

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/PRO-05 of 2015

Date of Hearing : 09.07.2015 & 14.09.2015

Date of Order : 16.11.2015

In the Matter of

Petition under Section 42 of the Electricity Act, 2003 read with Regulation 22 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 for approval of Additional Surcharge to the Discoms- UHBVNL and DHBVNL in reference to the Open Access for the FY 2014-15 to be recovered in the FY 2015-16.

Petitioners

1. Uttar Haryana Bijli Vitran Nigam (UHBVNL), Panchkula.
2. Dakshin Haryana Bijli Vitran Nigam (DHBVNL), Hisar

Present on behalf of the Petitioner

1. Shri Varun Pathak, Advocate
2. Shri R.K. Jain, GM/RA, UHBVNL
3. Shri Palwinder, XEN / RA, UHBVNL
4. Shri Nirmal Singh, AE/RA, UHBVNL

Present on behalf of the Respondents / Intervenors

1. Shri R.K. Jain, Advocate for JSL
2. Shri Hemant Singh, Advocate for FIA
3. Shri Vishal Sharma, Advocate for DCM Textile, Hisar
4. Shri Col. S.Kapoor (Retd.) FIA
5. Shri Rajan Ghai, FIA
6. Shri Vikrant Pamboo, FIA
7. Shri S.R. Sharma
8. Shri O.K. Sharma
9. Shri R. Singh

Quorum

Shri Jagjeet Singh, Chairman
Shri M.S Puri, Member

ORDER

Brief Background of the Case

1. The Haryana Electricity Regulatory Commission had issued Order dated 7.05.2015 in the matter of True-Up of the ARR for the FY 2013-14, Annual Performance Review for the FY 2014-15 and determination of Distribution and Retail supply tariff for the FY 2015-16 for Uttar Haryana Bijli Vitaran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitaran Nigam Limited (DHBVNL).

2. At para 5.3 of the said Order the Commission had observed as under:-

“The Discoms have filed the petition along with the supporting details on 04.03.2015 vide memo no. Ch-12/GM/RA/N/F-15/Vol-III dated 04.03.2015 wherein the Discoms, based on the fixed cost paid by them for the stranded capacity due to scheduling of Open Access power by the embedded Open Access consumers, have proposed an additional surcharge of Rs. 0.80 per unit to be paid by such consumers.

As the proposed levy of additional surcharge shall affect a large number of electricity consumers, the Commission has considered it appropriate to hold a public hearing before finalizing the same”.

3. In the public hearing, in the matter of Petition for True-Up of the ARR for the FY 2013-14, Annual Performance Review for the FY 2014-15 and determination of Distribution and Retail supply tariff for the FY 2015-16 for Uttar Haryana Bijli Vitaran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitaran Nigam Limited (DHBVNL) held on 13.02.2015, the Commission had directed the Discoms to file detailed calculation of the Additional Surcharge along with supporting data. Accordingly, UHBVN vide Memo No. Ch-12/GM/RA/N/F-15/Vol. III dated 4.03.2015 filed the supplementary information on Additional Surcharge that may be allowed to the Discoms in reference to the energy drawn

by the Open Access Consumers for the FY 2014-15 to be recovered in the FY 2015-16. Accordingly, UHBVNL (on behalf of both the Discoms i.e. UHBVNL & DHBVNL) had sought approval of the Commission for levying additional surcharge in the FY 2015-16 @ Rs. 0.80 / Unit.

4. The Commission vide Memo No. 7054/HERC/Tariff dated 25.03.2015, directed UHBVNL to file the matter of seeking approval of Additional Surcharge in the form of a petition. Accordingly, the Discoms filed a common petition dated 24.04.2015 (Affidavit dated 23.04.2015) and additional submissions along with affidavit dated 21.05.2015. The salient features of the said submissions are as under:-
5. **Petition for approval of Additional Surcharge filed by UHBVNL and DHBVNL**

In the petition filed by the Discoms (UHBVNL & DHBVNL) for approval of Additional Surcharge to be recovered from the Intra – State Open Access Consumers in the FY 2015-16, it has been submitted:

That the Regulation 22 of the “Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 provides as under:-

“Additional Surcharge. - (1) An open access 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 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.

Provided that such additional surcharge shall not be levied in case open access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use. (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 the details regarding the quantum of such stranded costs and the period over which these remained stranded and would be stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.

Provided that any additional surcharge so determined shall be applicable to all the consumers availing open access from the date of determination of same by the Commission.

(4) The consumers located in the area of supply of a distribution licensee but availing open access exclusively on inter-State transmission system shall also pay the additional surcharge.

(5) Additional surcharge determined on per unit basis shall be payable, on monthly basis, by the open access customers based on the actual energy drawn during the month through open access”.

1.2 That the Petitioners have a universal obligation to supply power, they have to enter into long term agreements for purchase of power from various generating stations for meeting the entire demand of the State. As such, when these embedded consumers draw power from any other person under Open Access, the fixed cost of the supply taken by these consumers from elsewhere is still payable by the Petitioners, making it a stranded capacity for them.

1.3 That the Petitioners had filed the details of additional surcharge applicable for the FY 2013-14 in the Commission wherein the applicants, based on the fixed cost paid by them for the stranded capacity due to scheduling of Open Access

power by the embedded Open Access consumers in the FY 2013-14, had proposed an additional surcharge of Rs. 0.97 / Unit to be paid by such consumers during the FY 2014-15.

1.4 That the Commission uploaded the petition filed by the Discoms on its website to enable the stakeholders to submit their comments / objections on the same. After holding a public hearing on the same, the Commission decided to levy additional surcharge on the energy drawn by Open Access consumers through open access @ 50 Paisa/kWh with effect from the date of notification of the MYT Tariff Order dated 29.5.2014.

1.5 That on similar lines, the Petitioners are submitting the details of Additional Surcharge applicable for the FY 2014-15 to be recovered from the Open Access consumers during the FY 2015-16 for approval of the Commission.

1.6 That the Discoms have filed the APR petition for the FY 2014-15 along with the ARR filings for the FY 2015-16 in the Commission. Subsequent to the same, public hearing on the APR filings was held on 13th Feb. 2015 wherein the Commission directed the Discoms to file the details of Additional Surcharge Calculations for the FY 2014-15.

1.7 That the Commission was requested to grant some additional time to the Petitioners to calculate the amount of Additional Surcharge and the Petitioners should be allowed for the FY 2014-15 to compensate for the fixed charges paid by the Discoms towards the stranded power in the given year, on the event of the consumers opting for Open Access and procuring the power from sources other than the Discoms.

1.8 That the Petitioners had submitted the details of the calculations of additional surcharge to be allowed to the Petitioners with reference to the Open Access for the FY 2014-15 to be recovered during the FY 2015-16 to the Commission vide Memo No. Ch-12/GM/RA/N/F-15/Vol/III dated 04.03.2015. In reference to the same, the Commission had directed the petitioners to file the

matter in the form of a petition vide Memo No. 7054/HERC/Tariff dated 25.03.2015.

1.9 That the Petitioners have calculated the amount of Additional Surcharge to be levied in the FY 2015-16 based on the power surrendered vis-à-vis energy drawn by the Open Access Consumers in the FY 2014-15 as given below:-

(i) That calculating slot wise power stranded due to Open Access for every day of the year is a cumbersome process and thus it was very difficult to go ahead with this methodology. Thus, a random sample of one day per month was selected by the Discoms from April 2014 to January 2015 wherein the slot wise power surrendered/backed down & Open Access power drawl were reflected for calculating additional surcharge.

(ii) That the Petitioners have considered slot wise power surrendered/backed down and Open Access power drawl for 10 days (one day per month from April 2014 to January 2015) and for every day, average quantum of power was evaluated in order to calculate the effective power quantum for that month in terms of power in MW-per day per slot.

(iii) Since, the **quantum of power surrendered every day are not from a specific power plant (emphasis added)**, and fixed cost associated with every power plant is different, the Petitioners have calculated an effective per unit fixed cost considered for calculating the amount of total fixed charges that the Petitioners are expected to pay by the end of the FY 2014-15, considering all the major power plant sources. An average effective per unit fixed cost has been calculated.

(iv) That the effective per unit fixed cost so obtained has been multiplied to the stranded power (in MUs) of that month that has been taken to be surrendered because of consumers opting Open Access and not scheduling power from the Petitioners.

(v) That the Average Quantum of power surrendered to be considered for Additional Surcharge eligibility for the entire year 2014-15 per day per slot in MW is calculated based on the ten values of the effective power quantum for every month in terms of power in MW-per day per slot.

(vi) Further, the total Units of Power in MUs to be considered for Additional Surcharge eligibility have been calculated for the complete FY 2014-15 from the Average Quantum of power surrendered per day per slot in MW for the entire year 2014-15.

(vii) Correspondingly, the total Additional Surcharge for the FY 2014-15 (in Rs. Crores) has been calculated over the Units of Power (in MUs) for the complete FY 2014-15 considering the per unit effective fixed charge.

(viii) In order to ensure that only such power surrendered is taken for calculating additional surcharge, which corresponds to power stranded because of open access consumers only, the lower of the quantum of the Open Access power per slot and the surrendered power for the corresponding slot is taken as the amount for the stranded power for the day due to open access.

(ix) Finally, the Per Unit Additional Surcharge applicable on the Open Access consumers in the FY 2015-16 owing to Open Access in FY 2014-15 (Rs./unit) is calculated considering the total Open Access Units estimated for FY 2015-16 (considering same open access scenario as in the FY 2014-15 in MUs) and the additional surcharge (in Rs. Crores) has been determined.

