policy, “L” includes the aggregate of transmission, distribution and commercial losses expressed as a percentage applicable to the relevant voltage level. Hence, the consideration of “L” in terms of Rs / kWh in column 6 of Annexure III in para 10 is not correct. It is to reaffirm that “T” indicates the tariff

payable by the relevant category of consumer for the relevant year based on the average realization rate per KWH of relevant category. Hence, the computation of cross subsidy surcharge submitted by the petitioner in para 10 is not sustainable.

f) It is stated that the computation of cross subsidy surcharge is done as per the surcharge formula prescribed in Clause No. 8.5 of National Tariff Policy duly considering the aggregate losses as approved in Retail Supply Tariff Order for FY 2016-17 dated 23.06.2016 by the Commission. Hence, the petitioner's contention to review the CSS order is not sustainable.

10. The counsel for the review petitioner has filed written submission as follows.

a) It is submitted that the respondent at Sl. No.3 page No. 2 admitted that the computation of cross subsidy surcharge is made as per formula prescribed in clause No. 8.5 of National Tariff Policy Resolution dated 28.01.2016 and the same is as follows.

$$S = T - (C / (1-L / 100) + D + R)$$

1. It is submitted that as per first proviso of Clause 8.5.1 National Tariff Resolution dated 28.01.2016 is extracted for ready reference of the Commission.

“Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.”

As per above said proviso the surcharge shall not exceed 20% of the tariff applicable to the category of the consumer seeking open access.

As per submission of the respondent in the counter the tariff payable by the consumer includes the Fixed / Demand Charge, the energy charges and customer charges as determined by the Commission.

In view of the above the computation of cross subsidy surcharge from 01.07.2016 to 31.03.2017 shall as per tariff order be as follows:-

Sl. No.	Voltage Level KV	Energy Charges Rs. / KWH Page No. 197 & 198	Fixed charges (Demand Charges) Rs. / KWH i.e., Rs. 390/720= Rs. 0.54) page No. 197 & 198	Customer Charges Rs./KWH Rs.1685 / 1080000 = Rs.0.001	Total Tariff Per KWH Rs.	20% of Total tariff payable Rs. / KWH
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	11	6.65	0.54	0.001	7.191	1.44
2	33	6.15	0.54	0.001	6.691	1.33
3	132	5.65	0.54	0.001	6.191	1.23

2. It is submitted that the cross subsidy was computed on the basis of average realization whereas as per National Policy dated 28.01.2016 the surcharge has to be calculated on the basis of tariff and to the maximum extent of 20% of tariff.

3. *It is submitted that cross subsidy should be maintained at Current Level as per Section 4 (2) of Electricity Act, 2003.*

It is submitted that the cross subsidy surcharge was introduced for the respondent in the Financial Year 2015-16 and that at most the cross subsidy surcharge should be maintain at that current level and should be progressively reduced but cannot be increased.

4) PAYMENT OF DEVELOPMENT CHARGES:

1) It is respectfully submitted that as per Clause 6 (2) of Regulation 4 of 2013 (Page No.5) the Distribution Licensee is authorized to recover any expenses that shall be requires to reasonably incurred to provide any electric line specifically for the purpose of giving such supply to the applicant.

2) It is respectfully submitted that as per Clause 8 (1) of Regulation 4 of 2013 (Page No.5) the Distribution Licensee is authorized to recover from applicant requiring supply of electricity expenses on normative basis towards part of upstream network cost that Distribution Licensee has already incurred or to be incurred in extending power supply to the applicant.

3) As per Annexure 1 of Regulation 4 of 2013 (Page No. 7) the Development Charges for HT consumer is Rs. 1200/- per KVA or part thereof of the contracted demand of 11 KV and 33 KV supply Rs. 1,000/- for above 33 KV supply.

4) Accordingly the Development Charges as mentioned in Sl. No. 3 above are being collected from the consumer to provide supply of contracted demand.

