

**BEFORE THE RAJASTHAN ELECTRICITY REGULATORY COMMISSION
JAIPUR (RAJASTHAN)**

FILING NO:.....

CASE NO.....

IN THE MATTER OF:

PETITION FILED FOR DETERMINATION OF ADDITIONAL SURCHARGE UNDER SECTION 42 (4) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 4 AND 17 OF RAJASTHAN ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR OPEN ACCESS) REGULATIONS, 2016

AND

IN THE MATTER OF:

- 1. JAIPUR VIDYUT VITARAN NIGAM LTD.**
Vidyut Bhawan, Janpath,
Jaipur -302005
- 2. AJMER VIDYUT VITARAN NIGAM LTD.**
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer-305001
- 3. JODHPUR VIDYUT VITARAN NIGAM LTD.**
New Power House, Industrial Area,
Jodhpur-342003

- Petitioners

PETITION FILED FOR DETERMINATION OF ADDITIONAL SURCHARGE UNDER SECTION 42 (4) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 4 AND 17 OF RAJASTHAN ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR OPEN ACCESS) REGULATIONS, 2016

MOST RESPECTFULLY SHOWETH:

1. The Petitioners herein are the Distribution Licensees in the State of Rajasthan and are undertaking the functions of distribution and retail supply of electricity to the public at large in their respective area of distribution.
2. Section 43 of the Electricity Act, 2003 provides for a duty on the distribution licensees of the area of supply to develop and maintain an efficient, coordinated and economical distribution system and to supply electricity to all in the area in accordance with the provisions of the Act. Section 43 (1) of the Electricity Act reads as under:

“Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission: Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

1[Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form,

as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]”

3. To meet the universal supply obligation, Discoms have entered into long term PPAs with Generating Companies which inter-alia provide for payment of the guaranteed fixed charges payable irrespective of the fact whether Discoms are able to off take the entire power made available over the plant load factor.
4. In exercise of the powers under Section 181 of the Electricity Act, 2003, the State Commission has notified the Open Access Regulations, 2016, inter alia, providing for a person with contract demand of one MVA and above to draw electricity from sources other than the distribution licensees of the area through the Open Access.
5. Whenever any consumer opts for open access, the Petitioner continues to pay fixed charges to its contracted generation stations as per the PPAs. However, the Petitioner is not able to sufficiently recover such fixed cost obligation from the open access consumers. The cost recovered from fixed tariff schedule is less than the fixed costs incurred by the Petitioner which leads to the situation where the Petitioner is saddled with the stranded cost on account of its universal supply obligation.
6. To ensure that the burden of fixed cost of stranded power due to open access does not adversely impact the Discoms and is also not passed onto the general consumers at large, the Discoms are entitled to collect Additional Surcharge as per Section 42 (4) of the Electricity Act, 2003.

“Section 42 (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.”

7. Regulation 17 of the RERC Open Access Regulations, 2016 also entitle the Petitioners to collect additional surcharge from consumers opting for open access.

“17. Additional Surcharge

(1) A consumer availing open access and 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, in addition to wheeling charges and cross subsidy surcharge, to meet 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.”

8. Hon’ble Supreme Court in case of SESA Sterlite Vs OERC & Ors (2014) 8 SCC 444 held 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-subsidize 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. (emphasis supplied)

9. In light of the statutory provisions and the Hon'ble Supreme Court decision referred to above, the Hon'ble Commission in its order dated 24th August 2016 has recognised the Discoms' entitlement to claim additional surcharge from consumers opting for open access. The relevant extract from the aforementioned order is provided below.

“48. Considering the statutory provisions, and the decisions of Hon'ble Supreme Court as well as Hon'ble APTEL referred to above, there is no scope to deny the entitlement of Discoms for Additional Surcharge from Open Access Consumers to meet the stranded cost incurred to meet their universal supply obligation imposed under Section 43 of the Act. The Objectors also do not seriously dispute the legal right of the Petitioners for Additional Surcharge under Section 42 (4) of the Act. Their case is that Petitioners are not suffering from stranded capacity in the State as alleged due to their action of going for Open Access. The stranded capacity is occurring due to other reasons pointed out by them in their objections and hence Open Access Consumers in Rajasthan State are not liable to pay any Additional Surcharge.