1.11 A summary of the Additional Surcharge proposed by the Discoms for the approval of the Commission is as under:-

Sr. No.	Month	Additional Quantum to be considered for Additional Surcharge eligibility for the Month per day per slot in MW
1	April, 2014	164.14
2	May, 2014	75.98

3	June, 2014	106.46
4	July, 2014	76.48
5	August, 2014	44.79
6	September, 14	61.40
7	October,14	37.57
8	November, 14	182.03
9	December, 14	136.91
10	January, 2015	170.04
a	Average Quantum to be considered for Additional Surcharge eligibility for the year per day per slot in MW	105.58
b	Total Units of Power in MUs to be considered for Additional Surcharge eligibility	924.88
c	Effective Fixed Cost considered for the purpose of Evaluating Additional Surcharge (Rs./unit)	1.12
d	Total Additional Surcharge for the FY 2014-15 in Rs. Crores	86.42
e	Average Quantum of Open Access for the year per day per slot in MW	123.42
f	Open Access Units estimated for FY 2015-16 (considering same open access scenario as in FY 2014-15) in MUs	1081.13
g	Per Unit Additional Surcharge applicable on the same Quantum of Open Access (Rs./unit)	0.80

Further, in the additional submissions dated 21.05.2015 it has been submitted as under:-

- i) That the Discoms have already filed a petition for calculation (including the methodology) of additional surcharge which is pending before the Commission.
- ii) That the Discoms are hereby submitting the revised calculations of the amount of Additional Surcharge applicable for the FY 2015-16 based on the data for the FY 2014-15.
- iii) That the details submitted earlier had some calculation errors and the same have been rectified under the additional submissions and the same may be considered by the Commission.
- iv) That the corresponding details of the slot wise power surrendered and slot wise Open Access has been provided as Annexure to the additional submissions dated 21.05.2015.

- v) That a summary of the total additional surcharge that may be allowed to be recovered by the Petitioner in the FY 2015-16 based on the data for the FY 2014-15 is as under:-

Sr. No.	Month	Additional Quantum to be considered for Additional Surcharge eligibility for the Month per day per slot in MW
1	April, 2014	164.14
2	May, 2014	75.98
3	June, 2014	106.46
4	July, 2014	76.48
5	August, 2014	44.79
6	September, 2014	61.40
7	October, 2014	37.57
8	November, 2014	182.03
9	December, 2014	136.91
10	January, 2015	170.04
11	February, 2015	170.21
12	March, 2015	159.49
a	Average Quantum to be considered for Additional Surcharge eligibility for the year per day per slot in MW	115.46
b	Total Units of Power in MUs to be considered for Additional Surcharge eligibility	1011.41
c	Effective Fixed Cost considered for the purpose of Evaluating Additional Surcharge (Rs./unit)	1.12
d	Total Additional Surcharge based on data for the FY 2014-15 (in Rs. Crores)	113.40
e	Average Quantum of Open Access for the year per day per slot in MW	134.58
f	Open Access Units estimated for FY 2015-16 (considering same open access scenario as in FY 2014-15) in MUs	1178.92
g	Per Unit Additional Surcharge applicable on the same Quantum of Open Access (Rs./unit)	0.96

6. Public Proceedings

The Petition filed by the Discoms, for approval of Additional Surcharge, to be recovered in the FY 2015-16 from the Open Access Consumers was made available on the Commission's website i.e. herc.gov.in. In order to elicit comprehensive discussions on the proposal of the Discoms and ensure wide stakeholders' participation, the Commission issued Public Notice in the following Newspapers having wide circulation:-

- i. **Hindustan Times (English- Chandigarh Edition) dated 5.06.2015.**
- ii. **Dainik Jagran (Hindi) dated 5.06.2015.**

Written comments/suggestions/objections were invited from the public, power utilities, other organizations and stakeholders by June 15, 2015. The Discoms were allowed to file a rejoinder/reply by 22nd June, 2015.

7. Public Hearing (09.07.2015)

A public hearing was scheduled on 9.07.2015 at 12.30 P.M. in the Conference Hall of the Commission. After hearing the parties present, the Commission passed an Interim Order dated 9.07.2015. The operative part of the said Order is reproduced below:-

"4. Upon hearing the parties, the Commission allows four weeks time to the petitioner from the date of this Order to file all the relevant data / details as required under Regulation 22(3) of the HERC Open Access Regulations, 2012 with a copy to the Interveners. The Petitioners shall also file its reply to the objections/comments filed/made by the Interveners namely M/s Faridabad Industries Association and M/s Jindal Stainless Ltd. Thereafter, the Interveners shall file their comments/objections within 7 days time in the Commission with a copy to the Petitioner".

8. Stakeholders Comments / Objections

In response to the public notice inviting comments / objections from the stakeholders the following parties filed their comments / objections.

a) **Jindal Stainless Limited, Hisar, through its Executive Director Shri R.P. Jindal).**

b) **Faridabad Industries Association, through its Executive Director Col. S.Kapoor (Retd.).**

c) **DCM Textiles, Hisar**

The comments / objections dated 13.06.2015 filed by Jindal Stainless Limited through its Executive Director Shri R. P. Jindal, in response to the public notice issued by the Commission, are briefly stated as under:-

That the very Preamble of the Electricity Act, 2003 provides for “development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, etc.” Therefore, it is the mandate of the Electricity Act to protect interest of the consumers.

That Section 42 of the Electricity Act, 2003 covers the ‘Duties of distribution licensees’. Sub Section (1) of Section 42 of the Act reads as under:-

“It shall be the duty of a distribution licensee to develop and maintain an efficient coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.”

That the Tariff Policy notified by the Govt. of India in January 2006 mentions under the ‘Objectives of the Policy’ amongst others,

‘Ensure availability of electricity to consumers at reasonable and competitive rates, and Promote competition, efficiency in operations and improvement in quality of supply’.

The policy further specifically covers under the subject of 'Distribution'
“Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates is one of the main objectives of the National Electricity Policy.

A suitable transition framework could be provided for the licensees to reach the desired levels of service as quickly as possible. Penalties may be imposed in accordance with section 57 of the Act for failure to meet the standards.....

Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests.”

That the following extracts from the National Tariff Policy are very relevant for this petition;

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.

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11.

That a mere reading of these extracts from the Tariff Policy makes it amply clear that the Union Government's attempt to introduce open access in the transmission and distribution systems of the licensees was basically to create competition in the power distribution business and primarily in the larger interest of the consumers. The Policy clearly lays down that the impact of cross subsidy surcharge, additional surcharge and

wheeling charges etc. should not be so onerous that it eliminates competition. Further the Policy envisages a scenario where every electricity consumer pays for the cost of service or cost to serve to the distribution licensee. With this intention only it was specifically provided that the cross subsidy surcharge would be brought down progressively so as to attain a level of 20% of the opening level by the year 2010-11.

That the subsequent amendment in the Electricity Act 2003 brought in by Act 26 of 2007 was to modify the earlier provision of total elimination of surcharge and cross subsidies to progressively reduce these as per the decision of the State Commissions. The final authority was with the State Commission to lay down a road map for reduction of the subsidies and cross-subsidy surcharge depending on the State specific requirements.

That the Commission while approving the ARR and Retail Tariff of the Distribution Licensees amply takes into account all the factors as provided for in the Electricity Act 2003, the National Tariff Policy of 2006, and other Regulations framed for the purpose. The financial position of the licensees, their performance/adherence to the requirements of the Distribution License granted by the Hon'ble Commission and above all the basic interests of the electricity consumers in the State are kept in view while deciding the ARR & Retail Tariff on year to year basis.

While the Commission looks at the financial health and performance of the State Power Utilities, it also takes into consideration the efficiency with which the Licensee discharges its duties. A non-performing Licensee cannot be rewarded for his perpetual and progressive in-efficiencies. While the consumers pay for the genuine charges incurred by the Licensee, which are allowed by the Commission through annual ARR & Retail Tariff orders, it cannot be unduly loaded for the faults or inaction on the part of the Licensee.

That the sub-section (4) of Section 42 of the Electricity Act 2003 deals with the levy of additional surcharge on the charges of wheeling and reads 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 Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”*

Further, Regulation 22 of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 provides for additional surcharge,

“(1) An open access 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 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.

Provided that such additional surcharge shall not be levied in case open access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

(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 the details regarding the quantum of such stranded costs and the period over which these remained stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.

Provided that any additional surcharge so determined shall be applicable to all the open access customers availing open access from the date of determination of same by the Commission..

(4) The consumers located in the area of supply of a distribution licensee but availing open access exclusively on inter-State transmission system shall also pay the additional surcharge.

(5) Additional surcharge determined on per unit basis shall be payable, on monthly basis, by the open access consumers based on the actual energy drawn during the month through open access."

From the above provisions it is clear that additional surcharge could be recovered in specific circumstances only i.e.

- (i) if it is to meet out the fixed cost of distribution licensee arising out of his obligation to supply as provided under sub-section (4) of Section 42 of the Act,
- (ii) 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 component to such a contract.
- (iii) These charges are subject to the submission of half yearly details by the Licensee to the Commission and on its satisfaction if the Commission decides to levy such charges.

In every ARR Order, the Commission makes specific observations on non-submission of data by the Licensee along with ARR submissions. To claim any charges, the licensee has to submit all the details of the causes of such incidence and satisfy the Commission about its submissions. A simple statement that there is an element of Fixed Cost being incurred due to the purchase of power by the embedded consumers from any other person under open access, does not justify the claim. It has to be seen whether the Licensee exercised due diligence while entering into long term power purchase agreements or this situation has arisen due to poor planning of the Licensees. Indiscriminate signing of PPAs without linking it with the supporting accurate Demand Forecast and capability of the transmission & distribution system will result in such a dismal condition. Why should the poor consumers be loaded with undue costs because of the inefficiencies and lack of financial control by the Licensees?

That another factor which needs to be examined is the quantum of power being purchased by the open access consumers compared to the total power procured by the Licensee. The power being purchased by the open access consumers is less than 2% of the total power sold by the Licensee. Therefore, major part of the malady is due to inability of the Licensee to make available power to the consumers in the State. While the consumers in the State suffer from perpetual power cuts, the State Power Utilities are selling power outside the State at a cost far less than the actual power purchase cost of the Licensee.

