



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
Hyderabad**

Dated: 26.10.2012

PRESENT

**Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member**

O.P. No.73 of 2012

(Suo motu)

ORDER

In the matter of determination of Surcharge and Additional Surcharge under Sections 39, 40 and 42 of the Electricity Act, 2003 for FY 2008-09.

CHAPTER – I

INTRODUCTION

WHEREAS Sections 39(2)(d)(ii) and 40(c)(ii) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') provide for payment of a surcharge (hereinafter also referred to as 'the Cross-subsidy Surcharge') when a transmission system is used for open access for supply of electricity to a consumer and Section 42(2) of the Act provides for payment of the surcharge in addition to the wheeling charges as determined by the State Commission.

AND WHEREAS as per the afore-mentioned provisions, to maintain current level of subsidy, cross subsidy surcharge has to be levied on the consumers who opt for open access.

AND WHEREAS Section 42(4) of the Act further provides that a consumer permitted to receive supply of electricity from a person other than the Distribution Licensee of the area in which such consumer is located, shall be liable to pay an Additional Surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply.

AND WHEREAS the aforementioned Cross-subsidy Surcharge and the additional surcharge for the years 2005-06 and 2006-07 and the methodology for computations thereof were determined by the Commission vide its Order dated 21.09.2005 in OP No: 16 of 2005 and its Order dated 29.08.2006 in OP No: 13 of 2006 respectively.

AND WHEREAS the Commission has passed an interim order dated 28-03-2007 in OP No. 05 of 2007, provisionally extending the applicability of rates of surcharge/additional surcharge specified in the Annexure to its order dated 29-08-2006, in OP No. 13 of 2006 for different categories of consumers availing of open access at different voltages from 1st April 2007 onwards till the Commission passes a final order on the proceedings already initiated, subject to adjustment of the surcharge/ additional surcharge if any, so paid against the payable as per the final order.

AND WHEREAS the Commission is therefore required to pass an order for FY 2008-09 in the OP No. 73 of 2012, in continuation of the interim orders issued on 28-03-2007.

AND WHEREAS the Distribution Licensees have been seeking the determination of the Cross Subsidy Surcharge & Additional Surcharge by the Commission for the year 2007-08 onwards and certain representatives of the consumers also have been requesting the Commission to determine the Cross Subsidy Surcharge and Additional Surcharge for the FY 2007-08 and subsequent financial years.

Now, therefore, the Commission, in exercise of powers conferred by Sections 39, 40, and 42 of the Act and all other powers enabling it in that behalf, hereby specifies the Cross Subsidy Surcharge/Additional Surcharge applicable for different categories of consumers availing of open access at different voltages for the financial year, FY 2008-09, as indicated hereinafter.

CHAPTER – II

BACK GROUND

1. The Cross-subsidy Surcharge under the provisions of the Act was first fixed by the Commission for 2005-06 in its order dated 21-09-2005 in OP No. 16 of 2005. The embedded cost approach was adopted in this Order for computation of surcharge for different consumer categories. In the Order, Additional Surcharge was fixed at the rate of demand charge for HT Category-I (A) Industry – General applicable for the Tariff Order in the relevant year.
2. Subsequently, the Commission initiated proceedings for computation of Cross Subsidy Surcharge for FY 2006-07 by issuing notice for public hearing. Seven responses including one from Government of Andhra Pradesh were received for fixing up of Cross Subsidy Surcharge (CSS) in the light of the Tariff Policy issued by the GoAP. After taking into consideration of the responses of the objectors and response of GoAP, the Commission determined Cross Subsidy Surcharge for FY 2006-07 adopting embedded cost methodology and also determined additional surcharge for FY 2006-07 and passed an order dated 29-08-2006 in OP No. 13 of 2006.
3. On the determination of Cross Subsidy Surcharge by the Commission for FY 2005-06 in OP No. 16 of 2005 and for FY 2006-07 in OP No. 13 of 2006 respectively, by adopting embedded cost methodology instead of adopting the formula specified in the National Tariff Policy, M/s. RVK Energy Private Limited and others approached the Hon'ble Appellate Tribunal for Electricity (ATE).
4. Subsequently, in OP No. 5 of 2007 (Suo motu), Commission issued an order, dated: 28.03.2007, stating that *'....Commission, in exercise of powers conferred by Sec 94 (2) of the Act ibid and all other powers enabling it in that behalf extends the applicability of the rates of surcharge and the Additional Surcharge specified in the Annexure to its of aforementioned Order dated 29-08-2006 for different categories of consumers availing of open access at different voltages from 1st April 2007 onwards till the Commission passes a final order on the proceedings already initiated, subject to adjustment of the*

surcharge/additional surcharge if any so paid against that payable as per the final order’.

