



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

O.P.Nos.06 and 07 of 2016,
O.P.(SR) No.6 of 2019, O.P.(SR) No.10 of 2019, O.P.(SR) No.11 of 2019,
O.P.(SR) No.12 of 2019, O.P (SR) No.13 of 2019, O.P.(SR) No.14 of 2019,
O.P.(SR) No.15 of 2019, O.P.(SR) No.30 of 2019, O.P.(SR) No.31 of 2019 &
O.P.(SR) No.32 of 2019

Dated 11.03.2020

Present

Sri T.Sriranga Rao, Chairman
Sri M.D.Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

O.P.No.06 & 07 of 2016

Between:-

1. Southern Power Distribution Company of Telangana Ltd.,
6-1-50, Corporate Office, Mint Compound,
Hyderabad – 500 034.
 2. Northern Power Distribution Company of Telangana Ltd.,
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001 ... Petitioners
- AND
- Nil - ... Respondent
-
1. M/s INOX Air Product Pvt. Ltd.,
Plot No. 38, IDA, Phase I, Pasha Mylaram,
Medak District. ... Original Objector when order was passed on 23.06.2016
 2. M/s Agarwal Foundries Pvt. Ltd., (SC.SDP 893)
O/o 5-4-83, MG. Road, 2nd Floor, Rama Towers,
Secunderabad.
 3. M/s Federation of Telangana & Andhra Pradesh
Chambers of Commerce & Industry, # 11-6-841,
Federation House, Red Hills, Hyderabad – 500 004.

4. M/s Dilip Re-rolling Pvt. Ltd., Survey Nos. 21 to 24, Gunded (V), Balanagar Mandal, Mahabubnagar District.
5. M/s Suguna Metals Pvt. Ltd., Survey Nos. 142 & 1433. Lakshmi Devarapalli Road, Narayanpur Village, Parigi Mandal, Vikarabad District.
6. M/s Aryam Steels Private Ltd., Survey Nos.105 & 105/A, Nandigaon Village & Mandal, Rangareddy District.
7. M/s Radha Smelters Limited (MDK – 1395), (Furnace Division), Sy. No. 338 / A2, Mirzapally Road, Ch. Shankarampet (V) & (M), Medak District.
8. M/s Radha Smelters Limited (MDK – 1060), (Furnace Division), Sy. No. 327, 328, Ch. Shankarampet (V) & (M), Medak District.
9. M/s Vijayalakshmi Spintex Limited, Kondamadugu (V), Bibinagar Mandal, Yadadri District.
... Objectors who filed writ petitions before the Hon'ble High Court

O.P.(SR) No.6 of 2019

Between:-

M/s Jairaj Ispat Limited, Plot No.8, Phase–III,
I.D.A., Jeedimetla, Medchal District. ... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034. ... Respondent

O.P.(SR) No.10 of 2019

Between:-

M/s Vijaya Iron Foundry Private Limited,
Plot No.8–62/1, S.No.171-72,
I.D.A. Bollaram, Jinnaram Mandal,
Sangareddy District. ... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034. Respondent

O.P.(SR) No.11 of 2019

Between:-

M/s Devashree Ispat Private Limited,
Survey No.445, 460 & 463,
6th KM Pargi Road, Elikatta (V), Faruqnagar (M),
Rangareddy District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.12 of 2019

Between:-

M/s MMG Steels Private Limited,
Plot No.14, IDA, Bollaram, Jinnaram Mandal,
Sangareddy District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.13 of 2019

Between

M/s Vinayaka Steels Limited,
97/E, JP Dharga Road, Kothur (V) & (M),
Rangareddy District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.14 of 2019

Between

M/s Jeevaka Industries Limited, Annaram (V),
Jinnaram (M), Medak District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.15 of 2019

Between

M/s Navadurga Billets (P) Limited,
Mothighanapur, Balanagar Mandal,
Mahabubnagar District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.30 of 2019

Between

M/s Salasaar Iron & Steels Private Limited,
Survey No.417, Pargi Road,
Mogilligidda (V), Faruqnagar (M),
Mahabubnagar District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.31 of 2019

Between:-

M/s Suryalakshmi Cotton Mills Limited,
Amangallu (V) & (M),
Rangareddy District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

O.P.(SR) No.32 of 2019

Between:-

M/s Suryalata Spinning Mills Limited, Urukondapet (V),
Midjil (M), Mahabubnagar District.

... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

... Respondent

These petitions came up for hearing on 24.01.2020. Sri G.Raghuma Reddy, Chairman & Managing Director of TSSPDCL along with Sri S.Swamy Reddy, Director (IPC) and Sri P.Narisimha Rao, Director (Finance) are present on behalf of DISCOMs.

Smt. Shagun Srivastava, Sri Challa Gunaranjan, Sri G.Chandra Sekhara Rao and Sri Deepak Chowdary advocates are present on behalf of the opposing parties. The petitions and applications having been heard and having stood for consideration to this day, the Commission passed the following:

COMMON ORDER

Background

1. Originally, on 8th March 2016, TSDISCOMs have filed separate petitions O.P.No.6 of 2016 (TSSPDCL) and O.P.No.07 of 2016 (TSNPDCL) before the Commission under Sections 38, 39, 40 and 42 of the Electricity Act, 2003 (Act) for determination of Cross Subsidy Surcharge (CSS) and Additional Surcharge (AS) for FY2016-17 along with the filings made for approval of Aggregate Revenue Requirement (ARR), and Tariff proposals for Retail Supply Business (RSB) for FY2016-17.

2. The Commission duly following the procedure as per the Regulations and through public consultation process [*i.e., by issuing Public Notice in daily newspapers on 10.03.2016; conducting Public Hearings at Hyderabad on 6th and 7th April, 2016 and at Karimnagar on 9th April, 2016; by considering the Petitioners' filing; suggestions and objections of the other stakeholders; responses of the Petitioners to issues that are raised during the public hearing;*] and having considered the submissions made by the Licensees; all the suggestions and objections of the objectors & other stakeholders; responses of Licensees; additional submissions made by the objectors during the public hearings held and all other relevant material; and in exercise of powers conferred on it under Sections 39, 40 and 42 of the Electricity Act, 2003 and all other powers enabling it in that behalf, by order on 23rd June, 2016 r/w its amendment order dated 31st December, 2016, determined the CSS applicable to consumers availing Open Access (OA) in transmission and distribution system at different voltages during FY2016-17.

3. The Commission has passed a separate order dated 23rd June, 2016 filed with the same O.P. numbers determining the ARR and Retail Supply Tariffs for all consumer categories for FY 2016-17.

4. Whereas, one of the consumer M/s Agarwal Foundries Private Limited, HT-I category consumer [HTSCNo.SDP-893 and RRN-620] of TSSPDCL and a member of the Federation of Telangana Chambers of Commerce and Industry (FTCCI, formerly FTAPCCI), had questioned the above said order before the Hon'ble High Court.

The Hon'ble High Court Directions

5. The Hon'ble High Court in its common order dated 31.08.2018 in I.A.Nos.1 of 2018 of W.P.Nos.36090 & 36103 of 2016 "... *has allowed the Writ Petitions and set aside TSERC order in O.P.No.6 of 2016 and directed TSERC to provide hearing to the Petitioners and to the Federation (presently FTCCI), consider their objections to the levy of CSS proposed by 2nd respondent (TSSPDCL) for FY2016-17 and then pass a fresh reasoned order after considering all the objections contained in the objection petition dated 29.03.2016 filed by the Federation, within two (2) months from the date of receipt of copy of the order. Adjustments/refund of the levy towards CSS which are already collected from the Petitioner(s) shall be done by the 2nd respondent (TSSPDCL) depending on the fresh order it would pass. No order as to costs.*"

6. Following the said decision, the Hon'ble High Court has allowed several other batch Writ Petitions and in the common orders dated 30.10.2018 and 20.11.2018, order in O.P.No.06 of 2016 is set-aside. Pursuant to these orders, some of the Petitioners have filed separate Original Petitions [O.P. (SR). No.6 of 2019 and batch] before the Commission which are identical in nature with a pray "*to declare that no Cross Subsidy Surcharge need to be collected by the respondent for the FY 2016-17*".

Writ Appeals filed by TSERC before the Division Bench of Hon'ble High court

7. Aggrieved by the order of the learned single Judge of the Hon'ble High Court the Commission filed Writ Appeals against the writ petitioners vide W.A.Nos.3&4 dated 03.01.2019 challenging the common order dated 31.08.2018 and W.A.Nos.111&112 of 2019 challenging the common order dated 30.10.2018 and 20.11.2018 before the Division Bench of Hon'ble High Court.

Dismissal of Writ Appeals and directions to TSERC by the Hon'ble High Court

8. The Hon'ble High Court has passed the following common judgment dated 07.03.2019 dismissing the Writ Appeals.

"In view of the facts and circumstances, we do not find any infirmity in the order passed by the learned single Judge. The intra Court appeals, therefore, fail and the same are accordingly, dismissed. We clarify that we have not expressed anything on the merits of the case. However, it is stated by the learned counsel for the writ petitioner that in pursuance of the impugned order, objections have been filed. In view of the same, the Commission is directed to consider the same in accordance with law and take a 1 (2002) 8 SCC 115 4 decision within a period of three months from the date of receipt of a copy of this order following due procedure as per the Regulations."

Consequently, the Hon'ble High Court dismissed the Writ Appeals No.111 of 2019 and 112 of 2019 in common judgement dated 07.03.2019.

Initiation of Proceedings in terms of the Directions of the Hon'ble High Court

9. Therefore, the Commission is required to undertake the fresh hearing for determination of CSS for FY 2016-17 as per the directions of the Hon'ble High Court.

10. As the Commission order passed on 23.06.2016 is a Common Order for both the TSDISCOMs [i.e., TSSPDCL (O.P.No.06 of 2016) and TSNPDCL (O.P.No.07 of 2016)] and is in the matter of determination of CSS & AS for FY 2016-17, whereas the Hon'ble High Court has set aside TSERC order in O.P.No.6 of 2016 and directed TSERC to provide hearing to the Petitioners and to the Federation. The Commission if of the view to take up the matter a fresh with respect to filings of both the TSDISCOMs.

11. Accordingly and in obedience to the directions of the Hon'ble High Court, the Commission has initiated fresh proceedings by issuing separate individual notices to M/s Agarwal Foundries Pvt. Ltd., the Petitioner in Writ Petition Nos.36090 & 36103 of 2016; the Federation of Telangana Chambers of Commerce and Industry (FTCCI, formerly FTAPCCI or FAPCCI); M/s Inox Air Products Pvt. Ltd. (objector with regard to CSS in O.P.Nos.6&7 of 2016); the Writ Petitioners in the batch of WPs disposed by the Hon'ble High Court in common orders; and others who made written submission

(filed original petitions) before the Commission in the matter pursuant to the order of Hon'ble High Court.