That the Licensees are required to submit the requisite details about their claim for determination of Additional Surcharge at the time of submission of the ARR filing. As such this belated filing of this petition is totally arbitrary and un-acceptable. Hence this petition needs to be rejected straightaway.

Specific Comments on the Petition

That The contents of Para No. 1.1 of the Petition are simple extract from Regulation 22 of the HERC Open Access Regulations 12/2012 and that too incomplete. However full text of Regulation is given in Para 1.8 above. Hence no comments.

That the contents of Para 1.2 are wrong and distorted. It is wrong to say that the stranded capacity is due to open access consumers where as it needs to be appreciated that open access is not a new phenomenon in Haryana State. Consumers have been buying power through open access since the year 2009. The Licensees have fair idea of the power likely to be scheduled by the open access consumers over the year. Moreover, the quantum of power so purchased through open access is a very miniscule percentage of the entire stranded capacity. If 98% of the stranded capacity is due to the reasons other than the open access consumers then how this small segment could be blamed for the problem or its financial consequences. Why not the Licensees carry out introspection of their own

pattern of purchases and take remedial measures instead of passing off the burden to the open access consumers?

That the contents of Para 1.3 also need due scrutiny. At the time of hearing of the ARR for the year 2014-15 on 26.05.2014, serious calculation errors were pointed out in the computation of additional surcharge and the data furnished by the Licensees. The Commission had directed the licensees to rectify the apparent errors. It was proved beyond reasonable doubt that the data submitted by the Licensees was factually incorrect.

That the contents of Para 1.4 are totally wrong. In fact the data for additional surcharge was submitted separately by the Licensees vide Memo. No. dated It was never uploaded on the website. In the absence of correct data, the Commission had taken an ad-hoc decision to levy 50 Ps/kWh as the additional surcharge for the year 2014-15. This issue is already subject matter of a number of Petitions pending consideration in Hon'ble High Court and the Hon'ble Tribunal. A reference to the ARR and Distribution & Retail Supply order dated 29.05.2014 would be relevant in this case,

"The distribution licensee has filed the petition along with the supporting details on 15.05.2014 and vide memo no. Ch-06/GM/RA/N/F-25/Vol -52 dated 28.05.2014 wherein they, based on the fixed cost paid by them for the stranded capacity due to scheduling of Open Access power by the embedded Open Access consumers, have proposed an additional surcharge of Rs. 0.97 / Unit to be paid by such consumers."

"The Commission, therefore, after careful consideration of the submissions made in the petition by UHBVNL, replies / comments furnished by various stakeholders in reply to the petition, the comments / submissions by the petitioners and other stakeholders made during the hearing held on 27.05.2014 and the relevant statutory provisions is of the considered view that the additional surcharge cannot be attributed to the entire energy drawn through Open Access as the Discoms are expected to take into consideration some quantum of power that would be drawn by the Open Access Consumers based on the past trend while undertaking demand assessment and load management. The Commission therefore considers it appropriate to pass on 50% of the stranded cost worked out by the Discoms on account of power drawn through Open Access. Such reduction is necessary in view of the fact that the Discoms charges from most of the Open Access consumer a part of the cost of distribution system and cost of 6% losses as wheeling charges. Further the Discoms also collect, from most Open

Access consumers, demand charges on the basis of the connected load / contract demand. Hence in the considered view of the Commission some adjustment of the demand charges paid by the Open Access consumers in the stranded fixed cost of the Discoms has to be made.”

*“In view of the above disposition the Commission has now decided **to levy additional surcharge on the energy drawn by open access consumers through open access @ 50 Paisa/kWh with effect from the date of this Tariff Order.** The additional surcharge shall be levied / recovered by the distribution licensees from open access consumers as provided in regulation 22 of the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012.”*

That the contents of Para 1.5 are also wrong as the Licensee has totally changed the methodology of calculation of the additional surcharge. Hence the contents of this Para are wrong.

That the Contents of Para 1.6 are also incorrect. The extract from the ARR & Distribution & Retail Supply Order dated 07.05.2015 are reproduced for favour of reference,

“The Discoms have filed the petition along with the supporting details on 04.03.2015 vide memo no. Ch-12/GM/RA/N/F-15/Vol-III dated 04.03.2015 wherein the Discoms , based on the fixed cost paid by them for the stranded capacity due to scheduling of Open Access power by the embedded Open Access consumers, have proposed an additional surcharge of Rs. 0.80 per unit to be paid by such consumers.

As the proposed levy of additional surcharge shall affect a large number of electricity consumers, the Commission has considered it appropriate to hold a public hearing before finalising the same. Accordingly, the Commission shall schedule a hearing of the stakeholders and other interested persons and after hearing their objections / comments as well as the reply of the Petitioners thereto, shall pass an appropriate Order in the matter.”

That the contents of Para 1.7 & 1.8 are self revealing. The Commission vide its Order dated 26.04.12 in the Suo motu proceedings in the matter of “Seeking of review / clarifications and orders of the Commission on various issues by the power utilities of Haryana and other stakeholders through ordinary letters / emails etc.” has clearly directed all submissions to be filed in the form of a Petition. This fact was well known to the Licensees. Hence submission of data in letter shape was nothing but

an attempt to gain time. Extract from this order is reproduced for favour of reference,

“The Commission orders that power utilities and other stakeholders shall file applications / pleadings before the Commission in accordance with the procedure laid down in the HERC (Conduct of Business) Regulations, 2004. The consumers shall file complaints against distribution licensees, relating to the issues specified in HERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulations, 2004, before the concerned Forum / Electricity Ombudsman. The Commission shall not respond to any such application / pleadings from the power utilities / stakeholders which are not filed in accordance with the laid down procedure.”

That the method of calculation of the additional surcharge as brought out in the Petition is totally unacceptable and adhoc without any principle or approved practice. The specific errors in the methodology are discussed hereunder,

- a) The calculation of stranded capacity for a day at random and to use it for the month is totally unreliable. These are financial matters where approximation or random sampling cannot be accepted. In the present day of computerization, it is not difficult to work out the data for 365 days and 96 slots of 15 minutes each. No general approach could be allowed when it comes to payment of surcharge by the consumers.
- b) Similarly, using this average of a day for the month and taking average of the months so worked out for arriving at the average for the year is not only unreliable but erroneous.
- c) The calculation of effective Fixed Cost is also purely arbitrary. It is not supported by the actual power which remained stranded. The stranding of the power is not due to the open access consumers but it is affected by various other factors, like rains, seasonal demand of the consumers, transmission & distribution constraints in the system, etc. Therefore, the average worked out is totally unrealistic and arbitrary. On such data the consumers cannot be asked to pay additional surcharge.

- d) The Licensees have the exact data of the open access power scheduled and availed by the open access consumers in the State. Why can't that figure be produced to substantiate their calculations?
- e) If the total power purchased by the open access consumers is hardly 2% of the total power consumed in the State, and so is the percentage of the total power stated to be stranded, does it not indicate the in-efficiency of the Licensees to carry out effective planning of power purchases and scheduling of power for sale in the State. Why should the open access consumers be loaded with this in-efficiency of the Licensees?
- f) A reference is drawn to Section 42 (4) of the Electricity Act, 2003, where it is worth noting that,
 - (i) Additional surcharge on the charges of wheeling;
 - (ii) To meet the fixed cost of the distribution licensee arising out of his obligation to supply.

In the instant case both the conditions are not met with. It is categorically said that the additional surcharge is on the charges of wheeling. When the total wheeling charges are determined by the Commission as 37 Ps/unit, any surcharge over that could not be more than it or a small percentage of it.

- g) That if we look at the impact of fixed cost of the PPA, it is an integral part of the average cost of power purchase allowed by the Commission for each of the power plants. While determining the FSA, the actual cost of such power is accounted for and hence the impact of fixed cost is already recovered through the FSA. Therefore, any levy of the additional surcharge based on the fixed cost of power purchase would amount to double payment to the Licensee.
- h) That the fact remains that the wheeling charges are worked out taking into account the total ARR of the transmission licensee and the expected flow of power over the system. In case some of the expected power is not

wheeled or less wheeled, the net impact would be an increase in wheeling charges and that is only to be allowed as additional surcharge on the wheeling charges and not the fixed cost of the power purchase.

- i) That even if we go by the figures of power purchased through open access mentioned in the petition, this figure is a negligible percentage of the total power sold in the State. Moreover, while comparing the extent of backing down done by the Petitioners the open access power is not even 10% of the total backing down. Further it is to be noted that open access power is purchased even during the time slots when State is not able to meet the requirement of the consumers. It is worth appreciating that fixed cost of power is fully recovered by way of fixed charges/demand charges. This Commission is well aware about the facts of the case and decided the Retail Tariff after taking in to account the actual ground reality. While allowing the power purchase cost in the ARR, the Commission has rightly considered the overall tariff of the generation sources including the fixed and variable cost. Hence the computation of additional surcharge indicated by the Petitioner is not only misleading but far from truth.

That in view of the submissions made above, there is no substance in the proposal made by the Petitioners and the Commission may kindly reject the prayer as devoid of merit and save the consumers from unnecessary financial burden because of the total inefficiency of the licensees in the discharge of their functions under the license granted by this Commission.

Faridabad Industries Association (FIA)

In response to the Public Notice inviting comments / objections regarding levy of additional surcharge on Open Access Power, the Faridabad Industries Association (FIA) vide Ref. No. FIA/2015/167 dated 15th June, 2015 submitted as under:-

a) The National Tariff Policy clearly lays down that the impact of cross subsidy surcharge, Additional Surcharge; Wheeling Charges etc. should not be so onerous so as to eliminate competition.

b) There are approximately 290 Open Access Consumers in Haryana.

c) The maximum permissible Power that can be drawn by the said consumers is 750 MW.

d) There is no authentic data available regarding the stranded Power during the year 2014 - 15.

e) We strongly assert that the PPAs which are financially unviable should be cancelled. There is no need to burden a small segment of consumers on account of failure of the Discoms to review the unviable PPAs.

f) The Power being supplied by the Discom is not only expensive but unviable. In today's competitive environment the industry will be unable to survive if it continues drawing expensive Power.

g) The Open Access Power which has been contracted for is only about 10% of the overall availability of which only 2 to 3% is purchased on a daily basis. Therefore, the plea of stranded Power is unjustified. The Discoms should instead give the alleged stranded Power on a 24x7 supply to domestic, agricultural and other Commercial Consumers.

h) The OA Consumers are paying fixed charges to the DISCOMS which have since been increased from Rs. 150/KVA to 170/KVA for FY 2015-16 in the case of HT Industry up to supply at 400 KV and from Rs. 150/KVA to Rs.200/KVA in the case of Arc furnace/ steel rolling mills.

i) The phenomenon of Open Access is not new to the Discoms and therefore they should have re-casted their demand of Power in line with the marginally growing scale of Power procurement by OA Consumers. This lack of planning by the Discoms should not result in victimization of OA Consumers.

j) The Discoms should manage their load in a more efficient manner-so that the stranded Power is minimized.

k) The Commission, in all fairness, cannot reward any non-performing licensee for its perpetual & progressive inefficiencies.

l) It is a known fact that in the previous year i.e. 2014-15, the Commission had taken an ad-hoc decision to levy additional surcharge at

Rs. 0.50 /kWh based on ad-hoc and incorrect data. Similarly this year, as already mentioned above, there is no data available on the website of DHBVN to enable analysis and comments.

m) The levy of FSA which has been gradually increased over the month's accounts for actual increase in cost of Power and therefore the impact of fixed cost is already being recovered through this methodology. Therefore, any levy of additional surcharge would amount to double payment to the licensee.

DCM Textiles, Hisar

The intervener herein mostly relied on Regulation 22 (2) of the HERC Open Access Regulations, 2012 to state that the additional surcharge proposal submitted by the Discoms is not in line with the said Regulation. Further, it has been submitted that the Discoms have failed to demonstrate which specific power was surrendered and also failed to prove in which PPA there was an "unavoidable burden" of payment of fixed cost. Additionally, it has been submitted that the quantum of surrendered power, in some time slots is up to five times the Open Access Power. Hence, it is clear that the alleged stranded capacity is not because of the Open Access draws but is the result of poor and inefficient power purchase planning by the Discoms. It has been further submitted that the additional data allegedly filed by the Discoms in September, 2015 was not provided to the objectors as specifically directed by this Commission on 29.07.2015. The objector got to know about the data being put on the website of the Commission only when this Commission informed the objectors regarding the same. Despite this the Commission rejected the prayer of the Objector seeking more time to address the information so provided.

That 8-9 days in a month data provided by the Discoms cannot be representative data for the entire month. The data must be given for each time slot for each day. Any other method would only be presumptive i.e. based on assumptions and completely hypothetical. Further, no one to one correlation between power being surrendered by the Discoms and drawl by the Open Access Consumers have been established by the Discoms. It has been further submitted that there is absolutely no explanation as to why the claim for additional surcharge for the year gone by cannot be considered by this Commission as part of the True-

up process for the FY 2014-15 as the Commission would then have the benefit of the audited accounts of the Discoms for the relevant year. Further, as of now the entire exercise is being carried out on the basis of unaudited, unverified and the average data of the year gone by which is not permissible under any principle of tariff determination.

8.0 Reply filed by the Discoms

UHBVNL (on behalf of both the Discoms) vide Memo No. Ch-25/GM/RA/N/F-15/Vol-IV dated under Affidavit dated 10.08.2015 filed a detailed reply to the objections / comments filed by M/s JSL and M/s FIA as per Interim Order of the Commission dated 9.07.2015. Further, it has been submitted that a copy of the same has been provided to M/s Faridabad Industries Association and Shri. R.K.Jain, Counsel for M/s Jindal Stainless Ltd. The reply, in brief, is set out as under:-

That the objective of the Electricity Act, 2003 provides for balancing the interest of the power industry as a whole along with safeguarding the interest of the power consumers. The development of the electrical industry and rationalization of the electricity tariff would be possible only if the interests of both the power sector stakeholders and the consumers are simultaneously balanced. Hence, the Commission has not only to monitor performance of power utilities, but while assuring them reasonable returns, has to in unison, act as a custodian of public interest. In other words, the Commission is expected to balance the interests of the various stakeholders and, at the same time grant bare minimum ROE to the Discoms to promote efficiency, economy, and competition in the sector.

That the open access is aimed to enable the consumer to take advantage of competitively available power in comparison to the Discoms while protecting the financial interests of the Discoms through cross subsidy surcharge and additional surcharge. The provision of Open Access on Transmission and Distribution on payment of legitimate charges to the Utility has been introduced in the Electricity Act in order to enable number of players utilizing these capacities and transmit

power from generation to the load centre. This will mean utilization of existing infrastructure and easing of power shortage with no losses to be borne by the power Discoms, who shall remain revenue neutral towards the migration of consumers from the licensee to a second source of power under the provisions of open access. The Electricity Act provides levy of cross subsidy surcharge on such consumers for compensating the distribution licensee for the loss of cross subsidy. The principle provision in this regard is Section 42 (2) and (4) of the Electricity Act 2003 which is reproduced below :

“Section 42. (Duties of distribution licensee and open access): ---

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that [such open access shall be allowed on payment of a surcharge]¹ in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

¹ Subs. by Act 26 of 2007, Sec.7 for the words “such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge” [w.e.f. 15th June 2007].

*Provided also **that such surcharge and cross subsidies shall be progressively reduced** [***]² in the manner as may be specified by the State Commission:*

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]³

(.....)

*(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.***

That the National Tariff Policy, 2006 dealing with cross subsidy and Additional Surcharge provides as under:-

“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

² The words “and eliminated” omitted by Act 26 of 2007, Sec.7 [w.e.f. 15th June 2007].

³ Ins. by Act 57 of 2003, Sec.3 [w.e.f. 27th January, 2004].

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 only avail open access even if after the payment of all the charges it leads to a benefit to him. 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 **while the interest of distribution licensee needs to be protected.***

*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:

$$S = T - \left[C \left(1 + \frac{L}{100} \right) + D \right]$$

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.

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11.

8.5.2

8.5.3

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.

8.5.5 *Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.*

8.5.6

That the National Electricity Policy also recognizes that to make the power sector sustainable, there is an urgent need for ensuring recovery of cost of service from consumers (Point 5.5). Further, the National tariff Policy acknowledging the inter-linkage of Cross Subsidy Surcharge and Cross Subsidy mandates that the reduction of CSS needs to be in step with reduction of Cross Subsidy. The relevant extract is reproduced herein below:

*“5.8.3 Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers who are permitted open access under section 42(2), for loss of the cross-subsidy element built into tariff of such consumers. An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access.....**Further, it is essential that Surcharge be reduced progressively in step with the reduction of cross-subsidies as foreseen in Section 42(2) of the Electricity Act, 2003.**”*

That the above provisions need to be read to be read with clause 8.3.(2) of the Tariff Policy which read as under:-

For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within ± 20 % of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

Thus the reduction of Cross Subsidy Surcharge and Cross Subsidy prevalent as per tariff design go together. The Tariff of subsidising consumers were envisaged to be brought down to plus or minus 20% and in the said context the cross subsidy reduction was also envisaged to be reduced eventually to plus or minus 20%. Thus, the answering Respondent submits that the reduction in Cross Subsidy Surcharge cannot go independent of the reduction in Cross Subsidy in the tariff design as a consequence of the formula for determination of Cross Subsidy Surcharge notified under the National Tariff Policy. Both will have to go together. If the Cross Subsidy existing in the tariff design had not been reduced, how can there be any reduction in the computation of the cross subsidy surcharge only because otherwise there would be violation of the scheme and objective of the Electricity Act which in section 42(2) provides for the cross subsidy surcharge to meet the current level of cross subsidy prevalent in the tariff design and further the cross subsidy determination as per the tariff policy is the difference between the tariff of the relevant category and cost of supply.

That the Commission is a statutory body created under the Act and the tariff dispensation has been done in accordance with the principles enshrined under the Electricity Act and regulations framed thereto. It is submitted that open access is not an unfettered right and is subject to various terms and conditions provided under the Act and the regulations framed thereto. The grant of open access is the prerogative of the respective SERC under section 42 of the Act and is subject to operational constraints. It is submitted that there is a huge body of jurisprudence with respect to open access issues and the challenge to levy and/or increase of Cross Subsidy Surcharge and Additional Surcharge has already been decided by the Hon'ble Appellate Tribunal in various cases. In fact the levy of

Cross Subsidy Surcharge and Additional Surcharge in a mandate which flows from the provisions of the Act, namely section 42 and helps the distribution licensees in performing their public duties by compensating them for the loss of consumers who were of the subsidizing category in order to serve poor consumers. Any loss of Cross Subsidy Surcharge and Additional Surcharge will lead to a rise in general tariff of the other category of consumers. It is submitted that the fixation of retail tariff and other aspects of tariff require a detailed exercise and is done in a manner i.e. not only to protect consumers but also to ensure rational tariffs in the orders to reflect the actual cost of supply. Any unilateral tinkering with the levy of Cross Subsidy Surcharge and Additional Surcharge would result in upsetting the tariff structure within the State of Haryana and to further burden the already over burden Discoms.

That the power Discoms have signed PPAs to meet the increasing demand of power in the State, which is eight-ten per cent per annum at State level and 15-20 per cent per annum in industrial and commercial circles like Gurgaon and Faridabad, and thus the Haryana Government is regularly making all out efforts to create additional capacity of generation along with the power transmission and distribution system simultaneously being strengthened congruently. All this has helped improve the quality of power and also facilitated the Discoms to meet the rising need for electricity.

That every year the peak load for the Discoms reaches high levels of around 9000 MW and thus the arrangement of signing power purchase agreements are valid and justified. It is evitable from the fact that the running hours to various consumer categories specially industrial and commercial have improved at a fast pace.

In accordance with the provisions of the Electricity Act 2003, the distribution licensees have an obligation to supply power to all the consumers under the respective areas of supply; and correspondingly they have to enter into agreements for purchase of power from various generating stations for meeting the entire demand of the state, well in advance.

As such, when these embedded consumers draw power from elsewhere apart from the licensee under open access, the fixed cost of the supply taken by these consumers from elsewhere is still payable by the licensee, making it a stranded capacity for the distribution licensee. It is submitted that the additional surcharge is payable for the stranded capacity of the distribution licensee. In the event of the open access consumers moving out of the system of the licensee, the distribution licensee has still to bear stranding of assets which eventually causes financial loss to the distribution licensees and the same can only be compensated by way of additional surcharge, as has already been allowed by the HERC vide MYT tariff order dated 29.5.2014.

It is submitted that under present scenario, Haryana has surplus power left, owing to continuous rise in the open access consumers not purchasing power from original licensees and thus the distribution companies have to surrender huge quantum of power every day. Consequently, the distribution companies have to bear fixed charges over the surrendered power to the power generators along with UI charges at the time of already existing surplus power in the system and high frequency. The distribution companies are bound to sell the surplus power in the power exchanges at much cheaper rates in order to prevent hefty financial losses because of the consumers opting for open access. Thus, these stranded consumers are in fact buying the same power from the power market at cheaper rates and practicing gaming of power. The open access consumers in fact are purchasing power both from the Discoms and the power exchange in the real time on random basis in order to get the cheapest power from where so ever available without bothering the vulnerability of their original licensees.

Hence the contention that the Discoms have entered into long term power purchase agreements without proper due diligence and poor planning is not justified.

It is further submitted that the Discoms have considered only that quantum of stranded power which was backed down/surrendered owing to open access consumption in the state. Thus in time slots where the open access

consumption was lower than the surrendered power, if such deemed open access consumers would have purchased power from the Discoms, the power surrendered would have been lesser. Even in time slots where the open access consumption was higher than the surrendered power, if such deemed open access consumers would have purchased power from the Discoms, to the extent of power availability; the additional surcharge would have been nil as there would have been no surrendered power available for that slot.

Thus, since in every time slot, the additional surcharge would be applicable on the power surrendered and open access power – whichever is lower, the statement that the applicability of additional surcharge is unjustified because of non-ability of the Discoms to supply power to consumers does not hold valid.

That the details of the additional surcharge applicable for the FY 2014-15 (April 2014 to March 2015) may logically be not available at the time of ARR/APR filings (November 30, 2014) and thus the Discoms had submitted the details of additional surcharge calculations in the Hon'ble Commission accordingly. However, in accordance with the directions of the Hon'ble Commission vide order dated 9 July 2015, the Discoms is submitting the details of stranded power for the FY 2014-15 and corresponding open access slot-wise considering an increased sample of 9 days a month.

2.1 The Discoms have no comments to offer on the same.

2.2 It is submitted that the justification of the PPAs entered by the Discoms and applicability of additional surcharge only on stranded power owing to power consumed under open access is already discussed in the submissions above and are thus not repeated here for the sake of brevity

2.3 It is submitted that the data that was submitted for the Additional surcharge for FY 2013-14 was arithmetic sum of the power surrendered in MW; just for calculation purposes. For the Additional surcharge for FY 2014-15, the calculations have been done more precisely considering 15 min time slots and

thus the procedure and methodology aptly signifies and confirms that the additional surcharge has been calculated only for that power which has been surrendered owing to open access consumption.

2.4 It is submitted that the hearing for review of HERC tariff for Financial Year 2013-14 dated 30.03.2013 was held on 19.03.2014 regarding allowance of additional surcharge. The Hon'ble HERC was requested to grant some additional time to the appellant for calculating the amount of additional surcharge with respect to the stranded power during the year, because of consumers opting for open access and procuring the power from sources other than the appellant, who are licensed power suppliers of the respective areas of supply in the State of Haryana. In reference to the same the details of Additional Surcharge that may be allowed to the Nigams- UHBVN and DHBVNL in reference to the Petition under section 94 of the Electricity Act, 2003 and Regulation 78 (1) & (2) of the HERC (Conduct of Business) Regulations, 2004 were displayed on the website of the Hon'ble Commission and a notice was released by the for the General Public that the aforesaid matter including the intimation that a hearing was scheduled for hearing before the Hon'ble Commission on 20.05.2014 at 11:30 A.M.

2.5 It is reiterated that the procedure and methodology aptly signifies and confirms that the additional surcharge has been calculated only for that power which has been surrendered owing to open access consumption. Thus the additional surcharge has been calculated on sample basis following slot wise power surrendered and open access power.

2.6 It is submitted that the Discoms had filed the APR petition for FY 2014-15 along with the ARR filings for FY 2015-16 with the Hon'ble Commission. Subsequent to the same, public hearing over the APR filings was held on 13th Feb. 2015 wherein the Hon'ble Commission directed the Discoms to file submissions over Details on Additional Surcharge Calculations for the FY 2014-15.

The Hon'ble HERC was requested to grant some additional time to the Petitioners to calculate the amount of Additional Surcharge the Petitioners should

be allowed for the FY 2014-15 to compensate for the fixed charges paid by the Discoms towards the stranded power in the given year, in the event of the consumers opting for Open Access and procuring the power from sources other than the Discoms.

The Petitioners had submitted the details of the calculations of additional surcharge to be allowed to the Petitioners with reference to the Open Access for FY 2014-15 to be recovered during FY 2015-16 to the Hon'ble Commission vide Memo No. Ch-12/GM/RA/N/F-15/Vol/III dated 04.03.2015. In reference to the same, the Hon'ble Commission had directed the petitioners to file the matter in the form of a petition vide Memo No. 7054/HERC/Tariff dated 25.03.2015.

2.7 It is reiterated that the Discoms had filed the details of additional surcharge to the Hon'ble Commission in the form of a petition on the direction of the Hon'ble Commission to file the details in petition format. The statement that the delay on this account was intentional is truly unjustified and unacceptable. This is because the Hon'ble Commission has already directed that the decision on the levy of additional surcharge shall be given post separate public hearing in this regard. Thus the allegation is not justified.

2.8 It is submitted that the calculations of the additional surcharge were done based on the following :-

Calculating slot wise power stranded due to open access for every day of the year is a cumbersome process and thus it was very difficult to go ahead with this methodology. Thus, a random sample of one day per month was selected by the Discoms from April 2014 to March 2015 wherein the slot wise power surrendered/backed down & Open access power drawl were reflected for calculating additional surcharge.

- The Petitioners have considered Slot wise power surrendered/backed down & Open access power drawl for 12 days (one day per month from April 2014 to March 2015) and for every day, average quantum of power was evaluated in order to calculate the effective power quantum for that month in terms of power in MW-per day per slot.
- However, based on the discussions in the public hearing held in this regard on 9th July 2015, the Discoms shall be submitting the details with a better sample of around 9 days a month for 12 months of the FY 2014-15 for calculation of additional surcharge for the entire year.
- It is submitted that since, the quantum of power surrendered every day are not from a specific power plant, and fixed cost associated with every power plant is different, the Petitioners have calculated an effective per unit fixed cost considered for calculating the amount of total fixed charges (Additional surcharge) that the Petitioners are expected to pay by the end of FY 2014-15; considering all the major power plant sources. Moreover, the backing down for the power plants is done in such a way that the costliest power plant is backed down first. Hence the contention is not valid.
- The reply to the planning of power purchase by the Discoms is already discussed above and thus is not repeated here for the sake of brevity.
- It is submitted that the Hon'ble Tribunal vide Judgment in *APPEAL NO.294 OF 2013, APPEAL NO.299 OF 2013, APPEAL No.331 OF 2013 AND APPEAL No.333 of 2013 dated 26th Nov, 2014* has decided as under: -

42. Having prescribed the formula in the said manner, the tariff policy in order to avoid double recovery of fixed costs has restricted additional surcharge only to recovery of stranded power purchase costs. The relevant extract is 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.”

43. Fixed costs of the Distribution Licensees other than power purchase costs are generally included in the Wheeling Charges. The Cross Subsidy Surcharge then computed using the Tariff Policy formulae would not thus include such fixed costs. However, in case, the Wheeling Charges do not contain certain fixed cost of the distribution licensee then the same gets recovered by way of Cross Subsidy Surcharge as in the Tariff Policy Formula. The wheeling charges are to be subtracted from the tariff payable by various categories of consumers which include such fixed costs. The State Commission, in fact adopted the Cross Subsidy Surcharge formula specified in the tariff policy. Therefore, such fixed cost is recovered through Cross Subsidy Surcharges instead of wheeling charges. Since the fixed cost of distribution licensee other than power purchase cost would be recovered by the Distribution Licensee either by way of wheeling charges or Cross Subsidy Surcharges, therefore, as per the tariff policy, the additional surcharge is limited to stranded cost of the power only otherwise it would amount to double recovery of fixed cost from the migrating consumers.

- Thus, it may be seen that the recovery of fixed charges owing to stranded power because of open access consumption is exclusive of the fixed charges of the Discoms included in the wheeling charges. Thus the statement is not valid.

- It is submitted with clarity that the fixed charges included in the approved power purchase cost by the Hon'ble Commission is congruent to the estimated sales and revenue approved to the Discoms. Thus in the present case, while the open access consumers are procuring power from some other source other than licensee, the Discoms have to back down/surrender additional power (other than the power surrendered because of reasons apart from open access consumption) and thus without procuring such power, the fixed charges are to be paid to the generators. Hence, these fixed charges are paid without any revenue compensation through tariff and thus needs to be allowed as recovery through Additional Surcharge under the legal postulates of the Electricity Act 2003.
- It is submitted that the fixed costs owing to stranded power is recovered through FSA are recovered through consumers of the Discoms. In case the fixed costs owing to stranded power due to open access consumers is legitimately allowed to be recovered from open access consumers through additional surcharge, the same shall obviously be excluded in the FSA for the FY 2014-15.

