

considered while working out the power purchase fixed cost obligation attributable to the open access consumers. Hon'ble State Commissions of Telangana, Tamil Nadu and Punjab while computing additional surcharge adjust the effective demand charges paid by the embedded open access consumers while determining additional surcharge.

- b) That the National Tariff Policy, 2016 emphasises upon the fact that additional surcharge obligation is applicable if it is conclusively demonstrated that power purchase commitments has been and continues to be stranded consequent to open access. There could be multiple reasons for backing down of the capacity tied up by the DISCOMs, such as demand crash, fault in lines, accommodating renewable energy to comply with RPO requirement, optimization of power purchase etc. Therefore, it is pertinent that the methodology for working out the stranded capacity considers all such factors and additional surcharge can be levied only if it is established without any doubt that such loss is because of consumers opting for open access.
- c) That the Hon'ble Telangana Electricity Regulatory Commission recently issued Order for Determination and Levy of Additional Surcharge for H2 of FY 2022-23 dated 27.09.2022, wherein while computing stranded quantum, the Hon'ble Commission has opined that short term purchase during the availability of surplus capacity with Distribution Licensee cannot be attributed to stranded capacity due to open access and thereby reduced stranded quantum has been considered for computation of Additional Surcharge. Relevant extract of the order is provided below for the kind reference of the Hon'ble Commission:

"CHAPTER-4 ANAL YSIS AND CONCLUSION ON DETERMINA TION OF ADDITIONAL SURCHARGE FOR H2 OF FY 2022-23

4.1 Additional Surcharge for H2 of FY 2022-23

...

Capacity stranded due to Open Access

*4.1.2 On examination of 15-minute time-block data for the period from Oct'21 to Mar'22, the Commission noted that the TSDISCOMs have averaged the 15-minute time block data for the entire six (6) months period in accordance with the approved methodology. **Further, the Commission observes that TSDISCOMs have purchased the energy under short-term purchases during certain time blocks when there is an availability of surplus capacity. The Commission opines that the short term purchases during the availability of surplus capacity cannot be attributed to stranded capacity due to the open access consumers and accordingly the Commission approves the capacity stranded due to Open Access as 119.44 MW against 152.29 MW as detailed below:" (Emphasis added)"***

7. DHBVNL has filed a common reply on behalf of both the DISCOMs, to the comments/objections raised by the intervenors, through letter dated 18.10.2022, as under:-

7.1 Reply to the objections filed by M/s. Cleanmax Enviro Energy Solutions Pvt. Ltd.

7.1.1 That objections raised by the objector has already been adjudicated by this Hon'ble Commission. Therefore, all contentions raised in the objections by the objector are denied.

Re: Non-scheduling of HPGCL Unit-6, PTPS.

7.1.2 That the Hon'ble Commission's vide its Order dated 18.02.2021 in case no. HERC/PRO-76 of 2020 has directed HPGCL to de-commission / close PTPS Unit – 6. Since DISCOMs are bound to operate within the directions/guideline of the Hon'ble Commission, accordingly, the petitioner (s) have not scheduled any power from PSTPS Unit -6 during FY 2021-22.

7.1.3 That HPGCL has challenged the above direction of the Hon'ble Commission in APTEL. The APTEL vide order (APL No.150 of 2021 & IA no.592 of 2021) dated 24.09.2021 has provided interim relief to HPGCL and directed DISCOMs to pay the Fixed Charges and Return on Equity to the Appellant as per the existing PPA which is valid up to 31.03.2023.

7.1.4 That only after the direction of APTEL vide Order dated 24.09.2021 and as per direction of GoH, DISCOMs started the scheduling of power of PSTPS Unit -6, from Feb, 2022. Thus, the contention of Objector, that the Non- scheduling of HPGCL power is majorly on account procurement of Short -term and Medium term power market is incorrect.

Re: Methodology to calculate Stranded power for computation of Additional Surcharge

7.1.5 That Regulation 22 of the HERC Open Access Regulations, 2012 specifically provides for the methodology for working out the Additional Surcharge, which is also in line with the clause 8.5.4 of the National Tariff Policy. Both Regulation 22 of the HERC Open Access Regulations, 2012 as well as the National Tariff Policy provides that the Additional Surcharge shall correspond only to the fixed cost of the power stranded on account of drawl by Open Access consumers.

7.1.6 That backing down and non-scheduling of long-term sources, is based on Merit Order Dispatch (MOD) of the State which totally depend upon variable cost of generation.

Re: Report of Comptroller & Auditor General (CAG) regarding high variable cost of HPGCL power plants

7.1.7 That the Generation tariff of HPGCL are being determined in line with the applicable HERC MYT Regulations and all the power utilities of the State are bound to operate only within the regulatory framework of the Hon'ble Commission.

7.1.8 That with regard to other submissions by the objector, it is submitted these are relevant to terms and conditions of determination of Generation Tariff and same shall be considered by the Hon'ble Commission at time of tariff determination process of HPGCL.

7.1.9 With regard to backing down of Generating stations due to higher variable cost, it is reiterated that backing down and non-scheduling of long-term sources is entirely based on Merit Order Dispatch (MOD) list of the State, which totally depend upon variable cost of generation. However, the Additional Surcharge correspond only to the fixed cost of the power stranded on account of drawl by OA consumers.

Re: UPERC's Analysis in matter of Additional Surcharge

7.1.10 That the methodology considered by the Discoms in the present petition has been approved by the Hon'ble Commission vide its Order dated 16.11.2015 in the Case No PRO-05 of 2015 for determination of Additional Surcharge. The Hon'ble Commission vide its Order dated 06.03.2020 in the Case No. PRO-40 of 2019 and PRO-01 of 2020 has already re-examined and determined the existing methodology to determine of additional surcharge.

