

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Smt. Neerja Mathur, Member
Petition No. 205/2016
Date of Order: 15.09.2016

In the matter of:

Determination of Additional Surcharge for the Open Access consumers as per the JERC (Open Access in Transmission and Distribution) Regulations, 2009.

And in the matter of:

DNH Power Distribution Corporation Limited, 1st Floor, Vidhyut Bhavan, 66 KV Road, Amla, Opp. Secretariat, Silvassa-396230 **....Petitioner**

And in the matter of:

All Open Access Consumers of DNHPDCL

.... Respondent

Present

For the Petitioner

1. Shri Anand K. Ganesan, Advocate, DNHPDCL
2. Shri H. M. Patel, Superintending Engineer, DNHPDCL

For the Respondents

1. Shri R. N. Purohit, Advocate, APCPI.
2. Shri P. K. Jadia, Executive Secretary, Federation of Industries Association.
3. Dr. R. B. Shelke, Hon. Secretary, Federation of Industries Association.
4. Ms. Mandakini Ghosh, Advocate, Indian Energy Exchange.
5. Shri Chandrakant Parekh, SIMA.
6. Shri Manish Desai, State Secretary, BJP.
7. Shri K. J. Mody, Executive President, APCPI.

ORDER

1. The DNH Power Distribution Corporation Limited (DNHPDCL) through this Petition sought the Commission's approval for the following:-
 - a. additional surcharge and increase in the demand charges for Open Access (OA) consumers on quarterly basis;

- b. alternative methods for recovery of fixed charges payable by OA consumers.
2. On receipt of the requisite additional details from the petitioner through affidavit dated 04.08.2016, and in order to invite the objections and suggestions from stakeholders, a public notice was issued by the Commission in widely circulated newspapers in the Dadra & Nagar Haveli area as detailed below:-

Table 1: Details of Public Notice issued by the Commission inviting objections and suggestions in the matter

S. No.	Date	Name of Newspaper	Place of Circulation
1.	18 th August 2016	Gujarat Samachar (Gujarati)	Surat
2.	18 th August 2016	Indian Express (English)	Vadodara
3.	18 th August 2016	Navbharat Times (Hindi)	Mumbai

3. The Commission also published public notices in the leading newspapers giving due intimation to interested persons and the public at large about the public hearing to be conducted by the Commission on 8th September 2016 at 11:00 AM in President Hall, Yatri Niwas, Silvassa as given below:

Table 2: Details of Public Notice issued by the Commission for the scheduling of Public Hearing in the matter at Silvassa

S. No.	Date	Name of Newspaper	Place of Circulation
4.	5 th September 2016	Gujarat Samachar (Gujarati)	Surat
5.	5 th September 2016	Indian Express (English)	Vadodara
6.	5 th September 2016	Navbharat Times (Hindi)	Mumbai

4. Subsequently, the Commission conducted a Public Hearing for Determination of Additional Surcharge for OA consumers at Silvassa on 08th September, 2016.
5. Shri Anand Ganesan, the Learned Counsel for the Petitioner, submitted that in order to meet the total power requirement of Dadra & Nagar Haveli, the Petitioner has entered into long term Power Purchase Agreements (PPAs) with Generators. According to these PPAs, the Petitioner is obligated to pay fixed charges irrespective of the energy scheduled and the variable charges are paid on the basis of actual energy scheduled.

6. The Learned Counsel further submitted that during the FY 2015-16 approximately 180-200 MW of power was procured by various consumers through Open Access (OA). This quantum has presently increased to 300 MW, which is approximately 35% of the total demand. No other State's quantum of open access has reached this magnitude. It was also submitted by the petitioner that the OA consumers procured power from other sources and did not pay energy charges to the Distribution Licensee. This results in under recovery of fixed charges which are supposed to be recovered through energy charges. This under recovery of fixed charges gets passed on to the non OA consumers.
7. The Learned Counsel further submitted that Clause 16 (iii) of the JERC for the State of Goa and Union Territories (Open Access in Transmission and Distribution) Regulations, 2009 provides that:

