RP No:03/2024

No:N/49/2024

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No.16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru-560052.

Dated: 15.10.2024

RP No. 03/2024

<u>Present</u>

Shri P. Ravi Kumar	..	**Chairman**
Shri H.K. Jagadeesh	..	**Member (Legal)**
Shri Jawaid Akthar	..	**Member**

<u>**BETWEEN:**</u>

1. **Bangalore Electricity Supply Company Ltd.,**
   The Managing Director
   Corporate Office, KR Circle,
   Bangalore 560001

2. **Mangalore Electricity Supply Company Limited**

   MESCOM Bhavana, Kavoor Cross Road,
   Bejai, Mangalore – 575 004

3. **Hubli Electricity Supply Company Limited**
   Navanagar, P.B Road,
   Hubballi-580025

4. **Chamundeshwari Electricity Supply Corporation Limited**

    Corporate Office, #29,
    Vijayanagara, 2nd Stage
    Hinkal, Mysuru – 57001

5. **Gulbarga Electricity Supply Company Limited**

    Station Road, Kalaburagi
    Karnataka -585102   .……… **Petitioners**

(Petitioners Represented by Sri. Shahbaaz Hussain, Advocate, for Precinct Legal)

- Vs-

Nil   .…**Respondent**

This petition is filed under Section 94 of the Electricity Act, 2003 R/w Order 47 of the Code of Civil Procedure, 1908, with a prayer to Review the Tariff Order dated 28.02.2024 to the extent of determination of Cross Subsidy Surcharge.

The Brief facts of the case of the petitioners are as follows: -

1. This Commission as per Order dated 28.02.2024 passed Tariff Order-2024 for FY-25. In the said Tariff Order while determining Cross Subsidy Surcharge at Chapter 6.7.5 a specific provision has been made regarding the determination of the CSS. While determining CSS, this Commission has not taken into consideration the formula stipulated at Clause 8.5.1 of National Tariff Policy 2016, which reads as follows: -

    8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be

levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the Cross-Subsidy Surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

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.

2. Further, this Commission has failed to take note of the 4th amendment to the KERC (Terms and Conditions for Open Access) Regulations. This Commission had adopted the formula stipulated in the National Tariff policy, 2016 while determining CSS in the Tariff Orders passed prior to 2024. But, in the Tariff Order 2024 this Commission has erroneously determined the CSS by deviating from the said policy and by considering "Actual Cross Subsidy". The National Tariff Policy provides the methodology for determination of CSS and further clarifies that CSS is the difference between the Tariff of the relevant consumer charge by DISCOM and the cost of supply for the said consumer category. The Hon'ble ATE in Reliance Infrastructure Limited V/s MERC in Appeal No.

178/2011, has affirmed that CSS is the difference between the Tariff of relevant consumer category and cost of supply for such category.

3. Further, National Tariff Policy 2016 also mandates that CSS must be determined by considering the Voltage-wise cost of supply. This Commission in the Tariff Orders of the previous years determined the CSS by adhering to Clause 8.5.1 of the NTP and as per the directions of the Hon'ble ATE in its Order dated 8.10.2014 in Appeal No. 42/2014. Moreover, this Commission has recognized such directions of the Hon'ble ATE and has indicated in the Tariff Order-2023.

4. This Commission has erroneously determined the CSS by deviating from the previously existing methodology which was in line with NTP 2016 and the decisions of the Hon'ble ATE.

5. In the Tariff Order 2024, this Commission though determined and calculated the voltage-wise cost of supply as per the NTP, but it has considered an additional step i.e., "The actual CSS" as against the formula indicated in the NTP and the directions of Hon'ble ATE.

6. The petitioners have contended that there is a prima-facie error in the Tariff Order 2024 and as such the same need to be reviewed. Hence, the petitioners have prayed this Commission to allow the review petition.

7. On 3.07.2024 this review petition was posted for hearing on admission. At that juncture the Commission noticed that there were 9 days delay in preferring this review petition and as such on the basis of the reasons stated by the petitioners in their affidavits and also after hearing the counsel for the petitioners, this Commission passed an Order and there by condoned the delay in filing the petition. Further, a direction was given to the office to take steps for holding public hearing regarding

the relief sought by the petitioners in the review petition.