In view of the above, it is to be noted that the consumers of the respondents have already paid the development charges towards erection of electric lines and upstream network cost hence, the proportionate cost has to be reduced from the computation.

b) In view of the above stated facts it is pertinent to note at this juncture that the consumers of respondents who have already paid Development Charges towards erection of electric lines and upstream network cost. The individual consumer is the owner of transmission system to the extent of Development Charges he paid.

c) Hence, the proportionate cross subsidy pertaining to the transmission system for which the development charges is paid by the consumer is to be deducted from the actual cross subsidy surcharge fixed.

d) It is further submitted that as per clause 10 of Regulation 4 of 2013 which is extracted as follows.

“The Distribution Licensee shall account, under appropriate account heads, all charges recovered by him for erection of electric line / plant for extending supply to the applicant seeking new connection / enhancement of existing load. The amounts so recovered shall be deducted from the Gross Assets to arrive at the value of Net Fixed Assets.”

11. The counsel for the respondents submitted written submissions as follows.

a) The review petitioner M/s. Binjusaria Ispath (P) Ltd., herein is consumer of Sothern Power Distribution Company of Telangana Limited having HT service connection No. MBN 627.

b) Further, the review petitioner filed a written submission in response to the counter filed by respondent 1 / TSSPDCL and Respondent 2 / TSNPDCL against petition for review of cross subsidy surcharge (CSS) order dated 23.06.2016 passed for FY 2016-17 in O. P. No. 6 of 2016 and 7 of 2016 for TSSPDCL and TSNPDCL respectively. In response to the written submissions of the appellant, the respondent herewith submits its reply as follows.

c) In reply to para No.1, it is respectfully submitted that the computation of cross subsidy surcharge is done in accordance with the proviso of clause 8.5.1 of National Tariff Policy i.e. the surcharge not exceeding 20% of the tariff applicable to the category of consumers seeking open access. It is to reaffirm that the computation of cross subsidy surcharge is done for the consumer category but not for an individual consumer in accordance with the provisions of National Tariff Policy and the relevant part is extracted below.

“8.5.1Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.”

d) It is stated that the computation of cross subsidy surcharge as presented in para No. 1 is highly inappropriate and the computation of fixed charges / demand charges from Rs /KVA / month to Rs / KWH in column 2 considering 100% load factor and unity power factor is not correct as the load factor for a consumer category will be around 85% and power factor around 0.95. Further, it is to submit that the computation of customer charges as presented in column 5 by the petitioner is not clear and it can be comprehended from the calculation table that the computation is being done on an individual consumer basis which is highly untenable.

e) Further, it is stated that the average revenue realization for relevant category of consumers considered in the computation of cross subsidy surcharge is based on the approved sales in Retail Supply Tariff Order for FY 2016-17 and anticipated revenue from the approved sales for FY 2016-17. The relevant part in the order for cross subsidy surcharge for FY 2016-17 (pg 13) dated 23.06.2016 is extracted below.

“2.22 The Commission has determined to compute Discom wise, category wise, voltage wise T, i.e. per unit tariff (Rs./unit) realized for FY 2016-17 from the relevant category of consumers, calculated based on category wise revenue anticipated from the approved sales at tariff determined for that category, divided by the approved sales, as per the Retail Supply Tariff (RST) Order. The value of T computed for each category has been presented in Annexure 2.”

The Average Revenue Realization for relevant category of consumers as indicated in Annexure 2 (pg 18) of Cross Subsidy Surcharge Order for FY 2016-17 is extracted below.