Public Notice

12. The Commission also issued a Public Notice dated 27.12.2019 as per TSERC (Conduct of Business) Regulation No.2 of 2015, inviting comments, objections and suggestions from the stakeholders, interested persons and others in the matter and public at large by 17.01.2020 on the filings made by the Applicants/Licensees in the matter of CSS for FY 2016-17.

13. The Commission has also placed the public notice and the filings made by the licensees for the FY 2016-17 in respect of determination of CSS for FY2016-17 on its website that is www.tserc.gov.in.

14. In response to the Public Notice no objections/suggestions were received within the due date i.e., by 17.01.2020. However, FTCCI (Federation or FTAPCCI) has made their statement of objections through email on 21.01.2020 and later on, made additional objections on 24.01.2020 and requested for personal appearance during the hearing. Further, the FTCCI also filed written submissions pursuant to the hearing. Also, FTCCI has made a representation on 23.01.2020 requesting for recusal of Member (Technical) himself from the hearings.

Hearings

15. The Commission organized the court hearings in the Court Hall of TSERC at Hyderabad on 24.01.2020 on the filings made by TSDISCOMs. During the hearing, Sri G.Raghuma Reddy, CMD, TSSPDCL made a brief presentation on their filings. He also explained the procedure adopted earlier and the contentions raised in the objections on the earlier occasion as well as the replies given by the licensee including the finding recorded therein earlier by the Commission. The Commission heard the counsel of FTCCI and all those objectors desiring to be heard in person. The counsel appearing for other parties adopted the arguments of the counsel for FTCCI. At the end, as directed by the Commission, Sri G.Raghuma Reddy, CMD/TSSPDCL responded on the issues/ objections raised by the objectors during the said hearing. The licensee was directed to furnish written submissions on issues/objections which could not be replied immediately.

Statutory Provisions

16. The following are the statutory provisions in determination of CSS.
- 16.1. Sections 39(2) (d) (ii), 40(c) (ii) and 42(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') provide for payment of a surcharge by the consumer (hereinafter also referred to as 'the Cross-subsidy Surcharge') when a consumer avails of power under OA. Further, Section 42(2) of the Act provides that the surcharge shall be determined by the State Commission and such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee. The Act provides further that such surcharge and cross subsidies shall be progressively **reduced** [*the words 'and eliminated' omitted by Act 26 of 2007 w.e.f. 15.06.2007*] in the manner as may be specified by the Commission.
- 16.2. As per the afore-mentioned provisions, to maintain current level of subsidy, CSS has to be levied on the consumers who opt for OA.
- 16.3. CSS is normally computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class i.e., Cost of Service (CoS) for a particular category of consumers.
- 16.4. Section 86 (4) of the Act provides that "*In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under Section 3.*"
- 16.5. Section 3 of the Act, provides that the Central Government shall prepare and publish the Tariff Policy.
- 16.6. The methodology, for determining the CSS, prescribed by the National Tariff Policy (NTP) dated 28th January 2016, notified by the Ministry of Power, Government of India is as indicated below.

Tariff Policy – Methodology

16.7. As per section 8.5 of NTP-2016, CSS computation formula is as given below:

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

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 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.

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

The material averments of O.P. (SR) filed by Petitioners/Applicants – as follows:

17. Pursuant to the orders of the Hon'ble High Court, some of the Petitioners have filed separate Original Petitions [O.P.(SR) No.6 of 2019 and batch] before the Commission which are identical in nature with a pray "*to declare that no CSS need to be collected by the respondent for the FY 2016-17*". These Petitioners/ Applicants have raised the contentions, which are identical in nature and therefore, the material averments of the 1st petitioner in O.P.(SR) No.6 of 2019 are stated hereunder.

17.1. The Petitioner is a Limited Company having its registered office at 11-B, Jatindra Mohan Avenue, Kolkata, West Bengal. The Petitioner has established

an industrial unit (Induction Furnace Unit) at Plot Nos. 8, 11B, 12C and 12D of I.D.A. Phase III, Jeedimetla, Medchal District which is engaged in the manufacture of steel ingots and the said unit is commercially known as mini steel plant or induction furnace unit.

- 17.2. For FY 2015-16, the TSSPDCL filed tariff determination application dated 07.02.2015 for approval of aggregate revenue requirement (ARR) and filing of proposed tariff (FPT) which application was numbered as O.P.No.76/2015. In the said O.P. the Commission passed order dated 27.03.2015 permitting the TSSPDCL to collect the CSS for FY 2015-16 at the rate of Rs.2.07. in respect of consumers availing power supply at 11 kV voltage, Rs.1.29 in respect of consumers availing power supply at 33 kV voltage and Rs.0.93 in respect of consumers availing power supply at 132 kV voltage.
- 17.3. The Commission fixed the above CSS rates in deviation of the proposals submitted by the TSSPDCL. The TSSPDCL submitted proposal for fixation of the CSS at the rate of Rs.1.13 in respect of consumers availing power supply at 11 kV voltage level, Rs.0.30 in respect of consumers availing power supply at 33 kV voltage levels, Rs.0.11 in respect of consumers availing power supply at 132 kV voltage level.
- 17.4. The Petitioner submitted that the affected parties approached the Hon'ble High Court challenging the Commission Order in O.P.No.76/ 2015 dated 27.03.2016 whereby the Commission fixed the above-mentioned CSS in respect of the above three categories of consumers. That the Hon'ble High Court by order dated 20.11.2018 made in W.P.No.27860 of 2015 and batch set aside the order passed in the above mentioned O.P. and directed the concerned DISCOMs. to levy Rs.1.13 in respect of 11 kV consumers and Rs.0.30 in respect of 33 kV consumers and Rs.0.11 in respect of 132 kV consumers towards the CSS for the year 2015-16.
- 17.5. For FY 2016-17, the TSSPDCL filed proposal before the Commission for the determination of CSS. In the said proposal, the TSSPDCL calculated the CSS as per the formula provided in National Tariff Policy (NTP) of the central

government dated 28.01.2016. The proposal made by the TSSPDCL in respect of 33 kV voltage consumers like applicant was at Rs.1.46.

- 17.6. The proposal submitted by the TSSPDCL for fixation of CSS at Rs.0.48 in deviation of the mandatory provisions of the Act, 2003, inasmuch as, as per section 45 of the Act, the Cross Subsidy leviable has to be gradually reduced and ultimately should be eliminated that is it should be brought down to '0' level. But the TSSPDCL has been increasing the CSS year by year in deviation of the above mandatory provision.
- 17.7. In view of the fact that the Hon'ble High Court directed collection of CSS for the year 2015-16 at Rs.0.30 per unit in respect of 33 kV consumers, at any rate the levy of CSS for the year 2016-17 should be necessarily at a lower rate than that. But in contrast, there is much variation between the CSS levies permitted by the Commission for the year 2015-16 and 2016-17.
- 17.8. As per first proviso to section 42 (2) of the Act, 2003, the OA consumers are liable to pay CSS in addition to wheeling charges prescribed by the Commission. The 3rd proviso to section 42 (2) of the Act, 2003 mandates that surcharges and cross subsidy shall be progressively reduced in a manner as prescribed by the Commission. The said provision is extracted hereunder for the sake of convenience.
- “Provided also that surcharge and cross subsidy shall be progressively reduced in the manner as may be prescribed by the Commission.”*
- 17.9. Under Section 3 of the Act, the Central Government is empowered to frame the National Electricity Policy (NEP) and National Tariff Policy (NTP). In exercise of the said power, the central government notified NTP dated 12.02.2015. Para 8.5 of the said policy deals with CSS and Additional Surcharge (AS) for the open access (OA) consumers. In terms of the NTP, the CSS has to be levied and should not be so onerous that it eliminates the competition, which is intended to be fostered in generation and supply of power directly to the consumers under OA. A formula has been provided therein for computing CSS. The above policy also mandates that the CSS has to be brought down

progressively at a linear rate to a maximum of 20% of its opening level by the year 2010-11. The relevant provision is extracted hereunder for convenience.

“The Cross Subsidy Surcharge should be brought down progressively and as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11.”

17.10. However, the Commission has not followed the above said mandatory provision of law while fixing the CSS for the year 2016-17.

17.11. Under Section 3 of the Act, the Central Government is obligated to prepare the NEP and NTP in consultation with the Government and Authority for development of power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable source of energy. Further, under Section 61 of the Act, while fixing the tariff, the Commission shall be guided by NEP and NTP issued by the Government of India. As stated above, the NTP of the central government is to scale down the levy of CSS progressively as far as possible at linear rate for the maximum of 20% of its opening level for the year 2010-11. The above statutory mandate is not followed while fixing the cross subsidy for the year 2016-17.

17.12. The erstwhile A.P.Electricity Regulatory Commission (APERC) to which this Commission is a successor entity passed orders in O.P.No.13/2006 dated 29.08.2006 by fixing CSS for the year 2006-07. Assailing the validity of the said order M/s R.V.K.Energies Private Limited and Others filed statutory appeal before the Appellate Tribunal. The Appellate Tribunal allowed the Appeal Nos.69 to 172/2005 and 148 and 149/2006 by order dated 05.07.2007 directing the APERC to fix the CSS in terms of the formula enunciated at para 8.5 of the NTP for FY 2006-07 and years previous and subsequent thereto. The said order of the Appellate Tribunal was challenged by the APERC in the Hon'ble Supreme Court vide Civil Appeal Nos. 49362-49417/2007. The Hon'ble Supreme Court at the first instance passed interim order dated 05.05.2008 staying the operation of the order passed by the Appellate Tribunal.

- 17.13. Thereafter, the APERC vide its order in O.P.No.77/2012 dated 26.01.2012 determined the CSS for the year 2007-08 to 2012-13 by adopting the embedded cost methodology subject to the orders of the Hon'ble Supreme Court in the above mentioned Civil Appeals. Similarly, for the year 2015-16 also, the CSS was determined following embedded cost methodology formula.
- 17.14. Subsequently, the Hon'ble Supreme Court by its orders dated 31.03.2016 dismissed the above Civil Appeals. Consequently, this Commission has to follow the formula as provided in the NTP by following the mandatory directions as contained therein as to progressive reduction of CSS in terms of NTP. If the said method is followed by now, there cannot be any levy of CSS at all.
- 17.15. The NTP dated 28.01.2016 as framed by the Government of India further mandates that the CSS shall not exceed 20% of the tariff applicable to the categories of consumers seeking OA. In the tariff order for the year 2016-17 in respect of 33 kV voltage consumers, the Commission notified the tariff rate at Rs.6.15 per unit. For the above said mandate as contained in NTP is taken into account, the maximum cross subsidy that can be fixed in respect of 33 kV voltage consumers is Rs.1.23 per unit. This submission is made by the applicant without conceding the aspect if CSS leviable is brought down in terms of the mandatory provisions of the Act and NTP as notified by the Government of India as stated in the preceding paragraph for the year 2016-17, there need not be any levy of CSS as the same could have come to '0' level long back.
- 17.16. Hitherto the Federation of Andhra Pradesh Chambers of Commerce and Industry submitted objections as regards fixation of CSS for the year 2016-17. However, the said objections are not considered by the Commission before fixing the CSS for the said year. Applicants craves leave of the Commission to treat the objections as raised by the said Federation in its representation dated 29.03.2016 as part and parcel of the present Petition.
- 17.17. The Hon'ble High Court by its order dated 30.10.2018 set aside the above order passed by the Commission by directing the Commission to hear the applicant and consider its objections to the surcharge proposed by the TSSPDCL for FY 2016-17 and to pass fresh reasoned order after considering all the objections

within 2 months from the date of receipt of the copy of the order. Hence the present petition.

17.18. The applicants have sought the following prayer in the application “*to declare that no CSS need to be collected by the TSSPDCL for FY 2016-17.*”

Submissions made by the FTCCI (Federation) in pursuant to the notice

18. Pursuant to the notice, the Federation of Telangana Chambers of Commerce and Industry (FTCCI or Federation) had filed its statement of objections on 21-01-2020 before the Commission, the material averments as follows:

“18.0 Cross Subsidy Surcharge

18.1. The Retail Supply Tariff Order (RSTO) and Cross Subsidy Surcharge (CSS) orders are inter-related as CSS order is merely an arithmetic exercise as the CSS formula is based on various tariff parameters such as average realisation, tariff of consumer category, weighted average power purchase cost, transmission and distribution cost, voltage wise tariffs, etc. which are approved in the Retail Tariff Order.”

18.2. FTCCI had submitted the objections on the Petition for Retail Supply Tariff for FY 2016-17 on the matter of cost of service, cross subsidy, voltage wise cost of service and tariff related issues.

18.3. Section 86(4) of the Electricity Act, 2003 provides that “*In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.*”

18.4. Section 3 of the Act provides that the Central Government shall prepare and publish the Tariff Policy.

18.5. Section 61 of the Act provides that the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following principles, namely:

“(g) that the tariff progressively reflect the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission”.

“(i) the National Electricity Policy and tariff policy”

18.6. The above provisions of the Electricity Act, 2003 mandate the Commission to follow the principles enshrined in the Tariff Policy and also provides that the tariff should progressively reflect actual cost of supply for each consumer category and not average cost of supply.

18.7. The Hon’ble Supreme Court in its Order dated 11th April, 2017 in Civil Appeal Nos.5399-5400 of 2016 (Energy Watchdog case) has held that the Tariff Policy is a statutory document and has the force of law. The relevant extract of the same is reproduced below:

“53 Both the letter dated 31st July, 2013 and the revised tariff policy are statutory documents being issued under Section 3 of the Act and have the force of law.”

18.8. Thus, it is clear that the Hon’ble Commission is bound to follow the principles laid in the Tariff Policy. Apparently, it is because of the same reason that the Hon’ble Commission has followed the formula prescribed in the Tariff Policy for computation of CSS.

18.9. Clause 8.3 of the Revised Tariff Policy dated 28.1.2016 provides:

“8.3 Tariff design: Linkage of tariffs to cost of service. It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources. In terms of the Section 61 (g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.

Accordingly, the following principles would be adopted:

Consumers below poverty line who consume below a specified level, as prescribed in the National Electricity Policy may receive a special

support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply.

For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.”

18.10. Thus, the Revised Tariff Policy, 2016 envisages that the tariff should progressively reflect the efficient and prudent cost of supply of electricity and the tariffs for all categories of consumers except the consumers below poverty line should be within $\pm 20\%$ of the average cost of supply. More importantly even for BPL categories for consumption up to a prescribed level (i.e., 30 units per month) the prescribed tariff ought to be at least 50% of the average cost of supply.

18.11. Section 61 (g) of the Electricity Act, 2003 mandates the Commission to ensure, that the tariff progressively reflects the cost of supply and also reduces the cross subsidies. Thus, the Tariff Policy read with Section 61(g) of the Act, clearly provides that the State Commission is required to ensure that the cross subsidies are to be progressively reduced and to ensure that tariff for each category is within $\pm 20\%$ of the overall average cost of supply.

18.12. The Tariff Policy recognises the fact that one of the objectives is that the tariff should reflect the cost of supply and for achieving that objective, the State Commission should notify roadmap to ensure that the tariffs are within $\pm 20\%$ of average cost of supply. However, nowhere, the Tariff Policy suggests that the cross subsidy has to be calculated based on average cost of supply. On the other hand, it provides that the tariff progressively should reflect cost of supply.

18.13. The full Bench of the Hon'ble APTEL in the case of SIEL Limited vs. Punjab State Electricity Regulatory Commission in 2007 ELR (APTEL) 931 has settled the position related to the average cost of supply and cost to supply of a

particular category of consumers. The relevant portion of the APTEL judgment is reproduced below:

109. *According to Section 61(g) of the Act 2003, the Commission is required to specify the period within which cross subsidy would be reduced and eliminated so that the tariff progressively reflects the cost of supply of electricity. Under Section 28(2) of the Act of 1998, the Commission while prescribing the terms and conditions of tariff was required to safeguard the interests of the consumers and at the same time, it was to ensure that the consumers paid for the use of the electricity in a manner based on average cost of supply. The word "Average" preceding the words "cost of supply" is absent in Section 61(g) of the Act of 2003. The omission of the word "Average" is significant. It indicates that the cost of supply means the actual cost of supply, but it is not the intent of the legislation that the Commission should determine the tariff based on cost of supply from the date of the enforcement of the Act 2003. Section 61(g) of the Act of 2003 envisages a gradual transition from the tariff loaded with cross subsidies to a tariff reflective of cost of supply to various class and categories of consumers. Till the Commission progressively reaches that stage, in the interregnum, the roadmap for achieving the objective must be notified by the Commission within six months from January 6, 2006, when the tariff Policy was issued by the Government of India i.e. by July 6, 2006. In consonance with the tariff policy, by the end of the year 2010-11, tariffs are required to be fixed within plus minus 20% of the average cost of supply (pooled cost of supply of energy received from different sources). But the policy has reached only up to average cost of supply. As per the Act, tariff must be gradually fine tuned to the cost of supply of electricity and the Commission should be able to reach the target within a reasonable period of time to be specified by it. Therefore, for the present, the approach adopted by the Commission in determining the average cost of supply cannot be faulted. We, however, hasten to add that we disapprove the view of the Commission that the words "Cost of Supply" means "Average Cost of Supply". The Commission shall gradually move from the principle of average cost of supply towards cost of supply.*

110. *Keeping in view the provisions of Section 61 (g), which requires tariff to ultimately reflect the cost of supply of electricity and the National Tariff Policy, which requires tariff to be within plus minus 20% of the average cost of supply, it seems to us that the Commission must determine the cost of supply, as that is the goal set by the Act. It should also determine the average cost of supply. Once the figures are known, they must be juxtaposed, with the actual tariff fixed by the Commission. This will transparently show the extent of cross subsidy added to the tariff, which will be the difference between the tariff per unit and the actual cost of supply.*

111. *In a given case, where an appropriate Commission comes to the conclusion that time has come when Tariff is to be fixed without providing for cross subsidies between various consumer categories, it can fix the Tariff accordingly as there is nothing in the Act which compels a regulatory Commission to formulate Tariff providing for cross subsidies between the consumer categories for all times to come.*

18.14. The above principles have been reiterated in the following judgments:

- i. APTEL's Judgment dated 2.6.2006 in Appeal Nos.124, 125 and 177 of 2005 and Appeal No. 18 of 2006 titled Kashi Vishwanath Steel Ltd. vs. Uttaranchal ERC & Others.
- ii. Tata Steel India vs. OERC and NEESCO: 2011 ELR (APTEL) 1022.
- iii. APTEL's judgment dated 12.9.2011 in Appeal Nos. 96 of 2011 titled East Cost Railways vs. OERC & Others.
- iv. APTEL's judgment dated 23.09.2013 in Appeal No. Appeal No. 52, 67, 68 and 69 of 2012 in Ferro Alloys Corporation Ltd & Others vs. OERC & Others.

18.15. The approved Retail Tariffs for FY 2016-17 have markedly deviated from the permitted $\pm 20\%$ range of the cost of supply. The HT tariffs are significantly over 120% of the average cost of supply as well as voltage wise cost of supply.

18.16. As per the provisions of the Act and Tariff Policy, the subsidising consumers such as industrial consumers cannot be penalised, for making good the cost, to be recovered from the subsidised category beyond the permissible $\pm 20\%$ of the average cost of supply. Any benefit which the Licensee wants to confer to the subsidised category beyond the maximum of $\pm 20\%$, can and should be recovered through Government subsidy and cannot in any way be loaded to the subsidising consumers.

18.17. In a catena of judgments (discussed in above paragraphs), the Hon'ble APTEL has held that eventually, the State Commission shall gradually move from the principle of average cost of supply towards cost of supply for each consumer category. The Objector states that the incidence of cross subsidy is even higher when category wise cost of service i.e. voltage wise cost is service is considered.

18.18. In the RSTO 2016-17 dated 23rd June, 2016, the Hon'ble Commission has captured a brief of the Objections filed by the Objector herein, response of the Petitioner and views of the Commission. The relevant extracts are reproduced below:

2.31 Tariff should be within $\pm 20\%$ of the average cost of supply

The Revised Tariff Policy envisages that the tariff should progressively reflect the efficient and prudent cost of supply of electricity and the tariffs for all categories of consumers except the consumers below poverty line should be within $\pm 20\%$ of the average cost of supply. More importantly even for BPL categories for consumption up to a prescribed level the prescribed tariff ought to be at least 50% of the average cost of supply.

The objector has suggested that though the Petitioner has calculated the category-wise CoS for all classes of consumers, it has not used the same to determine tariffs. This renders the exercise of calculating the category-wise CoS futile and misleading. The non-domestic (commercial) and HT tariffs are significantly over 120% of the average cost of supply. As per the provisions of the Electricity Act and Tariff Policy, the subsidizing consumers such as industrial consumers cannot be penalized, for making good the cost, to be recovered from the subsidized category beyond the permissible $\pm 20\%$ of the

average cost of supply. Any benefit which the Licensee wants to confer to the subsidized category beyond the maximum of $\pm 20\%$ can and should be recovered through Government subsidy and cannot in any way be loaded to the subsidizing consumers. In view of the above, the Objector states that the tariff hike for industrial consumers is invalid in law and fails the mandate of the Electricity Act and Tariff Policy.

Reply from Licensees

The licensees have proposed an increase of 7.5% for HT-I category while the cost of service increase is 14.2%. The cross subsidy for the overall HT-I category is 117%. The licensees submit that the cross subsidy certainly contributes to additional cost to the industry, but it has to be borne in mind that the truly needy (particularly domestic consumers with consumption < 100 Units / month) are able to realize the benefits of electricity at a reduced tariff.

