



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan Lakdi-ka-pul Hyderabad 500004

O.P.(SR)No.26 of 2019

Dated 07.09.2020

Present

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

Between:

M/s The Federation of Telangana Chambers
of Commerce and Industry, # 11-6-841,
Federation House, Red Hills, Hyderabad – 500 004.

... Petitioner

AND

1. M/s Southern Power Distribution Company of
Telangana Limited, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
2. M/s Northern Power Distribution Company of
Telangana Limited, H. No. 2-5-31 / 2, Corporate Office,
Vidyut Bhavan, – 500 063.

... Respondents

This petition came up for hearing through video conference on 13.07.2020. Smt. Swapna Sheshadri, Advocate along with Smt. T.Sujatha, Joint Director appeared for the petitioner. The respondents were represented by Sri. Mohammed Bande Ali/ Law Attaché, Chief General Manager and Divisional Engineer of TSSPDCL, Chief General Manager of TSNPDCL and Superintending Engineer, of TSSLDC also appeared through video conference on 13.07.2020. This petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s The Federation of Telangana Chambers of Commerce and Industry (FTCCI) has filed a petition under section 42 (4) and 62 of the Electricity Act, 2003 (Act, 2003) seeking directions on the determination of additional surcharge applicable on open access consumption for the period from April, 2019 by adopting

the formula as suggested in the petition for the State of Telangana.

2. The petitioner preferred the present petition on account of the failure of the distribution licensees (DISCOMs) to file the necessary petition in terms of the regulations of the Commission and further in view of the fact of changed circumstances in the State of Telangana which has resulted in the non-applicability of conditions precedent for the determination and levy of additional surcharge.

3. The petitioner stated that this particularly includes the decision of the DISCOMs to procure substantial quantum of power on short term basis, through the exchange and also to enter into new power purchase agreements (PPAs) for procurement of power of 1000 MW on short term basis and 550 MW on medium term basis to meet the demand in the State and the State is about to commission Kaleshwaram and other lift irrigation schemes which would add to an additional demand of 4000 MW (approx.) in the State. Once lift irrigation schemes are in place, DISCOMs will be in a deficit situation, as more fully detailed herein under:

3.1 The petitioner stated that it is the Federation of Telangana Chambers of Commerce and Industry (earlier known as FTAPCCI), started in 1917. It is an apex body representing the interests of industry, trade & commerce in the State of Telangana. FTCCI has got membership of more than 3000 with about 150 associations/chambers of commerce, having indirect membership of 25000. FTCCI is working closely with government on policy issues, interfacing with thought leaders and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus building and networking on key issues.

3.2 The petitioner stated that the sine qua non for the determination of additional surcharge is the existence of continuous stranded capacity on account of open access consumers. This is a dynamic concept and has to be examined from time to time. It is for this reason that the Commission also determines the additional surcharge on a periodic basis.

3.3 The additional surcharge was last determined by this Commission by its order dated 27.03.2018 "*determination of cross subsidy surcharge and additional surcharge for FY 2018-19*", where the Commission held that:

“4.19 The AS in the State was introduced from 01.01.2018 and the rate of Rs.0.52/kWh was applicable for a period of 3 months from 01.01.2018 to 31.03.2018. The AS computed cannot be wholly allowed considering the fact that the AS has been recently introduced in the State. In order to strike the balance between the interest of all the stakeholders, the Commission approves the AS for FY 2018–19 as Rs.0.52/kWh at the same level of the AS applicable for the period 01.01.2018 to 31.03.2018.”

- 3.4 The petitioner stated that the above was based on the representation of the DISCOMs that there is stranded capacity on account of open access consumers and therefore additional surcharge needs to be determined.
- 3.5 The petitioner stated that however, at presently there is no stranded capacity to be levied for additional charge considering the fact that the DISCOMs are regularly procuring power on basis of short term and medium term agreements.
- 3.6 It is stated that even at that point of time the DISCOMs had failed to update the details and data for the determination of additional surcharge. In any event, now that the year 2018–19 is over, the actual data is available in regard to the purchases made by the distribution licensees, the stranded un-requisitioned capacity etc.
- 3.7 The petitioner stated that despite the above, the DISCOMs have not taken any approach to file the petition for determination of additional surcharge in the State of Telangana and have continued to levy the previous additional surcharge determined, which it is respectfully submitted is high and unjustified, particularly considering the facts and circumstances that there is no stranded capacity in the State of Telangana.
- 3.8 It is pertinent to note that the DISCOMs have not taken any steps to approach the Commission for additional surcharge determination. This is perhaps for the reason that the actual data available for the previous period would disentitle the DISCOMs from any additional surcharge whatsoever, leave alone the high surcharge of Rs.0.52/kWh.
- 3.9 The petitioner stated that in the facts and circumstances mentioned above,

the present petition has been filed by it seeking directions of the Commission for redetermination of additional surcharge that is to be made applicable in the State of Telangana on the open access consumption.

- 3.10 The petitioner stated that one of the primary features and provisions of the Act, 2003 is the concept of open access. Open access is the right available to the consumer to source electricity from third parties, apart from the DISCOM which operates in the area of supply, only using the transmission and distribution system of the licensees.
- 3.11 Open access under the Act, 2003 is provided in section 38, 39 and 42 which mandates open access to be introduced in a progressive manner. Section 42 provides that the Commission shall introduce open access for consumers in such phases and subject to such conditions as may be specified.
- 3.12 The petitioner stated that the primary intention behind the concept of open access evolved under the provisions of the Act, 2003 is to promote competition. When the consumers have the option and freedom of taking electricity from third parties and not from the DISCOM in the area of supply, there arises competition between the multiple sources of supply including that of the DISCOM which ultimately benefits the consumers at large.
- 3.13 Once open access is permitted, the use of the transmission and distribution lines are to be on non-discriminatory basis, namely, that the open access sources are to be placed on the same pedestal with regard to the use of the lines as that of the transmission licensee/distribution licensee, with neither getting any preference over the other.
- 3.14 The petitioner stated that in this regard, the statement of objects and reasons to the Act, 2003 also the preamble captures the intention of the Union Parliament to promote competition and open access.
- 3.15 Section 42 (4) of the Act, 2003 provides for the levy of additional surcharge, which reads as under:
- “42. Duties of distribution licensee and open access –*
- (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.”

- 3.16 On a plain reading of the above provision, the surcharge under section 42 (4) of the Act, 2003 is only for the purpose of meeting the fixed cost of the distribution licensee on account of its obligation to supply. The obligation to supply is provided under section 43 of the Act, 2003.
- 3.17 The petitioner stated that the Central Government (GoI) has also in exercise of its statutory powers under section 3 of the Act, 2003 has framed, notified the National Electricity Policy (NEP) and the National Tariff Policy (NTP). The above policies of the GoI also lay great emphasis on competition to be promoted and towards that end to ensure that open access is provided to the consumers in the matter of right.
- 3.18 Open access apart from providing the freedom of choice to the consumers for supply of electricity, also helped the development of states and their economics by providing for an alternate mechanism to meet the electricity demand in the state. The DISCOMs have been in substantial deficit of capacity and have been unable to meet the demand in the states. The open access has helped to bridge this gap in demand and supply to some extent.
- 3.19 The petitioner stated that the Act, 2003 provides for only the following charges to be levied by the DISCOM on open access consumers and which are towards particular purposes:
- a) Wheeling charges: The wheeling charges are payable only if the electricity lines of the distribution licensee are used. In case of dedicated transmission lines etc. where no part of the distribution system is used, no wheeling charges are payable;
 - b) Cross subsidy surcharge: This is to compensate for the existing level of cross – subsidy in the system.
 - c) Additional surcharge [Section 42(4)]: This is payable to compensate for any stranded capacity of the distribution licensee on account of consumers taking supply through open access.
- 3.20 The NEP and the NTP lay great emphasis on open access to be provided and

competition to be promoted in the electricity sector.

3.21 The petitioner stated that the NTP, 2016 reiterates the objective of promoting open access and ensure that charges and conditions are not imposed to make open access un-competitive. The NTP notification dated 28.01.2016 reads as under:

”8.5 **Cross-subsidy surcharge and additional surcharge for open access**

8.5.1 *National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.*

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission system are used, distribution utility for the wheeling charges and in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time bound manner, is used to bring about competition in the larger interest of consumers.

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

.....”

