



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

R.P.(SR) No.98 of 2018

In

O.P.No.21 of 2017

Dated 20.07.2021

Present

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

Between:

Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad-500 063 ... Petitioner

AND

-Nil- ... Respondent

The petition came up for hearing on 04.02.2021. Sri Mohammad Bande Ali, Law Attaché along with Sri K.Satish Kumar DE, TSSPDCL for the petitioners has appeared through video conference. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

Southern Power Distribution Company of Telangana Limited (TSSPDCL) (review petitioner) has filed this review petition under Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of Conduct of Business Regulation, 2015 seeking review of the order passed by the Commission dated 27.03.2018 in O. P. No. 21 of 2017 whereby the levy of cross subsidy surcharge (CSS) and additional surcharge (AS) have been determined for FY 2018-19.

2. The review petitioner stated that the licensee having studied and analysed the CSS and AS order for FY 2018-19 dated 27.03.2018 passed in O. P. No. 21 of 2017,

identified the following areas where the above order of the Commission needs to be reviewed under the circumstances mentioned in detail under each head. The issues identified by the licensee relate to:

- a) Methodology for determination of cross subsidy surcharge;
- b) Methodology for determination of additional surcharge;

3. **Issue 1:** Methodology for determination of cross subsidy surcharge (CSS), the review petitioner stated as below:

- a) The computation of CSS levied on open access consumers shall be based on the CSS formula as per clause 8.5 of National Tariff Policy, 2016 (NTP) notified by Ministry of Power (MoP) dated 28.01.2016 and the same is extracted below.

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

Where,

S is the surcharge

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

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

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

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

R is the per unit cost of carrying regulatory assets

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

- b) The determination of CSS has to be the minimum of CSS approved for FY 2017-18 and that computed for FY 2018-19 on account of no revision in retail supply tariffs is not appropriate and against NTP guidelines.
- c) The CSS to be levied for a particular year depends on the average revenue realization of the concerned category and power purchase cost for the relevant year. Hence, the approval of CSS based on the revenue realized and power purchase cost incurred for previous year is not appropriate.
- d) The NTP 2016 mandates for reduction of cross subsidy and bring tariff at

±20% average cost of supply, however it restricts CSS at 20% of the tariff payable by the consumer. In case the tariff payable by the consumer is more than 120% of average cost of supply, the licensee will not be able to recover losses through CSS in case consumer opts for open access. Hence, it is essential to implement both para 8.3 2 (i.e., bringing tariff at ±20% average cost of supply) and first proviso to para 8.5.1 (i.e., restricting CSS at 20% of tariff payable by the consumer) of the NTP 2016 simultaneously. If one of the provisions could not be implemented due to some reason, the second provision should also not be implanted to that extent. The application of 20% cap in determination of cross subsidy surcharge alone is principally incorrect which is against the NTP guidelines and the DISCOM will be at revenue loss.

e) Hence, the licensee requests the Commission to revise the CSS to be levied on open access consumers for FY 2018-19.

4. **Issue 2:** Methodology for determination of additional surcharge (AS), the review petitioner stated as below:

a) The licensee proposed AS to be levied on open access consumers in accordance with Section 42 (4) of Act, 2003 which reads as

“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.”

b) The AS proposed by the licensee is in line with Clause 8.5.4 of NTP 2016 which reads as

“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.”

c) The licensees have proposed AS based on the fixed cost commitment of the

licensees arising out of power purchase agreements that have been entered in order to provide reliable and quality power supply without any load shedding to all the consumers in the state under universal service obligation.

- d) In CSS and AS order for FY 2018-19, the AS applicable to open access consumers based on the stranding of power purchase commitments that is backing down due to open access is computed to be Rs. 1.01 / kWh (page 18 of CSS and AS order for FY 2018-19) and the same is extracted below.

“4.1.8 Based on the information furnished by the DISCOMs and in accordance with the methodology specified by the Commission, the AS for FY 2018-19 has been computed as Rs. 1.01 / kWh.”

- e) However, the AS to be levied on open access consumers for FY 2018-19 is restricted to Rs. 0.52 / kWh, at the same level of the AS applicable for the period from 01.01.2018 to 31.03.2018.
- f) The restriction of AS to Rs. 0.52 / kWh leads to under recovery of stranded fixed cost commitments due to open access by the licensee leading to financial burden on the licensee and the same is shown below.

Particulars	Value
Computed additional surcharge (A)	1.01/kWh
Approved additional surcharge (B)	0.52/kWh
Estimated OA Sales for FY 2018-19 (C) (as per RST order for FY 2018-19 – page 105)	2159.4 MU

- g) In view of the above, the review petitioner requests the Commission to safeguard the interests of the licensee as well in this regard and prays that the Commission to revise the AS to be levied on open access consumers for FY 2018-19 as per the computed value i.e., Rs. 1.01 / kWh.