The Licensees would like to state that they have examined the views of a large spectrum of stakeholders while arriving at the tariff proposals for FY 2016-17 and it has been their best effort to balance revenue gap and providing reasonable tariffs to various consumers in the State.

As per the National Tariff Policy, the tariffs to the consumers are to be fixed at $\pm 20\%$ of COS. Hence it is deemed that the consumers whose tariffs are fixed over and above COS will cross subsidise the consumers whose tariffs are below COS to ensure revenue neutrality.

However, as per the Tariff Policy, Licensee has put all efforts while proposing tariffs to be within $\pm 20\%$ of the average cost of supply wherever it is possible.

Commission's view

The Commission while determining the tariff for each category has considered existing tariff, Increase in the average cost of supply over the previous year for the subsidizing categories so that the cross subsidies from these categories are not increased, Avoiding of tariff shock to the subsidized categories during this year.

Ultimately, tried to achieve the principles of National Tariff Policy”

18.19. From the above extracts of the Retail Supply Tariff Order, the following is evidently clear that:

- i. The Petitioners have admitted that the retail tariff proposed by them breaches the limits prescribed by the Tariff Policy.
- ii. The Hon'ble Commission has stated that it has "tried" to achieve the principles of Tariff Policy but from the retail tariffs approved, it is evidently clear that it has not followed the principles enshrined in the Tariff Policy as the tariffs for HT consumers have been approved at levels significantly above 120% of the cost of supply.

18.20. On reading the Tariff Policy and the Hon'ble Supreme Court Order in conjunction, it is observed that the Tariff Policy bears "*the force of law*". Based on the Retail Supply Tariff Order 2016-17 issued by the Commission, and the Hon'ble Commission's Statement –

"Ultimately, tried to achieve the principles of National Tariff Policy", it is clear that the approved numbers in the said Tariff Order have been derived without adhering to the National Tariff Policy. FTCCI submitted that the Average Tariff payable by the respective consumer category (and also particularly for CSS purposes) may be reworked and determined strictly in accordance with the provisions of the Tariff Policy and limited to maximum of 120% of the cost of supply.

18.21. The approach of determining the voltage wise cost of supply is patently incorrect. For example, the cost of service for LT-V: Irrigation and Agriculture for both the DISCOMs has been approved at Rs.5.05/kWh (Ref: Page 298 of the Retail Supply Order) as against cost of service for HT-1 Industry category 11 kV which has been approved at Rs.6.36/kWh and even overall cost of service at Rs.5.94/kWh. It is just not possible that supply to agriculture consumers across the length and breadth of the State and with small loads can be at a lower cost than supply to industrial consumers at 11 kV and even overall DISCOMs wise. The entire approach for allocation of cost to various consumer categories has to be transparently shared by the Petitioners and Hon'ble Commission may kindly determine the tariffs and CSS in a transparent manner.

The FTCCI craves leave to demonstrate similar anomalies in category wise cost of service and consequent faulty determination of tariff during the hearing in the instant matter.

18.22. Clause 8.5.1 of the Revised National Tariff Policy 2016 provides the following formula for calculating CSS.

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

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;

....

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

18.23. The Tariff Policy prescribes that CSS may be approved as per the formula prescribed therein or a maximum of ceiling of 20% of the tariff applicable to the category of the consumers seeking OA i.e. 20% of "T" (Average Realization). It is respectfully submitted that the value of "T" if calculated at maximum of 120% of category wise cost of service would be significantly lower than the number approved in the Retail Tariff Order and hence would result in consequently lower CSS.

18.24. The allowable CSS for HT Industrial consumer categories; even if tariff is calculated at maximum of 120% of the category cost of service, the resultant CSS is lower than the CSS approved in the order dated 23rd June 2016. Thus, the allowable CSS in the Objector's opinion is lower than that approved by the

Hon'ble Commission in order dated 23rd June 2016 and hence the Cross Subsidy computations may kindly be re-determined.

Therefore, the objectors sought the following reliefs in the petition.

- a. *Re-determine the CSS for FY 2016-17 as prayed and assessed by the Objector hereinafter strict and complete conformance with the provisions of the Electricity Act, 2003 and Tariff Policy;*
- b. *Permit the Objectors to participate and make additional submission and produce additional details and documents during the course of the public hearing."*

Additional Submissions made by the Federation (FTCCI) on the date of hearing i.e., on 24-01-2020:

19. The following are the additional material averments filed by the Federation on the date of hearing.

19.1. The necessity of having to amend the CSS is imperative for the industries to survive, otherwise, the entire idea of having a cross subsidy becomes counter-productive and redundant in the long run. It is well established (through the policy of the Central Government and the intent of the legislation laid by it) that the long term goal in determining the tariffs of electricity, is to have the cross subsidy taper down to zero and not to a mere $\pm 20\%$.

19.2. Though it is well understood that being a welfare state, the same may not be possible at this stage but it is essential that every policy made by the Commission is a holistic one and serves the welfare and interest of every strata of the economy, particularly the industries, as the entire economy is dependent on it and it forms the very backbone of a growing and developing economy. In such a scenario, it becomes essential that the industries are not overburdened and ousted from the market or else it will lead to non-percolation and under development of the economy as a whole.

19.3. It is a clear principle of jurisprudence that there cannot be an estoppel against law and therefore, it was mandatory that the State Commission had, suo-moto,

considered the National Electricity Policy, 2005 and National Tariff Policy of 2006 (along with the amendments) while formulating its tariff regulations under its powers of delegated legislation.

- 19.4. Primarily, while formulating the CSS, which is derived from the tariff provided in the retail supply tariff order 2016-17 and the NTP, the same should have been within $\pm 20\%$ of the cost of supply by FY 2010-11, however any failure to achieve such goals by the tariff policy even in FY 2016-17, will have a throttling effect on the industries, who would suffer irreparable loss due to increasing costs and stagnancy in economy and revenues. Any such policy, not only fails the statutory law requirements of the centre but also fails the principles of equity and natural justice and thereby a rational solution in the calculation of cross subsidy becomes imperative in a welfare state.
- 19.5. The objections raised before this Commission are not in the nature of a recall or a review application, where the scope of hearing is limited, the objector, therefore, submits that it may be allowed to be heard at length to identify the issues with the CSS and its dependent components, as has ordered by the Hon'ble High Court vide its order dated 14.03.2019 in Writ Appeal No. 03 and 04 of 2019, so that a fair and rational solution can be reached by the Commission in determining the CSS for FY 2016-17.
- 19.6. There was no road map, whatsoever, that had been laid down while determining the CSS and the computation of the same has been done in the most arbitrary and unjust manner.
- 19.7. The entire RSTO for FY 2016-17 is not being challenged but only the particular component that affects CSS, the same may be heard by the Commission in the interest of justice.
- 19.8. In the case of WBERC vs. CESC Ltd [2202 8 SCC 715] it has been categorically held by the Hon'ble Supreme Court that "*once the regulations framed under the statute unequivocally provided a right to of hearing/ representation to the consumers, which is in conformity with the principles of natural justice, the Commission cannot avoid following principles of natural justice on the ground*

of inconvenience, even if such convenience does in fact exist, since it has power to regulate the manner of exercise of the right of hearing. It held that right of hearing is a vested right, compliance with which is mandatory". It was further held that "existence of technicalities in the subject matter cannot absolve the Commission of the responsibility of considering the objections and cannot also prevent this Court from checking whether they are referred to and considered". Therefore, FTCCI may be heard on the primary issue of CSS and any ancillary issues related to the same during the hearing.

Pursuant to hearing, written submissions of Federation dated 28-01-2020:

20. The federation also filed written submissions pursuant to the hearing and had stated therein as below while reiterating the contentions made in the objections already filed originally by it. The additional submissions are as below.

20.1. The federation spoke about the marked deviation in retail tariffs FY 2016-17 from the permitted $\pm 20\%$ range of cost of supply. The federation relied on the figures notified in the tariff order for each of the licensees with regard to average realization, average cost of supply, voltage wise cost of supply and the resultant average realization in percentage of average cost of supply or average realization as percentage of voltage cost of supply.

20.2. FTCCI has relied on the decision of the Hon'ble ATE in the matter of M/s. SEIL Limited vs. Punjab State Electricity Regulatory Commission.

20.3. FTCCI filed a statement of comparison of the CSS of the TSSPDCL year-wise identifying the tariff approved by the Commission, tariff of DISCOM average cost of supply and the combined average cost of supply of all the DISCOMs for FY 2015-16 to FY 2018-19.

20.4. FTCCI also filed a statement in respect of each of the licensees as to what is CSS approved by the Commission and what is the assessment for FY 2016-17 as per its calculations. The contents of the statement showing calculation in the table based on the following figures that is average realization per kWh, 20% limit of average realization, approved CSS per kWh as approved by the

Commission. On its own assessment, it has taken cost of service as per tariff order in kWh, average realization of maximum 120% of cost of service, 20% of average realization, allowable CSS in kWh and difference between the Commission's order and its own assessment.

Replies of TSDISCOMs to the Contentions of the Objectors

21. The petitioners gave following replies to the contentions of the objectors.
 - 21.1. Section 86 (4) of the Electricity Act read as "*In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, Nation Electricity Plan and tariff policy published under section 3*". Further section 61 (g) (i) of the Electricity Act provides that the Appropriate Commission shall specify the terms and conditions for the determination of tariff and in doing so, shall be guided by the National Electricity Policy and Tariff Policy. Hence, the Act specifies that the SERCs shall only be guided by the tariff policy in discharging its functions and NTP is no way binding.
 - 21.2. The erstwhile APERC has adopted embedded cost methodology for determination of CSS till FY 2012-13. The directions of the Hon'ble APTEL dated 05.07.2007 and the Hon'ble Supreme Court dated 31.03.2016 has become a binding direction on the Commission due to which the Commission has to follow the tariff policy in fixation of the CSS. However, for FY 2015-16, the TSERC has computed the CSS using both the methodologies viz. embedded cost and surcharge formula prescribed in NTP and the surcharge determined with embedded cost methodology resulted in higher rates. The objectives of the Electricity Act, 2003 is to facilitate indiscriminate OA and create competition and the OA consumers should not be burdened with high surcharge. Hence, the Commission decided to refrain from the methodology adopted by the erstwhile APERC for determination of CSS and adopted the National Tariff Policy Methodology for determination of CSS for FY 2015-16 without prejudice to the earlier year orders by the erstwhile Commission.
 - 21.3. Clause 8.3 (2) of National Tariff Policy, 2016 states that "*For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the*

Appropriate Commission would notify a roadmap such that tariffs are brought within $\pm 20\%$ of the average cost of supply". This clause itself states that the average cost of supply has to be considered for tariff design and determining the cross subsidies between the categories. Hence, the objector stating that nowhere the tariff policy has suggested for calculating the cross subsidies based on average cost of supply is not correct.

