

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO-34 of 2020

**Date of Hearing : 01.09.2020 & 08.09.2020
Date of Order : 24.09.2020**

IN THE MATTER OF:

Petition under section 42 of the Electricity Act 2003 read with Regulations 22 of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 for approval of Additional Surcharge to the Discoms - UHBVN and DHBVN for 1st half of FY 2020-21 and onwards.

Petitioners

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
& Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

Respondents

General Public

Present On behalf of the Petitioners through Video Conferencing

1. Shri Samir Malik, Advocate

Present On behalf of the Respondent(s)/General Public through Video Conferencing

1. Shri Saurabh Srivastav, Manager, Regulatory Affairs, IEX
2. Shri Rajan Ghai, M/s. Faridabad Industries Association (FIA)
3. Col. S. Kapoor, M/s. Faridabad Industries Association (FIA)

QUORUM

**Shri D.S. Dhesi,
Shri Pravindra Singh Chauhan,
Shri Naresh Sardana,**

**Chairman
Member
Member**

ORDER

1. The Petition has been filed by Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula & Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar (collectively referred to as "DISCOMs) for determination of Additional Surcharge for the 1st half of the FY 2020-21 and onwards on the basis of data for the 2nd half of the FY 2019-20 i.e. October, 2019 to March, 2020, under Regulation 22 of the "Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and

distribution system) Regulations, 2012. UHBVNL has submitted as under:-

- a) That the calculation of additional surcharge based on 100% data of all days in second half of FY 2019-20 i.e. October-19 to March-20 is submitted.
- b) That in order to ensure that only the surrendered power stranded due to open access consumer, is considered for determination of additional surcharge Hence, the lower of the open access power and surrendered power in each slot, is taken into account to calculate the stranded power quantum for additional surcharge.
- c) That based on the slot wise stranded power as determined above, the total quantum of backing down eligible for computation of Additional Surcharge has been determined by the Discoms. The eligible backing down quantum is further multiplied by per unit Fixed Charge approved for the relevant financial year, for determination of total amount of Additional Surcharge.
- d) Per unit fixed charges, approved by the Commission, in Tariff Order dated 7th March 2019, is tabulated as under: -

Fixed Charges approved for FY 2019-20

Sr. No.	Generating Stations	Estimated Quantum (MU)	Fixed Cost (Rs. Cr.)
	NTPC		
1	Singrauli STPS	1296.00	97.5
2	Rihand STPS I	431.00	41.1
3	Rihand II	378.00	37.4
4	Rihand III	372.00	65.2
5	Unchhahar TPS I	63.00	9.1
6	Unchhahar TPS II	131.00	17.1
7	Unchhahar TPS III	68.00	12.0
8	Unchhahar TPS IV	104.00	11.0
9	Anta CCPP	14.30	12.8
10	Auraiya CCPP	16.03	20.5
11	Dadri CCPP	36.08	17.8
12	Faridabad CCPP	984.00	246.4
13	Farakka STPS	62.44	8.4
14	Kahalgaon I STPS	150.72	19.7
15	Kahalgaon II STPS	419.97	57.9
16	Kol Dam HPS	318.94	79.9
	NHPC		
17	Salal I HPS	469.00	83.8
18	Bairasiul HPS	190.00	23.3
19	Tanakpur HPS	18.54	5.3
20	Chamera I HPS	415.53	63.2

Sr. No.	Generating Stations	Estimated Quantum (MU)	Fixed Cost (Rs. Cr.)
21	Chamera II HPS	79.83	10.0
22	Chamera-III HPS	139.30	42.1
23	Dhauliganga HPS	54.72	11.3
24	Dulhasti HPS	120.00	38.8
25	Uri HPS	141.66	18.1
26	Sewa II HPS	28.59	8.9
	SJVNL (Nathpa Jhakri)		
27	SJVNL (Nathpa Jhakri) HPS	292.38	39.7
28	Rampur HPS	69.00	17.0
	THDC		
29	Tehri (THDC) HPS	196.60	60.6
30	Koteshwar HPS	48.14	10.6
	NPCIL		
31	NAPP (Narora)	180.04	-
32	RAPP (3-4)	545.00	-
33	RAPP (5-6)		-
34	HPGCL (as per HERC order)	17288.00	1751.3
	Shared Project		
35	BBMB HPS	2890.55	0.0
	DVC		
36	Mejia TPS	466.00	91.9
37	Koderma TPS	336.00	114.5
38	Raghunathpur TPS	636.00	38.1
	UMPP		0.0
39	CGPL Mundra UMPP TPS	2561.43	252.5
40	Sasan UMPP TPS	3000.00	54.5
	Others		0.0
41	Tala, HPS	45.07	0.0
42	PTC GMR Kamalangs TPS	1611.00	316.8
43	PTC Baglihar HPS	263.72	0.0
44	PTC Lanco Amarkantak TPS	1857.43	250.7
45	PTC Karchamwangtoo HPS	803.72	229.1
46	PTC Karchamwangtoo HPS New	649.15	0.0
47	IGSTPP, Jhajjar (Aravali) TPS	2406.00	789.3
48	Pragati Gas Bawana CCGT	0.00	104.2
49	Adani Power Ltd. TPS	9300.00	1132.8
50	Teesta III HPS	0.00	0.0
51	MGSTPS, CLP, Jhajjar TPS	5628.00	870.2
52	Bhoruka HPS	29.14	0.0
53	P&R Gogripur HPS	9.73	0.0
54	Puri Oil Mill HPS	13.60	0.0
55	Biomass Projects	217.14	0.0
56	Cogeneration Plants	226.63	0.0
57	New Plants (Hydro)	1189.86	0.0
58	Solar Projects	209.40	0.0
	Total	59471.38	7182.13
	Average Fixed Cost of Power Purchase excluding PGCIL charges		1.21

- e) Per Unit Additional Surcharge is determined by dividing the total additional surcharge with the estimated Open Access Units in MUs for the Second half of FY 2019-20.