49. In light of the specific statutory provision in Section 42 (4) of the Act and authoritative pronouncements referred above, the second issue is answered in favour of the Petitioners.”

10. The Hon'ble Commission in its order dated 24th August 2016 has determined the additional surcharge payable by open access consumers using the following methodology.

“114. The lower of the back-down quantum and open access quantum has been considered as power surrendered due to open access for each of the 96 time blocks in a day, i.e., if the back down quantum is more than the open access quantum, the open access quantum has been considered, and if the back down quantum is less than the open access quantum, then the back down quantum has been considered as the quantum stranded due to Open Access Consumers not sourcing power

from Discoms. This ensures that only the power stranded because of Open Access Consumers is taken.

115. Since the quantum of power surrendered every day is not from a specific power plant, and fixed cost associated with every power plant is different, the Commission has calculated an effective per unit fixed cost for every month by calculating weighted average fixed cost per unit based on the relevant tariff order of generating station against fixed charges and the quantum of energy drawn from each station for FY 2015-16 (up to Jan.16).

116. To work out a total effective per unit fixed cost of generation backed down, the fixed costs for the individual power plant units as per tariff order have been taken in the same proportion as the proportion in which individual power plant units have contributed to the surrendering of power. As compared to the consideration of actual payments made to generators, taking the fixed costs as per tariff orders eliminates all apprehensions about the period for which payments pertain. Thus, the rates of fixed costs are consistent.

117. This fixed cost has been considered for calculating the amount of total fixed charges that the Petitioner has paid because of the total stranded power owing to corresponding open access for FY 2015-16 (up to Jan.16).

118. To compute the Additional Surcharge recoverable, the effective per unit fixed cost obtained as explained above is multiplied to the quantum of stranded power (in MUs) which has been considered to be surrendered because of consumers opting for open access.

119. To compute per unit Additional Surcharge to be levied on Open Access Consumers, it has been assumed that the Open Access scenario will remain the same in FY 2016-17. Therefore, the total Additional Surcharge recoverable for the FY 2015-16 (up to Jan.16) computed

above has been spread over the total open access quantum for the FY 2015-16 (up to Jan.16) to arrive at Additional Surcharge of Rs. 0.80 per unit.”

11. The Discoms have relied on the similar methodology to compute the payable additional surcharge. The Hon’ble Commission in its order dated 24th August 2016 had not considered the stranded cost of boxed up stations as at that time bilateral purchases were made to replace the boxed up power. However, in FY 2018-19 the quantum of power boxed up was significantly higher than the bilateral purchases undertaken. This clearly indicated that boxup was not done merely as a prudent and commercial practice but due to lack of demand. Therefore, the Discoms in this petition has also considered the net of Boxup power and Bilateral purchases along with the power backed down.
12. Accordingly, the computation of additional surcharge for FY 2019-20 is based on the following methodology.
13. The lower of the stranded power (backdown quantum + boxup quantum - bilateral quantum) and open access quantum has been considered as power surrendered due to open access for each of the 96 time blocks in a day, i.e., if the quantum of stranded power is more than the open access quantum, the open access quantum has been considered, and if the stranded power quantum is less than the open access quantum, then the stranded power quantum has been considered as the quantum stranded due to Open Access Consumers not sourcing power from Discoms. This ensures that only the power stranded because of Open Access Consumers is taken.
14. Since the quantum of power surrendered every day is not from a specific power plant, and fixed cost associated with every power plant is different, the Discoms have calculated an effective per unit fixed cost by calculating weighted average fixed cost per unit based on the relevant tariff order of generating station against fixed charges and the quantum of energy drawn from each station for FY 2018-19.