- 21.4. Further, the APTEL judgment cited by the objector in the case of SIEL Ltd vs. Punjab ERC also stated that *"... Therefore, for the present, the approach adopted by the Commission in determining the average cost of supply cannot be faulted. We, however, hasten to add that we disapprove the view of the Commission that the words "Cost of Supply" means "Average Cost of Supply." The Commission shall gradually move from the principle of average cost of supply towards cost of supply."*
- 21.5. The Hon'ble APTEL has set aside the CSS orders of erstwhile APERC for FY 2005-06 and FY 2006-07 (which were based on the Embedded Cost Methodology) and directed the Commission to determine the CSS rates from FY 2005-06 onwards as per National Tariff Policy. The CAs filed by erstwhile APERC against the Hon'ble APTEL order dated 05.07.2007 mandates the Commission legally to follow NTP formula for calculation of CSS.
- 21.6. The tariffs for subsidizing categories cannot be brought within $\pm 20\%$ of the average cost of supply and the cross subsidies cannot be reduced in the present scenario in order to cross subsidize the domestic category consumers whose tariff is far less than the average cost of supply and to provide free power supply to agricultural category consumers as per the Government of Telangana (GoTS) policy, in addition to ensure the revenue neutrality. The Commission while determining the tariff for each category has considered the then existing tariffs, increase in the average cost of supply over the previous year for the subsidizing categories so that the cross subsidies from these categories are not increased and avoiding of tariff shock to the subsidized categories during the FY 2016-17. The licensee stated that the cross subsidy certainly contributes to additional cost to the industry, but it has to be borne in mind that the truly needy

(particularly domestic consumers with consumption < 100 units / month) are able to realize the benefits of electricity at a reduced tariff. The Commission has made the best effort to balance revenue gap and providing reasonable tariffs to various consumers in the state simultaneously.

21.7. Further, regarding the prayer to limit the average tariff payable to maximum of 120% and re-determine the CSS, it is stated that the CSS has already been limited to 20% of the tariff applicable to the category as per the clause 8.5.1 of the tariff policy. Even though, there would be an impact on the licensee's revenue, the CSS is capped to 20% of average realization for each category as per NTP-2016 as the licensee feels that it cannot partly follow this methodology. Though 20% cap on CSS will not adequately compensate the DISCOMs, only because the cross subsidy in the existing tariffs of certain categories are higher than 20% of COS, the CSS is capped at 20% of average realization. The CSS rates determined now provide enough financial leverage to the consumers who are willing to opt for OA. Any further reduction of CSS rates will put the DISCOMs finances in jeopardy and will harm the electricity sector in the long run.

21.8. All the required information submitted to the Commission on allocation of cost to various consumer categories.

i) **Technical Model:** The technical model evaluates the load factors of major category of consumers with their estimated sales and gives the coincident demand and non-coincident demand for these categories of consumers. It studies the actual load pattern by taking feeder wise loads recorded during the immediate past 12 months period considering predominance loads on such feeders to arrive at category wise load curves under sampling method. The sales estimated for category of consumers grossed up with respective voltage level losses are used to arrive at coincident and non-coincident factors for each category of consumers which are shown in page no. 68 of the ARR filing petition of FY 2016-17.

- ii) **Financial Model:** The financial model uses the outputs from the technical model for allocation of costs among consumer categories. Initially each cost line item is classified into demand, Energy and customer related expenses and then allocated / apportioned to the consumer categories based on coincident, non-coincident demand, energy and connected loads as explained in page no. 69 and 70 of the ARR filings petition for FY 2016-17.

21.9. Only because the cross subsidy in the existing tariffs of certain categories are higher than 20% of COS, the CSS is capped at 20% of average realization as per the Tariff Policy guidelines. Hence, calculating the value of "T" (Average realization) at maximum of 120% of category wise COS for the purpose of re-determining the CSS is not correct as the actual tariffs applicable and levied are different. The calculation of "T" at maximum of 120% of COS will lead to lesser cross subsidies whereas the actual cross subsidies existing are different. The clause 8.3 of the tariff policy guided the principles for tariff design stating that "*For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within $\pm 20\%$ of the average cost of supply*". This does not depict that tariff should be limited at maximum of 120% of COS for the purpose of calculation of CSS.

21.10. Emphasized that the CSS order is the derivative of the RSTO i.e., the calculation of CSS is merely through a formula with the parameters derived from the tariff order. Hence, the objector challenging only the CSS without challenging the retail supply tariff fixed by the Commission and requesting to re-determine the CSS by modifying the applicable tariff only for the purpose of calculation of CSS is not correct. This will not reflect the actual cross subsidy that could not be recovered by the DISCOM in case of the consumer opting for OA. Hence, the revised CSS calculation of the objector cannot be considered.

21.11. The Hon'ble APTEL in its various Judgments interpreted the component of "T" used for calculation of CSS as effective tariff which includes both fixed/demand charges and energy charges. The relevant portions are extracted below:

Appeal No.	Petitioner vs. Respondent	Relevant extract of the APTEL Judgment
102, 103 and 112 of 2010	Tata Steel Ltd. vs. OERC	Para No.35 specifies the formula for calculating the average tariff applicable to the category as Average Tariff realization for a category = $\frac{\text{Total expected revenue realized from that category as per ARR}}{\text{Total anticipated sale to that category as per ARR}}$
178 of 2011	Reliance Industries vs. MERC	Para No.60 (III) specifies the methodology to calculate 'T' in determination of CSS as "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."
181 of 2015	Byrnihat Industries Association vs. Meghalaya ERC	The Tribunal agreed in para no.19 for using Average Billing Rate (ABR) for determining CSS as "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 CSS, 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 sued while determining CSS."

21.12. From the above, it is clear that the component "T" reflects average realization for that category and includes both demand and energy charges. Hence, considering "T" as average realization for determination of CSS is legally correct and permitted by Law

Replies of TSDISCOMs to the additional submissions of the Objectors:

22. The Petitioner (TSSPDCL) gave following replies to the additional contentions of the objectors.

22.1. In the present scenario of highly subsidized tariffs to domestic category (with consumption < 100 units / month) and free power to agriculture sector in addition to year on year increase in cost of supply, the existence of cross subsidies are essential to maintain the revenue neutrality. Zero cross subsidies are not possible until the subsidized tariff categories are totally supported in the form of Govt. Subsidy or full cost tariff is levied on subsidized categories which leads to sudden tariff shock. However, as per the Tariff Policy, licensee has put all efforts while proposing tariffs to be within $\pm 20\%$ of the average cost of supply wherever it is possible.

- 22.2. Though the tariffs could not be brought within $\pm 20\%$ of the average cost of supply due to the existing tariff structure providing reduced tariffs to the needy consumers and reasonable tariffs to various consumers in the state duly balancing the revenue gap, the Commission has capped the CSS to 20% of average realization in order not to burden the OA consumers, though the same will not compensate the loss of current levels of cross subsidy to the DISCOMs. Hence, the tariff policy guidelines are followed by the Commission in determination of CSS keeping in view the larger interest of consumers.
- 22.3. It is stated that, initially the petitioners have challenged the CSS order passed by the Commission dated 23.06.2016 in O. P. Nos. 6 and 7 of 2016 before the Hon'ble High Court contending that the Commission has not followed the NTP for determination of CSS. But they have not contended that the Commission has not considered the objections filed by the petitioners or FTCCI on CSS proposals. Subsequently, certain petitioners have filed interim applications stating that the petitioners are members of FTAPCCI who filed objections on CSS proposals for FY 2016-17 on 29th March, 2016 which were not considered by the Commission while passing the impugned order. Based on these additional material papers submitted by the petitioner through interim applications, the Hon'ble High Court had passed the judgment directing the Commission to pass a fresh reasoned order after considering all the objections contained in the objections dated 29th March, 2016 filed by the Federation. Whereas, the FTAPCCI objection petition dated 29.03.2016 is enclosed with the objection dated 28.07.2016 and 22.10.2016, while the TSERC has already issued CSS order on 23.06.2016. Actually, the objection was on CSS proposals of AP State DISCOMs and also on revised CSS proposals of AP State DISCOMs and the same is enclosed with covering letter addressed to the TSERC. The same was produced before the Hon'ble High Court and judgment issued for consideration. It is stated that the objections stated by the FTAPCCI to TSERC on TSDISCOMs ARR filings for FY 2016-17 does not contain any objection regarding CSS proposals, which is also produced during the hearing. In this regard, there is no objection to consider in the FTAPCCI objections for re-determining the CSS as per the court directions.

22.4. Though the Commission has not specified a roadmap for reduction of cross subsidy, the tariff for each category is determined by considering the existing tariff increase in the average cost of supply over the previous year for the subsidizing categories so that the cross subsidies from these categories are not increased and avoiding of tariff shock to the subsidized categories during the year. Hence, there may not be significant reduction in cross subsidies every year due to huge increase in cost of supply vis-à-vis tariff increase. However, the CSS is determined as per the formula prescribed in the NTP duly capping the same to 20% of average realization. Hence, the objector stating that the computation has been done in most arbitrary and unjust manner is not accepted.

22.5. The objector challenging only the particular component that affects the CSS is derived from the retail supply tariff order. The computation of CSS is merely through a formula whose parameters are derived from the retail supply tariff order. The Commission while determining the CSS for FY 2016-17 along with approved retail supply tariffs including cross subsidies after subsidy commitment from the GoTS. Hence, any further reduction of CSS cannot be considered as there cannot be any change in the approved parameters of the tariff order and government subsidy, which will adversely affect the revenues of the DISCOM.

Issue: Representation received form the FTCCI for recusal of M.D.Manohar Raju Member (Technical) himself from the hearing on the issue of re-determination of CSS for FY 2016-17

23. The Commission is in receipt of representation from the FTCCI for recusal of one of us [Sri M.D.Manohar Raju, Member (Technical)] from the hearing on the issue of re-determination of CSS for FY 2016-17

24. Sri M.D.Manohar Raju, Member (Technical) was a serving officer of the Licensee (TSSPDCL) at the relevant time, when originally the CSS was determined. However, subsequently he retired from service on superannuation in May, 2019, thereafter the Government of Telangana in its wisdom selected and appointed him as Member (Technical) of the Commission. In his capacity as an officer of the licensee he was only discharging the duties as are entrusted to him and nothing of personal

interest was involved therein. In his capacity as an officer of the licensee entrusted with the work relating to the regulation would be required to assist his company and thereby assist the Commission and also any other judicial forum on the subjects and issues placed before such authorities. Incidentally due to efflux of time, if the same individual assumed the higher position like that of Member (Technical) and is required to decide the issues on which he was assisting the said authority, it does not constitute any bias. This is more so because, there was nothing of personal interest involved while assisting his company or such other authority including this Commission. Therefore, there is no necessity of recusal from the hearing of the subject matter or for that matter in any other issue, unless, it is shown that he has personal interest in the matter.