Category	TSSPDCL				TSNPDCL			
	Sales (MU)	Revenue (INR Crores)	Avg. Realisation (INR/KWH)	20% Limit of AR	Sales (MU)	Revenue (INR Crores)	Avg. Realisation (INR/KWH)	20% Limit of AR
HT-I Industry (11KV)	3,129	2,587	8.27	1.65	558	462	8.29	1.66
HT-I Industry (33KV)	4,505	3,340	7.41	1.48	203	146	7.18	1.44
HT-I Industry (132KV and Above)	2,498	1,689	6.76	1.35	665	447	6.72	1.34

Hence, in order to meet the current levels of cross subsidy the surcharge has to be determined category-wise average revenue realization as approved in the Tariff Order.

f) In reply to the averments made in para No. 4 in respect of development charges, it is stated that the regulated rate base considered in the Annual revenue Requirement of Distribution Business for determination of wheeling charges is based on the net fixed assets of the licensee that is the consumer contributed assets arising from payment of development charges will be deducted from the gross fixed assets and the same has been indicated in the Order for wheeling tariffs for Distribution Business for 3rd control period dated 27.03.2015. The relevant part of the Tariff Order (pg 13) is extracted below.

“8.3. Regulated Rate Base: Regulated Rate Base (RRB) for the year is equal to sum of opening balance of RRB, change in RRB and working capital required for the year. Regulated Rate base at the opening of the year is equal to original cost of Fixed Assets adjusted with Accumulated depreciation and outstanding Consumer Contributions.”

Thus, the development charges has already been reduced from the distribution business ARR which is carry forwarded to the Retail Supply Business ARR in the form of distribution cost. Hence the impact of development charges has already been considered in the Retail Supply Business ARR and thereafter in the tariffs and hence no further deduction is required.

Hence, the review petitioner's contention to deduct the proportionate cross subsidy pertaining to the transmission system for which the development charges is paid is not sustainable.

12. We have heard the counsel for the parties and also examined in detail the calculations set forth in original order with reference to the contentions raised in the review petition alongwith the reply given by the licensee.

13. Prima facie the contentions in the review petition ought to be and likely to be on the following grounds. The review petitioner appears to have noticed the policy change and therefore the present petition. While review of an order passed by this Commission is dependent on the following aspects under the Code of Civil Procedure 1908,

- a. Where there is a typographical mistake that has crept in the order.
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise.
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of Law.
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given.
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion.

14. The grounds raised in the review petition squarely do not fit into the matrix of review as is understood under law and conforming to the parameters as detailed in the earlier paragraphs. Suffice it to state that there cannot be reappraisal of the decision rendered by the Commission while undertaking review of the order passed by it. Under the provisions of the Act, 2003, the Commission is ordained to follow to a limited extent the power exercisable by a Court under Code of Civil Procedure, 1908, but that does not extend to relooking into all the facts as has been considered while passing the original order. Thus, the scope of review is very limited as set out in Order

XLVII Rule 1 of C.P.C. 1908. On this context, this review petition is not sustainable and has to be rejected.

15. The orders sought to be reviewed is relating to determination of tariff that is charged to the consumers by the licensees in the State of Telangana. Likewise, by virtue of separate order on the same date and on the same original petition numbers, this Commission also determined the cross subsidy surcharge for the period from 01.07.2016 to 31.03.2017.

16. Such determination has to be in conformity with the Act, 2003 and the policy enunciated under section 3 of the Act, 2003 in respect of tariffs. The relevant formula has already been extracted elsewhere in this order, the issue raised by the review petitioner sought to demonstrate the surcharge should be 20% of the applicable tariff, which is at present contrary to the CSS determination and not inline with the tariff policy. It is also the review petitioner's case that the Commission should revisit the determination so as to bring it inline with the tariff policy. The thrust of the argument rests on figure 'T' in the order, which according to the review petitioner is the figure that includes tariff payable by the relevant category of the consumers. The revenue realization is not determined as per the formula for each category but the tariff payable is taken into consideration and the losses arrived at in retail supply tariff order are not considered.