- f) The details of the backing down owing to Open Access in MW and MU for calculation of additional surcharges and Open Access availed is given in the table below:-

Month-wise Stranded Power & Open Access Power

Month	Stranded Power Min. of OA & backdown (MW)	Stranded Power Min. of OA & backdown (MU)	OA Purchase (MW)	OA Purchase (MU)
Oct'19	186.92	139.07	199.94	148.76
Nov'19	169.23	121.85	183.32	131.99
Dec'19	152.93	113.78	162.78	121.11
Jan'20	176.56	131.36	184.05	136.94
Feb'20	204.02	137.10	210.27	141.30
Mar'20	145.09	107.95	164.03	122.04
Total		751.10		802.13

- g) A summary of calculation of total additional surcharge for Second half of FY 2019-20 and per unit additional surcharge to be applicable on the Open Access consumers in first half of FY 2020-21, as submitted by the DISCOMs, is summarized below:

Calculation of Additional Surcharge

Sr. N	Particulars	Units	Value
1	Total Eligible Quantum (Min of Backing down and OA) to be considered for Additional Surcharge	MU	658.97
2	Approved Fixed cost per unit	Rs/kWh	1.21
3	Total Additional Surcharge for H1 of FY 2019-20	Rs. Cr.	79.58
4	Estimated Open Access Units for H2 of FY 2019-20 (considered same as in H1 of FY 2019-20)	MU	689.09
5	Additional Surcharge to be applicable on OA Consumers	Rs/kWh	1.15

- h) Accordingly, the DISCOMs have proposed to recover additional surcharge of Rs 1.13 per unit from the open access consumers calculated on the basis of details of slot wise surrendered power and slot wise open access power considering data of all days.
- i) Following prayers have been made:-
- i) Allow the recovery of Additional Surcharge Rs. 1.13/kWh from the Open Access consumers in first half of FY 2020-21 and onwards.
 - ii) To determine the additional surcharge under the current petition filed before the Commission and may kindly set right the submissions made in this regard in other petitions thereof.

- iii) Condone any inadvertent omissions/errors/shortcomings and permit the Petitioners (UHBVN & DHBVN) to add/change/modify/alter this filing and make further submissions as may be required at a future date.
- iv) To condone any delay in filing of Additional Surcharge Petition due to the reasons of unavoidable delay.
- v) To pass necessary the order as deemed fit for recovery of Additional surcharge from the Open Access Consumers.

Proceedings in the Case

2. The Commission, as part of the proceedings, issued Public Notice in Indian Express (English) and Dainik Tribune (Hindi) dated 25th July 2020, inviting comments/objections from general public/stakeholders, on or before 20th August, 2020. The date of public hearing i.e. 01.09.2020, through Video Conferencing, was also mentioned in the said notice with link of Video Conferencing to be shared with the stakeholders filing comments/objections.
3. In response, to the ibid public notice & the hearings held on 01.09.2020 & 08.09.2020, the following stakeholders filed their comments/suggestions/objections: -
 - (a) M/s Indian Energy Exchange (IEX).
 - (b) M/s Faridabad Industries Association (FIA).

The DISCOMs have filed reply to the comments/objections raised by the intervenors, through email dated 15.09.2020, on affidavit dated 14.09.2020.

4. Comments/Objections filed by M/s. IEX:-

The comments/objections filed by M/s. IEX have been summarized as under:-

- i) METHODOLOGY FOR COMPUTATION OF ADDITIONAL SURCHARGE:

- i.1. The Discoms have claimed Rs. 1.13/ kWh towards Additional Surcharge for the first half of FY 2020-21. The said claim is based on the similar methodology as adopted by the Commission in its order dated 06.03.2020.

i.2. National Tariff Policy, 2016 emphasises upon the objective of promoting open access while ensuring that charges and conditions levied for such open access do not make it un-competitive. The relevant clause of the Tariff Policy, are extracted 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.

.....

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.”

i.3. The past methodology of the Commission used in the Order dated 06.03.2020 does not account for the reasons of backing down of generation other than consumers procuring power through open access and presumes that all backdown by Discoms is result of consumers opting for open access.

i.4. The Discoms have not submitted one to one block wise mapping of open access power procured and the stranded energy of its stations. The presumption that there exists a causation between open access and the backing down of stations can only hold ground with block wise mapping.

i.5. The Commission is requested to adopt a rational methodology for computation of additional surcharge, considering all the factors leading to back down such as demand crash, lines outage,

accommodating RE to comply with RPO requirement, open access, optimisation of power purchase owing to commercial aspects etc.

ii) CONSIDERATION OF FIXED CHARGES PER UNIT:

ii.1. The Discoms have computed the additional surcharge on fixed charge rate of Rs. 1.21/ kWh approved in the ARR Order FY 2019-20 dated 07.03.2019.

ii.2. It is submitted that instead of the fixed charge rate approved in the original ARR Order, the Commission must consider the latest rates based on the audited accounts. The same will be true reflection of the fixed cost incurred by the Discoms during the 2nd half of FY 20-21. This is pertinent since there's no truing up of Additional Surcharge in general and the benefit of reduced fixed charge rate, if any, ought to be passed to open access consumers as well.