25. In this regard, it is also relevant to state that in a recent case that has come up for consideration before the Hon'ble Supreme Court, in the matter of M/s. Indore Development Authority vs. Manohar Lal & Ors., [S.L.P.(C) Nos.9036-9038 of 2016 and batch] a constitutional bench of five judges was looking at similar issue. In the said matter, the Presiding Judge being Sri Justice Arun Mishra was required to recuse himself as per the request of the counsel for one of the parties. Then the Hon'ble Supreme Court vide its order dated 23.10.2019 had observed that there is no necessity of recusal of Sri Justice Arun Mishra as was required in that case.

26. From the above findings of the Hon'ble Supreme Court itself, it is clear that recusal of a person holding adjudicatory position depends on several factors. Inasmuch as in the matter of Supreme Court Advocates-on-Record-Association and Ors. Vs. Union of India 2016 (5) 808, it has been elucidated about recusal in detail at paragraph 541 and 542.

27. In view of the above, there is no necessity of recusal of Sri M. D. Manohar Raju Member (Technical) of TSERC in this matter. Accordingly, Commission consider proceedings further in deciding the matter without being hindered by the letter of the federation.

Issue: Compliance to the Directions of Hon'ble High Court

28. M/s Agarwal Foundries Pvt. Ltd., an electricity consumer of TSSPDCL and a member of FTCCI, had challenged the Commission's CSS Order dated 23-06-2016 before the Hon'ble High Court on the grounds that the objections of Federation (FTCCI) dated 29.03.2016 had not been considered by the Commission in the determination of CSS for FY 2016-17. Based on the submissions of M/s Agarwal Foundries Pvt. Ltd., the Hon'ble High Court set aside the CSS Order dated 23.06.2016 in O.P.No.06 of 2016, and directed TSERC to provide hearing to the Petitioners and to the Federation (presently FTCCI), consider their objections to the levy of CSS proposed by 2nd respondent (TSSPDCL) for FY 2016-17 and then pass a fresh reasoned order after considering all the objections contained in the objection petition dated 29.03.2016 filed by the Federation.

29. During the Hearing held on 24.01.2020, the Commission directed FTCCI to respond specifically on the submission of TSSPDCL that the objections stated to be not considered by this Commission in the determination of CSS for FY 2016-17 actually pertain to the submissions made by the Federation before APERC in another proceedings that too after the issuance of the CSS order by this Commission. In reply, FTCCI requested the Commission to provide them the details of discrepancies pointed out by TSSPDCL. FTCCI in their written submissions dated 28.01.2020 after hearing, reiterated that they have filed their objections on ARR and Tariff proposals for FY 2016-17 on 29.03.2016 and it was highly improbable that they have attached objections dated 28.07.2016 and 22.10.2016 with covering letter dated 29.03.2016.

30. The directions of the Hon'ble High Court was based on the submissions of M/s Agarwal Foundries Pvt. Ltd. with the covering letter dated 29.03.2016 submitted to TSERC. It is pertinent to mention that although the covering letter is the same as submitted to TSERC the objections enclosed to that covering letter are the objections dated 28.07.2016 and 22.10.2016 on different proceedings before APERC (not TSERC). The stated objections dated 28.07.2016 and 22.10.2016 do not pertain to the CSS proposals of TSDISCOMs for FY 2016-17.

31. The objections of Federation (FTCCI) dated 29.03.2016 having submitted to the Commission had been duly considered in the Retail Supply Tariff determination

for FY 2016-17. As there had been no objections on the CSS proposals of TSDISCOMs for FY 2016-17, consideration of the same in CSS Order dated 23.06.2016 did not arise. The Commission is of the view that, the directions of the Hon'ble High Court to consider the objections of Federation (FTCCI) dated 29.03.2016 has been fully complied to due to the following reasons:

- (i) The objections contained in the Federation objections dated 29.03.2016, submitted to the Commission [which do not contain any specific objections on CSS proposals] had been duly considered in the Retail Supply Tariff determination for FY 2016-17 in accordance with the statutory provisions and the Commission's Regulations.
- (ii) The purported objections dated 28.07.2016 and 22.10.2016 as enclosed to Federation (FTCCI) letter dated 29.03.2016 and submitted to the Hon'ble High Court do not pertain to the CSS proposals of TSDISCOMs for FY 2016-17.

Current Proceedings:

32. In spite of the same, in compliance to the directions of the Hon'ble High Court, the Commission has taken into consideration the submissions of Federation (FTCCI) in the current proceedings and given its views/analysis on the same as discussed under.

33. The CMD of the licensee made detailed submissions stating that the present hearing has occasioned pursuant to direction of the Hon'ble High Court to hear the writ petitioner, federation and pass fresh orders determining the CSS for FY 2016-17. He also explained the procedure adopted earlier and the contentions raised in the objections on the earlier occasion as well the replies given by the licensee including the finding recorded therein earlier by the Commission.

34. The CMD of the licensee stated that the matter may be disposed of ensuring that no further remained from the higher forum is made by setting aside the order of the Commission. He also stated that the objections purported to have been placed before the Hon'ble High Court on behalf of federation pursuant earlier notice in the year 2016 are not correct and they had no occasion to respond to the same. The

federation had never filed an objection in so far as CSS is concerned. The federation had filed fresh objections and served a copy to the TSDISCOMs.

35. The counsel appearing for other parties adopted the arguments of the counsel for the opposite parties Smt. Shagun Srivastava and sought one week time for written submissions. Smt. T.Sujatha, Deputy CEO, representing the federation stated that until the year 2018 the federation was the joint federation for both the states of Telangana and Andhra Pradesh and that the same was bifurcated only in the year 2019. The federation has never filed objections in respect of CSS for the year under issue and if the objections relating to AP Tariffs and CSS were placed before the Hon'ble High Court or the Commission, then the same is erroneous.

Issue: Whether the Commission is mandated to adhere to the provisions of tariff policy.

36. The counsel for the objectors stated about the need for determination of the CSS in accordance with tariff policy of the government. Determination of CSS should not stifle the growth of industry which in turn affects the society at large. The tariff policy contemplated that the CSS to be $\pm 20\%$ of the tariff application to the category and it cannot include all other charges other than tariff. Pointing out the provisions of the Act, 2003 it is stated that the Commission is guided by the tariff policy and it should invariably be followed. In fact, the Act and the tariff policy mandate gradual reduction of CSS upto the percentage mentioned in the tariff policy. It is not the case of the industry that no CSS can be levied on OA being availed, but it should not be so onerous so as to defeat the purpose of allowing OA. Therefore, CSS may be determined in accordance with the tariff policy within the percentage prescribed therein.

37. The Act, 2003 mandates that the Commission is guided by the tariff policy made under section 3 of the Act, 2003. It is appropriate to state that the word 'guided' has been interpreted to state that it is not mandatory but merely directory. There is a stark difference between the words 'guided' and 'directed'. While guided would require that a thing or direction may be followed, on the other hand, directed would mean mandatorily performance of a task or action. In ordinary sense, the word 'guided' stands for 'may' and whereas the word 'directed' would stand as 'shall'. Thus, the Commission in exercise of its powers and functions may be guided and it is not

mandatory for the Commission to strictly follow the same. Thus, either under section 61 or under section 86 (4) of the Act, 2003, the Commission is not expected to follow a particular course of action as suggested in the policy to the extent it is feasible. Therefore, this contention of the federation cannot be accepted.

38. The federation referred to several judgments of the Hon'ble Supreme Court and also the Hon'ble ATE. The judgment referred to in M/s. Energy Watchdog case was in the context of sale of energy by a generator from one state to distributor in another state. It did not refer to any issue relating to CSS. However, interpretation was given what constitutes law. It is bound and duty of this Commission to follow what is termed as law. But at the same time, it is also required to give effect to the provisions of the statute. The other judgments referred by the federation on the aspect of CSS were rendered by the Hon'ble ATE prior to the policy notification made by the Government of India in the year 2016. Therefore, the same are not relevant for the present case. Moreover, the said judgments have been rendered on the basis of the policy of 2006, which had different formula for computing the CSS as against the formula provided in the policy of 2016. Thus also, the judgments are not relevant in this matter.

39. The contention of the federation that the tariff should be $\pm 20\%$ of average cost of supply to all the categories except the below poverty consumers, may not be correct. The tariff is dependent on the several factors like load factor, power factor, voltage and total consumption. The cost of supply itself is dependent on several factors and components, broadly comprising of demand charges and energy charges. The federation made attempts to show that the CSS should be on the basis of the tariff related to each category energy charges only. Its calculations shown in its objections cannot be accepted for the reason that they do not reflect the correct computation of cost of supply and based on such calculation arrival of CSS.

40. Though, there may be relation between the retail supply tariff and CSS, as CSS is calculated on the basis of tariff itself, however, it cannot be said that all the aspects that constitute revenue would necessarily be treated as tariff as part of the charges are relating to the other activities or may be non-tariff income. As such, CSS has to be determined solely on the basis of components given in the formula provided in the policy and there cannot take different computation in deviation of the formula or limited

to a particular factor in the formula. Thus, the same is not acceptable. The issue in the present proceedings is that the Commission is required to determine the CSS for the FY 2016-17 and not the tariff itself. Therefore, contending that the tariff should be \pm 20% of average cost of supply is neither relevant nor appropriate.

41. The Commission is inclined strictly adhere to the tariff policy January, 2016 in determination of CSS for FY 2016-17.

Issue: Comparison of CoS of various consumer categories:

42. We notice from the submissions that purported anomalies are sought to be canvassed against the retail supply tariff for the year 2016-17. Levy of CSS is based on final determination of tariff for each category of consumers. That any variation or misgivings if any cannot be agitated in respect of tariff for several categories as this proceeding is neither a review nor an appeal on the said issues, but is only limited to determination of CSS for FY 2016-17 as per the directions of the Hon'ble High Court. Thus, the contentions regarding LT-V and HT industry category cannot be compared. The contention cannot be accepted by this Commission as it is not related to the subject matter.

Issue: Component of T for CSS determination:

43. One other contention raised by the federation is with regard to applying the 20% in respect of average realization that is denoted as 'T' in the formula mentioned in the policy that should be the basis for determination of CSS. It is axiomatic to state that the formula cannot be disjointed and only one parameter can be considered as all the parameters have to be taken into account for arriving at CSS duly keeping in mind the method provided in the formula. Therefore, merely considering one component to arrive at CSS is not appropriate and correct and would be contrary to the policy itself.

44. The determination of CSS as stated earlier cannot be merely based on cost of service as is sought to be portrayed. In fact, if the total tariff component of the category is considered for calculation of CSS, then the actual CSS to be levied would be more than 160% of the present determination of CSS, which is neither in the interest of the petitioners nor the objectors. The Commission is of the view to consider the components of the tariff formula only to determine the CSS and not otherwise.

Issues: Non-Relevant Contentions of the Consumers and Federation:

45. The Commission is of the view that the following contentions of the Consumers and Federation are not relevant to the present matter of determination of CSS for FY 2016-17.