17. We are of the view that the following discussion would demonstrate and clarify the contention of the review petitioner. The review petitioner claimed that cross subsidy surcharge (CSS) should be computed on the basis of tariff and to the maximum extent of 20% of tariff. The Commission's approach to approval of CSS for 01.07.2016 to 31.03.2017 is detailed as follows:

1. The Commission has considered Average Billing Rate (ABR) in Rs / KWh for the respective category as "T" as it reflects the effective combination charges payable by that category of consumers.
2. Average Billing Rate =
$$\frac{\text{Total Expected Revenue from a category}}{\text{Total Sale of power to that category}}$$
3. Each of the elements i.e., expected revenue and sale of power has been drawn from the approved numbers in the RST Order 2016-17.

4. Tabulated below are the extract of calculations for the purposes of determination of “T” and thereby CSS at 20% of “T” which are the same as approved in CSS Order dated 23.06.2016 for FY 2016-17.

RST Order 2016-17			TSSPDCL			TSNPDCL		
			11KV	33KV	132K V	11K V	33K V	132 KV
Pg.190, 191	Revenue for HT-I category (Rs. Crs)	[A]	2,587	3,340	1,689	462	146	447
Pg.125, 128	Approved sales for HT- I category (MU)	[B]	3,129	4,505	2,498	558	203	665
T	ABR = Avg Rate of realization (INR / KWH)	([A]/[B]) *10	8.27	7.41	6.76	8.29	7.19	6.72
	CSS at 20% of “T”	ABR *20%	1.65	1.48	1.35	1.66	1.44	1.34

18. From the above discussion, it is emphatically clear that the Commission had followed the policy in letter and spirit and more particularly the figure “T” in the formula has been scrupulously adhered to. Thus, the review petitioner has not made any case for reviewing the order dated 23.06.2016 passed in O. P. Nos. 6 and 7 of 2016.

19. In order to strengthen the finding we also refer to the judgments rendered by the Hon’ble ATE in Appeal No. 178 of 2011 decided on 02.12.2013 between Reliance Industries Ltd. V/s Maharashtra Electricity Regulatory Commission, Appeal No. 181 of 2015 decided on 20.05.2016 between Byrnihat Industries Association V/s Meghalaya State Electricity Regulatory Commission & another and lastly in Appeal No. 184 of 2015 decided on 24.05.2017 between Open Access Users Association, New Delhi V/s Madhya Pradesh Electricity Regulatory Commission & others. For better appreciation of the issue, the relevant portion of the order is extracted below.

Appeal No. 178 of 2011

“57. Now important question that arises is this Had the State Commission computed CSS using the correct data for ‘T’ and ‘C’ and came out with some reasonable figure, would the consumers had migrated to Tata Power paying CSS and would it be fair for such consumers, who have already migrated to Tata Power considering that they would be liable to pay NO CSS, be subjected to revised CSS with effect from date of migration? It is true, that the Consumers were supposed to know that they would be liable to pay CSS, but the issue is retrospectivity.

x x x

60. Summary of the findings:- I. The CSS can only be determined with the figures for the current year as per the law (2nd proviso to Section 42 of the 2003 Act). Anything done outside this requirement is patently illegal. Hon'ble Supreme Court in its judgment dated 30.9.2013 in Selvi J Jayalalitha Vs Government of Karnataka 2013(12) SCALE 234 has held that when a statute provides that a thing is to be done in a particular way, it has to be done in that way only and no other way. In view of the clear provision of 2nd proviso to Section 42, there cannot be any other view on this issue.

II. The contention of the State Commission that Tariff Policy provide that the CSS should not be so enormous to suffocate the Competition is misplaced. The Act mandated the State Commission to determine the CSS to meet the requirement of current level of cross subsidy. We have to keep in mind that the CSS is paid by the subsidizing consumers only. This Tribunal in catena of cases has held that CSS is compensatory in nature. It is meant for to compensate the loss suffered by the remaining subsidized low-end consumers. Thus, in the scenario of mass change- over of consumers, the CSS has also to be such that exodus of subsidizing consumers does not load the remaining low-end consumers heavily. The State Commission has to balance the interest of all the consumers, the plea taken by the State Commission in Appeal No. 132 of 2011 and accepted by this Tribunal in its judgment. The above submission of the State Commission also suggests that it has attempted to suppress the CSS artificially.