5. Comments/Objections filed by M/s. FIA:-

The comments/objections filed by M/s. FIA have been summarized as under:-

i) National Tariff Policy, 2016 emphasizes upon the objective of promoting open access while ensuring that charges and conditions levied for such open access do not make it un-competitive. The relevant clauses of the Tariff Policy, are extracted 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.

.....

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.”

- ii) The Regulations framed by the Commission are also in line with the object, purpose and the provisions of the Electricity Act and also the National Tariff Policy. Regulation 22 of the Open Access Regulations, 2012 notified by the Commission reads as under:

"Additional Surcharge – (1) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under subsection (4) of Section 42 of the Act.

.....

(2) This additional surcharge shall become applicable only if the obligation of the licensee in terms of 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. However, the fixed costs related to network assets would be recovered through wheeling charges.

(3) The distribution licensee shall submit to the Commission, on six monthly basis the details regarding the quantum of such stranded costs and the period over which these remained stranded and would be stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.

Provided that any additional surcharge so determined shall be applicable to all the consumers availing open access from the date of determination of same by the Commission.

(4) The consumers located in the area of supply of a distribution licensee but availing open access exclusively on inter-State transmission system shall also pay the additional surcharge.

(5) Additional surcharge determined on per unit basis shall be payable, on monthly basis, by the open access customers based on the actual energy drawn during the month through open access".

- iii) In the above background, it is understood that the Additional surcharge as a concept is based on the present, existing and also continuing stranded capacity and stranded cost of the distribution licensees on account of the open access supply being taken by the consumers.
- iv) The stranded capacity on account of open access consumers presumes surplus capacity available with the distribution licensee, namely, capacity which would have been scheduled if the open access consumers had taken supply from the distribution licensee.

Therefore, the presumption is that the distribution licensees are in surplus.

- v) As a direct natural corollary, the existence of any of the following circumstances would disentitle the distribution licensees 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 made by the distribution licensees;
- vi) In addition, the renewable energy purchase made by the distribution licensees also need to be examined. The distribution licensees are obligated to procure renewable power 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 licensees. This cannot be loaded on in the determination of additional surcharge.
- vii) Each of the above needs to be co-related on every 15 minutes time block basis as against the un-requisitioned capacity from power stations from which distribution licensees are procuring electricity under long-term PPAs to ascertain the existence of stranded capacity.

In view of the above, the following aspects need thorough scrutiny by the Commission:-

- i) Past methodology of the Commission:-
 - a. It is submitted that the past methodology vide Commission Order dated 06.03.2020 does not account for the reasons of backing down of generation other than consumers procuring power through open access and presumes that all backdown by Discoms is result of consumers opting for open access. The flaw is that it is a matter of fact that the Discoms may request for back down due to multiple reasons such as demand crash, fault in lines, accommodating renewable energy to comply with RPO requirement, optimisation of power purchase etc. Therefore, the past methodology did not consider various factors affecting the determination of Additional Surcharge as provided in Section 42(4) of EA 2003 and Tariff Policy

which specifically mandates that the loss on account of stranded capacity is recoverable only if it is established without any doubt that such loss is because of consumers opting for open access.

b. The Commission is humbly requested to adopt a more rational and balanced methodology for computation of additional surcharge, considering all the factors leading to back down such as demand crash, fault in lines, accommodating renewable energy to comply with RPO requirement, open access, optimisation of power purchase etc.

ii) Consideration of Demand charges paid by the consumers

a. The consumers in the state pay demand charges even while availing power through open access. These demand charges account for some part of the fixed cost borne by the Licensee and ought to be considered while working out the fixed cost obligation of the open access consumers.

b. It is submitted that the Petitioner has not deducted the fixed cost already paid by the embedded open access consumers on account of demand charges to the Licensee. It is vital for the Commission to deduct this amount from the amount of additional surcharge in order to avoid double collection of revenue by Licensee from the embedded open access consumers and also to maintain the balance of competition between the Licensee and open access consumers as also iterated in the National Tariff Policy, 2016.

c. It would be pertinent to mention that State Commissions of Gujarat, Maharashtra and Punjab while computing additional surcharge adjust the effective demand charges paid by the embedded open access consumers while determining additional surcharge.

iii) Consideration of fixed cost inherent in the CSS paid by OA consumers

It may be noted that the Commission while computing Cross Subsidy Surcharge takes into account the demand charges paid by the open access consumers to the Distribution Licensee as a regular consumer. Such fixed cost is already incurred by the OA consumers and is also a part of the CSS determined by the Commission.

Thereby, it is also important to adjust fixed component of CSS while determining Additional Surcharge.

- iv) Box-up/Reserve Shut down capacity
- a. that among the stranded power capacity considered for computing additional surcharge, there shall be certain capacity which is being backed down by the Licensee irrespective of the open access consumption, owing to their high cost, unreliable supply or other reasons not related to open access.
 - b. Fixed cost against such stranded power should not be considered for computation of additional surcharge as back down of such power is not on account of open access consumers. The Commission in the HERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015, has stated that the power stranded shall be applicable for additional surcharge if such power is consequent to open access contracts.
 - c. That the Licensee be directed to furnish the details of such plant which are backed down for more than a month. Such capacity ought not to be considered for assessing stranded capacity.
- v) Incorrect Consideration of OA energy (MUs)
- a. That Discoms in their submission have made errors while converting the capacity (in MW) to energy (in MUs) for the month of Feb-20. The table below provides the backdown and open access energy submitted by the Petitioner and as worked out with the correct formula.