- 3.22 The petitioner stated that the NTP, 2016, continues the same provision with regard to the additional surcharge as in the earlier policy as under:
- “8.5.4 The additional surcharge for obligation to supply as per section 42 (4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”*
- 3.23 The petitioner stated that the Hon’ble ATE and the Hon’ble Supreme Court have reiterated that open access is essential to promote competition and the charges which are imposed on the open access consumers ought not to be onerous which has the effect of throttling open access and competition.
- 3.24 The Hon’ble ATE has in the full bench decision in the case of RVK Energy Private Limited vs Central Power Distribution Company of Andhra Pradesh Limited and Others in Appeal Nos.169 of 2006 and batch dated 05.07.2007 has held that the object and purpose of the Act, 2003 is to promote competition and considering the above the charges for open access need to be determined in a reasonable manner and not to make open access illusory.
- 3.25 The petitioner stated that in the case of SESA Sterlite vs OERC as reported in 2014 (8) SCC 444, the Hon’ble Supreme Court has reiterated the importance of open access for promoting competition. The Hon’ble Supreme Court has also held that the cross subsidy surcharge and additional surcharge are compensatory in nature.
- 3.26 The very concept of additional surcharge applies in a situation wherein the DISCOM has entered into long term PPAs and is under an obligation to pay fixed charges, but a part of the capacity tied up under the PPAs are left stranded on account of open access consumers purchasing electricity from third party sources. Such capacity has to be continuously stranded and not merely for part of the day or month.
- 3.27 The petitioner stated that for determination and levy of additional surcharge, the following needs to be fulfilled in relation to stranded capacity:

- a) The consideration is only of long term power purchase commitments which are in excess of the demand in the state;
- b) The stranded capacity is to be considered only on the drawl by the open access consumers and not back down for any other purpose;
- c) The fixed cost to be considered is out of such stranded capacity on account of open access consumers, which otherwise gets passed on to the retail supply consumers.
- d) There has to be continuous stranding of capacity for the period for which additional surcharge is determined e.g. six months, not for individual time blocks.

3.28 The petitioner stated that the Commission's regulations are also consistent with the above concept, which is also in line with the above object and purpose of the Act, 2003, the provisions of the Act, 2003 and also the NTP.

3.29 Additional surcharge as a concept cannot be fixed for a longer period of time as it is based on the present, existing and also continuing stranded capacity and stranded cost of the DISCOMs on account of the open access supply being taken by the consumers.

3.30 The stranded capacity on account of open access consumers presumes surplus capacity available with the DISCOM, namely, capacity which would have been scheduled if the open access consumers had taken supply from the DISCOM. Therefore, the presumption is that the DISCOMs are in surplus.

3.31 The petitioner stated that as a direct natural corollary, the existence of any of the following circumstances would disentitle the DISCOMs from claiming any stranded capacity.

- a) any load shedding carried out or load restrictions imposed on consumers in the state.
- b) short term power purchases or medium term power purchases made by the DISCOMs;

3.32 Even the execution of long term PPAs by the DISCOMs would result in the non levy of additional surcharge, as there is no rationale in execution of long term PPAs if there is already stranded capacity.

- 3.33 The petitioner stated that in addition the renewable energy purchase made by the DISCOMs also needs to be examined. The DISCOMs are obligated to procure renewable power due to its must run status and any backing down of capacity under long term PPAs on account of renewable power purchase is not accountable to the open access consumers, but the renewable obligation of the DISCOMs. This cannot be loaded on the determination of additional surcharge.
- 3.34 Each of the above needs to be correlated on every 15 minutes time block basis as against the un-requisitioned capacity from power stations from which DISCOMs are procuring electricity under long term PPAs.
- 3.35 The petitioner stated that the above is essential because the additional surcharge under section 42 (4) can be levied only to the extent the capacity remained stranded on account of the open access consumers. Therefore, the following would be relevant.
- a) When the DISCOMs are imposing load restrictions or load shedding on consumers, to such extent the DISCOMs are unable to supply electricity to the consumers. If during the same time block there is any un-requisitioned capacity from power stations under long term PPAs, the said capacity remains un-requisitioned not due to the open access consumers but due to the inability of the DISCOMs to supply electricity to its consumers and imposition of load shedding;
 - b) When the DISCOMs are procuring power on short term basis, either on bilateral basis or from the power exchange, to such extent any capacity un-requisitioned from power stations under long term PPAs cannot be attributed to open access consumers. The DISCOMs in such cases are only, for reasons best known to them, substituting the power available under the long term purchases and the same has nothing to do with open access consumers.
 - c) As stated above, to the extent of renewable energy purchases by the DISCOMs under new PPAs being entered into, such capacity being purchased from renewable sources are to fulfil the renewable purchase obligation of the DISCOM and are consciously intended to substitute the power available under long term PPAs. In other words, despite

there being claimed surplus capacity with the DISCOMs, further capacity from renewable energy sources are being tied up to fulfil the renewable purchase obligation. To such extent the capacity under long term PPAs being stranded are not on account of the open access consumers, but are due to procurement of renewable energy to fulfil the renewable purchase obligation.

- 3.36 The petitioner stated that as stated above, the quantum of stranded capacity and the corresponding stranded costs are to be correlated on a 15 minutes time block basis with the above factors to arrive at a scientifically and legally correct determination of stranded cost on account of open access consumers for the imposition of additional surcharge under section 42 (4) of the Act, 2003.
- 3.37 Further, the assessment and determination of additional surcharge should be carried out for each period of six months. In case DISCOMs are not able to meet peak demand of the period, no additional surcharge should be imposed.
- 3.38 The petitioner stated that the Commission also determines the additional surcharge on a periodic (six monthly) basis, which is required to ensure that during periods when there is higher stranded capacity, the DISCOMs are adequately compensated by way of additional surcharge, but when there is no stranded capacity on account of open access consumers, the same additional surcharge previously determined assuming stranded capacity should not be continued to be levied.
- 3.39 The petitioner stated that in such an event, the additional surcharge should be calculated based on actual parameters for the comparable past period and assuming that conditions would remain same for corresponding period next year. For example, the period of April to June for the FY 2016–17 is comparable with April to June of FY 2017–18. However, in case if it is envisaged that the assumption of the same scenario in corresponding six month of last year and the next year will not be same then the likely scenario of the ensuing period of six months should be considered for the determination of additional surcharge.
- 3.40 The petitioner stated that for computation of the capacity being continuously

stranded on account of open access consumers, various factors including load shedding, short term purchases etc., need to be considered. The assessment of stranded power attributable to open access customers during each 15 minute time block of six month period may be done as under:

$$SP_{15} = \text{Minimum} [(URS - STPP - REP - LS), OA]$$

$$SP_{OA} = \text{Min} [SP_{15}]$$

Where

- SP_{15} is stranded power (MW) attributable to open access customers during 15 minute time block;
- SP_{OA} is the continuous stranded capacity on account of open access in the period of six months under consideration;
- URS is un-requisitioned power (MW) during the time block from various power stations with which DISCOM has long-term PPA duly approved by the SERC;
- LS is the quantum (MW) of load shedding carried out or load restrictions imposed on various categories of consumers or areas during the time block;
- STPP is the short-term power purchase (MW) during the time block;
- REP is the renewable energy purchase (MW) during the time block against RPO;
- OA is the quantum of open access granted (MW) during the time block;

3.41 The petitioner stated that the above formula factors into account the load shedding or load restrictions in the area of the DISCOMs and the short term power purchase to arrive at the actual stranded power during the time block on account of the open access consumers and continuous stranded capacity on account of open access for six months. Further the renewable purchases are also reduced, for the reasons stated hereinabove. By this methodology, it is ensured that only the power continuously stranded because of open access consumers is used for assessment of additional surcharge.