8. In pursuance of Order dated 03.07.2024, public hearing notice was given through the website of the Commission and also through the newspapers publications as per the circulations dated 23.07.2024 in the following newspapers: -

    I.   Prajavani   …. Kannada language

    II.   Vijayavani   …. Kannada language

    III. Deccan Herald … English language

    IV.   Times of India   … English language

9. As against the issue of Public Hearing Notice, the written objections / suggestions from the following persons/ stakeholders have been received by the Commission:

    (a) M/s Gokak Textile Limited:

    M/s Gokak Textile Limited in its objection has referred the provisions of Section 62, subsection 4 of Electricity Act,2003. The objector has stated that the petitioners should have avail the provision as provided under section 111 of the Act for filing the appeal against the Tariff Order issued by the Commission. The objector has referred the Order 47 Rule 1 of Code of Civil Proceedure,1908 about the grounds on which the review petition is maintainable and also referred the Hon'ble Supreme Court of India decision in Parison vs Sumitri Devi (1997(8) SCC 715) that a review cannot be an appeal in disguise.

    (b) Karnataka Small Scale Industries Association (KASSIA):

    KSSIA in its objection has submitted that a period of six months has been passed from the date of issue of Tariff Order by the Commission

for FY25 and requested for not to admit the review petition filed by the Petitioners for review of cross subsidy surcharge and which can be taken up in the next annual tariff revision for FY26. Any revision in cross subsidy surcharge should not affect the present LT and HT consumers who are not opted open access.

(c) Distributed Solar Power Association:

The objector has referred the provisions of National Tariff Policy and the Electricity Act,2003 with regard to the levy of CSS. The Green Energy Open Access consumer (GEOA) is a different category of consumer as compared to the consumer from conventional power and conventional CPP. The GEOA consumer is always under the ambit of contract demand and demand charges up the total demand met either by sourcing power from the State utilities or GEOA. The CSS on the GEOA consumer may be calculated at 20% of the energy cost of the particular category of consumer without including fixed cost/ demand charges. If it is not possible then a concession to the tune of CSS calculated on fixed cost to be provided to GEOA. No further hike to be made in the CSS for industrial and commercial consumers.

(d) DGEPL:

The objector has submitted the objection during the public hearing on the subject and narrated the same before the Commission. The objector has submitted that with the levy of various charges for open access consumer under GEOA, the realization rate is lesser than wind generic tariff. The objector has further submitted that the RE generators are penalized with open access charges which is more than the difference of APPC cost and Tariff. The CSS should not be

levied on to all RE power when the fixed tariff of Rs.5 per unit has been fixed by the Commission for consumers who opt for DERS –Monsoon scheme. The objector has requested the Commission not to consider the review petition of the ESCOMs and continue with the existing CSS during non- monsoon period, waive off the CSS to wind generators for monsoon period till the DERS scheme is in force and waive off the transmission charges of Rs.1.66 lakhs per MW per year for the ale power under third party mode under OA.

(e)Renewable Energy Developers Association of Karnataka:

(i)The Objector stated that the Petitioners have proceeded on wrong premise that the methodology for determination of CSS provided in NTP is mandatory and Commission is bound by the same. The Regulatory Commission's are empowered to frame policy in the form of Regulations and they are guided by National Electricity Policy, the National Tariff Policy as well as National Electricity Plan in terms of section 79(4) and 86(4) of the Electricity Act,2003 by referring the Para 18 and 19 of the Judgement of the Hon'ble Supreme Court of India in the case of PTC India Ltd.92010) 4 SCC 603. The Objector also referred the Order of the Hon'ble Appellate Tribunal for Electricity in the case of M/s Maruthi Suzuki India ltd Vs Haryana Electricity Regulatory Commission (2013 ELR (APTEL)1).

(ii) The Objector has stated that, Tariff Policy under section 3 of Electricity Act,2003 is the guidance to the Commission while specifying the terms and conditions for determination of tariff and need not be interpreted as a binding rule. The Commission has determined the CSS by considering all the relevant factors and the extent of requirement of cross subsidy. The petitioners have picked only CSS of HT2(a) tariff

schedule ignoring the CSS of HT 2(b) category, where the CSS is quite substantial and requested for dismissal the petition. The objector has also referred the decision of the Hon'ble Supreme Court in M/s Sesa Sterlite Ltd v/s Orissa Electricity Regulatory Commission and Others (AIR 2014 SUPREME COURT 2037) with reference to the rational for collection of CSS and the provision made in the Electricity Act,2003 for collection of CSS.