Months	Stranded Power Min. of OA & backdown (MW)	Stranded Power Min. of OA & backdown (MU)	OA Purchase (MW)	OA Purchase (MU)	Stranded Power Min. of OA & backdown (MU)	OA Purchase (MU)
	Petitioner			Proposed		
Oct'19	186.92	139.07	199.94	148.76	139.07	148.75
Nov'19	169.23	121.85	183.32	131.99	121.85	131.99
Dec'19	152.93	113.78	162.78	121.11	113.78	121.11
Jan'20	176.56	131.36	184.05	136.94	131.36	136.93
Feb'20	204.02	137.10	210.27	141.30	141.99	146.35
Mar'20	145.09	107.95	164.03	122.04	107.95	122.04
Total		751.11		802.14	755.99	807.17

Apparently, the said error is due to consideration of lesser no. of days in Feb-20. While the said increase in MUs doesn't have a material impact of the surcharge, the Licensee ought to be cautious in the workings it submits.

b. It is requested that the Commission must do a thorough prudence of the computations submitted by the Discoms and to verify the information/ data submitted by the Petitioner, to avoid levy of unjust surcharge on the open access consumer.

vi) Incorrect computation of Fixed charge per unit (Rs./kwh):

a. The Discoms have computed the additional surcharge on fixed charge rate of Rs. 1.21/ kWh approved in the ARR Order FY 2019-20 dated 07.03.2019.

b. The Petitioner in its ARR Petition for MYT Period for FY 2020-21 to FY 2024-25, True up of FY 2018-19, APR of FY 2019-20, dated 29th November, 2019, has revised and reduced the fixed cost rate for FY 2019-20 from Rs. 1.21/kWh approved earlier to Rs. 1.16/ unit in the APR.

c. The Commission vide its True- Up for FY 2018-19, APR for FY 2019-20, ARR of UHBVNL and DHBVNL for MYT control period FY 2020-21 to FY 2024-2025 and Distribution & Retail Supply Tariff for FY 2020-21 dated 01.06.2020, has projected fixed cost rate at Rs. 1.07/ unit for FY 2020-21.

Discoms	Quantum (MU)	Fixed Charge (Rs./ Cr)	Fixed Charge Rate (Rs./ kWh)
APR Petition FY 2019-20			
UHBVN	25648.50	2985.28	1.16
DHBVN	35242.96	4123.18	1.17
Haryana Discom	60891.46	7108.46	1.16
ARR Order FY 2020-21			
Haryana Discom	63666.53	6852.0	1.07

Source:

UHBVN APR Petition for FY 2019-20 dated 29.11.2019 (Page- 49)

DHBVN APR Petition for FY 2019-20 dated 29.11.2019 (Page- 68)

HERC Order for Tariff for FY 2020-21 dated 01.06.2020 (Page-177)

d. The actual fixed cost per unit for FY 2019-20 will be less than the approved fixed cost per unit in the ARR order for FY 2019-20. In order to avoid unjust recovery of additional surcharge from open

access consumers, the Commission is humbly requested to consider the actual fixed cost for FY 2019-20 for computation for FY 2019-20.

vii) Assessment of stranded capacity

- a. It is submitted that the details of stranded capacity provided by the Petitioner in the current Petition are not sufficient to assess the stranded capacity due to open access.
- b. The details provided by the Petitioner pertain to the backdown information only. However, backdown of power plants can be because of availability of cheaper source of power also i.e. commercial reasons and not due to open access. The Petitioner must provide the information with regard to units purchased from each power plant in every 15 min. blocks against the open access availed during the block during FY 2019-20. It will provide a clear picture as to how much of the back down is on account of open access.
- c. The Commission may direct the Petitioner to provide excel version of the block wise and day wise stranded capacity for the period Oct 2019 to Mar 2020. The Commission may also direct the petitioner to provide plant wise power procurement details for FY 2019-20.

Since, M/s. FIA could not be heard during the public hearing held on 01.09.2020, on account of connectivity issue, the Commission granted another opportunity to be heard in the matter to M/s. FIA on 08.09.2020. Pursuant to the hearing held on 08.09.2020, M/s. FIA has filed additional submissions as summarized hereunder:-

That presently the total fixed cost being recovered through the open access consumer is slightly more than that attributable to them. This is because the CSS determined and recovered from the OA consumers, inherently consists of a certain component of fixed charge which is not being accounted for in the determination of Additional Surcharge. Since there is not much detailed data available in the tariff petitions or the tariff order, a reasonable estimate has been shown based on the numbers available therein.

The working is shown below:

Revenue Items	Formula	Rs./kWh	Reference/Description
Energy Charge	A = 6.55 (Tariff Order dated 07.03.2019)		EC for HT Industry (33 kv) is Rs. 6.55/kVah
Fixed Charge	B = C - A	0.70	Difference of: ABR and Energy

			charges of HT consumers
Total charges - Av. Billing Rate	C	7.59	Pg. 336 of the Tariff Order 2019-2020; 7.59 is the avg. billing rate (ABR) estimated for HT consumers, ABR i.e. FC + EC.
% of energy charge in ABR	$D = A/C$	91%	Proportion of energy charge in ABR
% of fixed charge in ABR	$E = B/C$	9%	Proportion of fixed charge in ABR
CSS	F	0.78	Pg. 336 of the Tariff Order 2019-20
Fixed charge component in CSS	$G = F * E$	0.07	As per the proportion of fixed charge in ABR
Energy charge in CSS	$H = F - G$	0.71	As per the proportion of energy charge in ABR

Based on the available data and reasonable estimates, —Rs. 0.07/kWh of fixed charges are being recovered through CSS from the OA consumers. This amount is not being accounted for while considering the fixed cost recovery on account of stranded capacity of generation. The Commission may do a prudence check of the fixed cost attributable to HT-Ind. Consumers and the fixed component in revenue being recovered from them.