45.1. Some of the consumers have raised objections in the above stated petitions while relying on the contentions of the federation. Attempt has been made to explain the cross subsidy proposals of the year 2015-16, this is neither relevant nor appropriate to the present proceedings. Suffice it to state that at present, the issue of levy of CSS insofar as FY 2015-16 is sub-judice before the Hon'ble Supreme Court. It is also relevant to state that the CSS is determined year on year basis and determination made for one FY may not squarely fit into the tariff that is proposed for the subsequent FY as there are variations for each FY, as such CSS is determined differently. Therefore, the contentions placed on behalf of the consumers that CSS determined for FY 2015-16 has a bearing on the present determination of CSS is not relevant.

45.2. It is contended that the Hon'ble High Court had directed collection of CSS for FY 2015-16 at Rs.0.30 per kWh for 33 kV consumers is not relevant as the said determination of the Commission was under challenge before the Hon'ble High Court at the time of earlier determination of CSS for FY 2016-17 and the same is now pending consideration before the Hon'ble Supreme Court. The submission is made out of context. Moreover, the consumers contended about progressive reduction of CSS under section 42 (2) of the Act, 2003, which is dependent on the tariff determination and not otherwise. The consumers have not made out any case for sustaining the contention.

45.3. The contentions of the consumers that the tariff policy provided for progressive reduction of CSS in linear rate from the FY 2010-11 is not relevant to the present case, as the determination of CSS for FY 2016-17 and it should be on the basis of tariff policy 2016 and cannot be on the basis of the tariff policy 2006. The reliance placed by the consumers as regards applicable tariff policy for determination of CSS is misplaced and therefore, the contention fails.

- 45.4. The consumers and federation have also touched upon the road map for tariffs to be brought within $\pm 20\%$ of the average cost of supply as per the tariff policy 2016. As the current proceedings are limited to determination of CSS for FY 2016-17 which is already lapsed, the contention is out of place.
- 45.5. The consumers attempted to press into service unrelated facts about the determination of CSS for FY 2005-06 and 2006-07, as also the subsequent events. The determination of CSS for FY 2005-06 and 2006-07 is neither relevant nor appropriate for the present determination of CSS for FY 2016-17, as both periods are covered by different formula of the tariff policies that is the tariff policy of 2006 in respect of FYs 2005-06 and 2006-07 and the tariff policy of 2016 for FY 2016-17. Also it is appropriate to state that there is no basis for the statement that there cannot be levy of any CSS at all, if the policies are followed, as determination of CSS is dependent on the tariff along with relevant parameters as applicable under the formula. The Commission is of the view that, the plea of the consumers and federation regarding applicability of tariff policy 2006 for CSS determination for FY 2016-17 is not tenable.
- 45.6. The consumers are harping on the statement that the CSS would become '0' had the tariff policy been followed by the Commission. Except making a statement as to how one could arrive at the figure of '0', no details or working are placed on record to substantiate their case. As could be seen from the formula extracted elsewhere in this order, there are several factors, which would have to be factored into to arrive at CSS for the relevant year. By any stretch of imagination, it cannot be said that at least one factor appears to be '0', which could have influenced the result of calculating CSS to be '0'. Therefore, the consumers failed to demonstrate that the CSS would be '0' for the relevant year and more particularly FY 2016-17. Moreover, the provision under section 45 of the Act, 2003 is very clear that whatever charges ought to be collected as determined under the relevant provisions had to be levied and collected. In that process, elimination of the charges and bringing down to '0' may not be possible for varying factors including the tariff determination for the respective FY. Therefore, this contention is untenable and rejected.

46. Upon examination of the objections/suggestions and analysis of data available on record, the Commission is inclined to strictly adhere to the formula of tariff policy January, 2016. Accordingly, we deem it appropriate to rework the figures provided by the TSDISCOMs and arrive at the CSS to be levied for the FY 2016-17.

Determination of CSS & AS for FY 2016-17

a) Licensees' submissions

47. The Licensees filed for determination of CSS for FY 2016-17 based on the surcharge formula prescribed in the NTP dated 28.01.2016. The CSS filed by the Licensees for FY 2016-17 is given in the Tables below.

Table 1: Cross Subsidy Surcharge for FY 2016-17 as filed by TSSPDCL

Category		Average Realization	Weighted Average PP Cost	Aggregate T&D Charges	Aggregate AT&C Loss	Cost of Carrying Regulatory Asset	CSS	20% Limit of Average Realization	CSS as per Tariff Policy, Jan, 2016
		T	C	D	L	R	S	20% of T	
		(Rs./unit)	(Rs./unit)	(Rs./unit)	(%)	(Rs./unit)	(Rs./unit)	(Rs./unit)	(Rs./unit)
High Tension (HT)									
HT Category at 11 kV									
HT-I	Industry	8.31	4.19	0.52	11.99%	-	3.03	1.66	1.66
HT-II	Others	10.51	4.19	0.52	11.99%	-	5.23	2.10	2.10
HT-III	Airports, Railway Stations and Bus Stations	9.63	4.19	0.52	11.99%	-	4.35	1.93	1.93
HT-IV	Irrigation & CPWS	5.61	4.19	0.52	11.99%	-	0.33	1.12	0.33
HT-VI	Townships and Residential Colonies	6.89	4.19	0.52	11.99%	-	1.61	1.38	1.38
HT-VII	Temporary Supply	15.00	4.19	0.52	11.99%	-	9.71	3.0	3.0
HT Category at 33 kV									
HT-I	Industry	7.32	4.19	0.19	7.84%	-	2.58	1.46	1.46
HT-II	Others	9.37	4.19	0.19	7.84%	-	4.64	1.87	1.87
HT-IV	Irrigation & CPWS	6.28	4.19	0.19	7.84%	-	1.55	1.26	1.26
HT-VI	Townships and Residential Colonies	6.96	4.19	0.19	7.84%	-	2.22	1.39	1.39
HT-VII	Temporary Supply	18.67	4.19	0.19	7.84%	-	13.94	3.73	3.73
HT Category at 132 kV and above									
HT-I	Industry	6.62	4.19	0.16	4.01%	-	2.10	1.32	1.32
HT-II	Others	9.35	4.19	0.16	4.01%	-	4.83	1.87	1.87
HT-III	Airports, Railway Stations and Bus Stations	8.20	4.19	0.16	4.01%	-	3.68	1.64	1.64
HT-IV	Irrigation & CPWS	6.30	4.19	0.16	4.01%	-	1.78	1.26	1.26
HT-V	Railway Traction	7.46	4.19	0.16	4.01%	-	2.93	1.49	1.49

Table 2: Cross Subsidy Surcharge for FY 2016-17 as filed by TSNPDCL

Category		Average Realization	Weighted Average PP Cost	Aggregate T&D Charges	Aggregate AT&C Loss	Cost of Carrying Regulatory Asset	CSS	20% Limit of Average Realization	CSS as per Tariff Policy, Jan, 2016
		T	C	D	L	R	S	20% of T	
		(Rs./unit)	(Rs./unit)	(Rs./unit)	(%)	(Rs./unit)	(Rs./unit)	(Rs./unit)	(Rs./unit)
High Tension (HT)									
HT Category at 11 kV									
HT-I	Industry	8.70	4.11	0.74	11.75%	-	3.31	1.74	1.74
HT-II	Others	10.53	4.11	0.74	11.75%	-	5.13	2.11	2.11
HT-III	Airports, Railway Stations and Bus Stations	9.20	4.11	0.74	11.75%	-	3.80	1.84	1.84
HT-IV	Irrigation & CPWS	5.55	4.11	0.74	11.75%	-	0.15	1.11	0.15
HT-VI	Townships and Residential Colonies	6.82	4.11	0.74	11.75%	-	1.42	1.36	1.36
HT-VIII	RESCO (CESS)	1.01	4.11	0.74	11.75%	-	-	0.20	-
HT Category at 33 kV									
HT-I	Industry	6.86	4.11	0.18	7.85%	-	2.22	1.37	1.37
HT-II	Others	9.32	4.11	0.18	7.85%	-	4.68	1.86	1.86
HT-IV	Irrigation & CPWS	5.34	4.11	0.18	7.85%	-	0.70	1.07	0.70
HT-VI	Townships and Residential Colonies	7.08	4.11	0.18	7.85%	-	2.44	1.42	1.42
HT Category at 132 kV and above									
HT-I	Industry	6.71	4.11	0.16	4.01%	-	2.27	1.34	1.34
HT-II	Others	51.85	4.11	0.16	4.01%	-	47.40	10.37	10.37
HT-IV	Irrigation & CPWS	6.46	4.11	0.16	4.01%	-	2.02	1.29	1.29
HT-V	Railway Traction	7.51	4.11	0.16	4.01%	-	3.06	1.50	1.50
HT-VI	Townships and Residential Colonies	6.76	4.11	0.16	4.01%	-	2.32	1.35	1.35

b) Commission's Analysis

48. As per the Hon'ble APTEL order dated 05.07.2007 and the Hon'ble Supreme Court order dated 31.03.2016 regarding the methodology for determination of CSS, the Commission is legally mandated to follow tariff policy formula for determination of CSS. Hence, the Commission has adopted the CSS formula as specified in tariff policy dated 28th January, 2016 for determination of CSS for FY 2016-17 and computed the values of each component based on its approved numbers determined in its Retail Supply Tariff Order (RSTO) for FY 2016-17.

49. The method of computing each component has been detailed below:
- 49.1. **Component 'T'**: Hon'ble APTEL in its various judgments have interpreted the component 'T' used for calculation of CSS as effective tariff which includes both fixed and energy charges.
- Accordingly, the Commission considered average realization i.e., 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 Order (RSTO). The value of 'T' computed for each category is shown in Table under **Annexure-2**.
- 49.2. **Component 'C'**: The Commission has computed weighted average cost of power purchase approved in the RST Order, divided by the approved energy requirement. The value of 'C' computed for each TSDISCOMs is given in Table under **Annexure-3**.
- 49.3. **Component 'D'**: The Commission has considered Transmission charges approved for FY 2016-17 in the Transmission Tariff Order for the third control period (FY2014-15 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 (FY2014-15 to FY 2018-19) dated 27th March, 2015 approved by this Commission.
- 49.4. **Component 'L'**: The Commission computed the percentage loss in the transmission system as considered in RST order for FY2016-17 and voltage wise approved distribution loss trajectory (including commercial losses) for the relevant year in the Distribution Tariff order for 3rd control period.
- 49.5. **Component 'R'**: The Commission has not approved any regulatory assets in its Retail Supply Tariff Order (RSTO) for FY 2016-17, hence cost of carrying regulatory assets 'R', is Nil.

50. Based on the above, the Commission has computed TSDISCOM-wise, voltage-wise CSS for different categories of consumers applicable to those availing OA in the area of supply of respective Licensees, as below. The calculations in arriving at the rates of CSS are shown in Annexures 1 to 3.