Re: Non-Scheduling from HPGCL's Plants

7.1.11 That backing down and non-scheduling of long-term sources is based on Merit Order Dispatch (MOD) of the State, which totally depend upon variable cost of generation. However, the Additional Surcharge correspond only to the fixed cost of the power stranded on account of drawl by OA consumers.

Re: Anticipated Power Supply position of Haryana by CEA during FY 2022-23

7.1.12 That the power supply position in the CEA LGBR (Load Generation Balance Report) of FY 2022-23 is on projection basis and not on actual basis. Further, the LGBR report shows the power supply position on monthly / yearly basis, whereas, at the Discom level, the power procurement decisions are taken on real-time basis, considering day-to-day Demand and Supply positions and also 15 minute interval scheduling and dispatch scenarios.

7.1.13 Accordingly, the contention of Objector that the Haryana being a power deficit state and that there is no stranded capacity of the Petitioner Discoms on account of Open Access is invalid.

7.2 Reply to the objections filed by M/s. Cleanmax Enviro Energy Solutions Pvt. Ltd.
RE: Consideration of Demand Charges paid by Embedded Consumers

7.2.1 That this argument has been raised and rejected time and again before this Hon'ble Commission in its previous orders for determination of Additional Surcharge.

7.2.2 That in the Commission's Order dated 16.11.2015 passed in Petition No. HERC/PRO-05/2015, while approving the Additional Surcharge for the FY 2015-16, the Commission 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."

7.2.3 That the same observation has also made by the Commission in its 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."

RE: Determination of Stranded Capacity due to Open Access – Non-Consideration of Short-Term Market Purchase

7.2.4 That similar issue was considered by the Hon'ble Commission while passing order HERC / PRO-1 of 2020 dated 06.03.2020 for determination of Additional Surcharge for FY 2018-19 wherein the Hon'ble Commission was satisfied that the data given by the licensees demonstrates power stranded due to Open access. Hon'ble 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 Hon'ble 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."

Commission's Order

8 As both the petitions i.e. petition no. 31 and 35 of 2022 were identical, the Commission considered it appropriate to hear them as a bunch matter and decide them through the

present common order. Accordingly, both the cases were heard on 19.10.2022, as scheduled. The representatives of both the Discoms present reiterated the contents of the petition. The Commission heard the arguments of the petitioner (s) at length as well as perused the comments/objections filed by the interveners i.e. M/s. Cleanmax Enviro Solutions Pvt. Ltd. and M/s. IEX in the matter. The Commission has carefully examined the Regulations occupying the field and earlier orders passed by it in the determination of Additional Surcharge.

- 9 The Commission has considered the objections filed by M/s. Cleanmax and M/s. IEX as well as the reply of the petitioner (s) thereon. It is observed that while passing the 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, the Commission had, at length, dealt with almost all the issues raised by the interveners. Further, the methodology of calculation of Additional Surcharge including the issue of recovery of fixed charge raised by M/s. Cleanmax and M/s. IEX was also examined and decided by the Commission. Therefore, the issues raised by the interveners are res-judicata as no new argument/facts and figures have been brought before the Commission that may call for reconsideration of the methodology as well as the underlying data for the calculation of per unit (Rs./kWh) additional surcharge recoverable from the short term open access consumers.
- 10 The Commission has examined the applicable Additional Surcharge in line with the past practice which has attained finality. Regulation 22 of the Haryana Electricity Regulatory Commission Open Access Regulations, 2012, casts an obligation on the DISCOMs to file the requisite data regarding quantum of stranded power on six monthly basis, which forms the basis for determination of Additional Surcharge by the Commission. Accordingly, the DISCOMs have filed the relevant data. The same has been examined as under: -
- a) That the petitioner has worked out backing down quantum day-wise and slot-wise for six months of the FY 2021-22 (1st half), from the implemented schedule and the entitlements as per their last revision, for a 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 at bar due to less demand have not been considered and only the backing down of running units has been considered for arriving at the stranded cost of power for determination of the additional surcharge.
 - d) While calculating the fixed cost for estimating the Additional Surcharge, the DISCOMs have taken the average fixed cost approved by the Commission in its ARR order dated

30.03.2021, for the FY 2021-22. However, for the purpose of determination of Additional Surcharge for first half of the FY 2022-23 and onwards, the fixed cost approved for the FY 2022-23 is relevant which is Rs. 1.11/kWh (rounded off) i.e. Rs. 70306 Million divided by the approved volume i.e. 63556 MUs.

- e) Accordingly, the Additional Surcharge, recoverable from the Open Access consumer(s) has been determined as per the details provided in the table 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'21	25.54	19.00	36.46	27.12	
Nov'21	76.51	55.09	96.28	69.32	
Dec'21	83.84	62.38	116.84	86.93	
Jan'22	61.82	45.99	62.82	46.74	
Feb'22	52.67	35.40	115.90	77.88	
Mar'22	3.15	2.34	4.12	3.07	
Total		220.20		311.05	
Quantum considered for Addl. Surcharge (lower of the power backed down/surrendered and open access power)				MU	220.20
Per Unit Fixed Cost of Power Purchase for the FY 2022-23				Rs/kWh	1.11
Cost of stranded power eligible for Additional Surcharge				Rs. Cr.	24.44
Estimated Open Access Units for H1 of FY 2022-23 (considered same as in H2 of FY 2021-22)				MU	311.05
Additional Surcharge to be applicable on OA Consumers				Rs /kWh	0.78

It is observed that the methodology as well as the calculations placed before this Commission are in order. Hence, the Commission orders that Rs. 0.78/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 the 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 petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 20.10.2022.

Date: 20.10.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman