

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 23 of 2017 (Suo-Motu)

In the matter of:

Suo-moto proceedings in the matter of Office Memorandum issued by UPCL regarding continuation of Continuous Power Supply Surcharge/Additional Surcharge on Power purchased through open access.

In the matter of:

1. Uttarakhand Power Corporation Ltd.
2. M/s India Glycols Ltd.
3. M/s Hindustan National Glass & Industries Ltd.
4. M/s Asahi India Glass Ltd.
5. M/s Vista Alps Industries Ltd.
6. M/s Kashi Vishwanath Textile Mill (P) Ltd.
7. M/s Air Liquid North India Pvt. Ltd. ... Respondents

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: May 16, 2017

Date of Order: May 23, 2017

The Order relates to the suo-moto proceedings initiated by the Commission in the matter of Office Memorandum issued by UPCL regarding continuation of Continuous Power Supply Surcharge/Additional Surcharge on Power purchased through open access.

1. Background and submissions

- 1.1 The Commission had, on receipt of various representations from stakeholders, vide its Retail Tariff Order dated 29.03.2017 for FY 2017-18 abolished the applicability of continuous supply surcharge on power purchase through open access under collective or

bilateral transactions.

- 1.2 M/s India Glycols Ltd., M/s Hindustan National Glass & Industries Ltd., M/s Asahi India Glass Ltd., M/s Vista Alps Industries Ltd., M/s Kashi Vishwnath Textile Ltd. and M/s Air Liquid North India Pvt. Ltd. made representations and raised similar objections on UPCL's OM in respect of rate schedule for FY 2017-18. Since representations received from all the stakeholders are similar hence, the same have been dealt with collectively in this order.
- 1.3 All the above mentioned stakeholders contended that the above referred OM of UPCL specified that the additional surcharge as approved by the Commission vide its order dated 18.08.2011 shall continue to be payable by those embedded open access consumers who avail continuous supply option and draw power through open access. The stakeholders also submitted that they have been procuring power through open access since last 4-5 years. The stakeholders informed that apart from charging/levying continuous supply surcharge @ 15% of the energy charges on power supplied by UPCL, the same rate of charge, i.e. 15% is also being levied by UPCL on the power purchased through open access by such embedded open access consumers.
- 1.4 The stakeholders submitted that UPCL while implementing the tariff order dated 29.03.2017 vide its OM dated 31.03.2017 stated that the continuous supply surcharge shall not be applicable on power procured through open access, however, additional surcharge as approved by the Commission vide its order dated 18.08.2011 shall continue to be payable by those embedded open access consumers who avail continuous supply option and draw power through open access.
- 1.5 The stakeholders, further, submitted that the Commission had vide its order dated 18.08.2011 imposed the surcharge termed as Additional Surcharge on power brought through open access by continuous supply consumers and the same was kept at 15% of the applicable ToD tariff. This surcharge was applicable only for consumers opting for continuous supply and not subjected to load restrictions. Further, UPCL till date has been levying 15% surcharge on open access power and has been terming this as continuous supply surcharge. There is no separate head in the bill for Additional surcharge for levy/charge on the power purchased through open access.
- 1.6 The stakeholders submitted that during the tariff proceedings UPCL did not make any representation that the additional surcharge being levied was different from the

continuous supply surcharge. The stakeholders, further, submitted that since the Tariff Order dated 29.03.2017 for FY 2017-18 abolished the continuous supply surcharge on open access power, hence, the tariff for the period from 01.04.2017 has to be strictly in terms of the aforesaid Tariff Order.