Sl. No	Category		Approved CSS as per NTP Dated 28 th Jan 2016	
			TSSPDCL (Rs./unit)	TSNPDCL (Rs./unit)
High Tension (HT)				
HT Category at 11 kV				
1	HT-I	Industry	1.65	1.66
2	HT-II	Others	2.03	2.03
3	HT-III	Airports, Railway Stations and Bus Stations	1.88	1.78
4	HT-IV	Irrigation & CPWS	0.36	0.21
6	HT-VI	Townships and Residential Colonies	1.31	1.28
7	HT-VII	Temporary Supply	2.76	-
8	HT-VIII	RESCO (CESS)	-	-
HT Category at 33 kV				
9	HT-I	Industry	1.48	1.44
10	HT-II	Others	1.81	1.78
11	HT-IV	Irrigation & CPWS	1.26	0.86
12	HT-VI	Townships and Residential Colonies	1.32	1.35
13	HT-VII	Temporary Supply	3.34	-
HT Category at 132 kV and above				
14	HT-I	Industry	1.35	1.34
15	HT-II	Others	1.77	3.55
16	HT-III	Airports, Railways Stations and Bus Stations	1.51	-
17	HT-IV	Irrigation & CPWS	1.24	1.28
18	HT-V	Railway Traction	1.41	1.42
19	HT-VI	Townships and Residential Colonies	-	1.28

51. Provided that this CSS shall not be applicable to the Solar Power Projects (SPPs) as per the policy directions given under section 108 of the Act by the Government of Telangana vide letter No.608/Pr.(A2)/20-16 dated 17.12.2016 to adopt the Telangana Solar Power Policy, 2015 and AP Solar Power Policy, 2012 as given below:

A.P. Solar Power Policy, 2012	Telangana Solar Power Policy, 2015
Cross Subsidy Surcharge shall not be applicable for Open Access obtained for third party sale within the state subject to the industries maintaining their demand within its contracted demand with the DISCOMs. It is not applicable for captive use.	For SPP located within the state and selling power to third parties within the state, 100% exemption shall be provided on the Cross Subsidy Surcharge as determined by TSERC for five years from the date of commission of the SPP.

52. Provided further that the Government of Telangana shall reimburse the TSDISCOMs, the sum of money accrued due to the exemption of the CSS to the SPPs as stated in the first proviso. In the event of non-reimbursement by the Government of Telangana of the CSS so exempted, the TSDISCOMs shall levy the CSS as applicable as mentioned in Table under para 50 plus the sum accrued as arrears from such consumers who are exempted.

Determination of Additional Surcharge (AS):

53. The Licensees have neither provided any information on the cost to be incurred on account of fixed cost of stranded generation capacity nor shown any other costs which will become stranded if any existing eligible consumer avails OA. In the absence of such information the Commission has not determined the Additional Surcharge to be levied to OA consumers for FY 2016-17. However, the Licensees are at liberty to establish the costs that are going to be stranded for availing OA, to be examined by the Commission for passing necessary order.

54. The Cross Subsidy Surcharge rates determined in this Order are applicable for the period from 1st July, 2016 to 31st March, 2017.

55. The Commission hereby disposes of the above stated O.Ps. along with SR petitions in terms of the directions of the Hon'ble High Court.

This order is corrected and signed on this 11th day of March, 2020.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER (FINANCE)

Sd/-
(M.D.MANO HAR RAJU)
MEMBER (TECHNICAL)

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

// certified copy //

Annexure-1

Table 1: Cross Subsidy Surcharge for FY 2016-17 as approved for TSSPDCL

Category		Average Realization	Weighted Average PP Cost	Aggregate T&D Charges	Aggregate AT&C Loss	Cost of Carrying Regulatory Asset	CSS	20% Limit of Average Realization	Approved CSS as per Tariff Policy, Jan, 2016
		T	C	D	L	R	S	20% of T	
		(Rs./unit)	(Rs./unit)	(Rs./unit)	(%)	(Rs./unit)	(Rs./unit)	(Rs./unit)	(Rs./unit)
HT Category at 11 kV									
HT-I	Industry	8.27	4.00	0.65	11.17%	-	3.12	1.65	1.65
HT-II	Others	10.13	4.00	0.65	11.17%	-	4.98	2.03	2.03
HT-III	Airports, Railway Stations and Bus Stations	9.41	4.00	0.65	11.17%	-	4.26	1.88	1.88
HT-IV	Irrigation & CPWS	5.50	4.00	0.65	11.17%	-	0.36	1.10	0.36
HT-VI	Townships and Residential Colonies	6.56	4.00	0.65	11.17%	-	1.42	1.31	1.31
HT-VII	Temporary Supply	13.80	4.00	0.65	11.17%	-	8.66	2.76	2.76
HT Category a 33 kV									
HT-I	Industry	7.41	4.00	0.31	6.99%	-	2.80	1.48	1.48
HT-II	Others	9.03	4.00	0.31	6.99%	-	4.42	1.81	1.81
HT-IV	Irrigation & CPWS	6.31	4.00	0.31	6.99%	-	1.70	1.26	1.26
HT-VI	Townships and Residential Colonies	6.62	4.00	0.31	6.99%	-	2.01	1.32	1.32
HT-VII	Temporary Supply	16.71	4.00	0.31	6.99%	-	12.10	3.34	3.34
HT Category at 132 kV and Above									
HT-I	Industry	6.76	4.00	0.14	3.12%	-	2.50	1.35	1.35
HT-II	Others	8.83	4.00	0.14	3.12%	-	4.57	1.77	1.77
HT-III	Airports, Railway Stations and Bus Stations	7.54	4.00	0.14	3.12%	-	3.27	1.51	1.51
HT-IV	Irrigation & CPWS	6.19	4.00	0.14	3.12%	-	1.92	1.24	1.24
HT-V	Railway Traction	7.06	4.00	0.14	3.12%	-	2.79	1.41	1.41

Table 2: Cross Subsidy Surcharge for FY 2016-17 as approved for TSNPDCL

Category		Average Realization	Weighted Average PP Cost	Aggregate T&D Charges	Aggregate AT&C Loss	Cost of Carrying Regulatory Asset	CSS	20% Limit of Average Realization	Approved CSS as per Tariff Policy, Jan, 2016
		T	C	D	L	R	S	20% of T	
		(Rs./unit)	(Rs./unit)	(Rs./unit)	(%)	(Rs./unit)	(Rs./unit)	(Rs./unit)	(Rs./unit)
HT Category at 11 kV									
HT-I	Industry	8.29	3.85	0.87	11.17%	-	3.09	1.66	1.66
HT-II	Others	10.14	3.85	0.87	11.17%	-	4.94	2.03	2.03
HT-III	Airports, Railway Stations and Bus Stations	8.89	3.85	0.87	11.17%	-	3.69	1.78	1.78
HT-IV	Irrigation & CPWS	5.41	3.85	0.87	11.17%	-	0.21	1.08	0.21
HT-VI	Townships and Residential Colonies	6.48	3.85	0.87	11.17%	-	1.28	1.30	1.28
HT-VIII	RESCO (CESS)	0.99	3.85	0.87	11.17%	-	-	0.20	-
HT Category a 33 kV									
HT-I	Industry	7.18	3.85	0.31	6.99%	-	2.73	1.44	1.44
HT-II	Others	8.90	3.85	0.31	6.99%	-	4.46	1.78	1.78
HT-IV	Irrigation & CPWS	5.31	3.85	0.31	6.99%	-	0.86	1.06	0.86
HT-VI	Townships and Residential Colonies	6.74	3.85	0.31	6.99%	-	2.29	1.35	1.35
HT Category at 132 kV and Above									
HT-I	Industry	6.72	3.85	0.14	3.12%	-	2.60	1.34	1.34
HT-II	Others	17.76	3.85	0.14	3.12%	-	13.64	3.55	3.55
HT-IV	Irrigation & CPWS	6.40	3.85	0.14	3.12%	-	2.28	1.28	1.28
HT-V	Railway Traction	7.08	3.85	0.14	3.12%	-	2.96	1.42	1.42
HT-VI	Townships and Residential Colonies	6.41	3.85	0.14	3.12%	-	2.30	1.28	1.28

Annexure-2

Table 3: Average Revenue Realization for TSSPDCL and TSNPDCL for FY 2016-17

Sl. No	Category		TSSPDCL			TSNPDCL		
			Sales	Revenue	Average Realisation	Sales	Revenue	Average Realisation
			MU	Rs. in Crore	Rs./unit	MU	Rs. in Crore	Rs./unit
HIGH TENSION								
HT Category at 11 kV								
1	HT-I	Industry	3,129	2,587	8.27	558	462	8.29
2	HT-II	Others	1,501	1,520	10.13	102	104	10.14
3	HT-III	Airports, Railway Stations and Bus Stations	6	6	9.41	8	7	8.89
4	HT-IV	Irrigation & CPWS	86	47	5.50	66	35	5.41
6	HT-VI	Townships and Residential Colonies	94	61	6.56	16	10	6.48
7	HT-VII	Temporary Supply	39	54	13.80	-	-	-
8	HT-VIII	RESCO (CESS)	-	-	-	685	68	0.99
HT Category at 33 kV								
8	HT-I	Industry	4,505	3,340	7.41	203	146	7.18
9	HT-II	Others	606	548	9.03	20	18	8.90
10	HT-IV	Irrigation & CPWS	69	43	6.31	117	62	5.31
11	HT-VI	Townships and Residential Colonies	44	29	6.62	44	30	6.74
12	HT-VII	Temporary Supply	11	19	16.71	-	-	-
HT Category at 132 kV and above								
13	HT-I	Industry	2,498	1,689	6.76	665	447	6.72
14	HT-II	Others	61	54	8.83	2	3	17.76
15	HT-III	Airports, Railway Stations and Bus Stations	67	51	7.54	-	-	-
16	HT-IV	Irrigation & CPWS	774	479	6.19	364	233	6.40
17	HT-V	Railway Traction	246	174	7.06	451	319	7.08
18	HT-VI	Townships and Residential Colonies	-	-	-	90	58	6.41

Annexure - 3

Table 4: Calculation of weighted average cost of PP for FY 2016-17

Rs. in Crore

Sl. No	Sources	TSSPDCL	TSNPDCL
1	CGS	3409	1423
2	TSGenco Thermal	5376	2244
3	TSGenco Hydel	742	309
4	APGPCL	17	7
5	IPPs	679	284
6	NCE	960	367
7	Other LTPP & MTPP	3209	1340
8	Short Term Sources	125	0
9	Cost of meeting RPO	0	0
10	Interest on Pension Bonds	228	95
11	DISCOM to DISCOM Purchases	468	0
12	DISCOM to DISCOM Sales	0	- 468
13	Revenue from sale of excess energy	155	65
	Total	15058	5536
	Total Power purchased (MU)	37685	14379
	Weighted average cost per unit (Rs/unit)	4.00	3.85