



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 615/21017/A

Petition No.: 06/2017

ORDER SHEET

31.07.2017

Before the Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

M/s Star Cements Limited

-----Petitioner

Assam Power Distribution Company Limited (APDCL)

----- Respondent

In the matter of

Review Petition No. 06 of 2017 for Review of APDCL's Tariff Order dated March 31, 2017 regarding Truing up for FY 2014-15 and FY 2015-16, ARR for FY 2016-17 to FY 2018-19 and Tariff for FY 2017-18.

CORAM

Shri Naba Kumar Das, Chairperson
Shri Dipak Chakravarty, Member
Shri Subhash C. Das, Member

ORDER

1. M/s Star Cements Limited (formerly known as Cement Manufacturing Co. Ltd) (herein after referred as "the Petitioner") has filed a Review Petition before the Commission for Review of APDCL's Tariff Order dated March 31, 2017 regarding the Truing up for FY 2014-15 and FY 2015-16, ARR for FY 2016-17 to FY 2018-19 and Tariff for FY 2017-18 on April 26, 2017.
2. The Petitioner prayed that Cross-Subsidy Surcharge (hereinafter referred as "CSS") should be 82 paise/kWh in place of approved CSS of 131 paise/kWh. The salient submission of the Petitioner are as under:
 - 2.1. The Commission has determined CSS for FY 2017-18 in Order dated March 31, 2017 in contravention to National Tariff Policy, 2016.
 - 2.2. The CSS has been computed based on Average Cost of Supply as against Category wise cost of supply as laid down in National Tariff Policy
 - 2.3. The Commission has not considered the Tariff of the relevant category. The Open Access consumers continue to pay the fixed charges as per the contracted demand every month irrespective of power procurement in respect of quantum and source. Therefore, the fixed charges paid by the HT category to the distribution licensee, is totally recoverable for the sanctioned contracted demand of the HT category. Accordingly, the revenue pertaining to fixed charge of HT category, is being recovered fully by distribution licensee upto the contracted load.
 - 2.4. The Distribution Licensee will actually lose the revenue of energy charge only. Therefore, the compensation amount towards CSS lies in the part of energy charge only. The concept of considering ABR of Rs. 8.73/kWh HT-II category for calculations of CSS is completely erroneous as ABR is inclusive of contract demand charges, electricity duty, taxes, rebate, RPO charges etc. which are still recoverable by the distribution licensee even when the consumer is procuring power through Open Access.
 - 2.5. The Commission has not considered the Voltage wise cost of supply. The

Petitioner stated that even after mentioning Judgments/Orders of the Hon'ble Supreme Court in Civil Appeal No. 4510 of 2006, Punjab State Power Corporation Limited v. Punjab State Electricity Regulatory Commission &Ors. And the Hon'ble Appellate Tribunal of Electricity in Tata Steel v. OERC &Ors, Appeal No. 102, 103 and 112 at para 30-34 in the Tariff Order, the Commission has not taken into consideration voltage wise cost of supply after calculation of the same.