5. The Hon’ble ATE in its judgment dated 5th July 2007, in appeal nos. 169 to 172 of 2005 and OP No. 248 and 249 of 2007, directed APERC *‘to compute the cross subsidy surcharge, which consumers are required to pay for use of open access in accordance with the Surcharge formula given in Para 8.5 of the National Tariff Policy for the year 2006-07 and for subsequent years’.*
6. Against the aforementioned judgment of the Hon’ble ATE, APERC filed civil appeals 4936-4941/2007 in the Hon’ble Supreme Court of India. The Apex court passed the following interim order on 05.05.2008: *“Until further orders, operation of the impugned order in relation to the appellant shall remain stayed”*. Later on, in its Order, dated 04-12-2009, Hon’ble Supreme Court stated that *“Interim Orders dated 05.05.2008 shall remain operative till final disposal of the appeal”*.
7. The Commission, has taken up the exercise of determination of the rates of Cross Subsidy Surcharge (CSS) for FY 2008-09 and also for FY 2007-08, FY 2009-10, FY 2010-11, FY 2011-12 & FY 2012-13 and has issued a Public Notice, inviting suggestions / objections from all the stakeholders, to be submitted to the Commission on or before 28-07-2012. In the public notice, it was also mentioned that the Commission would hear all the interested stakeholders from 11 AM onwards on 13.08.2012 in the Court Hall of the Commission.
8. Along with the notice for public hearing, the Commission put into public domain the proposed figures of Cross Subsidy surcharge and Additional Surcharge (in the form of ‘proposed charges sheets’), based on the ‘embedded cost methodology’. This methodology was adopted for arriving at the proposed figures of Cross Subsidy Surcharge and Additional Surcharge in view of the orders of the Hon’ble Supreme Court, dated 05-05-2008 and 04-12-2009. The Commission initially heard the affected and other interested parties on the subject on 13-08-2012. During the Public Hearing, held on 13-08-2012, some of the objectors pointed out that in the ‘Proposed Charges

sheets', displayed in the public domain, do not explain the basis for arriving at such charges as indicated and pleaded the Commission to post the sheets explaining the basis. Considering the requests of the Objectors, Commission directed the Commission Secretary and Director/Tariff of APERC to provide the details to the objectors as desired by them and again heard the objections/suggestions on 17-09-2012 after the information indicating the basis for the proposed charges had been made available to the public. While concluding the public hearings, Commission extended the 'due date for submission of objections/views/comments' upto 25-09-2012.

9. The Commission already determined the transmission and wheeling charges for the first control period (FY 2006-07 to 2008-09) and retail supply charges for FY 2008-09. The Cross Subsidy Surcharge and Additional Surcharge, to be charged to open access consumers, are now needed to be determined based on the new tariffs and costs.
10. The Commission, before arriving at the determination of the actual rates of Cross Subsidy Surcharge and Additional Surcharge to be levied on the consumers opting for open access, has carefully examined all the objections/suggestions received from various consumers/learned counsels for the consumers and other stakeholders on the methodology adopted by the Commission to compute the provisional rates of surcharges and other related issues. The responses are discussed hereunder on each of the issues that have come before the Commission, both orally and in writing. Commission would like to mention its appreciation to all those who participated in the public consultation process took up by the Commission for determination of the rates of surcharges applicable to the consumers who opt for open access.

CHAPTER – III
ANALYSIS OF ISSUES ARISING FROM PUBLIC HEARING

Issue 1

11. *Delay in Determination of Cross Subsidy Surcharge for the Financial Year 2008-09*

Views of Objectors:

Sri. M. Venugopala Rao, Sr. Journalist and others stated that it is appropriate to determine and levy the Cross Subsidy Surcharge. Summary of the views of these objectors is -

- a) Orders of the ATE dated 05-07-2007, allowing the appeals against the Orders of APERC on Cross Subsidy Surcharge for FY 2005-06 & 2006-07, was stayed by Hon'ble Supreme Court on 04.12.2009. Since then, in spite of the repeated requests of the DISCOMs in their respective ARR/Tariff filings, Commission did not take up the determination of the subject charges since FY 2007-08, leading to undue advantage to the Open Access Consumers and depriving the DISCOMs of their revenues.
- b) Suppliers of energy to Open Access consumers and the Open Access consumers do not have any obligation to provide cross subsidy surcharge if there is no Cross Subsidy Surcharge, resulting in additional burden to the Government to provide more subsidies and more burdens on the subsidized consumers.

Commission's Views:

- As far as FY 2008-09 is concerned, Commission issued an interim order, dated 28-03-2007 in OP No. 05 of 2007, provisionally extending the applicability of the rates of Cross Subsidy Surcharge & Additional Surcharge specified in the Order, dated 29.08.2006, for FY 2006-07 (OP No. 13 of 2006 dated 29-08-2006), from 01.04.2007 onwards till the Commission passes a final order on the proceedings already initiated, subject to adjustment of the surcharge/additional surcharge if any so paid against that payable as per the final order.