(i)   The Objector has submitted that as per the Electricity Act, the CSS needs to be reduced progressively. Instead it is progressively increasing, which is detriment to the generator particularly to the renewable generators. The Objector has submitted that when the ESCOMs are permitted to sell the energy without losing money at Rs.5 per unit under DERS scheme even with the price difference of Rs.1.90 per unit between HT 2(a) tariff of Rs.6.90 per unit and DERS selling price of RS.5 per unit, there is no cause for levy of CSS.

(ii)   The Objector has further submitted that for the Tariff Order 2024 issued on 28.02.2024 for FY 2024-25, the ESCOMs have filed the Review Petition on 18.06.2024. As the Tariff Order was issued for the entire financial year, it cannot be changed / altered again and hence requested for rejection of the Review Petition filed by the Petitioners.

10. The Commission held the Public Hearing on 21.08.2024 in the Court Hall of the Commission at 4.00 PM in the matter of determination of Cross Subsidy Surcharge to the extent sought in the Review Petition.

11. In the public hearing, the following persons were made oral / written submission:

   (1) Sri Ashu Gupta, Vice President Distributed Solar Power Association.

(2) Sri Shahbaaz Husain, Advocate, on behalf of ESCOMs.

The Objectors and the Petitioner during the public hearing has reiterated the some of the issues / objections raised in their written objections in the matter submitted earlier to the Commission. The gist of the oral submission made during the public hearing are as under:

(1)   Distributed Solar Power Association (DiSPA):

a) The Distributed Solar Power Association represented by Sri Ashu Gupta, Vice President has referred the provisions of National Tariff Policy and the Electricity Act,2003 with regard to the levy of CSS.

b) The Green Energy Open Access consumer (GEOA) is a different category of consumer from the consumers of conventional power and conventional CPP. The GEOA consumer is paying the demand charges up the total contract demand for sourcing power from either the State utilities or GEOA.

c) The CSS on the GEOA consumer may be calculated at 20% of the energy cost of the particular category of consumer without including fixed cost/ demand charges or extend concession to the tune of CSS calculated on fixed cost to GEOA.

d) No further hike to be made in the CSS for industrial and commercial consumers.

(2) Sri Shahbaaz Husain, Advocate, on behalf of ESCOMs.

a) The counsel for the petitioner has submitted that, the petitioner in its tariff application filed before the Commission has computed the CSS as per the formula specified in the National Tariff Policy, KERC (Term and Conditions for Open Access) Regulations and KERC MYT Tariff Regulations which has been also adopted by the Commission

in the Tariff Orders issued for earlier periods.

b) The counsel for the petitioner has submitted various provisions as provided under Electricity Act,2003, National Tariff Policy, National Electricity Policy, KERC (Terms & Conditions for Open Access) Regulations and KERC Multi Year Tariff Regulations for determination of CSS

c) The Counsel for the petitioner has referred the decisions of the Hon'ble Supreme Court of India and the Hon'ble Appellate Tribunal for Electricity in the matter of determination of CSS and requested for adoption of the same formula as specified in the Tariff Policy which was earlier adopted by the Commission.

d) The counsel for the petitioner has referred the computation of CSS by the Commission in Annexure -4 of the Tariff Order-2024, wherein CSS has been computed as per the formula specified in the NTP and the relevant Regulations issued by the Commission. After computation of CSS, the Commission has considered the "actual Cross Subsidy" of the ESCOMs as a whole for each of the category of consumers while approving the CSS and allowed lower of CSS computed and actual Cross Subsidy, which is not provided in the NTP formula or the relevant Regulations issued by the Commission.

e) The Petitioner has submitted the details for under recovery of CSS with the approved CSS and requested for approval of CSS computed as per the formula specified in the NTP and KERC (Terms & Conditions for Open Access) Regulations.