6. Common Reply filed by DISCOMs on the Comments/Objections filed by M/s. FIA & M/s. IEX:-
- i) That objections raised by the objectors are repetitive and have already been adjudicated by this Commission time and again. Therefore, all contentions raised in the objections by the Objectors are denied.
 - ii) It has been contended that the past methodology of the Commission for calculation of Additional Surcharge is flawed and therefore the Objectors have requested for a change in the methodology.
 - iii) In this regard, it is submitted that the past methodology has been approved by the Hon'ble Appellate Tribunal for Electricity and the same has been followed by the Commission since FY 14-15. In this regard it is pertinent that the earlier methodology for determining Additional Surcharge was enunciated by this Commission vide Order dated 29.05.2014 in PRO-41, 42 & 43/2013 after discussing all legal issues raised by objectors for levy of Additional Surcharge.

iv) It is submitted that this methodology as given in Regulation 22 of the OA Regulations is the most appropriate methodology for working out the Additional Surcharge and the same is exactly in line with the clause 8.5.4 of the National Tariff Policy. Both regulation 22 of OA Regulations as well as National Tariff Policy provides that the Additional Surcharge shall correspond only to the fixed cost of the power stranded on account of drawl by OA consumers. This has also been made very clear by APTEL in its a judgement dated 26.11.2014 in **Appeal Nos. 294, 299, 331 and 33 of 2013 titled as Indian Hotel and Restaurant Association v. Maharashtra State Electricity Regulatory Commission & Ors.**, which is reproduced hereunder:-

*“42. Having prescribed the formula in the said manner, **the tariff policy in order to avoid double recovery of fixed costs has restricted additional surcharge only to recovery of stranded power purchase costs.** The relevant extract is as follows:*

“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.”

43. Fixed costs of the Distribution Licensees other than power purchase are generally included in the Wheeling Charges. The Cross Subsidy Surcharge then computed using the Tariff Policy formulae would not thus include such fixed costs. However, in case, the Wheeling Charges do not contain certain fixed cost of the distribution licensee then the same gets recovered by way of Cross Subsidy Surcharge as in the Tariff Policy Formula. The wheeling charges are to be subtracted from the tariff payable by various categories of consumers which include such fixed costs. The State Commission, in fact adopted the Cross Subsidy Surcharge formula specified in the tariff policy. Therefore, such fixed cost is recovered through Cross

*Subsidy Surcharges instead of wheeling charges. Since the fixed cost of distribution licensee other than power purchase cost would be recovered by the Distribution Licensee either by way of wheeling charges or Cross Subsidy Surcharges, **therefore, as per the tariff policy, the additional surcharge is limited to stranded cost of power purchase only otherwise it would amount to double recovery of fixed cost from the migrating consumers.***”

- v) Moreover, in Judgment dated 28.04.2016 passed in **Appeal Nos. 269/2014, 204/2014 and 216/2015 titled as Open Access Users Association v. Haryana Electricity Regulatory Commission**, Hon'ble APTEL had upheld this Commission's order dated 29.05.2014 and the methodology. The relevant paragraphs of the said final judgment and order dated 28.04.2016 are extracted and reproduced below:-

“39) Issue No.(k) - relating to Additional Surcharge: On this issue, the appellants have contended as under:

39.1) That the State Commission has approved Additional Surcharge of 50 paisa/kWh for the open access consumers for FY 2014-15. **Such high rate of Additional Surcharge is detrimental to the spirit of competition intended to be brought about by the Electricity Act 2003 and the Tariff Policy.**

39.2) **Paragraph 8.5.1 of the 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.** The Tariff Policy mandates safeguarding of the interest of the open access consumers in the broader interest of creating competition in the electricity market through open access. Since the amount of Additional Surcharge approved in the Impugned Order is detrimental to the spirit of competition in the electricity sector by means of open access, approval of such Additional Surcharge is against the spirit of Tariff Policy.

39.3) **That Regulation 22 of the HERC Open Access Regulations provides that Additional Surcharge shall become applicable**

only if the obligation of the licensee in terms of 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. However, the fixed costs related to network assets would be recovered through wheeling charges.

39.4) **That the consumers have been denied the rightful opportunity to study the method of computation or to assess the impact of the proposed Additional Surcharge during hearing before the State Commission.** The State Commission has issued the Impugned Order just on the very next day after the detailed submission made by the licensees, which submissions were never made public. Hence, the determination of Additional Surcharge violates the principles of natural justice.

39.5) That while the State Commission has allowed 41,086 Mu as the net energy available for intra-State sale for FY 2013-14, the power surrendered has been shown as nearly 10,327 MU, which is more than 25% of the net available energy for sale. The total surplus quantum for FY 2014-15 has been estimated as 5452 MU by the State Commission in the Impugned Order after considering all the sources of power supply and projected demand. It is not possible to understand how the DISCOMS could have surrendered almost double the quantum at 10327 MU in FY 2013-14, when the sources of power were lesser than those considered in FY 2014-15.

39.6) **That the Impugned Order does not contain the data regarding the fixed cost of power purchase from various sources of power purchase, as the power purchase expenses have been approved on the basis of the composite per unit rate, rather than considering the share of fixed charges in Rs. Cr. and the energy charges in Rs./kWh. Hence, there is no way to verify whether the rate of around Rs.1.00/kWh considered by the DISCOMS and accepted by the DISCOMS is appropriate. Since this is the most critical figure in the computation of Additional Surcharge, the absence of such information in the**

Impugned Order vitiates the determination of Additional Surcharge.

39.7) That open access energy has been shown as 1884 Mu i.e. around 4.6% of the total purchase allowed. Open access phenomenon was not new to the licensee and the likely trend of purchase of power through open access should have been taken into consideration. ***If the licensees had taken into consideration the likely trend of the open access in the State, it would have been possible for the licensee not to be bound by the long term PPAs for the excess amount of power on account of consumers opting for open access as the energy sales forgone by the licensees on account of open access is a small fraction of the total energy available for sales for the licensees. Indiscriminate signing of the agreements indicates nothing but poor planning on the part of the licensees. For the failure of the licensee, the consumers cannot be loaded for the contractual liabilities which are of no benefit to the consumers.***

39.8) That in a separate order dated 14.07.2014, in the matter of review of tariff order dated 30.03.2013 (for FY 2013-14), the State Commission in paragraph 4, dealing with trading loss has noted that the DISCOMS need to appreciate that peak and base load ought to be met with power sourced from different fuels i.e. requirement of base load power ought not to be met from peaking station as the consumer would have to bear the avoidable cost of peak load station during off peak hours. The DISCOMS have not demonstrated whether the DISCOMS explored the economies of different options to serve the peak load or whether the financial implications of the idle load were quantified and then the conscious decision was taken. Further the State Commission observed in its Review Order dated 14.07.2014 that on the one hand licensee talks of surplus power and on the other hand it resorts to load shedding and power regulatory measures. It is unable to strengthen its distribution system to release the long pending connection for new consumers who are in need of power and on the other hand it seeks compensation for under-drawing power at

a fraction of the cost of which could have been sold to these consumers at a compensatory tariff. The Commission in the Review Order further notes its concern that DISCOMS have already tied up for power which is in excess of its requirement for at least 5 to 7 years without having a system of power procurement planning and load forecasting and for open access of power purchase cost. Considering all this in Review Order, the State Commission has taken a view that the relief sought by the DISCOMS for recovering its trading loss from the consumers is not admirable hence, the same is not admitted.”

....

41) Our consideration and conclusion on Issue No.(k)- relating to Additional Surcharge:

41.1) **We have given our thoughtful consideration to the rival contentions made by the parties on this issue of Additional Surcharge.** The State Commission dealing with issue of Additional Surcharge has observed as under in the Impugned Order:

“The Commission observes that the distribution licenses, based on the data provided by them for the period April 2013 to March 2014, have been able to conclusively prove, backed with calculations, that their long term power purchase commitments do get stranded most of the times when power is drawn by embedded open access consumers from other sources and the DISCOMS have to bear the fixed cost of such stranded power which ultimately get passed on to other consumers. They have worked out the cost of such stranded power and based on that has worked out the Additional Surcharge as 97 paise/unit for FY 2013-14. The Commission further observes that it would not be fair if the cost incurred by distribution licensees for the power purchase commitments stranded on account of power drawn by open access consumers from other sources is passed on to other consumers as that would amount to cross subsidising of the open access consumers by other consumers. It would also be fair to assume that, as the number of open access consumers and power drawn through open access is increasing every year, the Additional

Surcharge worked on similar basis for FY 2014-15 would not work out less than as has been worked out by UHBVNL for FY 2013-14.

41.2) We have considered the reasoning's recorded in the Impugned Order on this issue of Additional Surcharge. We find ourselves in agreement with the same findings and observations. The conditions for levy of Additional Surcharge are provided in the relevant regulations and the repetition of the same is not needed.

41.3) We are happy to note that the State Commission in a separate review order dated 14.07.2014, seeking review of an earlier tariff order dated 30.03.2013, has expressed its concern that the DISCOMS have already tied up with power which is in excess of requirement for at least 5 to 7 years without having a system of power procurement planning and for load optimum power cost and accordingly the State Commission has rejected the relief sought by the DISCOMS for recovering its trading loss from the consumers.

41.4) Thus there is no perversity in the Impugned Order on this issue and it is decided against the appellants

vi) The said methodology has been later adopted by Commission in Orders for subsequent years. Relevant part of the Order dated 01.08.2016 passed by Hon'ble Commission in HERC/PRO-14/2016 is extracted and reproduced herein below:-

“At the outset it needs to be stated that this Commission, for the first time, had determined Additional Surcharge vide its Order dated 29.05.2014 (HERC Order on ARR & Tariff of UHBVN & DHBVN for Distribution and Retail Supply Business for the control period from the FY 2014-15 to the FY 2016-17. The calculation of Additional Surcharge, in the said Order, was largely based on the lower of the quantum of power surrendered by the DISCOMS from April 2013 to March 2014 and the quantum of power drawn by the Open Access consumers under Open Access mechanism; effective per unit fixed cost of power purchase as estimated by the Commission and the

same was multiplied by lower of the quantum of power surrendered by the DISCOMS and the power drawn by Open Access consumers under Open Access mechanism ;

“Accordingly, fifty percent of the stranded cost so worked out was passed on as Additional Surcharge. Aggrieved by the aforesaid Order, Open Access Users Association, Faridabad Industries Association and Hisar Industries Association, preferred statutory appeal in the Hon’ble APTEL (Appeal No. 269 of 2014, Appeal No. 204 of 2014, IA Nos 320 of 2014, 309 of 2014, 188 of 2015 and Appeal No. 216 of 2015 and IA No. 356 of 2015). These appeals were disposed of by the Hon’ble APTEL vide judgment dated 28th April, 2016. The operative part of the ibid judgment is reproduced below:-

....