- On the determination of Cross Subsidy Surcharge by the Commission for FY 2005-06 in OP No.16 of 2005 and for FY 2006-07 in OP No.13 of 2006 respectively, M/s. RVK Energy Private Limited and others approached the Hon'ble Appellate Tribunal for Electricity (ATE). The Hon'ble ATE in its judgment dated 5th July 2007, in appeal nos. 169 to 172 of 2005 and OP Nos. 248 and 249 of 2007, directed APERC *'to compute the cross subsidy surcharge, which consumers are required to pay for use of open access in accordance with the Surcharge formula given in Para 8.5 of the National Tariff Policy for the year 2006-07 and for subsequent years'*.
- Meanwhile in OP No 5 of 2007 (Suo motu), Commission issued an order, dated: 28.03.2007, stating that *'....Commission, in exercise of powers conferred by Sec 94 (2) of the Act ibid and all other powers enabling it in that behalf extends the applicability of the rates of surcharge and the Additional Surcharge specified in the Annexure to its of aforementioned Order dated 29-08-2006 for different categories of consumers availing of open access at different voltages from 1st April 2007 onwards till the Commission passes a final order on the proceedings already initiated, subject to adjustment of the surcharge/additional surcharge if any so paid against that payable as per the final order'*.
- Against the judgment of the Hon'ble ATE dated 5th July, 2007, APERC filed civil appeals 4936-4941/2007 in the Hon'ble Supreme Court of India. The Apex court passed the following interim order on 05.05.2008: *"Until further orders, operation of the impugned order in relation to the appellant shall remain stayed"*. Later on, in its Order, dated 04-12-2009, Hon'ble Supreme Court stated that *"Interim Orders dated 05.05.2008 shall remain operative till final disposal of the appeal"*
- In the backdrop of the earlier orders of the Commission including interim order dated 28-03-2007 in OP No. 05 of 2007 (suo-motu), and the Appellate orders of the Hon'ble ATE and the interim orders of the Hon'ble Supreme Court mentioned above, the Commission, has, in the present order, taken up the exercise of determination of the rates of Cross Subsidy Surcharge (CSS) for FY 2008-09.

Issue 2

12. ***Legality of Levy of Cross Subsidy Surcharge in respect of Past Financial Years***

Views of Objectors:

While submitting 7 Nos. of citations in support of their arguments, Sri Challa Gunaranjan, Legal Counsel for certain industrial consumers like M/s Parry Sugars Ltd and others submitted the following objections:

Commission has no power to determine any tariff or charges or surcharges retrospective effect in respect of the past periods. Any decision or order of the Commission can only have prospective effect for future transactions. Therefore, Commission cannot determine any surcharge in respect of the periods between 2007-08 to 2011-12 and also in respect of the already elapsed period in the year 2012-13.

Commission's Views:

- The Cross Subsidy Surcharge (CSS) is to be determined by the State ERC as per the relevant provisions of the Act, in continuation of the determination of the retail tariffs on annual basis.
- In O.P. No. 5/2007, under took proceedings in course of which Commission passed an interim order on 28-03-2007, making applicable the rates of surcharge and the Additional surcharge specified in the Annexure to its order, dated 29.08.2006 for different categories of consumers availing of open access at different voltages from 01-04-2007 onwards till the Commission passes a final order on the proceedings already initiated, subject to adjustment of the surcharge / additional surcharge if any so paid against that payable as per the final order.
- The present proceedings in respect of FY 2008-09 are in continuation of the above-mentioned proceedings already taken up by the Commission in which the interim order dated 28-03-2007 were issued. Hence it cannot be contended that the retro-spective proceedings are being initiated now.

Issue 3

13. *Applicability of Cross Subsidy Surcharge to the new consumers*

Views of Objectors:

Sri K. Raghu, Energy Auditor and others submitted that the Commission's are not clear regarding the applicability of CSS to the new consumers of the utility and these new consumers are also be charged. Objectors further submitted that it is not correct to state that a new consumer is not contributing to the 'current level of cross subsidy' because while determining retail tariff for the ensuing year, projected revenue from the new consumers is also taken into account by the Commission and the National Tariff Policy also does not distinguish between new consumers and existing consumers of the Licensees.

Commission's Views:

While issuing the Retail Supply Tariff Order for the ensuing year, Commission considers the projected sales units, consisting of the sale units of the existing consumers and the sale units of the new consumers that may come up due to the load growth based on historical data. The new consumers of subsidizing category also contribute to the Cross Subsidy amounts. Hence, the new consumers opting for open access will also be charged with CSS determined by the Commission.

Issue-4

14. *Commensurateness of Cross Subsidy Surcharge in relation to quantum of deprived cross subsidy amount*

Views of Objectors:

Sri M Venugopala Rao and others suggested that Cross Subsidy Surcharge should be equal to the Cross Subsidy amount.

Sri M Venugopala Rao and others suggested that Commission may recommend to the Government to provide additional subsidy to cover the loss of cross subsidy the DISCOMs suffer whenever substantial scarcity for power is created by its failures in ensuring adequate supply of fuels like natural gas and coal as per the allocations made by the Government to the respective

power plants with which DISCOMs have PPAs. Even from the angle of failure of the Governments to add reasonable reserve margin every year to avoid scarcity of power, it is the responsibility of the respective Governments to provide additional subsidy amounts to the DISCOMs to set off the amounts of the Cross Subsidy Surcharge lost due to the Open Access transactions.

Commission's Views:

- Commission determines the Cross Subsidy Surcharge as per the provisions laid down in the Act.
- Commission determines the Cross Subsidy Surcharge u/s 42 (2) and additional surcharge u/s 42 (4) of EA 2003. There is no provision under these sections of the Act to advise the Government to provide additional subsidy to the DISCOMs to set off the revenue losses incurred by them due to the opting of certain consumers to open access during the power shortage periods. Except u/s 65 of the Act, Commission cannot advise the Government to provide subsidy. Section 65 of EA 2003 states that *"If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall notwithstanding any direction which may be given under section 108 pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government:....."*

Issue 5

15. ***Levy of Cross Subsidy Surcharge on the receivables of Fuel Surcharge Adjustment (FSA)***

Views of Objectors:

K. Raghu, Energy Auditor and others have submitted that the Commission ignored the receivables over the Fuel Surcharge Adjustment amounts.

Commission's Views:

- The incremental charge on account of FSA is equally applicable to the Cost of Service (CoS) and also tariff revenue against the consumptions of all consumer categories, whether subsidized or subsidizing. As there is no change in Cross subsidy amount due to receivables over the FSA amounts, determination of CSS on FSA component does not arise.

Issue 6**16. Levy of Cross Subsidy Surcharge on NCE consumption****Views of Objectors:**

Sri K Raghu, Energy Auditor and Counsels Sri Challa Gunaranjan and Sri Gopal Chowdary for some of the objectors others such M/s Jeypore Sugars Limited, M/s. Parry Sugars Limited, M/s Bharathi Cements Limited etc., submitted the following:

As per the provisions of the Act contained in the preamble, Sec- 61 (h) and Sec- 86 (1) (e), requiring promotion of renewable sources of energy, special consideration is to be shown by way of exemption from surcharges in respect of such energy.

Commission in its order dated 21-09-2005 in OP No 16 of 2005 stated that to encourage renewable sources of energy, a relief of 50 percent on surcharge shall be provided to consumers availing of open access from non-conventional energy projects located within the State of Andhra Pradesh. Even if the CSS amount is reduced to 50% or less of the proposed charges in case of NCE source of energy the cost of such electricity to consumers would be still high.

Commission may clarify whether the above relief continues, for the current proposals also.

Commission's Views:

- Commission clarifies that CSS flows from the tariffs fixed for retail consumers and the costs attributed to different consumer categories and that

Commission does not distinguish between the sources of power purchases by the DISCOMs. Hence the rate of CSS cannot be different for different sources of generation.

Issue 7

17. *Impact of Load factor on determination of Cross Subsidy Surcharge*

Views of Objectors:

Sri. Challa Gunaranjan, Sri. Gopal Chowdary, Legal Counsels for certain industrial consumers like M/s. Parry Sugars Ltd., and others submitted the following:

Consumers with 40%, 60% and 80% load factors would be contributing a lesser amount as cross subsidy to the Licensee at the notified tariffs than the amount or surcharge determined by the Commission. If the DISCOM purchases energy @ Rs 4.26 per unit, it would incur a cost of supply to the consumer, who has a load factor of 80%, which would match the per unit revenue from that consumer; and in such case there would absolutely no question of the DISCOM recovering anything towards cross subsidy and DISCOM would not even realize anything towards supply margin. Therefore, for availing open access such consumers would be paying much more amount as cross subsidy in open access than the amount they pay as cross subsidy had they taken supply from distribution licensee.

Commission's Views:

- Commission is aware of the significance of load factor in determination of costs that are allocated to specific consumer categories and the resultant impact on the computation of cross-subsidy. Commission is also aware of the impact of load factor of a consumer category on the average revenue realization from that category and the category-wise quantum of cross-subsidy computed in the respective Tariff Orders. Therefore, the impact of the load factors would get reflected in the determination of cross-subsidy surcharge. Further, since the quantum of cross-subsidy is determined treating an entire category as a separate class, the surcharge has also to be determined category-wise and is being so done in the present proceedings.

- As regards the contention that the load factor should be user specific, i.e. distinct for each consumer, Commission observes that if one were to rely on the individual load factors, then the cross-subsidy and consequently the surcharge will be different for each individual consumer. By this logic, even the cost of supply and therefore the tariff for each consumer will have to be determined differently for each specific consumer. In such a system, the tariffs will not be fixed by the Commission for a class of consumers but individually, which is not possible or practicable. Hence, determining CSS on individual basis is also not possible / practicable.

Issue 8

18. *Levy of Cross Subsidy Surcharge in respect of Small Hydro Power*

Views of Objectors:

Small Hydro Power Developers have submitted that levying of Cross Subsidy Surcharge & Additional surcharge has been pursuant to the introduction of the Electricity Act, 2003. The member companies of Small Hydro Power Developers Association had entered into Power Wheeling & Purchase Agreements (PW & PA) prior to 2003 and hence the member companies of Small Hydro Power Developers Association are to be exempted from such Cross Subsidy Surcharge & Additional surcharge, the objectors submitted.

Sri. K. Raghu, Energy Auditor and others submitted that Cross Subsidy Surcharge should be levied on the additional loads sanctioned after the enactment of EA 2003, (i.e. w.e.f. 10-06-2003) to the Open Access consumers, who are exempted under repealed Laws.

Commission's Views:

- It is beyond the jurisdiction of the Commission to levy the Cross-Subsidy surcharge on those covered by the second order, dated 08-05-2005 of Ministry of Power, Government of India, issued under Section 183 of the Electricity Act, 2003 (Removal of Difficulties), effective from 10th June, 2003. However, Commission would like to clarify that such consumers are liable to

pay the surcharges applicable if they ceased to be covered by the subject order of Govt of India.

- Commission directs the Distribution Licensees to take appropriate action in terms of the provisions of the Act and the orders issued by the Commission from time to time.
- Commission is of the view that the additional loads taken by the existing open access consumers, who are exempted from payment of surcharges under the repealed Laws as per the aforementioned order of Government of India (GoI), dated 08-05-2005, have to be dealt with case-wise, based on the terms and conditions of the existing Power Purchase and Wheeling Agreements (PPWA) with the DISCOMs.