3.42 The above may further explained by way of an illustration as under:

1. *Calculation of total un-requisitioned (URS) power*

Time Block	Plant A (MW)	Plant B (MW)	Plant C (MW)	Plant D (MW)	Total URS (MW)
0.00-0.15	100	100	100	100	400
0.15-0.30	200	200	200	200	800

2. *Calculation of stranded capacity due to open access in a time block:*

Time Block	OA Quantum (A)	URS (B)	LS (C)	STPP (D)	REP (E)	Stranded Power (SP = B-C-D-E)	Min of 'A' and 'SP' (MW)
0.00-0.15	500	400	50	100	20	230	230
0.15-0.30	500	800	50	50	50	650	500

3.43 The petitioner stated that after assessment of stranded power due to open access in all the time blocks for the period of six months, the minimum quantum (MW) of stranded capacity (SP_{OA}) should be allocated amongst the generation plants starting with low variable cost. In other words, while allocating quantum, merit order should be followed. In the above example allocation of stranded power should be done in following manner:

Allocation of stranded capacity: In the above example 230 MW is minimum stranded capacity therefore $SP_{OA} = 230$ MW. Allocation of SP_{OA} should be done in following manner:

Time Block	Plant A	Plant B	Plant C	Plant D	Total stranded power (SPOA) (MW)
Variable cost Rs./Kwh)	3.12	3.36	3.44	3.85	
Allocation(MW)	100	100	30	0	230

3.44 The assessment of fixed cost of stranded power due to open access should be calculated in following manner.

(1) Calculation of fixed cost of each plant in Rs./Unit

Description		Plant A	Plant B	Plant C	Plant D
Annual fixed cost (cr. Rs)	Z	350	210	380	126
Quantum approved (MW)	Y	500	300	600	250
Fixed cost (cr, Rs./MW)	Z / Y	0.70	0.70	0.63	0.50

(2) Calculation of fixed cost of stranded power: In the above example total fixed cost should be calculated by multiplying stranded power from each plant with its fixed cost (Rs./MW):

Time Block	Plant A	Plant B	Plant C	Plant D	Total
Fixed cost (cr. Rs / MW)	0.70	0.70	0.63	0.50	
Allocation (MW)	100	100	30	0	230
Cost of Stranded power (cr. Rs.)	35 [(100*0.70)*12/2]	35 (100*0.70)*12/2]	19 [(30*0.63)*12/2]	0.00	89

(3) Calculation of total recoverable additional surcharge: recoverable additional surcharge should be arrived by adjusting revenue credited by generator (Rs.) against sale of un-requisitioned power and demand charges paid by the consumers.

Recoverable additional Surcharge(Rs.)(RAC)	=	(Total fixed cost of stranded power) – (Revenue credited by generator against sale of un-requisitioned power) – (demand charges paid by OA consumers)
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(4) For illustration, assume that the generator credited revenue at the rate of Rs.40 Cr. realized from sale of un-requisitioned power and Rs.20 Cr. recovered as demand charges from OA consumers. Therefore,

$$RAC = 89 - 40 - 20 = 29.00 \text{ Rs.Cr.}$$

(5) Additional surcharge levied from open access consumers:

$$\text{Additional surcharge (Rs./unit)} = \text{RAC/open access quantum}$$

e.g. Additional surcharge = $\frac{29}{900} = 0.32 \text{ Rs./unit}$
(Assuming OA quantum as 900 MUs in 6 months)

- 3.45 The petitioner stated the above details have to be provided for by the DISCOMs to ensure correct determination of additional surcharge. These are only within possession of the DISCOMs, which are to be produced to enable the Commission to determine the additional surcharge.
- 3.46 As is the settled position now, additional surcharge is compensatory in nature and has to correlate to the costs and expenses of the DISCOMs on account of stranded capacity due to the open access consumers. The additional surcharge cannot be a means for the DISCOMs to earn additional profit or subsidization of the other consumers for reasons other than stranded capacity.
- 3.47 In the present facts and circumstances, to the knowledge that is available to it from public sources, the DISCOMs are in fact not in a surplus, but are procuring substantial quantum of power on short term basis, on bilateral basis as well as from the power exchanges.
- 3.48 The petitioner stated that before going into the quantum of power procurement and open access purchase, it is pertinent to go through the power demand and supply position in the State of Telangana for the period from April, 2018 to March, 2019:

Month	Energy required (Mus)	Energy supplied (Mus)	Peak demand (MW)	Peak Met (MW)
April'18	5172	5166	9125	9125
May'18	4633	4622	7780	7752
June'18	4340	4335	7647	7616
July'18	5293	5288	10429	10429
Aug'18	5786	5781	10219	10198
Sep'18	6279	6272	10815	10815
Oct'18	6608	6601	10611	10600
Nov'18	5498	5491	9735	9735
Dec'18	5301	5295	9063	9019
Jan'19	5405	5403	9323	9323
Feb'19	5453	5453	10166	10166
Mar'19	6930	6929	10471	10471

Source: CEA power supply reports

- 3.49 In terms of the above, the DISCOMs are in fact in deficit in many months and are able to fully meet the demand.
- 3.50 Further, the DISCOMs in fact are procuring 1000 MW on short term basis

under new PPAs through Deep E–bidding portal and 550 MW on medium term PPAs from RKM power gen for 3 years for different durations from 2019 until 2021 under PFC scheme.

3.51 The details are as hereunder-

I. Short term power purchase through Deep E – Bidding Portal:

Date of RA	Period	Duration	Quantum
10.04.19	1 st July'19 to 31 st March'20	00:00-24:00	1000 MW
01.11.18	15 th Jan'19 to 30 th April'19	RTC	1000 MW
06.10.18	15 th Feb'19 to 15 th April'19	RTC	500 MW
26.09.18	1 st Oct'18 to 10 th Oct'18	RTC	1000 MW
05.07.18	16 th July'18 to 31 st July'18	RTC	1000 MW
21.06.18	16 th July'18 to 30 th Sep'18	06.00-09:00	1000 MW

Source: Deep E-Bidding Portal

II. Medium term power purchase from RKM power gen for 3 years under PFC scheme:

Period	Duration	Quantum
1 st July 2019 to 30 th Sept 2019	RTC	550 MW
1 st Feb 2020 to 30 th April 2020	RTC	550 MW
1 st July 2020 to 30 th Sept 2020	RTC	550 MW
1 st Feb 2021 to 30 th April 2021	RTC	550 MW

Source: MTOA Application filed by TSDISCOM

3.52 It is pertinent to note that the procurement is not under long term agreements and is further with the full knowledge of the present demand supply position.

3.53 The petitioner stated that the above by itself is sufficient to conclusively demonstrate that there is no continuous stranded capacity in the State and on the contrary the DISCOMs are under supply deficit for which they are entering into new short and medium agreements for purchase of power. When the DISCOMs are procuring such substantial capacity as mentioned above on short term / medium term basis, it would obviously mean that there is no present stranded capacity. Both cannot go together.

3.54 The petitioner stated that in addition to the above, for period from April, 2018 to March, 2019 the DISCOMs have procured a total of 2558 MUs of power on bilateral basis in the short term market. Further, the DISCOMs have procured 3569 MUs of power from the power exchange. Therefore, the total energy purchase is 6127 MUs throughout the year on short term basis. Having procured such high quantum of power on short term basis, the DISCOMs cannot claim that there is stranded capacity on account of open access

consumers. If at all, the open access consumers have only helped and assisted the DISCOMs, who otherwise would have been put to greater burden if the power requirement of the open access consumers was also required to be procured by the DISCOMs.

3.55 The petitioner stated that in fact as against the quantum of power of 3569 MUs procured by the DISCOMs from the power exchange during the period April, 2018 to March, 2019, the open access consumers have in fact only procured 872 MUs in the year 2018–19, the month wise details are as under:

Month	Total volume purchased from exchanges (MUS)	DISCOMs bilateral purchase (MU)	DISCOMs exchange purchase (MU)	Open access purchases (MU)
April'18	98	461	52	46
May'18	63	12	21	43
June' 18	142	26	60	82
July' 18	384	128	298	92
August' 18	301	474	213	102
September'18	313	459	267	46
October' 18	907	130	905	2
November'18	527	12	465	62
December'18	392	25	299	93
January' 19	370	164	273	97
February' 19	308	220	198	110
March' 19	615	448	518	97
Total	4421	2558	3569	872

Source: CERC MMC Reports, Regional Energy Account SRPC

3.56 The petitioner stated that in other words, only a miniscule portion of the total procurement of the DISCOMs on short term basis is the procurement by the open access consumers. This by itself establishes that there is no stranded capacity whatsoever in the State of Telangana on account of the open access consumers as the DISCOMs are themselves procuring substantially more power on short term basis as is being procured by the open access consumers. There obviously cannot be any backing down of generating stations on account of open access consumers, when the distribution licensees themselves are procuring so much of electricity on short term basis to meet the demand in the State of Telangana.

3.57 The petitioner stated that in addition to the above the DISCOMs are required to produce details of the load shedding in the State of Telangana, the quantum of drawl under the UI mechanism, the renewable energy purchases being tied up to substitute the power available under long term PPAs, any

new PPAs executed or being proposed to be executed on long term basis, etc.

3.58 The details are essential for the correct and proper determination and levy of additional surcharge. As stated hereinabove, the DISCOMs have failed to file the necessary petition and submit the details in terms of the regulations of the Commission.

3.59 The petitioner stated that the consumers in the State of Telangana cannot be put to prejudice on account of the default of the DISCOMs. The DISCOMs ought not to be allowed to levy any additional surcharge till the time the petition is filed in terms of the regulations of the Commission on a timely basis.

3.60 In the facts and circumstances mentioned above, it has been constrained to approach the Commission for directions in relation to the levy of additional surcharge.