It is evident from the judgment (Supra) that the Hon’ble APTEL is in agreement with the reasoning, findings and observations of the Commission on the issue of determination of Additional Surcharge. In the present case the DISCOMS have filed data regarding power surrendered / backed down from various power plants from where they are drawing power under long term Power Purchase Agreements for each day in 15 minutes time block from 1.04.2015 to 30.09.2015 (six months as per the relevant Regulations). Thus, the data, which was also put in the public domain, for inviting objections, in the considered view of the Commission is adequate to estimate the quantum and cost of stranded power that can be attributed to the Open Access consumers.

The Additional Surcharge of Rs. 0.87 / kWh as determined above shall be applicable from 1 ST August, 2016. The DISCOMS are advised to take timely action for submission of supporting data / details for the next six months and also host the same on its website. **The Additional Surcharge shall continue to be effective till the same is revised / amended by the Commission.** The Additional Surcharge of Rs. 0.87/kWh shall be applicable to the consumers of Uttar Haryana Bijli Vitran Nigam (UHBVN) and Dakshin Haryana Bijli Vitran Nigam (DHBVN) who avail power under the Open Access

mechanism in terms of Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, from any source other than the distribution licensees.”

vii) It is noteworthy that even in the recent order dated 06.03.2020 passed in PRO 40 of 2019 and PRO 1 of 2020 (“**Order dated 06.03.2020**”), this Commission has considered the arguments for change in methodology and thereafter upheld the past methodology. Relevant portion of the Order dated 06.03.2020 is reiterated below:

“Conclusion:-

...

In order to reduce the burden on the open access consumers, the DISCOMs have proposed to continue with the methodology of calculation of Additional Surcharge, as was adopted in the earlier orders of the Commission.

Accordingly acceding to the request of the DISCOMs and after analysing the impact of recovery method of calculation of Additional Surcharge, the Commission decides to apply the old methodology of calculation of additional charge, hitherto adopted by the commission in its earlier orders and time tested.”

viii) Hence, it is submitted that the past methodology has been time tested and there is no need for any change in the said methodology.

ix) It is further imperative to state that any methodology that shall be proposed must be in synchronisation with the principles/formula laid down in Regulation 22 of the HERC OA Regulations (supra) and any revision which is not synchronisation with the said regulation would require amendment in the provisions of the said regulation itself. The present proceedings are in quasi-judicial jurisdiction of this Hon'ble Commission and that revision of methodology and/or amendment to the said regulation 22 of OA Regulations for revision in such methodology falls within legislative jurisdiction (and outside quasi-judicial jurisdiction) of this Hon'ble Commission. Thus, any revision in methodology and/or amendment in said regulation 22 of OA Regulations cannot be done in the present proceedings, which

were initiated by UHBVNL and DHBVNL for the purposes of scrutinising the data submitted and determination of Additional Surcharge on the basis of existing methodology.

Re: Consideration of Demand charges paid by the consumers and fixed cost inherent in the CSS paid by OA consumers

- x) It has been once again contended by the objectors that the Petitioner has not deducted the fixed cost already paid by the embedded open access consumers on account of demand charges to the Licensee.
- xi) It is submitted that the said argument has been raised and rejected time and again before this Hon'ble Commission in its previous orders for determination of Additional Surcharge.
- xii) In HERC Order dated 16.11.2015 passed in Petition No. HERC/PRO-05/2015 petition filed by UHBVNL and DHBVNL for determination of Additional Surcharge for FY 2015-16, HERC framed the following issue for consideration:-

“Issue No.2: Whether the DISCOMS are already recovering the Fixed Cost through Tariff i.e. through demand charges and FSA mechanism.”

After due consideration, HERC concluded on the aforesaid issue that *“In view of the above discussions the Commission, subject to the observations on the FSA answers the Issue No. 2 in negative.”*

- xiii) The same observation has also made by the Commission in Order dated 06.03.2020, relevant part of which is reiterated below:

“Conclusion

Having answered the above issues, the Commission is of the considered view that the apprehension of the open access consumers that fixed cost of power purchase is being recovered from them twice i.e in the form of demand charges as part of tariff and in form of Additional Surcharge, is unfounded. In case the recovery of fixed cost of power purchase methodology is applied, then the Additional Surcharge to be levied on open access consumers will be more.”

xiv) Thus, the contention of the Objectors that they are also paying fixed cost of the power by way of demand charges/FSA has already been considered and rejected by the Commission.

Re: Box-up/Reserve Shut down capacity and assessment of stranded capacity

xv) The objectors have reiterated the submissions as made in the previous proceedings that among the stranded power capacity considered for computing Additional Surcharge, there shall be certain capacity which is being backed down by the Licensee irrespective of the open access consumption, owing to their high cost, unreliable supply or other reasons not related to open access.

xvi) Once again the said issue was considered by the Commission while passing order dated 06.03.2020 wherein the Commission was satisfied that the data given by the licensees demonstrates power stranded due to Open access. The Commission was aware that only a part of stranded generation capacity to the extent of quantum of OA scheduled out of total surrendered power can be attributed to OA consumers. Keeping this in mind the Commission held as under:
“However as per the situation currently obtaining in Haryana only a part of the stranded generation capacity to the extent of quantum of Open access power scheduled by such consumers out of total quantum of power surrendered by the DISCOMs can be attributed to Open Access consumers. The Commission further observes that the distribution licensees have been able to conclusively prove, backed with calculations that their long term power purchase Commitments do get stranded most of the times when power is drawn by embedded open access consumers from other sources and the Discoms have to bear the fixed cost of such stranded power which ultimately get passed on to the other consumers.”

xvii) It is submitted that similar required data has been provided by the Petitioners in the instant petition and therefore, by way of the same prudence check, the Commission may test the calculations provided by the Petitioners and approve the Additional Surcharge accordingly.