Issue 9

19. Levy of 'Additional Surcharge'

Views of Objectors:

Objectors like Sri. M. Venugopala Rao, Sri. K. Raghu, Sri. Gopala Chowdary – Legal Counsel for certain Industrial consumers and others pointed out that the basis for the proposed Additional surcharge @10% and its applicable period are not explained by the Commission and there is no rationale for linking the wheeling charges to the additional surcharge. The Capital investment made for creation of the connected T&D capacity, interest thereon, costs of its maintenance etc., should be the basis for working out additional surcharge proportionate to the period for which the network lies idle following any consumer of the state opting out for open access, they submitted.

Sri. Gopala Chowdary and others submitted that the methodology proposed is queer and its basis, logic and reasoning is obscure. If there will not be any additional surcharge in respect of 132 kV and above, it is not understood as to why such additional surcharges are applicable to 33 kV and below, they submitted. They further submitted that the basis of quantification and its nexus with the so-called stranded costs cannot be understood or comprehended.

Legal Counsels for certain Industrial Consumers like Sri Challa Gunaranjan and Sri. Gopala Chowdary and others pointed out that initially Commission proposed the Additional surcharge for all the years i.e. from 2007-08 to 2012-13; but, in the month of September 2012, it is observed that this charge is proposed for the year 2012-13 only. While referring to *'the proposed additional charge is now stated to be applicable only where the distribution licensees' fixed cost is stranded and the same is established'*, they further commented that the determination of the charge appears to be entirely academic in AP state where in the circumstances of severe power shortages, the question of fixed cost of the purchases being stranded does not arise.

Sri. K. Raghu and others pointed out that no reasons are mentioned for deletion of additional surcharge for the years from 2007-08 to 2011-12. They suggested that the additional surcharge should be collected from all the open access consumers of all the voltage levels for all the years. They further suggested that the entire loss incurred by the Utilities on account of open access should be recovered in terms of demand charges only.

Sri. K. Raghu and others suggested that additional surcharge should be collected from the Captive Consumers also, as is being done in some of the states in India.

Commission's Views:

- Additional Surcharge is leviable on the charges of wheeling to meet the fixed cost of each Distribution Licensee arising out of its obligation to supply power to such a consumer or category of consumers, who subsequently opts for open access mode, based on the investments made by the DISCOM to procure and supply power, as may be determined by the State Commission.
- At the time of issue of original public notice, Commission proposed to levy additional surcharge @10% on the wheeling charges of respective years, in addition to Cross Subsidy Surcharge (CSS) for the FY 2008-09. However, at the stage of putting further information on web during the course of the public hearings, the Commission dropped this proposal for FY 2008-09, since the DISCOMs, while implementing the interim orders of 28-03-2007 had not

levied such charges on the ground of absence of stranded fixed costs. Hence, the Commission is not levying any additional surcharge on the wheeling charge of FY 2008-09.

- Since the Commission is not levying any additional surcharge on the wheeling charge of FY 2008-09, the question of levying such charges on captive consumers does not arise.

Issue 10

20. *Levy of Cross Subsidy Surcharge during the R & C measures period*

Views of Objectors:

M/s. Sagar Cements Limited and others submitted the following:

Certain HT Industries are not opting for open access, avoiding power supply from the DISCOMs, either with any special interest or to get any price advantage. They are opting for open access under unavoidable circumstances like where DISCOMs themselves are declaring power holidays and sending notices to the consumers informing the power cuts. These industries are paying premium prices to the generators who are supplying the power in open access, besides paying for system losses in central and state networks. Act permits for collection of cross subsidy to make good of the losses suffered by the DISCOMs in the event of the subsidizing consumers opting for open access even when there is sufficient power available at the disposal of the DISCOMs. Hence, in the prevailing power shortage scenario in the state, it is against the spirit of Act to collect Cross Subsidy Surcharge.

Sri M Venugopala Rao and others suggested that in a situation of severe scarcity for power, when cross-subsidizing consumers are forced to get power through open access at a higher price than the tariffs of DISCOMs, imposing the surcharge on such purchases is not justified.

Commission's Views:

- The Commission considers that it is not reasonable to levy cross subsidy surcharge on consumers who utilize open access transactions during the

periods of load relief officially notified by the DiSCOMs. Hence, the Commission proposes to exempt such transactions of open access consumers while levying cross subsidy surcharge in FY 2008-09.

Issue 11

21. Methodology of Levy of Cross Subsidy Surcharge

Views of Objectors:

Sri. Challa Gunaranjan, Sri. Gopal Chowdary, Legal Counsels for certain industrial consumers like M/s Parry Sugars Ltd, and others submitted the following objections -

Commission, in its public notice, stated that it would be determining the Cross Subsidy Surcharge based on the 'embedded cost methodology'; such a pre-determination of the methodology to be adopted is not proper. Commission is not bound by its earlier decision to adopt the embedded cost methodology, more particularly in the light of the National Tariff Policy. Commission is required to discharge its functions being guided by National Electricity Policy and National Tariff Policy as per provisions of Sec-86 (4) of the Act. Commission is required not to put fetters upon it in carrying out a proceeding wherein the methodology as well as the quantification of the charges is to be made.

Sec 42 (2) of the Act read with the 5th proviso inserted by Act 57 of 2003 w.e.f. 27.01.2004, provide for a mandatory introduction of open access in phases considering all relevant factors including the cross subsidies. It is implicit that the mandate requires that the surcharges should not be onerous as to inhibit competition. If the magnitude of the surcharge is such as to defeat open access and to restrict competition and to make an open access a mere illusion, it would be tantamount to an abuse of the power to determine the surcharges and further it would be tantamount to surreptitiously undermining the objects, purposes and the mandate of the Act.