- 2.6. CSS should be computed considering the applicable energy charges only, as the distribution licensee will only lose the energy charge in case the consumer opts for Open Access as mentioned in National Tariff Policy and directed by the Hon'ble Supreme Court of India. Therefore, considering the voltage wise cost of supply of HT category, effective CSS for Industrial HT-II category should be Rs.0.82/kwh
- 2.7. The Commission has burdened the Open Access consumers by increasing the amount of CSS by 142% from 54 paise/kwh to 131 paise/kwh, which not only kill the spirit of Open Access, but also put down the competitiveness of the electricity market as well as efficiency of the distribution licensee which is against the Tariff Policy.
3. The Petitioner filed the review Petition on April 26, 2017 i.e., within the stipulated time, as specified in Regulation 34 of the AERC (Conduct of Business) Regulations, 2004, from date of issue of the Order in Petition No. 37 of 2016 dated March 31, 2017. Accordingly, the same was admitted.
4. The Commission vide Letter dated June 09, 2017 directed APDCL to submit its views and comments on the review Petition.
5. Further, the Commission vide Notice dated June 09, 2017 scheduled a hearing on the Review Petition on July 7, 2017.
6. The Assam Power Distribution Company Limited (APDCL) submitted their comments on July 4, 2017 on the review Petition as under:
 - 6.1. The Commission in Tariff Order for FY 2017-18 has computed the CSS as the difference between the Average Billing Rate (ABR) and Average Cost of Supply (ACoS), in line with the same philosophy adopted in Tariff Order for FY 2015-16 dated July 24, 2015.
 - 6.2. "The submission of the Petitioner that as Open Access consumers are already paying the charges on contract demand, RPO, etc and hence considering the ABR for CSS computation is not correct", is not logical.
 - 6.3. The Commission has computed Average Cost of Supply (ACoS) of Rs. 7.42/kWh and the same has been considered for calculation of Cross Subsidy with respect to ACoS.
 - 6.4. APDCL has initiated the process for determination of voltage wise cost of supply and the process is in its initial phase.
 - 6.5. The Petitioner has submitted to consider the provisions of National Tariff Policy, 2016 for computation of CSS. As per the formula stipulated in National Tariff Policy, 2016, CSS arrived at is Rs. 2.54/kWh.
 - 6.6. CSS determined by the Commission is in order. However, APDCL prays to pass any such Order, in view of Notification of National Tariff Policy, 2016 by Government of India, which the Commission deems fit and proper in the interest of justice based on the prevalent norms and circumstances and also give APDCL opportunity to recover ARR.
7. As scheduled, a Hearing on Review Petition was held on July 7, 2017 in the Court Room of the Commission. Mr. Sumanta Chand represented the Petitioner and Mr. T.N. Devchoudhury, Mr. A. K. Goswami & Mr. P. K. Baishya represented the Respondent.
8. During the Hearing, the Petitioner and the Respondent re-iterated submissions already made vide their written submissions.

Analysis and Decision

9. Having heard the Petitioner and APDCL and after taking on record the submissions made by the Petitioner and APDCL, the Commission's analysis and decision arrived at is discussed in the following paragraphs:
 - 9.1. As regards the determination of CSS, the Commission in the Order dated March 31,

2017, has stated as under:

“7.5 Cross-Subsidy Surcharge

- 7.5.1 *The Open Access consumers are liable to pay the CSS to compensate the utility for any loss of revenue due to the shifting of the consumer to the Open Access system. Eligible consumers with a connected load of 1 MW and above shall be allowed Open Access. Accordingly, HT category V (C): HT-II Industry consumers may opt for Open Access. In future, if the connected load limit for Open Access is reduced, then HT IV – HT I Industry may also opt for Open Access.*
- 7.5.2 *In the Tariff Order dated July 24, 2015, the Commission had determined the CSS for Open Access customers for FY 2015-16, as the difference between the ABR and ACoS for the category.*
- 7.5.3 *Accordingly, the CSS for HT- I Industry and HT-II industry category, computed in accordance with the above philosophy, is shown in the Table below:*

Table 88: Cross-Subsidy Surcharge for FY 2017-18

Category	Cross-Subsidy Surcharge
HT-II - HT Commercial category	2.11
HT-IV (i) - HT Bulk Supply Government Educational Institutions	0.35
HT-IV (ii) - HT Bulk Supply Others	1.70
HT-V (C) - HT Industry above 150 kVA category	1.31
HT-VII - Oil & Coal	1.51

... ..”(As modified vide Erratum Order dtd 07.04.2017)

- 9.2. The above said method for computation of CSS has been adopted by the Commission in line with Tariff Order for FY 2015-16. Hence, there is no error apparent on the methodology adopted by the Commission for computation of CSS.
- 9.3. The National Tariff Policy 2016 prescribes following formula for computation of CSS:
*“**SERCs may calculate** the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.*

Surcharge formula:

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

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.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.” (emphasis added)

- 9.4. The above quoted paragraph clarifies that even though the National Tariff Policy 2016 prescribes the formula for calculation of CSS, it is not mandatory in nature and each State Regulatory Commission has autonomy to opt for a different formula provided that it upholds the overall objectives of the Electricity Act, 2003. The Commission in Tariff Order for FY 2017-18 has continued with the same methodology considered in Tariff Order for FY 2015-16 for computation in CSS.
- 9.5. With regards to the submission of the Petitioner, the Commission computed the CSS by using the formula prescribed by the National Tariff policy 2016, the results of which is shown in the table below:

Particulars	ABR	C	C/(1-L%)	D	R	CSS
	Rs/kWh	Rs/kWh	Rs/kWh	Rs/kWh	Rs/kWh	Rs/kWh
HT Industries-II above 150 kW	8.73	3.34	3.64	1.81	0.30	1.75