Reply to Objections/Suggestions on levy of Additional Surcharge on Open Access Power filed by M/s Faridabad Industries Association.

That the replies to the points that are apart from the ones given above are submitted for kind consideration below. The points which have already been responded above are not repeated here for the sake of brevity.

1. That the Discoms have accurate slot wise details of power surrendered and open access for the given slots and hence the contention that the accurate details are not available with the Discoms is not justified.
2. That the existing PPAs are being entered considering the load/contract demand of the entire consumers of the state of Haryana; since the open access consumers are deemed open access consumers in the state of Haryana and thus the Discoms are under statutory obligation to provide power to all the consumers. Hence, the PPAs are being logically entered in by the Discoms.

3. That the Discoms are procuring power from approved sources of power purchase only as directed by the Commission
4. That the Discoms are already following the PRM schedule for various consumer categories and endeavours to supply reliable quality and continuous power to all consumer categories. However, the supply to the consumers can be provided only on the event of instantaneous demand and optimal network considerations.
5. That the revision in tariff is a matter of the Commission. In the FY 2015-16, on the APR petition filed by the Discoms, the Commission has notified the tariff order for FY 2015-16 dated 7.5.2015 giving tariff schedule notified for FY 2015-16. The Discoms are statutorily required to follow the tariff schedule notified by the HERC in for D&RS of electricity in the state of Haryana. Further, it is submitted that the landed Tariff rates (without FSA) per unit to industrial consumer (Rs./KWh) in the states of Haryana are much lesser than their counter parts in Delhi and Punjab as per the details given below:

HT Industry at 11 KV (Rs./kWh)	
Delhi (Large Industrial Supply)	8.89
Haryana	7.09
Punjab (LIP)	7.81
LT Industry (Rs./kWh)	
Delhi (Upto 10 KW)	9.97
Haryana (Upto 10 KW)	6.5
Punjab (Small Industry)	6.71

Additional Surcharge Calculations submitted by the Discoms (Abstract) vide submissions dated 10.08.2015

Month	Date of the month	Average Quantum to be considered for Additional Surcharge eligibility for the selected days per slot in MW	Average Quantum of Open Access for the selected days per slot in MW
Apr-14	1/Apr/14	260.35	270.94
	3/Apr/14	259.88	295.29
	8/Apr/14	246.93	309.54
	10/Apr/14	152.14	164.99
	15/Apr/14	217.63	290.38
	17/Apr/14	213.80	288.63
	22/Apr/14	237.50	290.88
	24/Apr/14	196.09	280.60
	29/Apr/14	236.46	295.20

	Monthly Average	224.53	276.27
May-14	1/May/14	156.85	224.42
	6/May/14	232.20	232.20
	8/May/14	227.19	227.19
	13/May/14	84.52	107.73
	15/May/14	73.56	98.32
	20/May/14	0.00	0.00
	22/May/14	0.00	0.00
	27/May/14	293.96	303.26
	29/May/14	202.92	298.20
	Monthly Average	141.24	165.70
Jun-14	3/Jun/15	151.73	194.58
	5/Jun/15	88.08	139.85
	10/Jun/15	112.01	112.01
	12/Jun/15	93.73	100.01
	17/Jun/15	106.46	110.73
	19/Jun/15	88.61	95.00
	24/Jun/15	127.00	160.82
	26/Jun/15	187.82	203.67
	Monthly Average	119.43	139.58
Jul-14	1/Jul/14	85.06	85.06
	3/Jul/14	178.68	178.68
	8/Jul/14	114.84	114.84
	10/Jul/14	87.86	87.86
	15/Jul/14	36.37	85.12
	17/Jul/14	76.48	85.12
	22/Jul/14	185.94	185.94
	24/Jul/14	164.17	164.17
	29/Jul/14	126.11	126.11
	31/Jul/14	148.63	148.63
	Monthly Average	120.41	126.15
Aug-14	5/Aug/14	154.15	154.15
	7/Aug/14	142.84	158.21
	12/Aug/14	148.93	158.21
	14/Aug/14	149.76	149.76
	19/Aug/14	160.16	160.16
	21/Aug/14	86.17	94.84
	26/Aug/14	51.04	51.04
	28/Aug/14	47.12	47.14
	Monthly Average	117.52	121.69
Sep-14	2/Sep/15	89.51	99.85
	4/Sep/15	176.29	176.29
	9/Sep/15	146.34	162.22
	11/Sep/15	142.37	142.37
	16/Sep/15	128.26	131.09
	18/Sep/15	95.65	108.64
	23/Sep/15	54.26	74.47
	25/Sep/15	60.10	65.93
	Monthly Average	111.60	120.11
Oct-14	2/Oct/15	16.35	47.59
	7/Oct/15	43.84	52.48

	9/Oct/15	9.15	9.15
	14/Oct/15	30.21	30.21
	16/Oct/15	48.22	48.22
	21/Oct/15	71.54	83.50
	23/Oct/15	66.48	66.48
	28/Oct/15	107.29	114.82
	30/Oct/15	118.13	128.80
	Monthly Average	56.80	64.58
Nov-14	4/Nov/15	157.12	157.12
	6/Nov/15	165.23	166.53
	11/Nov/15	170.67	170.67
	13/Nov/15	182.03	182.03
	18/Nov/15	219.62	221.66
	20/Nov/15	223.60	227.55
	25/Nov/15	126.11	229.92
	27/Nov/15	217.34	221.17
	Monthly Average	182.71	197.08
Dec-14	2/Dec/14	62.94	172.29
	4/Dec/14	160.07	190.73
	9/Dec/14	201.00	215.79
	11/Dec/14	178.70	197.06
	16/Dec/14	185.02	208.62
	18/Dec/14	164.97	205.71
	23/Dec/14	167.41	167.41
	25/Dec/14	99.58	162.98
	30/Dec/14	122.68	122.68
	Monthly Average	149.15	182.59
Jan-15	1/Jan/15	112.22	114.94
	6/Jan/15	133.98	155.84
	8/Jan/15	147.62	159.16
	13/Jan/15	170.14	183.72
	15/Jan/15	161.89	162.47
	20/Jan/15	125.42	169.55
	22/Jan/15	177.76	177.76
	27/Jan/15	150.39	150.39
	29/Jan/15	179.45	179.45
	Monthly Average	150.99	161.48
Feb-15	3/Feb/15	126.09	136.82
	5/Feb/15	145.14	145.14
	10/Feb/15	174.61	175.02
	12/Feb/15	170.21	179.92
	17/Feb/15	168.00	168.00
	19/Feb/15	177.62	177.62
	24/Feb/15	174.41	174.41
	26/Feb/15	197.40	177.62
	Monthly Average	166.69	166.82
Mar-15	3/Mar/15	166.43	166.43
	5/Mar/15	155.67	155.67
	10/Mar/15	173.17	173.45
	12/Mar/15	156.90	156.90
	17/Mar/15	197.13	197.13

	19/Mar/15	159.49	200.87
	24/Mar/15	183.28	183.28
	26/Mar/15	168.95	168.95
	31/Mar/15	194.84	194.84
	Monthly Average	172.87	177.50
	Yearly average	142.83	158.30
	Total Units of Power in MUs to be considered for Additional Surcharge	1,251.18	1,386.67
	Effective Fixed Cost considered for the purpose of Evaluating Additional Surcharge	0.91	
	Total Additional Surcharge for the FY 2014-15 IN Rs. Crores	114.34	
	Open Access Units estimated for FY 2015-16 (considering same open access scenario as in FY 2014-15) in Mus	1,386.67	
	Per Unit Additional Surcharge applicable on the same Quantum of Open Access (Rs./unit)	0.82	

9. Public Hearing (14.09.2015)

In order to get more clarity in the matter especially in view of the objections filed by the stakeholders, the Commission again held a public hearing on 14.09.2015. The arguments of the parties, for the sake of brevity are not being reproduced here as the parties mostly reiterated their written submissions.

After hearing the parties at length, the Commission passed an Interim Order dated 14.09.2015. The operative part of the said Order is reproduced below:-

“5. Upon hearing the parties, the Commission directed the Petitioner (s) to provide a copy of their submissions dated 10.08.2015 to the objectors namely Faridabad Industries Association (FIA, Faridabad) and DCM Textile, Hisar who did not receive the same as pointed out during the hearing. Further, the Petitioner (s) may facilitate the objectors to have access to the relevant information from the State Load Dispatch Centre (SLDC) for verification of data used by the Petitioner (s) for calculating additional surcharge. The Discoms are further directed to facilitate the objectors’ access to the Power Purchase Agreements (PPA) as requested

during the hearing. The Commission allowed ten days time to the Petitioner's Counsel, from the date of this Order, to file replies to the submissions made by the objectors and any other relevant data / details with a copy to the Counsel(s) of the opposite parties (objectors). Thereafter, the Counsel(s) for the objectors shall file their comments/objections within 15 days in the Commission with a copy to the Petitioner(s) or their Counsel".

UHBVNL vide its Memo No. Ch-13/GM/RA/N/F-15/Vol-V dated 24.09.2015 made supplementary submissions w.r.t the Commission's Interim Order dated 14.09.2015.

It has been submitted that the introduction of fixed charges for certain consumer categories is in line with the two-part tariff principle adopted by all the SERC's across the country.