Even with reference to the consultative paper issued by the Commission in respect of the 2005-2006 Order (*"from consideration of promotion of open*

access If an open access eligible consumer is not able to source generation at a cost lower than this, he may prefer to continue taking supply from the distribution licensee), the 'avoidable cost methodology represents the most equitable and reasonable approach.

The Forum of Indian Regulators had also considered various methods and concluded that (a) average cost methodology would discourage open access (b) embedded cost methodology would not encourage open access (c) avoidable cost methodology is recommended as balancing the twin objectives of safeguarding the financial viability of the Licensees and promotion of competition.

At the time of Commission's Order, for the year 2005-06, in which Commission opted for embedded cost methodology, National Tariff Policy, a statutory policy, was not issued. Commission is required to follow the formula set out in the National Tariff policy as the reasonable methodology for arriving at the base figures for determination of Cross Subsidy Surcharge.

If the 10% of the power purchases at the highest rates is avoided by the DISCOMs, the DISCOMs may actually be better off as they will not have to make purchases at higher cost and supply the same to certain categories with an under-recovery of revenue and the consequent loss. Commission needs to diligently analyse these aspects.

Spirit of the Act is to protect the interests of the Licensees should the consumers opt for Open Access even when the Licensees are ready to supply power and on consumers' wish. The spirit of the Act is certainly not in favour of 'Licensee not supplying power and collecting Cross Subsidy'. There is no justification whatsoever in any cross subsidy surcharge of any kind or of any amount whatsoever in Andhra Pradesh in the present circumstances or in the near future.

Cross Subsidy surcharges indicated in the calculations sheets posted on the website in September 2012 are different from the Cross Subsidy Surcharges indicated in the proposal that was initially posted in July 2012.

Commission's Views:

- At the time of issuing notice for public hearing on levy of CSS for FY 2008-09, the Commission posted in the public domain the 'provisional rates of surcharges' stating that the same had been worked out based on the embedded cost methodology. The Commission had adopted these rates since the rates determined in the earlier orders issued by the Commission for FY 2005-06 and FY 2006-07, were based on the embedded cost methodology.
- Commission had issued the Retail Supply Tariff Order for FY 2008-09 with computations of cost of service for each of the consumer categories based on the embedded cost methodology only. As per the Tariff Order computations, Cross Subsidy amount provided by a particular category of consumers is the difference between revenue realization and cost of service of that category.
- In its Order, dated 21-09-2005, for FY 2005-06, Commission, discussed the various models, including the models suggested by the objectors, for determination of the rates of surcharges and expressed that the embedded cost model used for determining the tariffs is undoubtedly the best methodology for determining the current level of cross-subsidy and accordingly the cross-subsidy surcharge. It may be noted that the Commission reiterated this view even in its subsequent order for FY 2006-07. Further, in its interim order, dated 28-03-2007, Commission extended the applicable rates of surcharges, specified for FY 2006-07, from 1st April 2007 onwards.
- M/s. RVK Energy and others challenged the embedded cost methodology adopted by the Commission in its orders dated 21-09-2005 and 29-08-2006 respectively, before the Hon'ble ATE. Hon'ble ATE, in its judgment dated 5th July 2007, directed APERC to conclude the CSS in accordance with the surcharge formula in Para 8.5 of National Tariff Policy for the years FY 2005-06, 2006-07 and for subsequent years. When this order of the Hon'ble ATE was appealed in the Hon'ble Supreme Court of India,

Hon'ble Supreme Court issued interim orders dated 05-05-2008 and 04-12-2009, stating that "until further orders, operation of the impugned order in relation to the appellant shall remain stayed". In view of the above mentioned interim order of the Hon'ble Supreme Court, the Commission feels it as appropriate to continue with the embedded cost methodology for determination of cross-subsidy surcharge in the present order.

- The order, determining the rates of Cross Subsidy Surcharge & Additional Surcharge for FY 2008-09, now being issued by the Commission, is subject to the final judgment of the Hon'ble Supreme Court in civil Appeal No. 4936-4941 of 2007.

CHAPTER - IV

DETERMINATION OF CROSS SUBSIDY SURCHARGE FOR FY 2008-09

22. After taking into consideration of objections/suggestions of the objectors/ stakeholders, representatives of associations of industrial consumers, counsels for industrial consumers and other consumer representatives, in the light of the directions of the Hon'ble Supreme Court and the Hon'ble ATE, and for the reasons mentioned against the respective issues in the earlier chapter, the Commission hereby determines the following rates for levy of Cross Subsidy Surcharge (CSS) for FY 2008-09, applicable to different categories of consumers availing open access at different voltages in the areas of supply of respective distribution licensees, based on the Embedded cost methodology for estimating the quantum of cross-subsidy for the respective consumer categories as adopted in the MYT order dated 23-03-2006 for Distribution Tariffs (2006-07 to 2008-09) and the Retail Supply Tariff Order dated 20-03-2008 for Retail Supply Tariffs of FY 2008-09.

