



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

R. P. (SR) No. 73 of 2023
in
O. P. Nos. 75 & 76 of 2022

Dated 22.06.2023

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,
Corporate Office, H.No.6-1-50, Mint Compound,
Hyderabad – 500 063.

... Review Petitioner

AND

- None -

... Respondent

This review petition came up for hearing on 05.06.2023. Sri. S. Sunil Kumar, DE / RAC / TSSPDCL along with Sri. Mohammad Bande Ali, Law Attaché for review petitioner has appeared on 05.06.2023 and having been heard and having stood over for consideration, the Commission passed the following:

ORDER

The review petitioner had filed a review petition seeking review of the order dated 20.03.2023 passed in O.P.No.75 & 76 of 2022 for determination of Additional Surcharge to be levied on Open Access consumers for the first half (H1) of FY 2023-24 in accordance with the provisions of the Electricity Act, 2003 and Tariff Policy, 2016.

2. The pleadings in the review petition are as below:
 - a. The Electricity Act, 2003 through sub-section (2) and (4) of Section 42, identifies the need for compensating distribution licensees by levying additional

- surcharge in case consumers switches to alternate supplies under open access.
- b. As identified by the policymakers through the Electricity Act 2003, removing and reducing additional surcharge below certain level would result in licensees having to bear excessive fixed costs associated with PPA signed for long-term duration (25 years) on account of switching of exiting consumers to alternate modes of supply.
 - c. The Commission had finalized methodology for computing Additional Surcharge through its order O.P.No.23 of 2020 dated 18.09.2020.
 - d. Using the approved methodology, the Commission had computed Additional Surcharge as Rs.0.52/kWh for H1 of FY 2021-22, Rs.0.96/kWh for H2 of FY 2021-22, Rs.1.15/kWh for H1 of FY 2022-23 and Rs.1.38/kWh for H2 of FY 2022-23. An increasing trend had been followed to compensate DISCOMs for its losses against fixed payments for stranded capacities. These orders were finalized after following due regulatory process.
 - e. The Commission in its order dated 20.03.2023 in O.P.Nos.75 & 76 of 2022 computed Additional Surcharge for H1 of FY 2023-24, wherein the Additional Surcharge determined is Rs.0.39/kWh as against DISCOM's proposal of Rs.9.86/kWh. The licensees had proposed the Additional Surcharge based on approved methodology as notified by the Commission.
 - f. As per the orders issued, the Additional Surcharge details were published in 5 newspapers along with Tariff & CSS order details.
 - g. However, in recent orders (H2 of FY 2022-23 & H1 of FY 2023-24), the Commission has deviated from its approved methodology of determining additional surcharge.
 - h. More importantly, the Commission in its order in O.P.Nos.75 & 76 of 2022 has reduced additional surcharge to Rs.0.39/kWh for H1 of FY 2023-24 against proposal of Rs.9.86/kWh. This is 72% lower than the additional surcharge of Rs.1.38/kWh determined for H2 of FY 2022-23. The resulting Additional Surcharge of Rs.0.39/kWh for H1 of FY 2023-24 computed by the Commission would cause significant financial loss to the TSDISCOMs.
 - i. The TSDISCOMs had proposed the Additional Surcharge of Rs.9.86/kWh by following the due process laid down by the Commission in its order O.P.No.23 of 2020.

- j. While determining AS for H1 of FY 2023-24, the Commission has deviated from its approved methodology by not considering the distribution charges for LT network for determination of AS even though these charges are to be considered as per the approved methodology, It has also not considered short-term purchases of DISCOMs which has resulted in reduced stranded capacity of DISCOMs. This deviation from methodology would cause substantial financial loss to the TSDISCOMs.
- k. The Commission has not modified the previously approved methodology. It may have modified the methodology based on its assessments and by following due process through consultation process.
- l. The entire Distribution Network System (33 kV, 11 kV & LT) ought to be considered as a single unit, as the Demand Charges, Fixed Charges are not uniform on all categories of the consumers.
- m. It may be considered that as per the RST order issued by the Commission, the entire fixed costs of Generation, Transmission, Distribution systems are not being recovered through Demand Charges (HT consumers), Fixed Charges (LT consumers), and major portion is being recovered through energy charges from the consumers. Hence, the Commission's order regarding Additional Surcharge for H1 of FY 2023-24 which consider 'recovery of demand charges' towards excess recovery from the open access consumers does not cover DISCOMs entire liability of fixed charge payments towards generators, transmission cost and distribution cost.
- n. Given the DISCOM's liability towards distribution charges, the exclusion of LT distribution cost from the computation of additional surcharge may be reconsidered by the Commission.
- o. The fixed charges for stranded capacity of generation for H1 of FY 2023-24 is determined as Rs.41.93 crore, leaving the Transmission & Distribution Charges, the Additional Surcharge for OA sales of 213.29 MU will be Rs.1.97/kWh in a conservative scenario.
- p. The petitioner requests the Commission to reconsider the order in O.P.Nos.75 & 76 of 2022 and provide appropriate relief by revising the Additional Surcharge computed for H1 of FY 2023-24 under the said order.