3.61 The petitioner has sought the following prayer in the petition.

- a) *“Redetermine the additional surcharge under section 42 (4) of the Electricity Act for the period from April, 2019 by adopting the formula as suggested in the petition.*
- b) *Direct the DISCOMs to provide the necessary details and information, duly certified by the SLDC, as required for the determination of additional surcharge.*
- c) *Award costs of the present proceedings in favour of the petitioner and against the DISCOMs”.*

4. The respondents have filed counter affidavit and its contents are as below.

4.1 The respondents stated that the subject issue is governed under clause 32 (1) of Regulation 2 of 2015.

4.2 The respondents stated that they have filed petitions before the Commission seeking extension of time for filing of ARR & Tariff proposals for retail supply business for FY2019-20 and FY2020-21 due to unavoidable circumstances viz., model code of conduct in view of elections to TS State Assembly, analysis of the data of upcoming lift irrigation schemes, delay in

receipt of information of power availability and cost thereon from central generating stations etc. The respondents in the circumstances mentioned above have also prayed the Commission to continue the tariffs including cross subsidy surcharge and additional surcharge applicable as on 31.03.2019 for FY 2019-20 and subsequently for FY 2020-21. The Commission, having noted the fact of filing of petitions for extension of time well before the expiry of earlier tariff order, and having considered the relevant facts and circumstances relating to the stakeholders passed interim orders in I.A.No.3 of 2019 dated 06.11.2019 and in I.A.No.8 of 2020 dated 20.3.2020 exercising powers conferred under section 94 (2) of the Act directing to continue retail supply tariffs including cross subsidy surcharge and additional surcharge for FY 2019-20 and FY 2020-21 respectively till the issuance of new Tariff Order.

- 4.3 The respondents stated that the other ground for filing the petition stating that "the changed circumstances in the State of Telangana which has resulted in the non-applicability of conditions precedent for the determination of levy of additional surcharge" also cannot be considered by the Commission as there is no fact in stating that the licensees are not entitled to levy additional surcharge without any stranded capacity due to regular procurement of power on short term basis. It is stated that while determining tariff and other charges for FY 2018-19, the Commission after considering the stranded assets has computed the additional surcharge at the rate of Rs.1.01 per unit. But in view of the submissions of the stakeholders and keeping in view the interest of the open access consumers, the Commission has decided to retain the additional surcharge computed for FY 2017-18 that is Rs.0.52 per unit for FY 2018-19. The same rate of additional surcharge is being continued for FY 2019-20 and FY 2020-21 till the issuance of new tariff order due to delay in submission of ARR filings. Hence, the additional surcharge levied on open access consumers cannot be said to be is not so onerous and even if the additional surcharge is determined considering the actual stranded assets of FY2018-19, the rate of additional surcharge as per the Commission methodology arrived will be higher than the existing continued rate.
- 4.4 The respondents stated that the petitioner has also prayed the Commission to determine the additional surcharge as per the formula suggested by it. As per

the directions of the Commission, the respondents have submitted the proposed methodology for determination of additional surcharge wherein quantum of backing down and quantum of open access, whichever is minimum, is taken into account to ensure power stranded due to open access.

4.5 The respondents submitted that the petitioner stated that, no inference can be drawn on short term power procurement by the petitioner for determination of stranded capacity. The capacity can be said to be stranded if power from long term sources in any time block has been backed down due to consumer availing open access in the respective time periods. It needs to be evaluated block wise and cannot be concluded basing on a single factor of short term purchases. The procurement of power from short and medium term power purchases shall not disentitle the licensees from collecting additional surcharge. In general the load curve will not be flat throughout the year. During the peak periods the licensees are forced to purchase power from the short term sources to provide uninterrupted power supply to the consumers. Hence purchase of power for short term becomes inevitable to maintain the grid in peak load conditions. The licensee will submit all relevant data to the Commission for determination of additional surcharge and the Commission after careful scrutiny and on being satisfied that assets of the licensees are stranded shall determine the additional surcharge. The computation of additional surcharge mainly factors the long term power purchase agreements, related fixed charges and stranded capacities during the period. As long as the licensees have long term power purchase agreements along with backing down of long term sources when the consumers are availing open access, the licensees can claim additional surcharge based on the conclusive evidence of stranded assets. However, the increased demand due to upcoming lift irrigation schemes will be met by the licensees through proper power procurement plan. The petitioner therefore cannot conclude that the DISCOMs will be moved to a deficit situation due to upcoming lift irrigation schemes.

4.6 The respondents submitted that the licensee has already proposed the methodology for determination of additional surcharge in reply to the directive issued by the Commission, wherein it is proposed to calculate the stranded

assets twice a year that is for first half of the financial year from April to September along with the ARR filings and for second-half from October to March within 2 months from the completion of the financial year for determination of additional surcharge for every six months period. The Commission is yet to finalize the methodology, terms and conditions for determination of additional surcharge.

- 4.7 The respondents stated that the licensees have filed necessary petitions before the Commission seeking for extension of time for filing of ARR and Tariff proposals due to several unavoidable circumstances as already explained and the Commission has considered the same. Due to the delay in ARR filings for Retail Supply Business, all the tariffs applicable for FY 2018-19 are being continued for FY 2019-20 and FY 2020-21 till the issuance of new tariff order. As the retail supply tariffs along with cross subsidy surcharge are being continued, the additional surcharge being part of the tariff is also continued with the same rate in order to avoid undue burden on the consumers. Hence, the contention of the petitioner that the licensee has not taken any steps and not approached the Commission for determination of additional surcharge is false and incorrect. Though the Commission has arrived at higher rate of additional surcharge for FY 2018-19 that is Rs.1.01 per unit, the previously determined lower rate of additional surcharge that is Rs.0.52 per unit is still being continued in order to avoid excessive burden on open access consumers. Hence, the contention of the petitioner that the actual data for the previous period would disentitle the distribution licensees from any levy of additional surcharge compared to higher surcharge of Rs.0.52 per unit becomes untenable and hence deserves no consideration. It is emphasized that there has been a significant increase in open access consumption for FY 2019-20 vis-à-vis decrease in consumption of HT consumers from DISCOM compared to previous year which is certainly a factor for stranding of DISCOM assets but not for total absence.
- 4.8 The respondents stated that the cases referred by the petitioner are not relevant and the same cannot be applied to the prevailing situation. The objective of the Act to promote competition and reasonable levy of open

access charges has already been taken care by the Commission while determining the additional surcharge for FY 2018-19.

- 4.9 The respondents submitted that the licensees have already proposed the methodology along with terms and conditions for determination of additional surcharge as per the directive issued by the Commission. The proposal covers all the concerns of the petitioner with regard to calculation of stranded assets for determination of additional surcharge viz; 15 - minute time block analysis of actual data for every six months period, minimum of surplus capacity and capacity scheduled by the open access consumers in each time block resulting in average stranded capacity for six months period due to open access consumption, etc.
- 4.10 The respondents stated that the contention of the petitioner that the existence of any load shedding and short term power purchases would disentitle the distribution licensees from claiming any stranded capacity for the reason that no DISCOM can rely completely on long term PPAs for supply of power to the consumers. An economic utilization of the power suggests a mix of base loads which are contracted loads considering acceptable load factors met through long term PPAs and medium and short term loads to manage the peak and seasonal loads through medium and short term contracts / exchanges. This will help DISCOMs to limit over contracting the PPAs and save on the capacity charge as the peak and seasonal quantum is not required throughout the year. The long term contracted power cannot be made available in line with varying requirements at all times. In such case, certain quantity of back-down becomes essential in certain time slots and power deficit in certain time slots which requires short term purchases. The licensees are procuring power on long and medium term basis based on the projected demand over a long period of time with lower price, while in case of sudden rise of peak demands in certain periods over and above the projected demand, the licensees opt for power procurement under short term basis with higher price to fulfil the universal service obligation of 24x7 power supply to its consumers. Hence, the existence of short and medium term purchases are inevitable and does not come in the way or deter the DISCOMs claim of stranded capacity due to open access. In fact the DISCOMs consider the 15

minute time blocks of all long term PPAs only to establish a conclusive evidence of stranded assets in a particular time period.