“A consumer availing OA and receiving supply of electricity from other person than the distribution licensee shall pay additional charges to meet the fixed cost of the Licensee arising out of obligation to provide supply under sub Section 4 of Section 42 of EA”
8. The Learned Counsel placed reliance on the Hon'ble Supreme Court's Order in SESA Sterlite Limited Versus Orissa Electricity Regulatory Commission and others wherein it was held that OA can be allowed on payment of a surcharge, to be determined by the State Commission, to take care of the requirements of current level of cross-subsidy and the fixed cost arising out of the Licensee's obligation to supply.
9. The Learned Counsel requested the Commission to approve additional surcharge per unit of energy consumption on the OA consumers so that the fixed charge deficit would be passed on to all the consumers including OA consumers in an equitable manner.
10. Shri R. N. Purohit, the learned counsel appearing on behalf of the Association of Polyester Continuous Polymerisation Industry (APCPI) opposed the contentions of the Petitioner and submitted that the demand charges of HT/EHT category of consumers have increased substantially in FY 2016-17 from FY 2015-16. This has reduced the gap between the recovery of demand charges and fixed cost liability of the Petitioner. Hence, it is required to consider fresh working with reference to the current year's accounting position. He also submitted that the petitioner should explore the possibility of surrender of surplus power specifically 'in-firm' power and 'specific allocation' of power. He further submitted that the petitioner be directed to submit the month-wise Fixed Cost getting passed on as Energy Charges. He further submitted that the petitioner should make efforts to reduce the fixed cost liability by selling the surplus power. He also stated that due to large surplus in Aggregate Revenue Requirement (ARR), the question of additional surcharge does not arise.

11. Shri P. K. Jadia and Dr. R. B. Shelke for the Federation of Industries Association, Silvassa, Silvassa Industries Association, Silvassa, Industries Manufacturers Association and Dadra & Nagar Haveli Industries Association jointly submitted that there was an adverse impact on the MSME units because of increasing OA transactions by a few large consumers. The under recovery of demand charges against the fixed cost liability of the Petitioner has increased the burden on the non OA consumers. They requested the Commission to take care of the interest of both OA and non OA consumers. They also requested the Commission to approve the additional surcharge on OA consumers from retrospective effect i.e. from May, 2016. They further requested that the petitioner should initiate immediate action for surrendering surplus power. They also suggested that the formula for the determination of additional charge should be transparent and logical.
12. Ms. Mandakini Ghosh, the learned counsel appearing on behalf of the Indian Energy Exchange submitted that JERC Regulations mandate determination of additional surcharge on case to case basis. Therefore the petition in its present form proposing determination of generic additional surcharge is not maintainable. She further submitted that the petitioner has failed to demonstrate that its generation capacity continued to be stranded. She also submitted that the petitioner should surrender its surplus costly power and make efforts for economic procurement of power. Demand charges and Cross-Subsidy Charges paid by OA consumers must be deducted to refrain from the double charging.
13. Shri Chandrakant Parekh of the SIMA submitted that there was an increase in the Fuel and Power Purchase Cost Adjustment (FPPCA) Charges of the non OA consumers due to the large quantum of Open Access. It is required to consider OA charges in such a way that there should not be an adverse impact on the non OA consumers. Also, the DNHPDCL should improve its working specifically with respect to economic procurement of power.
14. Shri Manish Desai, State Secretary- BJP submitted that Open Access is required to be allowed in accordance with the Law and Regulations. At the same time balancing is required to avoid a burden on the small consumers. He further submitted that it is not easy and practical to surrender the power allocated to DNHPDCL. He also requested that a formula be devised for recovery of the additional surcharge from OA consumers.
15. The Commission has considered contentions urged on behalf of the Petitioner and the Respondents and representations received during the Public Hearing dated 8th September 2016. The Commission has also examined the entire record placed before it alongwith the suggestions / comments from various stakeholders and relevant provisions of the

Electricity Act, 2003 and JERC for the State of Goa and Union Territories (Open Access in Transmission and Distribution) Regulations, 2009.

16. The Commission noted that the issue regarding maintainability of the petition was raised inviting reference to the relevant Regulation which provides for determination of additional surcharge for OA consumer (singular), only. The learned counsel for the petitioner explained that generally while interpreting the Regulations, singular may be considered as plural also for all practical purposes. He also stated that the other SERCs had determined the additional surcharge on generic basis only. The Commission is also of the view that for non-discriminatory application, it is required to determine the additional surcharge on generic basis.

