

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

'Vidyut Niyamak Bhawan', Near I.S.B.T., P.O.-Majra, Dehradun-248171

STATEMENT OF REASONS (SoR)

UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 were notified on 28.10.2010 whereas UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 were notified on 13.01.2015. The Regulation 23 of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 and Regulation 22 of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 very categorically specifies that cross subsidy surcharge shall not be levied on long term/medium term open access consumer and also by a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

The Rationale behind exempting long term/medium term open access consumers from the levy of cross subsidy surcharge was to promote the Open Access more so in the light of the fact that UPCL was in continuous shortage of power. In FY 2010-11, when Open Access Regulations, 2010 were notified, against the State's power requirement of 9850 MUs, the availability of power for UPCL was only 9255 MUs thus, there was an annual shortage of 595 MUs in the State. Later on in FY 2015-16, when Open Access Regulations, 2015 were promulgated (superseding the earlier Open Access Regulations, 2010), the power requirement in the State was 12888 MUs against the availability of 12674 MUs to UPCL, thus again, there was an annual deficit of 214 MUs. Now, since then the power supply position in the State has improved substantially with development of Power Markets in the form of power/energy exchange in the country, commissioning of Gas based thermal generating station in the State. As per the Commission's projection as against the energy requirement of 14123.57 MU during FY 2018-19 in the State, the total estimated energy available from firm sources is 14584.35 MU leaving an overall surplus of 407.78 MU. Therefore, in today's improved power supply/availability scenario vis-a-vis demand, if the subsidising consumers still want to procure power through Open Access, then without prejudice to the interest of the distribution licensee and considering the loss of significant amount of cross subsidy to the distribution licensee (UPCL), both the long term/medium term open access

consumers and the short term Open Access consumers should be levied cross subsidy surcharge.

The Hon'ble Supreme Court in Sesa Sterlite Ltd. Vs Orissa Electricity Regulatory Commission in Civil Appeal No. 5479 of 2013 had held that the mechanism of surcharge is to compensate the licensee for the Cross-subsidy, i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy. The relevant extract of the judgement is reproduced as under:

"28.... In nutshell, CSS is a compensation to the distribution licensee irrespective of the fact whether its line is used or not, in view of the fact that, but for the open access the consumer would pay tariff applicable for supply which would include an element of cross subsidy surcharge on certain other categories of consumers. What is important is that a consumer situated in an area is bound to contribute to subsidizing a low and consumer if he falls in the category of subsidizing consumer. Once a cross subsidy surcharge is fixed for an area it is liable to be paid and such payment will be used for meeting the current levels of cross subsidy within the area. A fortiori, even a licensee which purchases electricity for its own consumption either through a "dedicated transmission line" or through "open access" would be liable to pay Cross Subsidy Surcharge under the Act. Thus, Cross Subsidy Surcharge, broadly speaking, is the charge payable by a consumer who opt to avail power supply through open access from someone other than such Distribution licensee in whose area it is situated. Such surcharge is meant to compensate such Distribution licensee from the loss of cross subsidy that such Distribution licensee would suffer by reason of the consumer taking supply from someone other than such Distribution licensee."

The Hon'ble APTEL in judgement dated 03.10.2011 in Appeal no. 193 of 2011 in the matter of M/s DLF Utilities Limited Vs. Haryana Electricity Regulatory Commission and Ors. had held that:

"22 In OCL India Ltd. Vs. OERC: 2009 ELR (APTEL) 765, it has been held inter alia that the underlying philosophy behind cross subsidy surcharge is that a consumer has to compensate for the loss sustained by the distribution licensee. Thus necessarily open access has not been restricted by Section 42 (2) on the lines of the distribution licensee. It is a compensatory charge payable to the distribution licensee on the logic that but for the open access a consumer would have taken quantum of power from a distribution licensee

in which case a consumer was required to pay a tariff that definitely has an element of cross subsidy....”

Hon’ble APTEL in another judgement dated 09.02.2010 in Appeal nos. 119 & 125 of 2009 in the matter of Chhattisgarh State Power Distribution Co. Ltd. Vs. Aryan Coal Beneficiations Pvt. Ltd. has considered the rational in the purpose of Cross-Subsidy Surcharge. The relevant extract of the judgement is reproduced below:

“17 The cross subsidy surcharge, which is dealt with under the proviso to sub-section 2 of Section 42, is a compensatory charge. It does not depend upon the use of Distribution licensee’s line. It is a charge to be paid in compensation to the distribution licensee irrespective of whether its line is used or not in view of the fact that but for the open access the consumers would have taken the quantum of power from the licensee and in the result, the consumer would have paid tariff applicable for such supply which would include an element of cross subsidy of certain other categories of consumers....”

In the light of the above judicial pronouncements made by Hon’ble Supreme Court and Hon’ble APTEL it is unambiguous that Cross-subsidy Surcharge is compensatory in nature and is payable by every subsidising consumer when it decides not to take supply from the Distribution Licensee of the area but to avail it from another Licensee.