f) The Petitioner also submitted that the Cross Subsidy is the difference

between the Average Cost of Supply and Approved Average Tariff of the relevant tariff category of consumer to be paid by the consumers who avail power supply from the distribution licensee and which is being used to compensate the cross subsidized consumers. CSS is the difference between the Average Tariff payable by the relevant category of consumer and the cost of distribution licensee to supply electricity to the consumers of the applicable class computed as per the formula stipulated in the NTP and subject to limit of 20% of the average tariff payable by the relevant category of consumer. The CSS is payable only by the relevant category of consumer who avail power under Open Access (from other than distribution licensee.

g) The Petitioner has referred the adoption of National Tariff Policy formula by other State Electricity Regulatory Commissions in computation and approval of CSS in the respective State and requested to approve the CSS for FY25 as per the formula as stipulated in National Tariff Policy and which has been also adopted by the Commission in its earlier Tariff Orders.

12. we have carefully examined the grounds urged by the petitioners in the review petition, in the light of submission made on behalf of the petitioners and also the interested persons.

13. The points that would arise for our consideration are as follows:

Point No.1: Whether the petitioners have established that there is an error apparent on the face of the record with regard to determination of the CSS in the Tariff Order 2024, dated 28.02.2024?

Point No.2: What order?

14. For the reasons stated below, we answer the above points as under:

Point No.1 :- In the affirmative

Point No. 2:- As per final Order

REASONS

Point No. 1

15. The materials available on record would indicate that the tariff applications were filed by the Distribution Licensees (ESCOMs) for the approval of Annual Performance Review for FY23, Annual Revenue Requirement for FY25 and retail supply tariff for FY25. In the tariff applications, the distribution licensees had also claimed the CSS as under:

Table-1

BESCOM   Paise per unit

Voltage Class	HT-1	HT-2(a)	HT-2(b)	HT-2 (c (i)	HT-2(c)(ii)	HT-3	HT-4	HT-5	HT-6
66 kV & Above	-57.82	203.20	286.80	182.18	229.20	-50.82	135.18	286.6	164.82
HT-11kV or 33kV	110.92	156.08	286.80	129.08	229.20	-103.92	82.08	286.6	217.92
MESCOM									
66 kV & Above	146	160	253	140	222	-	117	366	-
HT	146	155	153	135	222	-	112	366	--
LT	146	87	253	67	202	-	44	366	

CESC									
66 kV & Above	145.18	208.35	275.90	214.87	246.68	35.33	255.16	611.84	86.13
HT-11kV or 33kV	145.18	208.35	275.90	214.87	246.68	27.43	255.16	611.84	78.24
HESCOM									
66 kV & Above	0.00	208.73	255.97	211.79	248.88	248.88	90.77	455.79	270.54
HT-11kV or 33kV	0.00	197.15	255.97	211.79	248.88	248.88	62.23	455.79	270.54
	LT-2(a)	LT-2(b)	LT-3	LT-(c)	LT-5	LT-6(c)	LT-7		
	40.83	255.56	271.82	130.71	252.80	146.58	761.79		
GESCOM									
66 kV & Above	18.00	125.00	265.80	224.40	64.00	0.00	171.00	657.00	585.40
HT-11kV or 33kV	0.00	0.00	246.00	39.00	0.00	0.00	0.00	657.00	585.40

16. The Commission had issued the combined Tariff Order-2024 on 28.02.2024 by approval of Annual Performance Review for FY23, Revised Annual Revenue Requirement and Retail Supply Tariff for FY 25 of ESCOMs. In the Tariff Order issued, the Commission, had determined the CSS at 66 kV and above, HT and LT voltage levels for the State as a whole applicable to all Open Access / Wheeling transactions in the area coming under ESCOMs for FY-25 as under:

Table-2

Approved CSS for the ESCOMs for FY25   **Paise per unit**

Voltage Class	HT-1	HT-2(a)	HT-2(b)	HT-2(c)(i)	HT-2(c)(ii)	HT-3	HT-4	HT-5	HT-6	HT-7	
66 kV & Above	0	55	246	0	121	0	37	305	230	0	
HT-11kV or 33kV	0	55	246	0	121	0	37	305	230	0	
LT											
LT-1	LT-2	LT-3(a)	LT-3(b)	LT-4(a)	LT-4(b)	LT-4(c)	LT-5	LT-6(a)	LT-6(b)	LT-6(c)	LT-7
48	120	209	510	0	0	231	71	0	0	0	448

