



सत्यमेव जयते

**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

IN CASE NO. OA – 297/ 18-19

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR DETERMINATION OF ADDITIONAL SURCHARGE UNDER REGULATION 14.3.11 OF WEST BENGAL ELECTRICITY REGULATORY COMMISSION (OPEN ACCESS) REGULATIONS, 2007, AS AMENDED (IN SHORT 'OA REGULATIONS') TO MEET THE FIXED COST OF SUCH DISTRIBUTION LICENSEE ARISING OUT OF HIS OBLIGATION TO SUPPLY IN ACCORDANCE WITH SUB-SECTION (4) OF SECTION 42 OF THE ACT IN CASE OF AVAILING OPEN ACCESS AND RECEIVING SUPPLY OF ELECTRICITY FROM A PERSON OTHER THAN A DISTRIBUTION LICENSEE OF HIS AREA OF SUPPLY

PRESENT:

SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON

SRI DURGADAS GOSWAMI, MEMBER

SRI PULAK KUMAR TEWARI, MEMBER

DATE: 28.06.2021

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Application for determination of Additional Surcharge under regulation 14.3.11 of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007, as amended (in Short 'OA Regulations') to meet the fixed cost of such distribution licensee arising out of his obligation to supply in accordance with sub-section (4) of section 42 of the Act in case of availing open access and receiving supply of electricity from a person other than a Distribution Licensee of his area of supply



Facts in brief:

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) has submitted an application vide letter dated 26.12.2018 for determination of Additional Surcharge under regulation 14.3.11 of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007, as amended (in Short 'OA Regulations') to meet the fixed cost of such distribution licensee arising out of his obligation to supply in accordance with sub-section (4) of section 42 of the Act in case of availing open access and receiving supply of electricity from a person other than a Distribution Licensee of his area of supply. The application has been admitted by the Commission in Case No. OA – 297/18 – 19.
- 2.0 The application of WBSEDCL inter-alia stated the following:
 - 2.1 To meet Universal Service Obligation (USO) as per section 43 of the Electricity Act, 2003 and to maintain 24x7 power supply as per Govt. policy, WBSEDCL will have to enter into a number of long-term agreements for purchase of power from various generating stations to meet the demand of the consumers. Further, due to certain challenges during real time operation, WBSEDCL in addition will also have to keep sufficient margin for power availability.
 - 2.2 WBSEDCL submitted that when a consumer meets its power requirement either partially or fully from other than sources of distribution licensees through open access it creates surplus power situation resulting in operational difficulty of distribution licensee and additional tariff burden of the existing consumers of distribution licensee. Further, the distribution licensee is required to maintain sufficient power availability in case of failure of source of Open Access customer. Thus, in order to meet the fixed cost of such power, distribution licensee needs to be compensated by way of additional surcharge.
 - 2.3 WBSEDCL also submitted that they are partially realizing their fixed cost obligation from the consumers through Fixed Charge/ Demand Charge as per the present tariff structure. Thus, a portion of the fixed cost obligation is being recovered from the consumers through Energy Charge. The consumers that have migrated to Open Access mode will not draw energy from WBSEDCL and hence will not pay Energy Charge to WBSEDCL. This will result in shortfall in fulfillment of WBSEDCL's fixed cost obligation that was being recovered through Energy Charge by WBSEDCL from its consumers.
 - 2.4 WBSEDCL in their application referred Judgement of Hon'ble Supreme Court of India in the case of SESA Sterlite vs OERC & Ors dated 25.04.2014 in Civil Appeal No. 5479 of 2013 and Judgement of Hon'ble Appellate Tribunal for Electricity (APTEL) in the case of RVK Energy Pvt. Ltd. vs Central Power Distribution Co. & Ors dated 05.07.2007 in Appeal No. 169 of 2005. WBSEDCL also referred regulations and orders of other SERCs in their application.

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- 2.5 WBSEDCL stated the regulation 14.3.11 (b) of OA Regulations provided fixation of Additional Surcharge through individual orders in case specific manner. WBSEDCL further submitted that such computation of Additional Surcharge on case to case basis is time consuming as the fixed cost charge incurred by distribution licensees in respect of stranded capacity created out of supply obligation to Open Access Consumers will not be consumer specific. WBSEDCL proposed that Additional Surcharge is required to be determined on generic basis instead of case to case manner.
- 2.6 In view of the above, WBSEDCL has prayed before the Commission to issue an appropriate order to fix the additional surcharge payable by any consumer including any consumer who puts up a captive plant for his own use under OA Regulations on generic basis.
- 2.7 As directed by the Commission WBSEDCL made a presentation of their submission before the Commission on 02.09.2020.

Observations of the Commission:

- 3.0 The Commission observes that under the West Bengal Electricity Regulatory Commission (Open Access) Regulations 2007, as amended, the Commission can fix the amount of additional surcharge to open access consumer on case specific manner through individual order. The relevant provisions of the Open Access Regulations are reproduced below:
- "14.3.11 Additional Surcharge (if applicable):
- (a) A consumer availing open access and receiving supply of electricity from a person other than a Distribution Licensee of his area of supply, shall pay the Distribution Licensee an additional surcharge in addition to any other charges including distribution wheeling charges and surcharge(s) to meet the fixed cost of such Distribution Licensee arising out of his obligation to supply in accordance with sub-section (4) of section 42 of the Act.
 - (b) The Commission shall fix the amount of additional surcharge **through individual orders in a case specific manner** keeping in view the amount of fixed / capacity cost as has been allowed by the Commission to such Distribution Licensee from year to year basis.
 - (c) The additional surcharge shall be decided and **leviable for such period as the Commission may determine**, keeping in view, inter-alia, sales growth."
- 4.0 WBSEDCL in their petition has quoted paragraph 25 of Hon'ble Supreme Court's judgement in Case of SESA Sterlite vs OERC & Ors (2014) and paragraph 26 of judgement passed by Hon'ble APTEL in the case of RVK Energy Pvt. Ltd. in Appeal No. 169 of 2005 in support of their argument. The Commission

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noted that, in both the paragraphs respective courts have emphasized the requirement of additional surcharge, which has already been allowed under the existing Open Access Regulations of the Commission. In the above-mentioned orders, there is no specific direction of determination / applicability of generic rates for additional surcharge.

- 5.0 Thus, the prayer of WBSEDCL to determine additional surcharge on generic basis cannot be considered under the present purview of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 as amended. However, the Commission is in a process of amending the existing Open Access Regulations and WBSEDCL may submit their suggestion as and when such draft amendment is published.

Order:

- 6.0 In view of the above, the Commission disposes of the application of WBSEDCL and directs the following:
- (i) WBSEDCL may submit their comments when the Commission invites such suggestions/ objections/ comments on the draft Open Access Regulation.
 - (ii) WBSEDCL may submit applications with such cases for which open access has been granted to the open access customers, if any, to the Commission for computation of additional surcharge on case to case basis in terms of regulation 14.3.11 (b) of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 as amended.
 - (iii) Let a copy of the order be served upon WBSEDCL.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

Dated: 28.06.2021


Secretary



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