17. Section 42 (4) of the Electricity Act, 2003 provides as under:

Duties of Distribution Licensees and Open Access

42. (4) "where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply".

18. Clause 16 (iii) of JERC for the State of Goa and Union Territories (Open Access in Transmission and Distribution) Regulations, 2009 provides that:

"A consumer availing OA and receiving supply of electricity from other person than the distribution licensee shall pay additional charges to meet fixed cost of the Licensee arising out of obligation to provide supply under sub Section 4 of Section 42 of EA"

19. The Commission examined the time block wise data for the period July, 2015 to Feb, 2016 and it became evident that the quantum of surplus capacity or stranded power increased, whenever any consumer opted for OA. At present consumers are availing OA on short-term basis only and also continue to keep their contracted demand with the licensee. It is mandatory for the licensee to supply power to them whenever they demand. Hence, the licensee is required to maintain allocated and contracted capacity for the same. Thus, it is clear that the capacity contracted under OA shall be considered as stranded capacity of the Petitioner due to OA.

20. The Commission has also examined in detail the Hon'ble Supreme Court's Order dated 25th April, 2016 in the matter of "**Sesa Sterlite Ltd Vs. Orissa Electricity Regulatory Commission and Others**" in Civil Appeal No. 5479 of 2013 wherein the Hon'ble Supreme Court observed *that*:

27. The issue of Open Access surcharge is very crucial and implementation of the provision of Open Access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the Distribution Licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of Open Access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts – one, on its ability to cross-subsidize the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.

28. Through this provision of Open Access, the law thus balances the right of the consumer to procure power from a source of his choice and the legitimate claims/interests of the existing licensees. Apart from ensuring freedom to the consumers, the provision of Open Access is expected to encourage competition amongst the suppliers.

21. In the light of the above observations of the Hon'ble Supreme Court, specific provision in the Electricity Act, 2003 as well as JERC for the State of Goa and Union Territories (Open Access in Transmission and Distribution) Regulations, 2009, the Commission is of the considered view that OA may be permitted on payment of a surcharge to be determined by the State Commission.
22. The Commission finds merit in the request of the OA consumers that data of the FY 2016-17 be considered for determination of additional surcharge, if any, to be recovered from the OA consumers as there is substantial increase in the demand charges for HT/EHT category for FY 2016-17 as compared to the same for FY 2015-16 and accordingly proceeds to determine additional surcharge on the basis of data for FY 2016-17. The Commission is however not inclined to accept the request of the Petitioner that recovery of fixed cost liability from consumers should be based on their energy consumption. The Commission is of the view that the fixed cost liability is related to capacity allocated or capacity contracted by the Petitioner. The capacity to be contracted depends on the peak demand requirement of the Distribution Licensee. However, the contribution of allocated/ contracted capacity in peak demand of the Licensee depends on the connected load / contracted load of the consumers. Thus it is appropriate to allocate fixed cost liability of the Distribution Licensee to different categories of consumers based on their contracted or connected load.