- 9.6. The Commission observes that CSS determined based on the formula prescribed by National Tariff Policy 2016 is Rs. 1.75/kWh, whereas the CSS approved in Tariff Order is Rs. 1.31/kWh, which is 25% lower. Therefore, the Commission is of the view that instead of increasing the burden of Open Access consumer, it has rather provided a relief of 25%, thereby upholding overall objectives of Electricity Act 2003.
- 9.7. Now coming to the broader issue with regard to determination of CSS i.e., should CSS be determined as a difference of applicable energy charge to a consumer category and Voltage wise Cost of Supply (VCoS) or as a difference of ABR and ACoS as followed by the Commission?
- 9.8. In this regard, the Commission first and foremost would like to clarify that the payable tariff determined for HT-II category is within +/- 20% of ACoS and not voltage wise cost of supply as claimed by the appellant. The relevant paragraphs from the Tariff Order are reproduced below:

“6.3.8 Thus, the Commission is required to determine the category-wise cost of supply as well as overall average cost of supply to all the consumers of APDCL. The Commission has accordingly computed the VCoS based on certain assumptions, as a starting point. This computation has to be refined further based on more accurate and reliable data.

6.3.9 In view of all the above reasons, the Commission is of the view that it would not be appropriate to determine tariffs on the basis of VCoS at this point in time, and hence, for the purpose of this Order, the Commission has continued to compute the cross- subsidy with respect to the ACoS. However, the Commission has attempted to ensure that the overall objective of reduction of cross-subsidies to be within the limits of +20% of the ACoS, as laid down in the Tariff Policy as well as several Judgments of APTEL.

6.3.10 Hence, **the Commission has determined the category-wise tariffs in accordance with the ACOS**, with one objective being that the tariffs for HT supply should be lower than the tariff for LT supply. However, this has not been possible for many categories, on account of historical tariff differences and other objectives of tariff determination, i.e., reduction of cross-subsidies, avoidance of tariff shock, etc.” **(emphasis added)**

9.9. As regards the issue of voltage wise cost of supply, the Commission has clearly stated in its Order that VCoS has been computed based on certain assumptions, as a starting point. This computation has to be refined further based on more accurate and reliable data. The Commission has also issued following directive to APDCL:

“Directive 10: Submission of Voltage-wise Losses and Voltage-wise Cost of Supply

APDCL is directed to submit properly reconciled data on voltage-wise losses and VCoS, based on proper energy audit, and with complete explanation and supporting data, along with the Tariff Petition for FY 2018-19”

9.10. The Petitioner has also submitted that calculations of CSS is completely erroneous as ABR is inclusive of contract demand charges, electricity duty, taxes, rebate, RPO charges etc., which are still recoverable by APDCL even when the consumer is procuring power through OpenAccess. Therefore, an ideal condition for calculation of CSS can be found only if the calculation is done with applicable energy charges which the distribution licensee will lose in case the consumer opts for OpenAccess.

In this regard, the Commission would like to clarify that the CSS has to be computed as the difference between the Tariff and the Cost, which reflects the cross-subsidy component. The Tariff Policy states that *“T is the tariff payable by the relevant category of consumers”*. The Tariff payable by the consumers has to two components, viz., Demand Charge and Energy Charge. Hence, the Commission considers the Tariff as ABR/Average Realisation Rate, which comprises the Demand Charges as well as Energy Charges.

9.11. If the Tariff Policy had intended that only the Energy Charges should be considered for the purpose of calculating the CSS, then the Tariff Policy would have stated accordingly, rather than stating *“T is the tariff payable by the relevant category of consumers”*. Out of the total cost of supply around 60%-70% is fixed in nature. On the other hand, the Fixed Tariff component of consumers is only 10%-20% of the total Tariff. Therefore, in case the concept proposed by Petitioner is adopted, the CSS will be much higher than the present level. Thus, the fact that the Open Access consumers are paying the Fixed Charges does not mean that the Fixed Charges should be excluded while calculating the CSS.

In view of the above, the Commission rules that there is no error apparent on face of record regarding the computation of CSS for FY 2017-18 for HT Industries-II category. The Commission finds no merit in the submission of the Petitioner. Hence, no relief has been granted against this Review Petition.

With the above observations and decisions on the issue submitted for review, the Review Petition (Petition No 6/2017) filed by the Petitioner stands disposed of.

(S. C. Das)
Member, AERC

(D. Chakravarty)
Member, AERC

(N. K. Das)
Chairperson, AERC