- 4.11 Normally, DISCOMs tend to surrender power due to various reasons like open access loads and their schedule deviations, seasonal load variations, purchase from power exchanges, etc., but not to meet demands. Hence the burden of load shedding accountable to reasons other than to open access should be shared by all consumers. However the methodology shall consider the minimum of load shedding MUs and open access MUs in a time period for computing additional surcharge to restrict the consideration of load shedding attributable to open access. This practice is being followed by many states to arrive at stranded capacities due to open access.
- 4.12 The contention of the petitioner that there is no rationale in execution of long term PPAs if there is already stranded capacity is totally incorrect. The licensees enter the long term PPAs as per the approved sales taken into consideration by the Commission in the ARR based on the demand projections of the DISCOMs. These long term capacities will get stranded due to temporary demand variations / renewable supply variations and / or due to consumers opting for open access intermittently. Hence, the existence of surplus capacity due to the said reasons cannot be factored for long term projections and stop the execution of long term PPAs which are essential to meet the year on year increase in contracted demand of the DISCOMs. However the additional surcharge methodology proposed by the licensees computes only the stranded capacity due to open access by carrying out 15 minutes time block analysis.
- 4.13 The licensee has been able to meet the peak demands since 2015-16 by procuring power through long term and short term basis as per the requirement without imposing any load restrictions on HT consumers. As the State of Telangana is in state of surplus in FY 17-18, open access consumption would result in generation assets getting stranded resulting in under recovery of fixed costs and hence the licensee has filed for levy of additional surcharge.

- 4.14 The respondents stated that the licensee projects the demand requirement and plans for procurement of power from various generators including renewable sources in advance. Hence renewable power purchase is not separately made to meet the renewable power obligation of the licensee but forms part of the long term contracts in order to meet the projected demand as a whole. As renewable generating stations are must-run stations so their cost of generation remains fixed and doesn't get affected by the change in energy requirement therefore variable cost of renewable power sources has been included in the computation. The DISCOMs have to bear the costs of renewable sources as part of the fixed cost in case of no off-take of energy which cannot be eliminated for calculation of stranded cost. Hence, the contention of the petitioner that the capacity under long term PPAs being stranded is totally on account of procurement of renewable energy to meet renewable purchase obligation and not due to open access consumers is completely baseless.
- 4.15 The methodology/formula for calculation of additional surcharge mentioned by the petitioner in the petition is very much complicated and cannot be considered by the Commission due to the following reasons:
- a. The short term power purchases and renewable energy purchases have been deducted from the backed down power in every time block. The licensee proposed methodology considers only minimum of backing down and open access quantum to ensure only power stranded due to open access is accounted for determination of additional surcharge. The un-requisitioned power and short term power purchase issues are already taken care of in the methodology. Further, the renewable power purchase forms part of the long term power procurement to meet the increased contracted demands which cannot be removed as the DISCOMs have to bear the costs of renewable energy sources as part of the fixed costs.
 - b. The stranded capacity arrived block wise is again allocated amongst the generation plants following the merit order and block wise stranded fixed cost is arrived which is not correct. The average stranded capacity for six months period due to open access is to be multiplied

with average fixed charge per MW of available power which forms the basis of total additional surcharge to be recovered from open access consumers.

- c. In addition to demand charges paid by open access consumers, revenue from sale of un-requisitioned power is also deducted from the total stranded fixed cost to arrive at net additional surcharge to be recovered. It is to submit that the Commission while determining the ARR of the licensees, the total cost of power purchase is fixed duly deducting the revenue from sale of power. Hence, there is non requirement of further deduction of revenue from sale of power for calculation of additional surcharge as the same is already factored in the ARR and tariff determination which is passed on to all the consumers including open access consumers. The licensees are levying only the fixed costs that are payable to the generators which become stranded on account of backing down of power due to open access consumers and not on the excess power sold by the licensees.

4.16 The respondents stated that the Commission in the interest of open access consumers has not considered the higher computed rate (that is Rs.1.01/unit) whereas fixed lower rate of additional surcharge (that is Rs.0.52/unit) for FY 2018-19 and the same is continued for FY 2019-20 & FY 2020-21 till issuance of new tariff order due to delay in submission of ARR filings. Hence, the petitioner contending that the additional surcharge cannot be a means for the distribution licensees to earn additional profit or subsidization of the other consumers for reasons other than stranded capacity is not acceptable. Even though the petitioner is liable to pay Rs.1.01/unit as additional surcharge for FY 2018-19 based on the Commission approved stranded cost of the DISCOMs, the licensees in order to avoid burden on open access consumers, have levied only Rs.0.52/unit as per the order of the Commission..

4.17 The respondents stated that the petitioner has shown peak demands met by the DISCOMs month wise and concluded that the distribution licensees are almost in deficit situation without any stranded capacity which shall disentitle the licensees to levy additional surcharge. It is to submit that the licensees are providing 24 hrs power supply to all the consumers without imposing any load

restrictions and are able to meet the peak demands since FY 2015-16. Hence, both the long term and short term power purchases are essentially required to meet the total demand of the state. It is to be noted that the peak demand occurs in a particular time slot which cannot be accounted for whole month and conclude that there is no stranded capacity. The licensees are able to meet the peak demand in excess of the projected demand in particular time periods by power procurement through short term basis which is essential to fulfil the universal supply obligation of the licensees. This does not mean that there cannot be any stranded capacity due to open access consumers. The licensees will enter the long term PPAs as per the projected demand for long term period based on the existing contracted demand of all the consumers and their growth pattern. The capacity can be said to be stranded if power from long term sources in any time block has been backed down due to consumer availing open access in the respective time periods. Hence, the contention of the petitioner that the open access consumers have alone helped and assisted the distribution licensees, who otherwise would have been put to greater burden of additional power procurement, becomes untenable being false and incorrect.

5. The counsel for the petitioner has filed written submissions after the hearing held on 13.07.2020 and stated as below.

5.1 At the outset, it is stated that the reply filed by the respondents, the distribution companies in the State of Telangana does not deal at all with the merits of the matter. The respondents have only relied on technicalities and interim orders passed by the Commission without dealing with the data placed on record by the petitioner.

5.2 The above action of the respondents clearly proves the data and the contents of the petition filed by the petitioner and on this short point alone, the additional surcharge being levied by the respondents needs to be stopped immediately and refund should be given to the consumers for the period from 01.04.2019 onwards along with interest.

5.3 The respondents have also given frivolous reasons for not filing the tariff and truing up petitions in time which are being dealt with hereunder. Further, the

contention of the respondents that the petitioner cannot seek re-determination of tariff/additional surcharge and this option is only available to the respondents is also incorrect. The respondents are benefitting by not giving any details or filing any proper ARR petitions before the Commission and simply continuing the additional surcharge earlier determined.

5.4 Despite the fact that the respondents have a deficit in power supply scenario, they are continuing to levy and collect the additional surcharge from the consumers in the State of Telangana without proving stranded capacity which is a basic requisite for levy of additional surcharge. The petitioner reiterates all the contentions stated in the petition on this aspect.

5.5 It has further been settled by a Full Bench of the Hon'ble Appellate Tribunal for Electricity that if licensees do not file tariff petitions in time, the Commission can Suo-Motu conduct the tariff redetermination process. In this regard, the Judgment dated 11.11.2011 in OP No.1 of 2011 reads as under –

“56. It is to be pointed out in this context, that the legislative intent in enacting the Act, 2003 is to secure effective Regulations characterised by tariff rationalisation with timely cost reflective tariff determination based on the principles set out in Section 61 read with the National Tariff Policy. The various provisions such as Section 94, 128, 129, 130, 142 and 146 empower the State Commissions to secure discovery of all relevant materials and enforce directions. Similarly, the respective tariff regulations and conduct of business Regulations notified by the State Commissions have enough provisions to call for and collect information and to enforce directions. Therefore, the hands of the State Commission cannot assumed to be tied-up to prevent them from enforcing the statutory mechanism. There are decided cases by the Hon'ble Supreme Court as well as by this Tribunal in which it is held that the State Commissions have complete powers to impose conditions, to frame regulations and to issue directions as also to enforce them. The relevant decisions are as under:

.....

59. Tariff determination ought to be treated as a time bound exercise. If there is any lack of diligence on the part of the Utilities which has led to

the delay, the State Commission must play a pro-active role in ensuring the compliance of the provisions of the Act, Regulations and the Statutory Policies under the Electricity Act, 2003.

.....

65. *In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:*

- i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.*
- ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011- 12 should be decided before 1st April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR / tariff.*
- iii) In the event of delay in filing of the ARR, truing up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.*
- iv) In determination of ARR / tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the*

distribution licensee.

- v) *Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.*
- vi) *Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula / mechanism in place must within 6 months of the date of this order must put in place such formula / mechanism."*

5.6 In the above background, it cannot lie in the mouth of the respondents to contend that the petitioner cannot seek the Commission for re-determination of additional surcharge in the absence of the respondents filing a proper petition for the same. Such an interpretation would defeat the entire purpose of the Act, 2003.

5.7 The excuses given by the Respondents in not being able to file ARR and tariff petitions for FY 2019-20 and FY 2020-21 are ex-facie erroneous and completely malafide. The assembly election got concluded in December of 2018 and in any case it is not clear what is the relationship between the elections and tariff petition which needs to be filed in advance for FY 2019-20. The model code of conduct could not have prohibited in filing the ARR and tariff petition. Further, the analysis of lift irrigation schemes has been done by the petitioner itself from the information available in public domain and its surprising that the respondents have not been able to do the same.

5.8 The petitioner has given the analysis of the lift irrigation schemes and its effect in its petition. There is a clear decision of the DISCOMs to procure

substantial quantum of power on short term basis, through the exchange and also to enter into new PPAs for procurement of capacity of 1000 MW on short term basis and 550 MW on medium term basis to meet the demand in the State and the State is about to commission Kaleshwaram and other lift irrigation schemes from July-2019 which would add to an additional demand of 4000 MW (approx.) in the state. Once lift irrigation schemes are in place, the respondents have been in a substantial deficit situation which is clear from the following –

- i) The power demand and Supply position in the State of Telangana for the period from April, 2018 to March, 2019 & from April 2019 to March 2020 is as under -

Month	Energy Required (Mus)	Energy Supplied (Mus)	Peak Demand (MW)	Peak Met (MW)	Difference (MW)
Apr-18	5172	5166	9125	9125	0
May-18	4633	4622	7780	7752	-28
Jun-18	4340	4335	7647	7616	-31
Jul-18	5293	5288	10429	10429	0
Aug-18	5786	5781	10219	10198	-21
Sep-18	6279	6272	10815	10815	0
Oct-18	6608	6601	10611	10600	-11
Nov-18	5498	5491	9735	9735	0
Dec-18	5301	5295	9063	9019	-44
Jan-19	5405	5403	9323	9323	0
Feb-19	5453	5453	10166	10166	0
Mar-19	6930	6929	10471	10471	0

Source: CEA Power Supply Reports

Month 2019 - 20	Energy Required (Mus)	Energy Supplied (Mus)	Peak Demand (MW)	Peak Met (MW)	Difference (MW)
Apr-19	5576	5576	10269	10202	-67
May-19	5283	5283	8703	8684	-19
Jun-19	4805	4804	8375	8355	-20
Jul-19	5157	5157	9472	9468	-4
Aug-19	5988	5988	11703	11703	0
Sep-19	5325	5325	9749	9749	0
Oct-19	4955	4955	8532	8532	0
Nov-19	5146	5146	9408	9408	0

Month 2019 - 20	Energy Required (Mus)	Energy Supplied (Mus)	Peak Demand (MW)	Peak Met (MW)	Difference (MW)
Dec-19	6049	6049	11200	11182	-18
Jan-20	6347	6347	11378	11359	-19
Feb-20	6646	6646	13168	13168	0
Mar-20	7028	7028	12941	12941	0

Source: CEA Power Supply Reports

- ii) The respondents in fact are procuring 1000 MW on short term basis under new PPAs through Deep E- Bidding Portal and 550 MW on medium term PPAs from RKM Power Gen for 3 years for different durations from 2019 until 2021 under PFC scheme, the details being as under –

Date of RfP	Period sought	Duration	Capacity called (MW)
FY 2018-19			
08.06.2018	16.07.2018 to 30.09.2018	06:00 to 09:00 hrs	1000
		16:00 to 22:00 hrs	1000
27.06.2018	16.07.2018 to 31.07.2018	RTC	1000
	01.08.2018 to 31.08.2018	RTC	1000
	01.09.2018 to 30.09.2018	RTC	1000
20.09.2018	01.10.2018 to 10.10.2019	RTC	1000
04.10.2018	13.10.2018 to 31.10.2018	RTC	1000
	16.10.2018 to 30.11.2018	RTC	
	12.10.2018	18:00 to 24:00 hrs	
	16.10.2018 to 30.11.2018	Open Offer	
20.10.2018	15.01.2018 to 30.04.2019	RTC	1000
06.10.2018	15.02.2019 to 15.04.2019	RTC	500
08.10.2018	11.10.2018 to 31.10.2018	RTC	1000
FY 2019-20			
10.04.2019	01.07.2019 to 31.03.2020	RTC	1000
11.09.2019	16.09.2019 to 15.11.2019	RTC	500

Source: DEEP E-Bidding Portal & Annual Report 2018-19 (for SPDCL)

- iii) The respondents are also purchasing medium term power from RKM Power Gen for 3 years under PFC scheme as under –

Period	Duration	Quantum
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Period	Duration	Quantum
1 July 2019 to 30 Sept 2019	RTC	550 MW
1 Feb 2020 to 30 Apr 2020	RTC	550 MW
1 July 2020 to 30 Sept 2020	RTC	550 MW
1 Feb 2021 to 30 Apr 2021	RTC	550 MW

Source: MTOA Application filed by TSDISCOM

- iv) In addition to the above, for period from April, 2018 to March, 2019, the DISCOMs have procured a total of 2568 MUs of power on bilateral basis in the short-term market. Further, the DISCOMs have procured 3569 MUs of power from the power exchange. Therefore, the total energy purchase is 6127 MUs throughout the year on short-term basis. Similarly, in FY 2019-20 the DISCOMs had procured 1749.58 MUs from bilateral and 4462.40 MUs from exchanges. Having procured such high quantum of power on short-term basis, the DISCOMs cannot claim that there is stranded capacity on account of open access consumers. If at all, the open access consumers have only helped and assisted the DISCOMs, who otherwise would have been put to greater burden if the power requirement of the open access consumers was also required to be procured by the DISCOMs.
- v) In fact, as against the quantum of power of 3569 MUs procured by the DISCOMs from the Power Exchange during the period April, 2018 to March, 2019, the open access consumers have in fact only procured 851.74 MUs in the year 2018-19, the month wise details are as under:

Month	Total Volume purchased from Exchanges (MUS) (1)	Discoms Bilateral Purchase (MU) (2)	Discoms Exchange Purchase (MU) (3)	Total Discom Short term Purchase (2+3)	Open Access Purchases (MU) (1-3)
Apr-18	98	461	52	513	46
May-18	63	12	21	33	42
Jun-18	142	26	60	86	82
Jul-18	384	128	298	426	86
Aug-18	301	474	213	687	88
Sep-18	313	459	267	726	46
Oct-18	907	130	905	1,035	2
Nov-18	527	12	465	477	62
Dec-18	392	25	299	324	93
Jan-19	370	164	273	437	97
Feb-19	308	220	198	418	110
Mar-19	615	458	518	976	97
Total	4,421	2,569	3,569	6,138	852

Source: CERC MMC Reports, Regional Energy Account SRPC

- vi) In fact, as against the quantum of power of 4462 MUs procured by the DISCOMs from the power exchange during the period April, 2019 to March, 2020, the open access consumers have in fact only procured 1461.35 MUs in the year 2019-20, the month wise details are as under:

Month	Total Volume purchased from Exchanges (MUS)	Discoms Bilateral Purchase (MU)	Discoms Exchange Purchase (MU)	Total Discom Short term Purchase	Open Access Purchases (MU)
Apr-19	317	328	215	543	102
May-19	286	13	189	202	97
Jun-19	200	21	107	128	93
Jul-19	418	63	309	372	109
Aug-19	422	167	313	480	110
Sep-19	144	231	9	239	135
Oct-19	161	26	26	52	135
Nov-19	287	14	154	168	134
Dec-19	684	82	550	632	133
Jan-20	920	180	778	958	142
Feb-20	950	185	818	1,003	132
Mar-20	1,134	440	996	1,436	139
2019-20	5,924	1,750	4,462	6,212	1,461

Source: CERC MMC Reports

- 5.9 As against the answering the above data, the DISCOMs have simply relied on the orders dated 06.11.2019 in I.A.No.3 of 2019 and 20.03.2020 in I.A.No.8 of 2020 passed by the Commission. These are only interim orders and will not in any manner give any sanctity to the additional surcharge of 52 paise per kWh being levied by the DISCOMs for FY 2019-20 and FY 2020-21. An interim arrangement does not give any support to the DISCOMs as is being contended in the reply. The DISCOMs cannot claim any equity based on the interim orders passed by the Commission.
- 5.10 The submissions made in the reply are ex-facie perverse, and is based on a completely non-application of mind on the petition filed by the petitioner. The Petitioner has stated in its petition all the provisions of the Act, 2003, the National Tariff Policy, (NTP) the National Electricity Policy (NEP) and judgments of the Hon'ble Supreme Court which all state that till there is stranded capacity, there is no question of levying additional surcharge. It has also given the detailed facts which prove that the DISCOMs are in continuous shortage of electricity and are purchasing RTC power on long term, medium term and short term basis. In such circumstances, it is not understood as to how the DISCOMs decided whether 52 paise per kWh is onerous or not

without showing there is stranded capacity. Such a stand is illegal and cannot be countenanced on law.

5.11 The DISCOMs, without submitting any data and only committing to submit the same, has raised long drawn arguments that merely because it is purchasing power in the short term does not mean that it does not have stranded capacity. To the contrary, it has shown that the DISCOMs have purchased power throughout the year and is not able to meet the existing load itself. The very concept of additional surcharge applies in a situation wherein the DISCOMs has entered into long term power purchase agreements and is under an obligation to pay fixed charges, but a part of the capacity tied up under the PPAs are left stranded on account of open access consumers purchasing electricity from third party sources. Such capacity has to be continuously stranded and not merely for part of the day or month. The stranded capacity on account of open access consumers presumes surplus capacity available with the DISCOMs, namely, capacity which would have been scheduled if the open access consumers had taken supply from the DISCOMs. Therefore, the presumption is that the DISCOMs are in surplus.

5.12 As a direct natural corollary, the existence of any of the following circumstances would disentitle the DISCOMs from claiming any stranded capacity:

- i) any load shedding carried out or load restrictions imposed on consumers in the State;
- ii) short term power purchases or medium term power purchases made by the distribution licensees;

5.13 Even the execution of any new long term PPAs by the DISCOMs which are being claimed to service the new lift irrigation schemes would result in the non-levy of additional surcharge, as there is no rationale in execution of long term PPAs if there is already stranded capacity. Therefore, the DISCOMs are contradicting themselves by one hand stating that they will enter into a new power purchase plan and on the other hand maintaining that additional surcharge is leviable.

5.14 The contents of the reply are wrong and are denied. The DISCOMs have

stated that they have also proposed a methodology for calculation of additional surcharge which will be done twice a year. However, the formula suggested by the DISCOMs is not in consonance with the Act, 2003 and the NTP. The formula suggested by it however is completely transparent and takes into account the load shedding or load restrictions in the area of the DISCOMs and the short term power purchase to arrive at the actual stranded power during the time block on account of the open access consumers and continuous stranded capacity on account of open access for six months. Further the renewable purchases are also reduced, since these arise out of RPO Obligations. By this methodology, it is ensured that only the power continuously stranded because of open access consumers is used for assessment of additional surcharge which is the intention of the Act, 2003.

- 5.15 Since additional surcharge is compensatory in nature and has to correlate to the costs and expenses of the DISCOMs on account of stranded capacity due to the open access consumers. The additional surcharge cannot be a means for the DISCOMs to earn additional profit or subsidization of the other consumers for reasons other than stranded capacity.
- 5.16 The contents of the reply are wrong and are denied. The DISCOMs have merely reiterated their earlier contentions of its reply which have already been answered hereinabove. However, the DISCOMs have contended that there has been a significant increase in open access consumption for FY 2019-20 as compared to the increase in HT consumers of the DISCOMs. This by no measure means that there is no stranded capacity. The DISCOMs are still purchasing RTC Power and also imposing load shedding. In view of the fact that the DISCOMs are in fact not in a surplus, but are procuring substantial quantum of power on short - term basis, on bilateral basis as well as from the power exchanges. Therefore, no additional surcharge can be levied.
- 5.17 The contents of the reply are wrong and are denied. The DISCOMs have made bald statements that the cases cited by it are not relevant without explaining as to how the Judgments do not apply to the present case. The Respondents cannot rely on the order determining the additional surcharge of the Commission for FY 2018-19 since the conditions when the said order was passed are no longer applicable.

- 5.18 The contents of the reply are wrong and are denied. The DISCOMs have once again stated that they have also proposed a methodology for calculation of additional surcharge which will be done twice a year. However, the formula suggested by the DISCOMs is not in consonance with the Act, 2003 and the NTP. The formula suggested by it however is completely transparent and takes into account the load shedding or load restrictions in the area of the DISCOMs and the short term power purchase to arrive at the actual stranded power during the time block on account of the open access consumers and continuous stranded capacity on account of open access for six months. Further the renewable purchases are also reduced, since these arise out of RPO Obligations. By this methodology, it is ensured that only the power continuously stranded because of open access consumers is used for assessment of additional surcharge which is the intention of the Act 2003.
- 5.19 The contents of the reply are self-contradictory in nature are wrong and are denied. If the DISCOMs are purchasing short and medium term power for specific months / days in a year or for specific hours in a day, it can still be argued that there may be a case of stranded capacity. But if the DISCOMs are not able to meet the load and are purchasing power 365 days in a year and also imposing load shedding how can it be said that due to open access, the power from long term PPAs is getting stranded. It is wrong and denied that sudden rise in demands are being met by short and medium term purchases. Since additional surcharge is compensatory in nature and has to correlate to the costs and expenses of the DISCOMs on account of stranded capacity due to the open access consumers. The additional surcharge cannot be a means for the DISCOMs to earn additional profit or subsidization of the other consumers for reasons other than stranded capacity.
- 5.20 As regards DISCOMs submissions regarding surrendering of power and the sharing of burden of load shedding accountable to reasons other than Open Access, The it is stated that for any claim for additional surcharge, it is for the licensee to conclusively demonstrate that its capacity has been and continues to be stranded. What is a sine qua non is the continuous stranding of capacity on account of the open access consumers. Seasonal stranding due to various reasons can never be the basis for levy of additional surcharge. On the other

hand, such stranding which may be due to variety of reasons and for limited period of time is due to real time grid operations, whereas the pre-requisite for additional surcharge is continuous stranding.

- 5.21 The submissions of the DISCOMs regarding execution of long-term PPAs and meeting of peak demand by procuring power through long-term and short-term are self contradictory, wrong and are denied. If indeed the DISCOMs have been able to meet the peak demand in the State from FY 2015-16 onwards and are power surplus, then there is no question of entering into new long term PPAs. Also, the specific its prayer is that for FY 2019-20 and FY 2020-21, there is no case for levy of additional surcharge since there is no stranded capacity. Therefore, the situation FY 2017-18 is not at all relevant.
- 5.22 The DISCOMs submissions that the petitioner has contended that that the stranded capacity under long-term PPAs is totally on account of procurement of renewable energy to meet RPO and not due to Open Access are wrong and are denied. Its specific case is that to the extent of renewable energy purchases by the DISCOMs under new PPAs being entered into, such capacity being purchased from renewable sources are to fulfil the renewable purchase obligation of the DISCOMs and are consciously intended to substitute the power available under long-term PPAs. In other words, despite there being claimed surplus capacity with the distribution licensees, further capacity from renewable energy sources are being tied up to fulfil the renewable purchase obligation. To such extent the capacity under long-term PPAs being stranded are not on account of the open access consumers, but are due to procurement of renewable energy to fulfil the renewable purchase obligation. Therefore, the formula suggested by it seeks to exclude only the cost of RPO which is being incurred to substitute the brown power with green power. This has not been answered by the DISCOMs and irrelevant statements have been made in the reply.
- 5.23 The DISCOMs submissions regarding the proposed methodology/formula for calculation of additional surcharge are wrong and are denied. The DISCOMs have termed the proposed methodology as 'complicated' and have questioned the need to adjust short term power purchase and renewable purchase in the back down power quantum. As stated earlier, when the

DISCOMs are procuring power on short-term basis, to such extent any capacity un-requisitioned from power stations under long-term PPAs cannot be attributed to open access consumers since the licensees in such cases are only, for reasons best known to them, substituting the power available under the long-term PPAs with short-term purchases and the same has nothing to do with open access consumers.

- 5.24 Further, as regards the renewable power, while the distribution companies have averred that the renewable power purchase forms part of the long term power procurement to meet the increased contracted demands, the anomaly stems from their own submissions during the tariff proceedings of past years. In the tariff order dated 27.03.2018 for FY 2018-19, the DISCOMs have submitted the following with respect to renewable power purchase:

“2.4.4 In accordance with Regulation No. 1 of 2012, the DISCOM shall purchase from NCE sources a quantum not less than 5% of its consumption of energy, during each of the years from FY 2012-13 to FY 2016-17. The actual purchases from NCE sources during FY 2014-15, FY 2015-16 and FY 2016-17 were to the tune of 0.24%, 0.62% and 3.53% respectively for SPDCL and 1.84%, 2.23% and 1.92% respectively for NPDCL, of the total consumption of the respective DISCOM. Hence, the DISCOMs are not meeting their RPPO of 5%. To fulfil the RPPO, the DISCOMs conducted a transparent competitive bidding and the PPAs were signed after obtaining the approval of the Commission

.....