		Cross Subsidy Surcharge FY(2008-09)			
		CPDCL	EPDCL	NPDCL	SPDCL
		Rs./Unit			
L.T Category					
LT-II	Non-Domestic	2.22	2.38	1.33	2.19
LT-III	Industrial (Normal)	1.31	1.39	1.13	1.73
	Industries (SSI)	1.22	0.12	1.05	1.97
H.T Category					
HT-I A	Indl - 11 kV	1.28	1.70	0.99	1.32
	Indl - 33 kV	1.17	1.57	1.36	1.30
	Indl – 132 kV & above	1.14	1.80	1.17	1.24
HT- IB	Ferro Alloys -11 kV	0.00	0.00	0.00	0.03
	Ferro Alloys - 33 kV	0.37	0.00	0.00	0.00
	Ferro Alloys -132 kV & above	0.51	0.69	0.00	0.00
HT-II	Others - 11 kV	2.14	2.81	2.08	2.44
	Others - 33 kV	2.29	3.03	1.99	2.55
	Others - 132 kV & above	2.51	3.42	1.64	0.00
HT- V	Railway Traction	1.51	1.83	1.27	1.58
HT- VI	Townships & Residential Colony Lighting – 11 kV	0.97	2.22	1.06	1.14

The calculations in arriving the above CSS rates are shown in the Annexure-A enclosed.

23. The CSS as specified in this order shall be subject to adjustment against any CSS/additional surcharge already paid by the Open Access consumer concerned against the Commission's interim order issued dated 28-03-2007, in OP No. 5 of 2007.
24. If, during the FY 2008-09, the DISCOMs had officially imposed any power cuts, duly informing the respective consumers of the same, Cross Subsidy Surcharge should not be levied for such specific periods and the DISCOMs shall take necessary action accordingly.
25. The Commission has decided not to levy "additional surcharge" on the wheeling charges for the FY 2008-09.

This Order is corrected and signed this 26th day of October 2012.

Sd/-
(R.ASHOKA CHARI)
MEMBER

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN

ANNEXURE-A

Cross Subsidy Surcharge rates detailed working sheet for the FY 2008-09 for OPEN ACCESS Consumers

FY 2008-09	Energy Sales (MU)				Allocated Cost (Rs. Crs.)				Total Revenue (Rs.Crs)				CROSS SUBSIDY (Rs.Crs)				CROSS SUBSIDY (Rs./unit)			
	CPDCL	EPDCL	NPDCL	SPDCL	CPDCL	EPDCL	NPDCL	SPDCL	CPDCL	EPDCL	NPDCL	SPDCL	CPDCL	EPDCL	NPDCL	SPDCL	CPDCL	EPDCL	NPDCL	SPDCL
LT-I: DOMESTIC	4,701.08	2,507.46	1,562.87	3,063.36	1,742.11	880.82	628.41	1,057.69	1,329.00	632.00	393.00	808.00	-	-	-	-	-	-	-	-
LT-II: NON-DOMESTIC/COMMERCIAL	1,522.81	527.34	313.72	672.14	576.85	187.88	143.71	244.23	915.20	313.42	185.51	391.65	338.35	125.54	41.80	147.42	2.22	2.38	1.33	2.19
LT-III(A): INDUSTRIAL NORMAL AND OTHERS																				
Industrial Normal	988.06	396.44	253.73	525.35	310.51	114.99	87.47	153.06	440.40	169.92	116.17	244.13	129.89	54.93	28.70	91.07	1.31	1.39	1.13	1.73
LT-III-B: INDUSTRIAL(SS1 UNITS)																				
SSI Units	232.39	43.11	92.18	56.26	73.03	12.51	31.78	16.39	101.47	13.04	41.50	27.45	28.44	0.53	9.72	11.06	1.22	0.12	1.05	1.97
HT-I: INDUSTRIAL(Excl. Ferro Alloys)																				
11 kV	2,309.15	775.18	175.37	893.45	605.25	178.52	52.65	226.01	900.24	310.07	70.08	343.73	294.99	131.55	17.43	117.72	1.28	1.70	0.99	1.32
33 kV	3,205.06	383.50	103.71	1,021.89	702.84	73.78	23.36	212.45	1,078.24	134.01	37.48	344.89	375.40	60.23	14.12	132.44	1.17	1.57	1.36	1.30
132 kV & above	1,860.91	916.70	628.15	651.48	380.99	170.36	125.97	125.20	592.50	335.40	199.70	205.73	211.51	165.04	73.73	80.53	1.14	1.80	1.17	1.24
HT-I(B): FERRO ALLOY																				
11 kV	-	-	-	7.30	-	-	-	1.85	-	-	-	1.87	-	-	-	0.02	-	-	-	0.03
33 kV	64.32	-	-	-	14.10	-	-	-	16.46	-	-	-	2.36	-	-	-	0.37	-	-	-
132 kV & above	184.78	621.40	-	-	37.83	115.48	-	-	47.28	158.30	-	-	9.45	42.82	-	-	0.51	0.69	-	-
HT-II: OTHERS																				
11 kV	942.42	170.46	57.41	218.83	290.70	45.65	18.56	64.21	492.76	93.50	30.50	117.63	202.06	47.85	11.94	53.42	2.14	2.81	2.08	2.44
33 kV	343.53	49.68	0.81	10.19	86.16	10.80	0.19	2.38	164.69	25.87	0.35	4.98	78.53	15.07	0.16	2.60	2.29	3.03	1.99	2.55
132 kV & above	53.64	12.58	2.40	-	12.89	2.82	1.09	-	26.38	7.12	1.48	-	13.49	4.30	0.39	-	2.51	3.42	1.64	-
HT-V: RAILWAY TRACTION	94.91	494.02	314.73	485.56	24.47	111.87	89.02	123.63	38.81	202.35	128.86	200.48	14.34	90.48	39.84	76.85	1.51	1.83	1.27	1.58
HT-VI: TOWNSHIPS & RESIDENTIAL COLONIES																				
All Voltages	88.61	23.60	133.40	42.34	27.55	5.91	40.52	12.69	36.15	11.15	54.64	17.51	8.60	5.24	14.12	4.82	0.97	2.22	1.06	1.14