15. To work out a total effective per unit fixed cost of generation stranded, the fixed costs for the individual power plant units as per tariff order have been taken in the same proportion as the proportion in which individual power plant units have contributed to the surrendering of power. As compared to the consideration of actual payments made to generators, taking the fixed costs as per tariff orders eliminates all apprehensions about the period for which payments pertain. Thus, the rates of fixed costs are consistent.
16. This fixed cost has been considered for calculating the amount of total fixed charges that the Petitioner has paid because of the total stranded power owing to corresponding open access for FY 2018-19.
17. To compute the Additional Surcharge recoverable, the effective per unit fixed cost obtained as explained above is multiplied to the quantum of stranded power (in MUs) which has been surrendered because of consumers opting for open access.
18. To compute per unit Additional Surcharge to be levied on Open Access Consumers, it has been assumed that the Open Access scenario will remain the same in FY 2019-20 as in FY 2018-19. Therefore, the total Additional Surcharge recoverable for the FY 2019-20 computed above has been spread over the total open access quantum for the FY 2018-19 to arrive at the payable Additional Surcharge.
19. For the sake of brevity, the daily block wise details of station wise power backed down, power boxed up and bilateral purchases along with net open access are being provided as Annexures to this petition in soft copy (CD).
20. In view of the above, Additional Surcharge based on data of FY 2018-19 is worked out as below:
 - a. Calculation of stranded power due to Open Access (MW):

Month	Back-down Aggregated over 96 Time Blocks (MW)	Boxup Aggregated over 96 Time Block (MW)	Bilateral Aggregated over 96 Time Blocks (MW)	Backdown + Boxup - Bilateral aggregated over 96 time blocks (MW)	Open Access Aggregated over 96 Time Blocks (MW)	Backdown due to Open Access Aggregated over 96 Time Blocks (MW)
	(1)	(2)	(3)	(4)	(5)	(6)
April	1,476,530	907,507	-	2,384,036	410,838	354,359
May	948,313	375,128	-	1,323,441	81,332	58,898
June	2,147,056	1,198,245	-	3,345,301	477,666	451,327
July	2,929,682	3,216,762	-	6,146,444	1,003,861	980,523
August	2,761,716	1,656,745	-	4,418,461	978,472	847,286
September	2,606,862	2,731,730	-	5,338,592	1,824,400	1,537,000
October	1,458,649	808,500	-	2,267,149	2,552,958	1,522,356
November	2,300,016	1,521,475	72,891	3,748,600	799,409	753,363
December	2,898,920	3,437,494	523,440	5,812,974	669,976	659,830
January	3,509,964	1,181,498	140,829	4,550,633	403,555	367,390
February	3,457,855	2,155,117	146,277	5,466,695	765,962	755,091
March	3,130,499	4,913,067	-	8,043,566	986,547	984,908
Total	29,626,063	24,103,266	883,437	52,845,891	10,954,977	9,272,330

Column 1, 2 & 3 represent sum of back-down, boxup and bilateral respectively for each time block of each day of the month in MW. Column 4 represents sum of net stranded capacity for each time block of each day of the month in MW. Column 5 represents sum of net open access respectively for each time block of each day of the month in MW. For Column 6, lower of net stranded capacity and open access has been considered for each time block separately

It may be observed that there is continuous stranded capacity over the entire period for which data has been submitted. It has to be noted that stranded capacity may vary in a day, a month and the year depending upon the load conditions and therefore, the overall situation needs to be considered. It is clearly demonstrable through the data that there is stranded capacity occurring on account of the consumers availing open access to source power from sources other than Discoms.

b. Calculation of effective fixed cost of generation stranded (Rs./kWh):

Power Station	Power stranded in FY 2018-19 (MU)	% of surrender	Fixed charges (as per tariff)	Component of fixed cost
DADRI GTPS	61.17	0.50%	2.25	0.01
NCPP-2 (Dadri-II Thermal)	342.04	2.78%	2.25	0.06
Jhajjar Aravali	0.29	0.00%	2.25	0.00
AURIYA GTPS	9.89	0.08%	9.03	0.01
UNCHAHAAR 1	101.62	0.83%	1.44	0.01