17. The Commission in its Tariff Order under Annexure-4 has computed the approved Cross Subsidy Surcharge as under:

Table-3

Calculations for Cross Subsidy Surcharge payable by Open Access customers for FY25

Sl. No.	Particulars			
1	Energy Input in Mu		82551.31	
2	Power Purchase Cost (PPC) including RE source and excluding KPTCL Transmission charges/ SLDC charges in Rs. Crs.		45850.00	
3	PPC paise per unit (Sl. No.2/1*1000)		555.41	

		Details of SCC at 66 kV level (paise per unit)	Details of SCC at 33kV level (paise per unit)	Details of SCC at LT level (paise per unit)
4	Power Purchase cost per unit(=sl. No.3)	555.41	555.41	555.41
5	Transmission Loss in % including Commercial loss	2.71	2.71	2.71
6	PPC after accounting transmission loss (sl. No.4/1- Sl.No.5/100)	570.89	570.89	570.89
7	ESCOMs loss at 33 kv/11kv level in % including commercial losses	0.00	3.12	3.12
8	PPC after accounting 33kv /11kv losses (Sl.No.6/(1-7*100)	570.89	589.29	589.29
9	ESCOMs loss at LT level in % including commercial losses	0.00	0.00	6.81
10	PPC after accounting LT losses (Sl.No.8/(1-9*100)	570.89	589.29	632.36
11	Over all Transmission charges per unit including carrying cost on Regulatory Assets	85.62	85.62	85.62
12	ESCOMs average wheeling charges at 33kv/11kv level	0.00	35.89	35.89
13	ESCOMs average wheeling charges at LT level	0.00	0.00	83.75
14	Add: Carrying cost on Regulatory Assets	0.00	0.00	0.00
15	Add: Cost of REC to meet RPO per unit	0.00	0.00	0.00
16	**Overall cost of supply (Sl. No.10+11+12+12+14+15)**	**656.51**	**710.81**	**837.63**

Computation of CSS for FY25

(In paise per Unit)

Sl.No.	Particulars	HT-1	HT-2(a)	HT-2(b)	HT-2(c)(i)	HT-2(c)(ii)	HT-3	HT-4	HT-5	HT-6	HT-7
		1	2	3	4	5	6	7	8	9	10
17	Average Tariff (Based on annexure -3 of all ESCOMs	730.00	959.00	1232.00	905.00	1025.00	356.00	941.00	1523.00	1150.00	905.00
18	Cross Subsidy at 66 kv & above ((sl. No.17-656.51)	73.49	302.49	575.49	248.49	368.49	-300.51	284.49	866.49	493.49	248.49
19	Cross Subsidy at HT level ((sl. No.17-710.81)	19.19	248.19	521.19	194.19	314.19	-354.81	230.19	812.19	439.19	194.19
20	Cross Subsidy at LT level ((sl. No.17-837.63)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
21	20% of Tariff (20% of sl. No. 17)	146.00	191.80	246.40	181.00	205.00	71.20	188.20	304.60	230.00	181.00
22	Applicable Cross Subsidy surcharge at 66 kv & Above (Lower of sl.No.18 & sl. No.21)	73.49	191.80	246.40	181.00	205.00	-300.51	188.20	304.60	230.00	181.00
23	Applicable Cross Subsidy surcharge at HT level (Lower of sl.No.19 & sl. No.21)	19.19	191.80	246.40	181.00	205.00	-354.81	188.20	304.60	230.00	181.00
24	Applicable Cross Subsidy Surcharge at LT level (Lower of sl.No.20 & sl. No.21)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Actual Cross subsidy	-174.00	55.00	328.00	1.00	121.00	-548.00	37.00	619.00	246.00	1.00
	CSS at 66 kv & Above level	**-174**	**55**	**246**	**1**	**121**	**-548**	**37**	**304**	**230**	**1**
	CSS at HT level	**-174**	**55**	**246**	**1**	**121**	**-548**	**37**	**304**	**230**	**1**
	CSS at LT level	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