III. The State Commission had used actual revenue recovered from various category of consumers during FY 2010-11 and divided it with actual sale to those category during the same period. This approach is completely wrong and dehores any logic. While passing the tariff order for FY 2009-10 the Commission must have the figures for expected revenue from every category and sale to such category. The Commission should have used these figures approved in the tariff order to arrive at Average Billing Rate or effective Tariff during the relevant year.

IV. As we are aware that presently a state of flux exists in Mumbai. Directing the State Commission to work out CSS afresh from the date of migration and charge the same from the group II consumers would create chaos in already

fluid situation. Since CSS is not going to affect the revenue of the Appellant in any manner, we are not inclined to interfere with the impugned order at this stage.”

Appeal No. 181 of 2013

“19. In the National Tariff Policy formula, “T” is the Tariff payable by relevant category of consumers. The Tariff has two components viz. Fixed/ Demand charge and Energy charge and hence, for the purpose of calculating cross-subsidy surcharge, the State Commission has considered Average Billing Rate in Rs/ KWh for the respective category as “T” as it reflects the effective combination of fixed/demand and energy charges payable by that category of consumers. We are in agreement with the formulation of the State Commission for using Average Billing Rate for a consumer category to be used while determining Cross Subsidy Surcharge.

20. On examining the submissions made by State Commission regarding computation of CSS and the relevant findings in its Impugned Order, we have found that the value of “T” and “C” as used by State Commission in its of the Impugned Order is in line with the formulation specified in the National Tariff Policy and the cross subsidy surcharge specified by State Commission as Rs. 1.51 per unit for EHT category and Rs. 1.41 per unit for HT category is in order.

21. Since we have found that the Cross Subsidy Surcharge has been determined by the State Commission as per the formula stipulated in the National Tariff Policy using the factors “T” and “C” appropriately, hence we do not find any error in determination of the CSS by the State Commission in its Impugned Order. However we would like to put a remark on this count that the State Commission should have brought out detailed calculations/computations regarding computation of the Cross Subsidy Surcharge for EHT and HT categories in the Impugned Order itself which would have facilitated better appreciation by all the stakeholders and avoided the apprehensions in the minds of the stakeholders.

ORDER

We are of the considered opinion that there is no merit in the present Appeal and the Appeal is hereby dismissed. The Impugned Order dated 31.03.2015 passed by the State Commission is hereby upheld.”

Appeal No. 184 of 2015

“11.1 On question no 7 a) i.e. Whether the Respondent Commission has erred in calculating the component ‘C’ & ‘T’ of the cross subsidy surcharge formula?, our observations are as follows:

a. The CSS formula has been adopted by the State Commission in the Impugned Order from the NTP. The prescribed formula is reproduced below:

$$S = T - [C (1+L/100) + D] \text{ Where}$$

S is the surcharge

T is the Tariff payable by the relevant category of consumers;

C is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

D is the Wheeling Charge

L is the system Losses for the applicable voltage level, expressed as a percentage"

The component ‘C’ as defined above in the NTP is the weighted average cost of power purchase of top 5% per cent at the margin excluding liquid fuel based generation and renewable power. The component ‘T’ is the tariff payable by the relevant category of the consumers.

b. The Appellant has contested that for computation of ‘C’, the weighted average cost of the costliest stations’ top 5% at the margin should have been considered by the State Commission irrespective of the scheduling by Discoms from those stations. The Respondents have made the case that the same should have been considered based on annual energy requirements and scheduling as per merit order approved by the State Commission on the allocations prescribed by Energy Deptt. Govt. of Madhya Pradesh (GoMP) notification dated March 19, 2013.

c. The component ‘C’ as defined above in the NTP and adopted by the State Commission is the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power by the Discoms. The power purchase cost per unit can

be determined if energy is scheduled by Discom. In the instant case based on merit order principles, Torrent, Jaypee Bina 1 and Jaypee Bina 2 power plants which are assigned to the Respondent No. 5 by GoMP do not fall in top 5% at the margin since they are not being scheduled by the Respondents 2 to 4. Accordingly, these plants are out for the purpose of computation of 'C'.

d. The State Commission at paras 4.17 to 4.19 of the Impugned Order determined 'C' as stated below:

“4.17 As mentioned in the preceding para, the cost of supply to the consumer for this purpose may be computed on the basis of the aggregate of top 5 % at the margin of the power purchase costs.

4.18 The cost of marginal power purchase of top 5% power works out as below :

Total Energy required in FY 2015-16 = 64,261 MU

Table 83 : Cost of marginal power purchase of top 5% power i.e. 3213.07 MU

Stations	Units (MU)	Cost (Rs. / unit)	Total cost (Rs. Crores)
SGTPS EXT	3,298.98	3.88	1,243.71
SGTPS	4.09	3.75	1.53
Total	3,213.07	3.88	1,245.24

4.19 The weighted average cost of power purchase of top 5% at the margin works out as Rs. 1245.24 Crore/3213.07 MU = Rs. 3.88 per unit.”

The issue of not scheduling power from Torrent (Oil based), Jaypee Bina 1 and Jaypee Bina 2 to the Respondent No. 2 to 4 has not been disputed by the Appellant. Moreover, the sale proceeds by sale of surplus power through exchange from these plants have been considered by the State Commission while arriving at the ARR.

e. In view of our observations as above, we are of the considered opinion that the State Commission has not erred in computation of the component 'C' of the CSS formula.

f. The Appellant has contested that the State Commission has erred in considering fixed charges for computation of the component 'T'. The Respondents have submitted that as per the formula prescribed in the NTP, the component 'T' is the tariff payable by the relevant category of the consumers which can only be arrived by considering fixed charges and variable charges.

g. The component 'T' as defined above is the tariff payable by the relevant category of the consumers. The fixed charges are the integral part of the tariff. The State Commission has fixed the tariff of different categories of consumers including the fixed charges based on Tariff Regulations, 2012. The component 'C' also includes the fixed charges and variable charges. The formula for CSS will be misinterpreted if fixed charges are removed from the component 'T'. In our view, it seems that the Appellant is looking for reduction of CSS by way of pleading for removal of fixed charges from the component 'T'.

h. The State Commission at paras 4.22, 4.23 and table 87 of the Impugned Order determined 'T' as stated below:

“4.22 Finally, the last term in the Tariff Policy formula 'T', Average Tariff for each category is derived from their expected revenue for FY 2015-16.

4.23 As per the MPERC (Open Access) Regulations, 2005, the consumers with contract demand of 1 MW or above are allowed open access w.e.f. 1st October, 2007. These consumers are to be connected at 33 KV or above as per Madhya Pradesh Electricity Supply Code, as amended from time to time.

Table 87 : Category wise average tariff (Rs. per unit)

Category of HT / EHT consumers	Average tariff 'T'
HV-1: Railway Traction	6.41
HV-2: Coal Mines	7.10
HV-3.1: Industrial	6.75
HV-3.2: Non-Industrial	7.21

HV-3.3: Shopping Malls	7.48
HV-3.4: Power Intensive Industries	5.48
HV-4: Seasonal	6.26
HV-5.1: Public Water Works	5.02
HV-5.2: Other than Irrigation	5.27
HV-6: Bulk Residential Users	5.27
HV-7: Start-up power for generators connected to the grid	6.25

i. In view of our observations as above, we are of the considered opinion that the State Commission has not erred in computation of the component 'T' of the CSS formula.

j. Hence this issue is decided against the Appellant.

.....