- 1.7 M/s Open Access Users Association (OAU) submitted that the UPCL's Office Memorandum is misconceived and seeks to unduly enrich the Distribution Company at the cost of the open access consumers. The Office memorandum issued is based on general statements and consolidated data whereas Act and Regulations clearly lay down that DISCOM has to demonstrate stranded capacities and reasons for levy of other surcharges conclusively and continuously. M/s OAU further submitted that Commission has directed the DISCOM to bank the surplus energy during the month of April, 2017 to September, 2017 and further permitted to bank the balance power for the next financial year 2018-2019. The Association also submitted that infact previously for the financial year 2016-17, State was in deficit as per the Tariff Order hence, in no way there appears any reason for charging Additional Surcharge.
- 1.8 M/s OAU submitted that as per National Tariff Policy 2006, 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. They further submitted that since all fixed costs against network cost is being levied through transmission and wheeling charges, therefore, demand charges are being recovered against fixed cost of generation. Hence, keeping the same into consideration there stands no reason for levying Additional Surcharge unnecessarily. Power purchase commitments cannot be taken as stranded if utility is purchasing short term power/overdrawing under UI during the period and shutting/backing down its generating plants.
- 1.9 Copies of stakeholder's representations were forwarded to UPCL for its comments. UPCL vide its reply dated 26.04.2017 referred to the Commission's order dated 18.08.2011 wherein it was directed to levy Additional Surcharge from continuous supply consumers on the energy drawn through open access at 15% of the applicable ToD rate of energy charge on the basis of prevalent tariff order. Accordingly, vide OM dated 30.08.2011, UPCL had implemented the Commission's directions in the matter.

1.10 On the Commission's direction to stop charging continuous supply surcharge on open access energy, UPCL submitted that UPCL is not charging continuous supply surcharge on the Open Access energy. However, at present the continuous supply surcharge/additional surcharge on continuous supply consumers is being charged @ 15% on total energy including UPCL and open access energy through the centralized billing system. By it both continuous supply surcharge on UPCL energy and additional surcharge on open access energy of such consumers are being charged. Since the rate of charge of additional surcharge and continuous supply surcharge are same, i.e. 15% of energy charges, therefore, additional surcharge and continuous supply surcharge are levied in same head in the centralized billing system, i.e. continuous supply surcharge. After development of online open access billing module, continuous supply surcharge on UPCL's energy and additional surcharge on open access energy shall be shown separately in the monthly bills.

1.11 A hearing was held on 16.05.2017 in the matter wherein UPCL and Respondents reiterated their written submissions as above.

2. Commission's views and decision

2.1 Before analysing the submissions made by the stakeholders as well as reply submitted by UPCL in the matter, it would be relevant to examine the legal context in which additional surcharge is leviable. Section 42(4) of the Electricity Act, 2003 stipulates as follows:

"(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply."

Further, Clause 8.5.4 of the Tariff Policy dated January 28, 2016 also provides for levy of additional surcharge 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."

In accordance with the Section 42(4) of the Act and Tariff Policy, provisions for

charging additional surcharge has already been specified in UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010. The same provisions have also been provided in UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015. Relevant extract of Regulation 23 of the existing Open Access Regulations, 2015 is as follows:

- “(1) Any 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 on the charges of wheeling, 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 sub-section (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, a detailed calculation statement of fixed cost which the licensee is incurring towards his obligation to supply.*

The Commission shall scrutinize the statement of calculation of fixed cost submitted by the distribution licensee and obtain objections, if any, and determine the amount of additional surcharge.

Provided that any additional surcharge so determined by the Commission shall be applicable on prospective basis on all open access consumers.”

Hence, provision of levying additional surcharge by the licensee exists in the Regulations. However, before levying the same, submission of detailed calculations and relevant statement by the distribution licensee is a pre-requisite. Further, based on the objections/comments received from stakeholders the Commission shall determine the additional surcharge to be levied on prospective basis from all open access consumers.

- 2.2 Based on the above provisions of the Act, Policy and Regulations similar views had also been taken by the Commission on UPCL’s Petition seeking determination of Additional Surcharge to meet the fixed cost arising out of obligation to supply continuous power. Accordingly, the Commission had vide its Order dated 18.08.2011 determined the continuous supply surcharge for FY 2011-12. Vide the said Order, the Commission decided

to allow normative additional surcharge of 15% on prevalent energy charges as per Tariff Order. Relevant extract of the Para 12 of the Order dated 11.08.2011 is as follows:

“12 Based on the above and considering the uncertain scenario of power purchase cost on a day to day basis, it has been considered that, since, embedded consumers of licensee, availing continuous supply option, are liable to pay the open access charges namely wheeling charges, transmission charges, cross-subsidy charges etc. except continuous supply surcharge of 15% while availing open access, a normative additional surcharge of 15% on prevalent energy charges as per Tariff Order, may be levied on energy drawn through open access by these embedded consumers availing continuous supply option and seeking to draw part or full of its demand through open access. ”

Further, the Commission at Para 16 of the Order had held as follows:

“16 In the light of the above, the Commission Orders that:

(i) The licensee shall charge Additional Surcharge only from those embedded consumers who avail the continuous supply option and draw power through open Access for meeting their part/full load requirements.