That in order to cater to the demand or load, the Discoms have to develop a healthy distribution network keeping in view the maximum, minimum load and the load which is likely to come in the near future. The demand charges covers Utilities fixed cost of providing certain level of energy to their consumers. The challenge is that the Utilities have to maintain enough capacity to satisfy all their consumers' electricity needs at once e.g. a hot day in July when every consumer run their ACs. This requires the Utilities to keep a vast array of expensive equipments including transformers, wires and sub-stations on constant standby. Such capacity is extremely expensive to build and demand charges help the Utility to meet such costs. Further, as per the Section 42 of the Electricity Act, 2003, Discom is required to maintain an effective and efficient distribution system and provides for the recovery of additional surcharge. Regulation 22 of the HERC Open Access Regulations, 2012 provides the details and manner in which additional surcharge is recoverable. Additionally, it has been submitted that demand charges and additional surcharge are not correlated in any manner. The demand charges are recovered on account of the investments made by the Discoms in the distribution network whereas, additional surcharge is meant to compensate the Discoms for the fixed cost of the stranded capacity due to Open Access Consumers.

Further, with regard to the methodology adopted by the Gujarat Electricity Regulatory Commission (GERC) in its Order dated 12.03.2014, it has been submitted that UHBVN and DHBVN while calculating additional surcharge has followed Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012. It has further been stated that as per the Section 22 of the aforesaid regulation Additional Surcharge is to be recovered only if there is a stranded capacity due to open access. The cited Regulation 22 is reproduced as under:

“(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”.

Accordingly, it has been stated that UHBVN and DHBVN as per the section 22 of the open access regulation, 2012 has considered only fixed cost of Stranded power for calculation of Additional Surcharge.

Further, UHBVNL vide Memo No. Ch-33/GM/RA/N/F-15/Vol-V dated 19.10.2015 filed the relevant data / details as required under Regulation 22(3) of the HERC Open Access Regulations, 2012 with a copy to the interveners. The gist of the submissions is as under:-

That in order to ensure that only such surrendered power is taken for calculating additional surcharge, which corresponds to power stranded because of open access consumers only, the lower of the open access power per slot and the surrendered power for the corresponding slot has been taken as the quantum of the stranded power for the day due to open access.

That, as suggested in the hearing that a broader sample of data needs to be considered for more accurate results and a sample size of 30% must be considered, the Discoms have taken average of around 8-9 days per month (excluding drawl by Jindal from its CPP) for all Tuesdays and Thursdays from April, 2014 to March, 2015 for calculation of additional surcharge excluding the drawl by Jindal from their Captive Power Plant. Further, for every day of the

month, they have calculated the average quantum to be considered for calculation of stranded / backed down power due to open access and average quantum of open access per slot in MW.

That the Discoms have separately calculated the slot-wise stranded / backed down power due to open access consumers and the power drawn from power exchange(s) by the open access consumers, UHBVNL and DHBVNL while calculating additional surcharge in line with the regulation 22 of the HERC Open Access Regulations, 2012. The Discoms have calculated daily average of the slot wise stranded power due to open access and also the daily average of the open access availed in that particular time slot. Further, monthly average of the average quantum of power stranded due to open access to be considered by calculation of additional surcharge and average quantum of open access per slot in MW for all the twelve months of the FY 2014-15 and thereafter the Discoms have calculated yearly average of the monthly values based on the monthly average of the average quantum to be considered for average quantum of power stranded due to open access and average quantum of open access per slot in MW for all twelve months.

That the Discoms, in these supplementary submission, have calculated the weighted average of per unit fixed cost of the stranded power and average stranded power in million units (MU). Accordingly, per unit fixed cost of surrendered power has been calculated at Rs. 1.21/Unit and the additional surcharge to be levied in FY 2015-16 at Rs.1.10/unit.

That the effective per unit fixed cost obtained is multiplied by the total units of power (MUs) to be considered for additional surcharge (AS) obtained by the formula as under:-

$$\text{Total Units of power (MUs) to be considered for as Additional Surcharge} = \frac{[(\text{Yearly average quantum to be considered for AS eligibility per slot (MW)} \times 96 \times 365 \times 1000)]}{(4 \times 1000000)}$$

That the total AS for the FY 2014-15 (in Rs. Crores) has been calculated over the Units of power (in MUs) for the entire FY 2014-15 considering the per units effective fixed charge. Finally, the per unit AS (Rs/Unit) applicable to the

open access consumers in the FY 2015-16 owing to open access in the FY 2014-15 has been calculated considering the total open access Units estimated for the FY 2015-16 (considering same open access scenario as in the FY 2014-15 in MUs) and the AS (in Rs. Crores) has been determined by dividing the total AS with the estimated open access Units for the FY 2015-16 in MUs. Accordingly, the Discoms have now prayed as under:-

“The Hon’ble Commission is requested to allow an additional surcharge of 1.10 paisa (sic.) per unit on the open access consumers; as calculated based on the details of slot wise surrendered power and slot wise open access power considering the representative sample of 104 days for the FY 2014-15”.

Shri R.K. Jain, appearing on behalf of M/s Jindal Stainless Limited (JSL), subsequent to the hearing held on 14.09.2015, vide letter dated 23.09.2015, has filed additional submissions. The gist of the same is as under:-

That there is no justification for levy of AS as the fixed cost incidence is being fully recovered through the demand charge component of the tariff as well as through FSA mechanism.

That there is no substance in the argument that the Discoms have to surrender power due to more and more consumers opting for open access in Haryana.

That against the total average surrender / backing down of 837 MW during the year the open access power constituted hardly 14% of the surrendered power. The balance 86% of the power surrendered was because of the failure of the Discoms to assess their demand properly and manage the power purchase function in a more scientific and economical manner.

That if we compare the open access the open access power with the total power purchased by the Discoms it will not constitute even 2% (118 MW) of the total power purchased. Therefore, the Discoms are blaming the open access consumers for causing stranding of power purchase agreements for the

negligible 2% portion of the power purchase rather than to account for the balance over 98% of power.

That the method of ascertaining the veracity of stranded power, the data of past six months needs to be closely examined as per the guidelines contained in the Tariff Policy and the Regulations. It has been pointed out that over 1/3rd of the open access power shown by the Discoms in their petition was actually the captive power which is not to be included in the calculation of stranded power.

That in view of the original submissions of JSL and the subsequent additional submissions, it is quite clear that the Discoms proposal are totally uncalled for and unreliable, hence, the same may be dismissed as devoid of merit. Further, suitable disciplinary proceedings may be initiated against the persons who were responsible for submitting erroneous data.

Col. S. Kapoor (Retd.), on behalf of the Faridabad Industries Association, vide his filing i.e. Ref. No. FIA/2015/282 dated 7th October, 2015 submitted comments on the supplementary submissions with reference to the Commission's Interim Order dated 14.09.2015. A gist of the same is as under:-

That the said Supplementary Submissions fail to address the following issues which were raised by the Objectors and other consumers at the hearing held on 14.09.2015 and the same are silent on the fact that Demand/ Fixed Charges which are already being recovered from Open Access consumers (including the Objectors) are inclusive of the fixed cost of the distribution assets (which becomes Wheeling Charge for an Open Access consumer) and the fixed cost of the generating sources (which becomes Additional Surcharge for an Open Access consumer). Unless the Petitioners answer/ clarify the said issue, no Additional Surcharge can be allowed to be levied on the Open Access consumers.

That the Petitioners in their Supplementary Submissions have failed to demonstrate that by recovering Demand/ Fixed Charges from Open Access consumers in addition to their non-Open Access consumers, the Petitioners have failed to recover the fixed cost of the generating sources. It is stated that only if the Petitioners can demonstrate failure to recover/ under-recovery of fixed cost

of generating sources, solely attributable to the Open Access consumers, can the question of allowance and levy of Additional Surcharge come into play. In this context, reference may be made to para 21 of the judgment dated 01.08.2014 passed by the Hon'ble Appellate Tribunal in Appeal No. 59 of 2013 as under:-

"21. The open access consumer who maintains full contracted demand with the Distribution Licensee is liable to pay for demand charges which should cover the fixed cost of the Distribution Licensee. In case the Distribution Licensee is not able to recover full fixed cost for the power arranged for such consumer then the Distribution Licensee has liberty to put up a case with supporting documents for the recovery of same for consideration of the State Commission to appropriately compensate the Distribution Licensee so that the burden is not passed on to other consumers".

That the Petitioners in their Supplementary Submissions have failed to clarify one material aspect regarding the Demand/ Fixed Charges recovered from the Open Access consumers on the Open Access quantum. It is to be noted that the said Demand/ Fixed Charges is 170 paise. The Wheeling Charges approved by this Commission is 86 paise.

That the Petitioners are seeking allowance of Additional Surcharge to the tune of 82 paise. Therefore the sum total of the Wheeling Charges and the proposed Additional Surcharge comes to 168 paise. Clearly, the said total is less than the Demand/ Fixed Charges being already recovered by the Petitioners from the Open Access consumers on the Open Access quantum. Hence, by no stretch of imagination, as is evident from the calculations of the Petitioners itself, can it be claimed that the Petitioners are under-recovering fixed cost of generating sources on account of Open Access being availed by consumers. The said fact fails the test contained in para 21 of the judgement in Appeal No. 59 of 2013, as referred hereinabove.

That the Petitioners in their supplementary submissions have failed to clarify that the Open Access consumers who are not reducing their contract demand stand on an equal footing, if not less, to the non-Open Access consumers. Both the said consumers are paying Demand/ Fixed Charges on the

entire Contract Demand. It is the case of the Objectors that those consumers who are not reducing their Contract Demand on account of Open Access, stand on a different footing than the non-Open Access consumers. The same is for the reason that at least the Open Access consumers are intimating a day in advance to the Petitioners about non-off take of power despite paying Demand/ Fixed Charges on the full Contract Demand. Whereas, with respect to normal consumers, whenever there is a reduction of their load demand, then such consumers are not liable to pay any Additional Surcharge in spite of the fact that on account of such reduction the Petitioners have to also back down their generators. This amounts to putting additional burden on the Open Access consumers, whereas, the Act envisages incentives and gradual proliferation of Open Access amongst the consumers which would in a way infuse competitive spirit in the Distribution system of the State. Therefore, imposing Additional Surcharge over and above the Demand/ Fixed Charges being collected for the entire Contract Demand from the Open Access consumers is arbitrary and discriminatory, which tends to violate the principles laid down under Article 14 of the Constitution of India. Unless the Additional Surcharge is disallowed, the Open Access transaction in the State of Haryana will be onerous and rendered unviable.