- 2.4.6 Generation from NCE sources especially solar and wind is dependent on climatic conditions. However, it is a well-accepted fact that this challenge has to be addressed through grid integration measures which enable conventional coal-based plants to respond to power generation and backing down requirements in a swift manner. As the PPAs executed with the NCE developers contained the provision of must run status to such generating stations and to fulfil the RPPO, there is no other option except to back down thermal stations based on merit order principles and payment of fixed charges. These are in line*

with prudent grid management practices.”

Thus, the renewable power is being purchased to meet renewable commitments (RPO) of the distribution companies notwithstanding the change in contract demand of consumers. It is also to be noted that the open access industries anyways bear the RPO cost to fulfil their commitment to renewable power purchase. The above extracted submissions also evidences that the renewable power purchase is one of the primary reasons for back down of thermal stations.

- 5.25 The DISCOMs have questioned the allocation of stranded capacity amongst the generating stations on merit order wise. Against the averment made by the DISCOMs in this regard, it is stated that since the stations are backed down as per their merit order, it is only logical that the allocation of stranded capacity ought also to be done merit order wise. The DISCOMs have submitted that there is no requirement of deduction of revenue from sale of power since the same is already factored in tariff and its benefit is passed on to all including the open access consumers. As for this submission, it may be noted that the benefit of revenue from sale of un-requisitioned power is not available to the open access consumers.
- 5.26 The DISCOMs submissions regarding the additional surcharge for FY2018-19, which was continued for FY2019-20 and FY2020-21 are wrong and are denied. The DISCOMs are stating that the additional surcharge was calculated at the rate of Rs.1.01 per kWh but reduced to 52 paise per kWh in the interest of open access consumer. Therefore, according to the DISCOMs, it should be thankful and continue to pay the additional surcharge for eternity. It is stated that the DISCOMs have accepted the order. However, this would not mean that stranded capacity will be assumed to be continued for all times to come and the levy of additional surcharge continued in such a fashion. When the data put of record by it prima facie shows that there is no stranded capacity and there is no response to this date, the least which is expected of the DISCOMs is to stop charging the additional surcharge and give refund to the open access consumers for FY 2019-20 and FY 2020-21 along with interest.

5.27 The DISCOMs submissions regarding the 24 hrs power supply to all the consumers without imposing any load restrictions are wrong and are denied. It is wrong and denied that 24x7 power is being supplied to all consumers in the State of Telangana. The situation in FY 2015-16 or FY 2017-18 are not at all relevant. It's case is that for FY 2019-20 and FY 2020-21, there is no case for levy of additional surcharge since there is no stranded capacity. Therefore, the situation FY 2017-18 is not at all relevant. It is reiterated that the open access consumers have helped and assisted the DISCOMs, who otherwise would have been put to greater burden if the power requirement of the open access consumers was also required to be procured by the DISCOMs.

5.28 There obviously cannot be any backing down of generating stations on account of open access consumers, when the DISCOMs themselves are procuring so much of electricity on short term basis to meet the demand in the state of Telangana.

6. From the records, the Commission perceived that the petitioner sought fresh determination of the additional surcharge on the basis of the parameters and factors, which it considered as relevant and appropriate based on its purported framing of a formula. The petitioner sought to highlight certain factors regarding power supply, which would result in the rate of additional surcharge being either minimum or there is no additional surcharge to be levied on the open access consumers. The petitioner also sought to tag the inability of the licensee to meet the complete demand and they being in shortfall with regard to the demand while undertaking supply, which in no case results in no stranded capacity contracted by them for undertaking supply.

7. According to the petitioner, the submissions of the licensees that they are in surplus and such surplus is resulting in stranded capacity thereby requiring the Commission to determine the additional surcharge, which is compensatory for the loss sustained due to such capacity being kept idle is unfounded from the demand supply status as available from the public domain. The data clearly demonstrates despite the licensees contracting for long term and short term power purchase including procurement through exchange, they had not met the entire demand in the financial years 2018-19 to 2019-20. Thus, they could not have sought the determination of the additional surcharge for the said financial years.

8. On the other hand, defence is taken by the licensees that in many time blocks it had been a case of availability of surplus power as also the additional capacity had been contracted keeping in view the likely demand arising out of and in relation to the lift irrigation capacity as also supply to the agriculture for 24 hours without any load shedding. They also sought to emphasize that there is increase in open access draws as the consumers are contracting power from the third party generators. However, keeping in view the provisions of the Act, 2003, they have to be ready with the capacity to meet the demand to fulfil universal service obligation. The licensees pointed out that the growth of demand is dynamic and therefore to meet the universal service obligation, it is but imperative that they contract for the required quantum of power to supply to all the consumers through long, short and medium term purchasers. They are also required to meet the peak demand by procurement of power through exchange. In order to ensure the above action, certain cost has to be incurred and in certain situations, they are required to pay fixed charges without even drawing a single unit as the demand curve slid down contrary to forecast made for demand. The situation arises out of several factors including but not limited to weather conditions as also drawl of power from third parties by the consumers under the open access and such parties ability to supply power. Thus, the licensees plead that they be compensated with additional surcharge for the loss sustained due to stranding of the capacity which has already been contracted for and for which they have to pay the fixed cost albeit non drawl of power.

9. The licensees submit that the loss sustained due to stranded capacity by payment of fixed charges and other costs would have to be recovered either through the additional surcharge or have to be passed on to the end consumers in general under retail supply tariff. Burdening the ordinary end consumer for no fault of theirs would cause unnecessarily trouble and also result in additional losses. Since the stranded capacity is a direct off shoot of the provisions of the Act, 2003 allowing open access, it is but appropriate that such consumers are mulcted with such compensatory tariff.

10. Prima facie the Commission is of the view that the licensees cannot obstruct or refuse to provide open access as they have to give effect to the provisions of the Act, 2003. At the same time, a concession being availed by the consumers drawing

power from the third parties cannot escape from the burden of paying for the loss against the capacity that stood unutilized for which charges have been paid by the licensees in order to adhere to the universal service obligation.

11. The Commission finds it appropriate to accept the submission that the contracted capacity of the licensees is beset with universal service obligation, which is being fulfilled in all times as per the mandate of the Act, 2003. In order to do so, the licensees have to make arrangements for procurement of power to be drawn on long, short and medium term basis including procurement from exchange to meet the peak demand. As rightly pointed out by the licensees, meeting of the demand for supply of power will depend on several factors and the licensees are required to be ready with such demand being met instantaneously. In order to facilitate such meeting of demand, there is likelihood of certain capacity contracted for becoming stranded and unutilized. Such stranded capacity is not derived free of cost, which attracts payment of fixed or variable cost as may be appropriate.

12. Both sides have placed on record the contention that open access has to be allowed, but at appropriate charges under section 42, 43 and 45 of the Act, 2003. While the petitioner placed factors like not meeting the demand, contracting surplus power and taking into account that no load shedding has been done by the licensees, on the other hand the licensees contended that they contracted additional capacity to meet the obligations as also sudden surge in demand and ensured 24x7 power supply for all types of consumers and levied only such additional surcharge as determined in the year 2018-19.

13. The commission has gone through the petitioner's submission, along with the counter submissions of the Respondents and the written submissions of the petitioner and its proposed methodology for assessment of stranded power attributable to open access and the computation of additional surcharge. The Commission does not find merit in the petitioner's submissions.

14. The Commission at this stage brings forth the fact that it had initiated *Suo Moto* proceedings in the matter of "*mechanism for determination of stranded power and framing of terms and conditions of Additional Surcharge*". The Petitioner has made its submissions in those proceedings. The Commission shall finalize the

mechanism for demonstration of stranded capacity in those proceedings.

15. The methodology of additional surcharge computation was approved by the Commission in its order dated 13.12.2017 in I.A.Nos.22 & 23 of 2017 in O.P.Nos.22 & 23 of 2016 respectively and does not require to be revised.

16. The petitioner relied on the judgments of the Hon'ble ATE and Hon'ble Supreme Court along with Tariff Policy, 2016. Since the Commission is not proposing to dwell into the merits of the case in favour or otherwise of either parties, it does not propose to express any opinion on the said contentions leaving it to open to be considered in an appropriate proceedings. Likewise, the petitioner also sought to address the aspect of stranded capacity and it being continuously occurring to the licensees for claiming additional surcharge. The Commission considers appropriate not to place its interpretation on whether the stranded capacity should be continuous or otherwise at this juncture owing to the self same reasons stated supra.

17. With the above the petition is hereby disposed. The parties shall bear their own costs.

This order is corrected and signed on this the 7th of September, 2020.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

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

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

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