(ii) The Additional Surcharge shall be levied on the energy drawn through open access @ 15% of the applicable ToD rate of energy charge on the basis of prevalent Tariff Order.

(iii) If UPCL feels that the above normative additional surcharge determined above is not adequate and does not cover the entire power purchase fixed costs of the licensee, UPCL may submit a proposal giving a detailed calculation statement for recovery of the any such shortfall in accordance with provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 and Tariff policy. ”

However, for subsequent financial years, UPCL did not file any petition in accordance with the prevalent Open Access Regulations and continued levying the additional surcharge. UPCL's contention that it is not charging continuous supply surcharge on the power sourced through open access as directed by the Commission in the tariff order FY 2017-18. However, as submitted by UPCL that at present the continuous supply surcharge/additional surcharge on continuous supply consumers is being charged @ 15% on total energy including UPCL and open access energy through the centralized billing system. UPCL has further submitted that both continuous supply surcharge on UPCL energy and additional surcharge on open access energy of such consumers are being charged. UPCL has also submitted that since the rate of charge of additional surcharge and

continuous supply surcharge are same, i.e. 15% of energy charges, therefore, additional surcharge and continuous supply surcharge are levied in same head in the centralized billing system, i.e. continuous supply surcharge. On this continuous supply surcharge/ additional surcharge on the energy drawn through open access, the Commission based on the representations made by various stakeholders during the tariff proceedings for FY 2017-18 had directed that no continuous supply surcharge would be leviable on energy sourced through open access. Now UPCL is taking the premise that it is not charging any continuous supply surcharge as directed by the Commission but is charging the additional surcharge as approved by the Commission vide its Order dated August 18, 2011 as the said Order is still applicable. In this regard, it is important to note that UPCL was continuously billing this additional surcharge for past 5-6 years as continuous supply surcharge and the stakeholders during the Tariff proceedings for FY 2017-18 requested the Commission to discontinue the same. Accepting their representations made in this regard, the Commission directed UPCL to discontinue levying such charge w.e.f. April 01, 2017. Even though additional surcharge was being billed under the nomenclature of continuous supply surcharge as submitted by UPCL, the Commission has already vide its Tariff Order dated March 29, 2017 decided to discontinue levying such charges. The Commission is of the view that when no continuous supply surcharge was being levied by UPCL, there is no relevance of any representations made by Open Access consumers and discontinuing the same by the Commission accordingly. Hence, UPCL has misinterpreted the intent of the Commission.

- 2.3 Notwithstanding the above, while approving the power purchase requirements for the ensuing year, the Commission based on the past trends duly adjusts the power sourced through open access by the existing embedded open access consumers. In Tariff Order dated 29.03.2017, the Commission has approved demand-supply scenario in the State for FY 2017-18 wherein UPCL has marginal surplus during FY 2017-18 and the cost of the same has already been factored in the ARR for FY 2017-18. Further, since sales of industrial consumers have also been adjusted by open access procurement by such consumers, stranded power if any, will be due to the reason that either the projected supply/ availability has exceeded the projected demand or more consumers are resorting to procurement of power through open access. Hence, unless substantiated by UPCL, that the power has become stranded due to the energy procured by the open access consumers in

excess of what was anticipated, there is no rationale for levy of additional surcharge.

- 2.4 The Open Access Regulations clearly provide that the licensee has to establish, by way of filing a petition before the Commission, that the power remained stranded on account of increase in capacities than what was envisaged, for procuring power through open access. Further, on six monthly basis licensee has to mandatorily submit detailed calculation statement of fixed cost which the licensee is incurring towards his obligation to supply power. Moreover, UPCL has not demonstrated that due to procurement of power through open access by such consumers, the power arranged through long-term contracts remained stranded. In the absence of any approved additional surcharges w.e.f. 01.04.2017, the licensee is not entitled to levy the same from open access consumers as also decided vide the Commission's Tariff Order dated 29.03.2017.
 - 2.5 For the purpose of claiming additional surcharge from such stakeholders UPCL may file a petition as provided in the Regulations. Till determination of such charges by the Commission UPCL is directed to stop levying the same with immediate effect in accordance with the directions provided in the Tariff Order dated 29.03.2017.
3. Ordered accordingly.

(Subhash Kumar)
Chairman