	CSS to LT Installations	LT-1	LT-2	LT-3(a)	LT-3(b)	LT-4(a)	LT-4(b)	LT-4(c)	LT-5	LT-6(a)	LT-6(b)	LT-6(c)	LT-7
		11	12	13	14	15	16	17	18	19	20	21	22
17	Average Tariff (Based on annexure -3 of all ESCOMs	952	1024	1113	2548	681	882	1154	975	733	877	462	2242
18	Cross Subsidy at 66 kv & above ((sl. No.17-656.51)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
19	Cross Subsidy at HT level ((sl. No.17-710.81)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	Cross Subsidy at LT level ((sl. No.17-837.63)	114.37	186.37	275.37	1710.37	-156.63	44.37	316.37	137.36	-104.63	39.37	-375.63	1404.37
21	20% of Tariff (20% of sl. No. 17)	190.4	204.8	222.6	509.6	136.2	176.4	230.8	195	146.6	175.4	92.4	448.4
22	(Lower of sl.No.18 & sl. No.21)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	(Lower of sl.No.19 & sl. No.21)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	(Lower of sl.No.20 & sl. No.21)	114	186	223	510	-157	44	231	137	-105	39	-376	448
	Actual Cross subsidy	48	120	209	1644	-223	-22	250	71	-171	-27	-442	1338
	CSS at 66 kv & Above level	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	CSS at HT level	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	CSS at LT level	**48**	**120**	**209**	**510**	**-223**	**-22**	**231**	**71**	**-171**	**-27**	**-442**	**448**

18. The CSS approved by the Commission in its Tariff Order is not applicable to Captive Generating Plant for carrying electricity to the destination of its own use and for those renewable energy generators who have been exempted from CSS by the specific order of the Commission.

19. The Commission note that while determining the CSS for FY25, it had adopted the formula as envisaged under National Tariff Policy,2016 and the relevant Regulations issued by the Commission which was adopted by the Commission in the Tariff Orders issued earlier at Sl. No. 22 and 23 to 66kV and above level and HT voltage level and Sl. No. 24 at LT level in the above para10(c), Table 3. The Commission in computation of CSS has restricted the allowable amount of CSS up to the maximum level of 20% of the tariff applicable to the relevant category of the consumers seeking Open Access. The Commission had computed the CSS based on the formula stipulated in the National Tariff Policy, 2016 specified at clause 8.5.1 as under:

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.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

20. The Commission also note the relevant extract of the Order issued by the **Hon'ble APTEL in Reliance Infrastructure Limited (R- Infra) Reliance Energy centre Vs MERC in Appeal No.178 of 2011** as under:

"Clause 8.5 of Tariff Policy specified the method of calculating CSS in a particular situation. Relevant portion of clause 8.5 of Tariff Policy is set out below for ready reference:

*"8.5 **Cross-subsidy surcharge and additional surcharge for open access***

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access. A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross-subsidy surcharge. The computation of cross subsidy

surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

Accordingly, when open access is allowed, the surcharge for the purpose of sections 38, 39, 40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges. Surcharge formula:

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

Where S is the surcharge

T is the Tariff payable by the relevant category of consumers;

C is the Weighted average cost of power purchase of top 5% at the margin   excluding liquid fuel based generation and renewable power

D is the Wheeling charge

L is the system Losses for the applicable voltage level, expressed as a   percentage … iv) According to Clause 8.5 of Tariff policy, <u>CSS would be the difference between   the tariff payable by the relevant category of consumers and the cost of   the distribution licensee to supply electricity to the consumers of the   applicable class…..</u>"

21. The Commission notes that in the Tariff Order issued by the Commission for FY25, the CSS has been calculated as per the above formula at Sl. No. 22 and 23 for 66kV and above level and HT voltage level and Sl. No. 24 at LT level in the above para10(c), Table 3. The Commission while approving the CSS has considered the CSS amount computed as per the above formula and the actual cross subsidy whichever is less. Further, the Commission has considered allowable CSS as Zero whenever the computed CSS is negative or if it is one paise or less.

22. The Commission note the relevant paras of the Order of the **Hon'ble Supreme Court of India in case Sesa Sterlite** which is reproduced as under:

> *"25. The issue of open access surcharge is very crucial and implementation of the provision of open access depends*

*on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – **one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy**, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts – **one, on its ability to cross-subsidise the vulnerable sections of society** and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.*

***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 fortiorari, 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."*

23. The Commission also note the provisions of Section 38,39,40 and section 2 of section 42 of the Electricity Act,2003 as quoted by the ESCOMs in the review petition and accordingly CSS would be computed as the difference between the tariff applicable to the relevant category of consumers and the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee in such position may discontinue purchase of power at the margin in the merit order.