ANNEXURE-B

CROSS SUBSIDY SURCHARGE DETERMINATION FOR FY 2008-09

LIST OF OBJECTORS

Sl.	Name and Address of the Objector
1	Sri S.Sreekanth Reddy, Executive Director, M/s Sagar Cements Limited, Plot No.111, Road No.10, Jubilee Hills, Hyderabad 500 033. Phone Nos.(040)23351571, 23356572 Fax No.(040)23356573 Email:info@sagarcements.in
2	Sri Challa Gunaranjan, Advocate (on behalf of M/s Jeypore Sugars Ltd., & Others 9 Firms) 05, Subhodaya Apartments, Boggulakunta, Hyderabad 500 001. Phone Nos.(040)24754758, 24757591 Fax No.(040)24762713 Email:guna_challa@hotmail.com
3	R.K.Agarwal, Chairman, M/s Andhra Pradesh Spinning Mills Association, 1-5, 1 st Floor, Surya Towers, Sardar Patel Road, Secunderabad 500 003. Phone Nos.(040)27890041 Mobile No.9849028556 Fax No.(040)27846837 Email:contact@apslin.com
4	Sri G.R.Karunakar, State Executive Member, Baratiya Janata Party, Plot 56, Laxmi Mega Township, Hayatnagar, Rangareddy 501 510. Phone No.(040)24243338
5	Sri M.Venugopala Rao, Senior Journalist, 7-1-408 to 413, Flat 203, Sri Saidarsan Residency, Balkampet Road, Ameerpet, Hyderabad 500 016.
6	Sri K.Raghu, Certified Energy Manager & Auditor, 204, SCK Residency, Niloufer Hospital Road, Lakdi-ka-Pul, Hyderabad 500 004.
7	M.Subrahmaniam, Company Secretary & Vice President, M/s Nava Bharat Ventures Ltd., Nava Bharat Chambers, Raj Bhavan Road, Hyderabad 500 082. Phone Nos.(040)23402064, 23403501, 23403540 Fax No.(040)23403013 Email:nbvl@nbv.in, nbvl@sify.com
8	Sri Sricharan Telaprolu, Advocate (on behalf of M/s Small Hydro Power Developers Association) Flat No.202, Classic Emerald Apartment, H.No.6-3-676/1, Behind JOS- Alukkas, Durga Nagar, Punjagutta, Hyderabad 500 082. Phone No.(040)66681231 Mobile Nos.9849285903, 7396002276
9	Sri Sricharan Telaprolu, Advocate (on behalf of M/s NSL Textiles Ltd. Inkollu and other 16 Companies) Flat No.202, Classic Emerald Apartment, H.No.6-3-676/1, Behind JOS- Alukkas, Durga Nagar, Punjagutta, Hyderabad 500 082. Phone No.(040)66681231 Mobile Nos.9849285903, 7396002276

Sl.	Name and Address of the Objector
10	M/s Rain Cements Limited, Rain Center, #34, Srinagar Colony, Hyderabad 500 073. Phone No.(040)40401234 Fax No.(040)40401212 Email:info@priyacement.com
11	M/s Rain CII Carbon (Vizag) Ltd., Rain Center, #34, Srinagar Colony, Hyderabad 500 074. Phone No.(040)40401235 Fax No.(040)40401213 Email:hq@raincii.com
12	Sri Y.V.Subba Rao, Managing Director, M/s RPP Limited, H.No.1B, (New 618), Arora Colony, Road No.3, Banjara Hills, Hyderabad 500 034. Phone Nos.(040)23544139, 23542109 Fax No.(040)23540793 Email:rpplimited@yahoo.com
13	Sri M.E.Manivannan, Vice President (Operations), M/s Loyal Textiles Ltd., 83 (old 41), 1 st Main Road, R.A.Puram, Chennai 600 028. Phone Nos.(044)42277374, 45120101 Mobile No.9500031441 Fax No.(044)43060622 Email:mem@loyaltextiles.com
14	N.Padma Rao, Executive Director, M/s Jyoti Bio-Energy Ltd., Mayanak Towers, # 6-3-1090/B & 1 & 2, 4 th Floor, Raj Bhavan Road, Hyderabad 500 082. Phone No.(040)30603399 Fax No.(040)30602073
15	K.Madhusudan, Chairman & Managing Director, M/s Sree Rayalseema Green Energy Ltd., H.No.1-10-19, Street No.3, Ashoknagar, Hyderabad 500 020. Phone No.(040)27611058 Fax No.(040)27611058 Email:srgelplant@rediff.com
16	Director, M/s United Seamless Tubular Pvt. Ltd., Kamineni, 2 nd Floor, King Koti, Hyderabad 500 001. Phone No.(040)24785566 Fax No.(040)24758999 Email:info@unitedseamless.com