11.3 On question no 7 c) i.e. Whether the Respondent Commission has wrongly calculated the component 'T' i.e. Tariff at 50% load factor payable by the Industrial consumer while determining the cross subsidy surcharge payable by Industrial consumer using prescribed formula in the Tariff Policy?, our observations are as follows:

a. The Appellant has contested that the component 'T' for industrial customers should have been calculated at load factor of 75% instead of 50% as their load factor is in the range of 75% and this will lead to reduction of 'T' and in turn reduction in CSS.

b. The Respondents have submitted that for calculating 'T' total energy sale and total revenue including fixed charge for a particular category/ sub-category has been considered. This is in line with provisions of the NTP which do not envisage further break up of energy sale and revenue if tariff is differentiated based on load factor or any other parameter. This approach has been upheld by this Tribunal in its judgement dated 30.5.2011 in Appeal Nos. 102, 103 & 112 of 2010 in the case of M/s Tata Steel Ltd Vs. Orissa Electricity Regulatory Commission and Anr. The State Commission has been following the similar methodology consistently for earlier tariff orders too.

c. Tariff Regulations, 2012 provide as below:

"42. Determination of tariffs for supply to consumers

42.1.....

(e) Load factor incentive: Load factor based concessions in tariff may be allowed to consumers based on the scheme approved by the Commission in its Tariff Orders issued from time to time.”

According to the Tariff Regulations, 2012, the State Commission may provide load factor based incentives in its tariff orders from time to time. The State Commission has provided incentives in energy charges for categories of consumers for load factor more than 50%. The same has been done by the State Commission after a consultative process involving all the stake holders. The Appellant or its representative body has not raised this issue during hearing on the tariff petitions of the Respondents 2 to 5.

d. The State Commission at para 4.22 of the Impugned Order has elaborated how the component ‘T’ is determined. The same is produced below:

“4.22 Finally, the last term in the Tariff Policy formula ‘T’, Average Tariff for each category is derived from their expected revenue for FY 2015-16.”

e. Relevant portion of this Tribunal’s judgement dated 30.5.2011 in Appeal Nos. 102, 103 & 112 of 2010 in the case of M/s Tata Steel Ltd Vs. Orissa Electricity Regulatory Commission and Anr. is reproduced below:

“35. We have also noticed that the State Commission has wrongly determined the average tariff realization for the appellants’ consumer category at an assumed load factor of 80%. According to Regulation 7(c) (iii) cross subsidy has to be computed as the difference between cost to serve that category and the average tariff realization of that category. Thus the method used by the State Commission in calculating average tariff for the appellant’s category is incorrect and needs to be corrected as per formula given below:

Average Tariff realization for a category= Total expected revenue realized from that category as per ARR /Total anticipated sale to that category as per ARR”

The above principle was also confirmed by this Tribunal's judgement dated 2.9.2011 in Appeal No. 57,67,68,69,70,71,72 and 73 of 2011 in case of Vishal Ferro Alloys Ltd. & Ors. Vs. Orissa Electricity Regulatory Commission & Anr.

f. After a careful perusal of the above, we observe that the methodology adopted by the State Commission for arriving at 'T' based on expected revenue is in line with this Tribunal's judgement dated 30.5.2011 in Appeal Nos. 102, 103 & 112 of 2010 in the case of M/s Tata Steel Ltd Vs. Orissa Electricity Regulatory Commission and Anr. and the NTP. Accordingly, the contention of the Appellant that the State Commission has wrongly calculated the component 'T' is misplaced.

g. Hence this issue is decided against the Appellant.

20. The judgments rendered by the Hon'ble ATE clearly demonstrate that the Commission had arrived at the CSS based on the correct interpretation given to letter 'T' in the original order dated 23.06.2016. Thus, the contention of the DISCOMs is appropriate and acceptable to this Commission.

21. While the matter is under consideration, the review petitioner has submitted reply to the written submissions filed on behalf of the respondents, is as follows.

a) It is stated that the respondents in their written submission dated 29.06.2017 at para 4 page 2 categorically admitted that the cross subsidy surcharge limited to maximum of 20% of tariff applicable to the category of the consumer seeking for open access as per clause 8.5.1 of National Tariff Policy. It is stated that the respondents at para 6 page 3 submitted the computation of average realisation per KWH which is in violation of clause 8.5.1 of National Tariff Policy and not correct and the same is under challenge.

b) It is respectfully submitted that as per National Tariff Policy, tariff payable by the consumer includes the Fixed / Demand charge, the energy charges and customer charges only. The same is admitted by the respondents in their written submission made before this Commission vide letter No. CGM (Comml.) / SE (IPC-II) / DE (RAC) / D. No. 690 / 17 dated 31.05.2017 at

para 3 page 2. Hence computation of average realization by taking expected revenue collection for computing cross subsidy surcharge is in violation of clause 8.5.1 of National Tariff Policy.

- c) It is stated that even if the cross subsidy surcharge is computed considering all the tariff rates in each categories, the cross subsidy surcharge for HT category i.e., 11 KV, 33 KV and 132 KV is worked out as per Clause 8.5.1 of National Tariff Resolution dated 28.01.2016 as follows:

Sl. No.	Voltage KV	Category	Energy Charges Rs / KWH	Average Rs. / KWH	Demand Charges Rs. / KWH	Customer Charges Rs. / KWH	Total Rs. / KWH	20% Rs. / KWH
(1)	(2)	(3)	(4)	(5)(Total of 4/4)	(6)	(7)	(8)(5-7)	(9) (8X20%)_
1	11	Industry Gen Poultry Farm Seasonal Ferro Alloys	6.65 4.65 7.60 5.90	6.20	0.54	0.001	6.741	1.35
2	33	Industry Gen Poultry Farm Seasonal Ferro Alloys	6.15 4.15 6.90 5.50	5.67	0.54	0.001	6.215	1.24
3	132	Industry Gen Ferro Alloys	5.65 5.00	5.33	0.54	0.001	5.865	1.17

- d) It is stated that the cross subsidy surcharge was introduced for the respondent initially in the Financial Year 2015-16 and that at most the cross subsidy surcharge should be maintain at that current level and should be progressively reduced but cannot be increased.

22. The review petitioner on one hand controverted the calculation adopted by the licensee in respect of 'T' and on the other hand seeks to rely on the same analogy to point out that the calculation made by the Commission is erroneous. The qualifying

term 'total expected revenue from the category' is not as understood by the review petitioner in the table mentioned above. Clubbing of various consumers and various tariffs is not germane to the above said term. Likewise, the term 'total sale of power to that category' also implies that a single category like HT-I and not different categories like HT-I, HT-I (A), HT-I (a) etc. Thus, the contention of the review petitioner is very farfetched if not atrocious and contrary to the understanding of the National Tariff Policy. Thus, the contentions in the reply submissions lack substance.

23. Another contention that has been raised in the written submissions of the review petitioner with regard to the development charges is a non-issue and does not enure to the benefit of the review petitioner. Inasmuch as the said aspect has already been taken into consideration by the Commission while determining the cross subsidy surcharge.

24. On thorough examination of the facts set out in the review petition in the light of the judgments rendered by the Hon'ble ATE and the calculations undertaken and shown in the earlier paragraphs, we have no doubt in our mind that the review petitioner has filed the present petition without any merits, warranting review of the cross subsidy surcharge being levied on the consumers availing open access. Inasmuch as we remind ourselves that the review petitioner had not even filed objections to the original tariff order leave alone the determination of cross subsidy surcharge. Accordingly, it has not made out any case for allowing the review petition.

25. In the circumstances, we reject the review petition but without any costs.

This order is corrected and signed on this the 15TH day of July, 2017.

**Sd/-
(H. SRINIVASULU)
MEMBER**

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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