Accordingly, the cost of supply to the consumer for this purpose may be computed as the per unit weighted average cost of power purchase by the distribution licensee including meeting the Renewable Purchase Obligations, transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the Commission and transmission, distribution and wheeling charges up to the relevant voltage level and per unit cost of carrying regulatory assets, if applicable. The CSS shall be computed as per the formula as specified in the National Tariff Policy as mentioned in the above paras. However, the CSS shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

24. The Commission notes that, as per the provisions of Electricity Act,2003 and the Orders of the Hon'ble Appellate Tribunal for Electricity in Appeal No.102 of 2010 dated 30.05.2011, Appeal No.103 of 2012 dated 24.03.2015 and Appeal No. 42 of 2014 dated 08.10.2014, the Cross Subsidy is the difference between the Average Cost of Supply and Approved Average Tariff of the relevant tariff category of consumer.

The Cross Subsidy is payable by the consumers who avail power supply from the distribution licensee and which is used to compensate the cross subsidized consumers. The Cross Subsidy Surcharge is the difference between the Average Tariff payable by the relevant category of consumer and the cost of distribution licensee to supply electricity to the consumers of the applicable class computed as per the formula stipulated in the NTP and subject to limit of 20% of the average tariff payable by the relevant category of consumer payable only by the relevant category of consumer who avail power under Open Access (from other than distribution licensee).

25. Thus, the Commission is of the opinion that, the Cross Subsidy and Cross Subsidy Surcharge are two different charges calculated on different methodology / formula wherein the Cross Subsidy is to be paid by the ESCOM's regular consumer for consuming power from them, whereas the CSS is to be paid by the relevant category of consumer who avail power from other than ESCOMs under Open Access.

26. From the above, the Commission note that, in the Tariff Order issued for FY25, the CSS has been computed as per the formula as specified under National Tariff Policy, KERC (Terms & Conditions for Open Access) Regulations, 2004 and amendments thereon and KERC MYT Tariff Regulations. However, while approving the CSS for the State as a whole, the consideration of lower of the CSS computed and actual Cross Subsidy as contended by the Petitioner is not provided and deviation from the formula   specified in NTP or the relevant KERC (Terms & Conditions for Open Access) Regulations or KERC MYT Tariff Regulations.

27. For the foregoing reasons, the Commission is of the view that, there is an error apparent on record in quantification of the approved CSS for FY25 to the extent of relief sought by the petitioners in the Review Petition. Hence, Point No. 1 is answered affirmatively.

Point No.2

28. In view of our discussion and affirmative finding on issue no 1, the petitioners are entitled for the relief claimed in the review petition. Hence, we answered this point as per final order.

ORDER

Review petition filed by the petitioners under section 94 of Electricity Act, 2003 R/w Order 47 of the Civil Procedure Code 1908, is allowed.

Consequently table shown under para 6.7.5 (f) in the original Tariff Order-2024, dated 28.02.2024, shall be read as follows, for the purpose of calculation and approval of CSS.

HT Installations

Paise per unit

Voltage Class	HT-1	HT-2(a)	HT-2(b)	HT-2(c)(i)	HT-2(c)(ii)	HT-3	HT-4	HT-5	HT-6	HT-7	
66 kV & Above	73	192	246	181	205	0	188	305	230	181	
HT-11kV or 33kV	19	192	246	181	205	0	188	305	230	181	

LT Installations											
										Paise per Unit	
LT-1	LT-2	LT-3 (a)	LT-3(b)	LT-4(a)	LT-4(b)	LT-4 (c)	LT-5	LT-6(a)	LT-6(b)	LT-6(c)	LT-7
114	186	223	510	0	44	231	137	0	39	0	448

The difference of CSS amount calculated as per the above revised rate for the period between April,2024 to September,2024 if opted by such open access consumers shall be collected in Six monthly instalments without any carrying cost.

No order as to cost.

Sd/-	Sd/-	Sd/-
(P. RAVI KUMAR)	(H.K. JAGADEESH)	(JAWAID AKHTAR)
Chairman	Member (Legal)	Member