5. The review petitioner therefore prays the Commission to review the CSS and AS order for FY 2018-19 dated 27.03.2018 as distinctly prayed under each head. The review petitioner has sought the following prayers in the petition and requests the Commission -

- a) To revise the CSS based on the computation for FY 2018-19 i.e., based on the anticipated revenue realized and power purchase cost for the relevant year without limiting to last year CSS.

- b) Not to restrict the CSS at 20% of tariff payable by the consumer unless the tariffs are not brought to +/-20% Average Cost of Supply.
- c) To revise the additional surcharge to be levied on open access consumers for FY 2018-19 as per the computed value i.e., Rs. 1.01 / kWh.

6. The Commission heard the representative of the review petitioner. It also perused the relevant material including the original order passed by the Commission. The submissions of representative of the review petitioner at the time of hearing are as extracted below:

"... The representative of the petitioner stated and explained the reasons for filing the review petition against the order determining the cross subsidy surcharge and additional surcharge for FY 2018-19. He also explained various figures and details regarding the levy of cross subsidy surcharge and additional surcharge in terms of the policy of the Government of India. It is his case that the Commission is required to review the order insofar as the above said charges are concerned as they are not in line with the policy of the government as also contrary to the earlier determination. He sought consideration of the factual matrix regarding the figures arrived at by the Commission in the orders and they need to re-fix them in view of the financial aspects projected by the DISCOMs in the petition. ..."

7. The point that arise for consideration in this matter is –
'Whether the order dated 27.03.2018 in O.P.Nos.21 & 22 of 2017 in the matter of determination of CSS and AS for FY 2018-19, is liable for review as sought by the Review Petitioner?'
8. Section 94 (1) (f) of the Electricity Act, 2003 empower the Commission for reviewing its decisions, directions and orders and such review powers are same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (CPC). Section 114 of CPC as well as Order 47 of CPC says about the review power of a Civil Court. Under Section 114 of CPC a person feeling aggrieved either by decree or by an order of court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree may apply for review of the decree or order as the case may be in the Court, which passed the order. Order

47 Rule 1 of CPC stipulates that, a review of judgement or an order could be sought (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant/petitioner; (b) such important matter or evidence could not be produced by the applicant/petitioner at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

The above provisions of CPC relating to review power need to be kept in mind by this Commission, while disposing of review petition filed before it u/s 94 (1) (f) of the Act.

Issue 1: Methodology for determination of Cross Subsidy Surcharge (CSS)

9. The contentions of the review petitioner and averments set out in the review petition is just reproduction of its additional prayer in the Original Petition (O. P. No. 21 of 2017) which was already addressed by the Commission in its CSS & AS Order dated 27.03.2018. Further, in the said Order, the Commission computed CSS for different categories of consumers for FY 2018-19. However, the CSS applicable for FY 2018-19 has been determined to be the minimum value of the CSS already approved for FY 2017-18 and that is arrived at for FY 2018-19 to be the CSS charge for the respective consumer category in FY 2018-19. The Commission's view for the same is reproduced below:

“3.1.9 Based on the above, the Commission has computed the DISCOM wise, voltage wise CSS for different categories of consumers applicable to consumers availing of open access at different voltages in the area of supply of the respective Licensees. As the Commission has not approved any Tariff increase in the RST Order for FY 2018-19, hence the CSS applicable for FY 2018-19 has been determined to be the minimum value of the CSS already approved for FY 2017-18 and that is arrived at for FY 2018-19 to be the CSS charge for the respective consumer category in FY 2018-19.”

10. Thus, the Commission had taken a considered view while approving CSS for FY 2018-19.

Issue 2: Methodology for determination of Additional Surcharge (AS)

11. The Commission computed the AS of Rs.1.01 / kWh for FY 2018-19 considering the information submitted by DISCOMs. However, the Commission

approved AS of Rs. 0.52 / kWh for FY 2018-19 since the Commission was of the view that the computed AS of Rs. 1.01 / kWh cannot be wholly allowed considering the fact that AS was recently introduced in the State. The relevant extracts of the said Order are reproduced below:

“4.1.8 Based on the information furnished by the DISCOMs and in accordance with the methodology specified by the Commission, the AS for FY 2018-19 has been computed as Rs. 1.01 / kWh.

4.1.9 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.”

12. Thus, the Commission has clearly elaborated its view as above for approving AS of Rs. 0.52 / kWh for FY 2018-19.

13. Upon perusal of the material on record along with the principles for undertaking review of an order, no specific contentions advertent to any violation of the principles for reviewing as enumerated above at para 8 are raised in the review petition which would have called upon the Commission to re-examine the findings made in the order dated 27.03.2018.

14. Thus, for all the reasons explained above, the review petition fails and is accordingly refused.

This order is corrected and signed on this the 20th day of July, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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