3. The review petitioner has sought the following prayer in the petition.
- (i) to revise the Additional Surcharge based on the original methodology as finalized through its order in O.P.No.23 of 2020.
 - (ii) to consider LT distribution network along with HT distribution network charges in the computation of Additional Surcharge.

4. The Commission has heard the petitioner on 05.06.2023 with regard to maintainability of review petition and the Record of Proceedings held on 05.06.2023 is as extracted below:

The representative of the review petitioner stated that certain aspects have not been considered while deciding the additional surcharge (AS) for the 1st half (H1) of FY 2023-24. The Commission may consider the aspects now set out in the review petition. At this stage, the Commission pointed that all these aspects should have been submitted at the first instance in the original proceedings. As such the same cannot be considered now.

5. The review petitioner has contended that the Commission had a) deviated from its methodology, [which has been specified in its Order dated 18.09.2020 in O.P.No.23 of 2020] and had not considered the distribution charges for LT network for determination of Additional Surcharge even though these charges are to be considered as per the specified methodology; b) not considered short-term purchases of TSDISCOMs which has resulted in reduced stranded capacity of TSDISCOMs, c) the 'recovery of demand charges' towards excess recovery from the open access consumers does not cover DISCOMs entire liability of fixed charge payments towards generators, transmission and distribution costs. The review petitioner had also stated that the Commission had not modified the previously specified methodology.

6. The Commission has specified the '*Mechanism for determination of stranded capacity and framing the terms & conditions for levy of AS on open access users to meet the fixed cost of the distribution licensee arising out of its obligation of supply*' for determination of Additional Surcharge in its *Suo-Moto* order dated 18.09.2020 in O.P.No.23 of 2020. The Commission following the methodology specified by it, had determined the Additional Surcharge for H1 of FY 2023-24.

7. In determination of Additional Surcharge for H1 of FY 2023-24, the Commission had followed the same procedure that had been considered in determination of Additional Surcharge for H2 of FY 2022-23 by order dated 27.09.2022 in O.P.Nos.55 & 56 of 2022. It is clear that the Commission had not deviated from the specified methodology, which had been specified in its Order dated 18.09.2020 in O.P.No.23 of 2020. Therefore, the review petitioner's contention is incorrect and baseless.

8. With regard to the contentions of the review petitioner, the order under review had specifically addressed all the issues now set out in the review petition.

9. The Section 94(1)(f) of the Electricity Act, 2003 empowers the Commission to review its decisions, directions and orders and as such, the power to review is in pari materia to the power as is vested in a Civil Court under the Code of Civil Procedure, 1908 (CPC). According to Order 47 Rule 1 of CPC, a review of judgement or an order could be sought on the following aspects.

- a. Where there is a typographical mistake that has crept up in the order;
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;
- c. When there is a mistake committed by the Commission, which is apparent from the material facts available on record and/or in respect of application of law;
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of the Commission coming to a different conclusion contrary to the findings given;
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

10. None of the contentions raised in the review petition would satisfy the ingredients of review so as to allow the Commission to undertake review of the order. The review petitioner has not placed on record any aspect in their review petition, which would have warranted the Commission to review its order dated 20.03.2023 in O.P.Nos.75 & 76 of 2022 by applying the above said principles.

11. In view of the foregoing discussion, the review petition fails and is accordingly rejected without any costs.

This order is corrected and signed on this the 22nd day of June, 2023.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

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

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