Power Station	Power stranded in FY 2018-19 (MU)	% of surrender	Fixed charges (as per tariff)	Component of fixed cost
UNCHAHAR 2	250.08	2.04%	1.27	0.03
UNCHAHAR 3	135.13	1.10%	1.7	0.02
UNCHAHAR 4	63.39	0.52%	1.349	0.01
ANTA GTPS	12.44	0.10%	8.96	0.01
KAHALGAON- 1 STPS	46.94	0.38%	1.63	0.01
KAHALGAON-2 STPS	183.32	1.49%	1.37	0.02
FARAKKA STPS	26.25	0.21%	1.38	0.00
CGPL	319.56	2.60%	1.071	0.03
SINGRAULI STPS	179.80	1.46%	0.56	0.01
RIHAND 1 STPS	59.60	0.49%	0.64	0.00
RIHAND 2 STPS	48.03	0.39%	0.65	0.00
RIHAND 3 STPS	94.33	0.77%	1.099	0.01
Sasan	61.83	0.50%	0.149	0.00
PTC MCCPL	21.29	0.17%	1.55	0.00
PTC DB Power	10.93	0.09%	3.108	0.00
STPS-(I-VI)	4,119.79	33.52%	0.824	0.28
DCCPP	2,014.05	16.39%	1.021	0.17
Ramgarh GTP(Stage-I&II)	11.12	0.09%	0.657	0.00
Ramgarh GTP(Stage-III)	0.36	0.00%	1.544	0.00
KTPS Unit(I-VII)	1,366.26	11.12%	0.612	0.07
Kalisindh TPP-I	465.19	3.79%	1.927	0.07
Kalisindh TPP-II	141.57	1.15%	1.805	0.02
CTPP I&II	181.24	1.47%	1.351	0.02
CTPP-III	103.46	0.84%	1.739	0.01
CTPP-IV	96.35	0.78%	1.476	0.01
Rajwest Power	922.15	7.50%	1.7	0.13
Adani Power	746.52	6.07%	1.479	0.09
NLC Barsingshar	1.32	0.01%	2.35	0.00
GIRAL	-	0.00%	1.864	-
CTPP-V	91.67	0.75%	1.987	0.01
Total	12,288.99	100.00%		1.12

c. Calculation of additional surcharge based on above:

	Open Access Aggregated over each time block	Total Open Access	Back-down due to Open Access Aggregated over 96 Time Blocks	Back-down due to Open Access	Effective Fixed Cost	Additional Surcharge
	MW	MU	MW	MU	Rs. / kWh	Rs. Cr.
Total	10,954,977	2,739	9,272,330	2,318	1.12	258.85
Additional Surcharge Recoverable per unit considering same open access scenario for the next year (Rs./kWh) (Total Additional Surcharge/Total Open Access*10)						0.95

21. In view of above submission, additional surcharge for FY 2019-20 has been computed as Rs. 0.95/kWh. The Petitioner requests the Hon'ble Commission to approve the levy of computed additional surcharge.

PRAYER

In view of the above submission, the Petitioner prays to the Hon'ble Commission

1. to admit and approve the Petition allowing revision in leviable additional surcharge;
2. to condone any error/omission and to give opportunity to rectify the same;
3. to permit the Petitioner to make further submission, additions and alterations to this Petition as maybe necessary from time to time;
4. to pass any such other order/s and/or direction/s, which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

JAIPUR VIDYUT VITARAN NIGAM LIMITED

AJMER VIDYUT VITARAN NIGAM LIMITED

JODHPUR VIDYUT VITARAN NIGAM LIMITED

Place: Jaipur

Dated: December 2019

**BEFORE THE RAJASTHAN ELECTRICITY REGULATORY COMMISSION
JAIPUR (RAJASTHAN)**

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- Petitioners

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HEREBY SOLEMNLYBAFFIRM AND STATE AS UNDER

1. I am theofand I am authorised to act on behalf of all the petitioners and I am conversant with the facts of the case and is able to depose to the same.
2. I have read the accompanying petition filed for determination of additional surcharge under section 42 (4) of the Electricity Act, 2003 read with Regulation 4 and 17 of Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2016
3. and I say that the facts stated therein are based in the records of the Petitioners maintained in the ordinary course of business and is believed by me to be true.

Deponent

I the Deponent above named do hereby verify that the contents of my affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Jaipur on thisday of December 2019

Deponent