Re: Alleged incorrect computation of Fixed charge per unit and incorrect Consideration of OA energy (Rs./kwh)

- xviii) It has been argued by the Objectors that for calculation of Additional Surcharge, the actual fixed cost as trued up for FY 2019-20 should be considered. It is submitted that the said arguments has no merit considering that if the trued up figures based on the Audited Balance Sheets are considered for calculation of Additional Surcharge then it would lead to an increase in the amount of Additional Surcharge. This has to be seen in light of the fact that the Regulations do not envisage truing up of Additional Surcharge in general.
- xix) So far as the argument of incorrect consideration of OA energy because of lesser number of days in the month of February 2020 is concerned, the Objectors have themselves admitted that the said increase in MUs doesn't have a material impact of the surcharge. Therefore, the said objections is immaterial and irrelevant.
- xx) In view of above, it is humbly submitted that the Hon'ble Commission may kindly allow the Petition and approve the recovery of Additional Surcharge worked out as at Rs 1.13/kWh for first half of FY 2020-21 based on methodology already being followed by the Hon'ble Commission in the past years.

Commission's Analysis and Order

7. The Commission heard the arguments of the parties at length as well as perused the comments/objections as well as reply filed in the matter. The Commission has carefully examined the Regulations occupying the field & its earlier Orders in the matter.
8. The Commission has considered the objections filed by the stakeholders as well as the reply dated 15.09.2020 filed by the Petitioner(s) and observes that while passing Order dated 06.03.2020 (Case No. HERC/PRO-40 of 2019) approving the Additional Surcharge to be recovered w.e.f. 22.10.2019, had dealt at length almost all the legal issues raised by the Interveners in the present matter. Further, the methodology of calculation of Additional Surcharge including the

issue of recovery of fixed charge raised by M/s. FIA in the additional submissions, was also examined and decided.

9. The Commission, while passing the ibid Order dated 06.03.2020, had decided to review the calculation of Additional Surcharge upon the receipt of detailed information for the second half of the FY 2019-20.
10. Accordingly, the DISCOMs have filed the requisite data, which has been examined as under:-
 - a) That the Petitioner has worked out backing down quantum day-wise, slot-wise for the six months of FY 2019-20 (2nd half), from the implemented schedule and the entitlements as per their last revision, for the particular day.
 - b) That due to the change in the declared capacity of the inter-State generator during the day, the change in entitlement of the State from that particular Generator, is automatically accounted for.
 - c) It has been further observed that the generating units which are not on bar due to less demand have not been considered and only the running units backing down has been considered for arriving at the stranded cost of power for determination of additional surcharge.
 - d) While calculating fixed cost for the purpose of estimating Additional Surcharge, DISCOMs have taken fixed cost for the FY 2019-20 i.e. Rs. 1.21/kWh. Whereas, in the ARR Order dated 01.06.2020, for the FY 2020-21, the Commission had approved the fixed cost at Rs. 1.08/kWh i.e. Rs. 68520 Million divided by approved volume i.e. 63666.53 MUs.
 - e) In view of the above, the Commission, while approving Additional Surcharge, has considered fixed cost approved for the FY 2020-21, in the ARR Order dated 01.06.2020 at Rs. 1.08/unit. Accordingly, the Additional Surcharge had been determined as per the details below:-

Months	MW	MU	OA (MW)	OA (MU)	
	A= Stranded Power lower of OA & backdown (MW)	B= A converted into MU	C= Open Access Purchase (MW)	D= C converted into MU	
Oct-19	186.92	139.07	199.94	148.76	
Nov-19	169.23	121.85	183.32	131.99	
Dec-19	152.93	113.78	162.78	121.11	
Jan-20	176.56	131.36	184.05	136.93	
Feb-20	204.02	142.00	210.27	146.35	
Mar-20	145.09	107.95	164.03	122.04	
Total	1,034.75	756.00	1,104.39	807.17	
Monthly Average		126.00		134.53	
Quantum considered for Addl. Surcharge (lower of the power backed down/surrendered				MU	126.00

Months	MW	MU	OA (MW)	OA (MU)	
	A= Stranded Power lower of OA & backdown (MW)	B= A converted into MU	C= Open Access Purchase (MW)	D= C converted into MU	
and open access power)					
Per Unit Fixed Cost of Power Purchase for the FY 2020-21				Rs/kWh	1.08
Avg. Additional Surcharge				Rs. Millions	136.08
Monthly Open Access Power				MU	134.53
Additional Surcharge (rounded off)				Rs/kWh	1.01

In view of the above, the Commission decides that Rs. 1.01/kWh shall be the Additional Surcharge applicable from the date of this Order and shall be applicable to the consumers of Uttar Haryana Bijli Vitran Nigam (UHBVN) and Dakshin Haryana Bijli Vitran Nigam (DHBVN) who avail power under the Open Access mechanism in terms of Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, from any source other than the distribution licensees. The additional surcharge shall continue to be effective till the same is revised / amended by the Commission.

11. In terms of the above Order, the present petitions are disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 24.09.2020.

Date: 24.09.2020 (Naresh Sardana) (Pravindra Singh Chauhan) (D.S. Dhesi)
Place: Panchkula Member Member Chairman