23. The projected fixed cost liability of the Petitioner for the contracted power and Transmission Charges of ISTS as approved by the Commission for FY 2016-17 are Rs. 854 Crore and Rs. 264 Crore respectively. Thus, total fixed cost for power purchase for the FY 2016-17 amounting to Rs. 1118 Crore is to be recovered from all the categories of consumers.
24. Out of the total connected load of 1575 MVA, the contracted load for the HT/EHT category of the consumers for the FY 2016-17 is 1278 MVA (81.16%). Accordingly, the fixed cost allocation for HT/EHT category of consumers for the FY 2016-17 is Rs. 907 Crore. (Rs. 1118 crore x 0.8116). Rs. 907 crore of the fixed cost liability of the Petitioner for the FY 2016-17 is required to be recovered from the 1278 MVA of the contracted load of HT/EHT consumers, which works out as Rs. 7100 per kVA per annum for the FY 2016-17.
25. The demand charges approved by the Commission for the HT/EHT category of consumers for FY 2016-17 are Rs. 275 per kVA per month i.e. Rs. 3,300 per kVA per annum.
26. The unrecovered net fixed cost liability to be considered for determination of additional surcharge is Rs. 3,800 per kVA (Rs. 7,100 – Rs. 3,300) for the FY 2016-17.
27. It is observed from the time block wise data for the period July, 2015 to Feb., 2016 that the load factor of the OA consumption is 100%. Accordingly, OA usage is considered as 100% i.e. 8760 hours for the year.
28. The Tariff Schedule approved for HT/EHT category for the FY 2016-17 provides that for the power factor in the range of 0.90 to 0.95, there is no penalty or incentive. Accordingly, the Commission considers average power factor of 0.925 for calculating the energy consumption per kW for the year and it works out as 1 kVA x 0.925 PF x 8,760 hrs.= 8,103 kWh
29. The unrecovered fixed cost liability works out as Rs. 3,800/ 8,103 = Rs. 0.47 per kWh.
30. **Accordingly, the Commission determines the additional surcharge for Open Access for FY 2016-17 to be recovered from the OA consumers at Rs. 0.47 per kWh.** The detailed computation is provided in Annexure-I.
31. The Commission is of the view that the decision of Short- Term Open Access and procurement of power by the consumers is based on day to day market price. It would be appropriate to make effective the additional surcharge on open access consumers prospectively. **Accordingly, the Commission directs DNHPDCL to levy of additional surcharge for OA consumers with effect from 1st October 2016.**

32. Almost all the respondents have submitted that the petitioner DNHPDCL should explore possibilities of surrender of surplus power. This issue was also deliberated during the last tariff exercise and the Commission had through the Tariff Order dated 07.04.2016, advised DNHPDCL to review existing power purchase agreements and power allocations keeping in view the current and future power requirements. The Commission reiterates the same. At the same time the petitioner has expressed difficulties in surrendering of allocated power because the consumers are seeking Short-Term Open Access while at the same time continuing with their Contract Demand with the Licensee. Hence, the Licensee is required to have allocated and contracted capacity for supply of power to OA consumers whenever the same may be demanded by them. The Commission advises consumers to explore the route of Long-Term Open Access, so that the Distribution Licensee is in a position to consider surrender of power and plan procurement of power duly factoring in its obligation to supply power to them. Long- Term Open Access applications, if any, from consumers are required to be processed by the nodal agency/ Licensee in accordance with the JERC Regulations in force from time to time.
33. The Commission is of the view that there is an urgent need for formulating detailed guidelines for procurement of power by the Distribution Licensees so as to ensure optimum and economic contracting of power. Hence, the office is directed to initiate the process of formulating detailed guidelines in this regard.

Ordered accordingly.

Sd/-
(NEERJA MATHUR)
MEMBER

CERTIFIED COPY

Sd/-
(KEERTI TEWARI)
SECRETARY

Annexure- I

Determination of Additional Surcharge for DNHPDCL for the FY 2016-17				
Sr. No.	Description	Pg.No. of TO 07.04.16	Unit	Value
A	Approved Fixed Cost for Power Procurement	124	Rs. Crore	854.07
B	Approved PGCIL related charges	124	Rs. Crore	263.83
C	Total Fixed Cost liability	A + B	Rs. Crore	1,117.90
D	Contracted Laod of HT/EHT category	109	MVA	1,277.90
E	Total Connected Load fo all consumers	109	MVA	1,574.59
F	Proportion of HT/EHT load in system	D as % of E		81.16%
G	Allocated fixed cost liability to HT/EHT Cons	C x F	Rs. Crore	907.26
H	Fixed cost liability for HT/EHT cons	Gx10000000/ Dx1000	Rs./kVA	7,099.63
I	Retail Tariff- Demand Charge for HT/EHT	155- Rs. 275x 12mon	Rs./kVA	3,300.00
J	Short Recovery of Fixed Cost liability	H - I	Rs./kVA	3,799.63
K	Load Factor for Open Access	From CD data		100%
L	Hours in the year	365 x 24	Hrs.	8,760
M	Energy usage for 1 kVA load in year @ 92.5% PF	1 kVA x 0.925 x 8760 hrs.	kWh	8,103
N	Short Recovery of Fixed Cost liability	J / M	Rs./kWh	0.47