That in light of the above, it can be stated that on account of the fact that Open Access consumers and the non-Open Access consumers are paying Demand/ Fixed Charges on the complete Contract Demand, the said Open Access consumers ought not to be made liable to pay any Additional Surcharge as is the case with the non-Open Access consumers.

That in the State of Haryana, the Open Access consumers are not reducing their Contract Demand meaning thereby that the said consumers are already paying the Demand/ Fixed Charges to the Petitioners. The same enables the Petitioners to levy and collect fixed/ demand charges for the entire Open Access quantum. In the Supplementary Submissions the Petitioners have completely failed to address a material legal objection raised by the Objectors with respect to the fact that in the Written Note filed by the Objectors on 14.09.2015, it was categorically stated that allowance and levy of Additional Surcharge on the Open

Access consumers would amount to double charging as the said consumers have already paid the fixed cost of the generating sources.

Discrepancies in Data

That pursuant to the objections raised by Jindal Power on 14.09.2015 wherein it was informed to the Petitioners that the units transacted between the Petitioners and Jindal Power ought not to be considered at the time of calculating the Additional Surcharge, as the same was on bilateral basis, the Petitioners have accordingly made changes to the data provided in the hard copy of the Supplementary Submissions dated 24.09.2015 as received by the Objectors on 05.10.2015, as against the petition dated 10.08.2015. Post the said change to the data sheet, it can be observed that the units transacted between the Petitioners and Jindal Power have not been considered. However, the resultant change in the eventual calculation of the proposed Additional Surcharge has not been provided to the Objectors.

Clearly, there is no rationale in the calculations being provided by the Petitioners. Hence, it is an urgent requirement that the data being provided by the Petitioners and the calculations being undertaken by the said Petitioners ought to be subject to an audit/ prudence check by this Commission or by such third parties as appointed by this Commission. Post such authentication of data, the same ought to be made available to the public at large so that the consumers who are affected can also analyze the same. Such a method would bring in much required transparency to the proceedings being undertaken for determination and allowance of Additional Surcharge.

That the data provided along with the supplementary submissions, received by e-mail by the Objectors on 28.09.2015 reflects the “per unit fixed cost of surrendered power (Rs/ unit)” to be Rs. 1.21. Subsequently, the Objectors have received on 05.10.2015, a hard copy of the supplementary submissions along with the relevant documents, wherein the aforementioned chart reflecting Rs. 1.21 per unit fixed cost of surrendered power is missing. Furthermore, nowhere in the supplementary submissions have the Petitioners even bothered to explain the basis for arriving at a figure of Rs. 1.21.

Furthermore, such figure of Rs. 1.21 per unit fixed cost of surrendered power is materially different from the figure given in Annexure 3 as 91 paise in the Petition circulated by the Petitioners on 10.08.2015. It is submitted that using such varied methodology for calculation of Additional Surcharge is only serving the purpose of increasingly confusing the consumers who are unable to successfully analyse and ascertain the validity of the figures. As of this day and date, the consumers (including the Objectors) are unaware of what the exact per unit fixed cost which has been considered in the formula at the bottom of the table given in Annexure 2 of the petition circulated on 10.08.2015.

That the recent documents received by the Objector along with the Supplementary Submissions dated 28.09.2015, physically received on 05.10.2015, does not show the final calculations and the proposed Additional Surcharge to be levied. In light of the changes made to the data sheet on account of the objections of Jindal Power, surely there must have been some material change to the figures eventually arrived at. The Petitioners can by no stretch of imagination come to the conclusion that by changing the statistical parameters pertaining to calculation of Additional Surcharge, the proposed Additional Surcharge to be levied would remain the same as it was before such change was effected.

That the submissions made hereinabove, it is pertinent to state herein that the proposed Additional Surcharge shall eventually financially affect the Open Access consumers of the State of Haryana. If nothing else, then at least the methodology, the calculations and the figures arrived at should be mandatorily made subject to an independent prudence check by this Commission or any third party auditor appointed by this Commission. Levying of surcharge cannot under any circumstances be at the whims and fancies of the documents submitted by the Petitioners without the same having been cross-checked and accordingly approved by a Regulatory/ Statutory Authority.

Para-wise Reply

That in addition to the Written Note filed on the last date of hearing and in addition to the Preliminary Submissions made herein above, the Objectors are only limiting the Reply to the specific submissions made by the Petitioners in the Supplementary Submissions.

That the contents of para 1 of the Supplementary Submissions are inadequate for demonstrating the need to levy Additional Surcharge by the Petitioners. The averments made by the Petitioners that the Demand/ Fixed Charges cover electric utilities' fixed costs of providing a certain level of energy to their customers are ambiguous and at the best vague. As already demonstrated in the foregoing paragraph's the Petitioner's have failed to clarify that the Demand/ Fixed Charges recovered from the Open Access consumers on the Open Access quantum includes the fixed cost of the distribution asset and the fixed cost of the generating source. Without the said clarification, the Petitioners cannot claim Additional Surcharge. The other averments and contentions of the Petitioners in para 1 of the Supplementary Submissions deal with the requirement of Discoms to establish an effective and efficient distribution system. The same does not in any manner justify the levy of Additional Surcharge in the present case as the Discoms are already recovering the said costs of establishing a Distribution System through collecting Demand/ Fixed charges from the Open Access consumers on the entire Open Access quantum.

That the Petitioners also aver that the Additional Surcharge is required to meet the fixed cost of power purchase of the DISCOM arising out of its obligation to supply. The Petitioners further refer to Regulation 22 of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for intra-State Transmission and Distribution System) Regulations 2012 in order to infer that Demand/ Fixed Charges and Additional Surcharge are not co-related in any manner. The said submissions of the Petitioners are fundamentally flawed. It is stated that the Demand/ Fixed Charges include the fixed cost of the distribution asset as well as the fixed cost of the generating sources. Assuming without admitting that the said submissions of the Petitioners are correct, then the same would mean that the Demand/ Fixed Charges recovered from non-Open Access consumers do not cover fixed cost of the generating sources. It has to be clarified and explained by the Petitioners that in the event of the non-existence of Open Access, in what manner would the Discoms recover fixed cost pertaining to generating sources. In light of the said submissions, it is stated that the Petitioners are making erroneous and misconceived submissions while

averring that Demand/ Fixed Charges and Additional Surcharge have no relation. At the cost of repetition, it needs to be appreciated that Demand/ Fixed Charges is a genus, whereas fixed cost is a specie, meaning thereby that Demand/ Fixed Charges is inclusive of the fixed cost of the generating source.

That the contents of para 2 of the Supplementary Submissions pertaining to the principle followed by the GERC, are immaterial to the present case of the Objectors as the Petitioners have failed to establish non-recovery/ under recovery of fixed cost of generating sources.

That the averments and contentions made by the Petitioners in the supplementary submissions are silent on the fact that Demand/ Fixed Charges which are already being recovered from Open Access consumers (including the Objectors) are inclusive of the (i) fixed cost of the distribution assets (which becomes Wheeling Charge for an Open Access consumer), and (ii) the fixed cost of the generating sources (which becomes Additional Surcharge for an Open Access consumer). Unless the Petitioners answer/ clarify the said issue, no Additional Surcharge can be allowed to be levied on the Open Access consumers.

That the Petitioners have failed to demonstrate that by recovering Demand/ Fixed Charges from Open Access consumers in addition to their non-Open Access consumers, the Petitioners have failed to recover the fixed cost of the generating sources. It is stated that only if the Petitioners can demonstrate failure to recover/ under-recovery of fixed cost of generating sources, solely attributable to the Open Access consumers, can the question of allowance and levy of Additional Surcharge come into play.

Unless the above criteria, as laid down by the Hon'ble Appellate Tribunal vide its judgment dated 01.08.2014 in Appeal No. 59 of 2013, pertaining to demonstration of under-recovery of fixed cost of generating sources, is fulfilled, the Petitioners cannot refer for the applicability of the principles adopted by the GERC for computing Additional Surcharges.

10. Commission's Analysis and Order

The Commission has closely examined the petition filed by the Discoms including the supplementary / additional submissions subsequent to the hearing held on 09.07.2015 and 14.09.2015 as well as the replies / objections filed by the stakeholders and their arguments in the hearings held in the matter.

Further, the Commission, with fair degree of interest has examined the issue raised by M/s DCM Textiles, Hisar i.e. why the claim for additional surcharge for the year goneby cannot be considered by this Commission as part of the True-up process for the FY 2014-15 and observes that subsequent to the True-up of the ARR of a particular year as per the MYT Regulations in vogue, the impact (+/-) is passed on to all the electricity consumers of the Discoms in Haryana. As against this the additional surcharge is to be recovered from a specific set of consumers i.e. the Open Access Consumers on the basis of past data regarding the stranded Power Purchase Commitments. Further, as the revenue earned on account of levy of Additional Surcharge forms part of the 'Other Income" of the Licensees and the same to that extent gets trued-up on actual basis in the subsequent ARRs / Tariffs. The Commission finds such a dispensation fair as well practical to implement rather than Truing-up the additional surcharge itself and recovering / restoring the difference to ever changing short-term Open Access Consumers whose transactions, for all practical purposes, get concluded during the period for which short-term Open Access was sought.

The Commission, however, does not appreciate the multiplicity of additional / supplementary submissions revising the calculations of additional surcharge filed by the Discoms. The Commission has taken note of the issue raised by the Objectors that some of the supplementary data e.g. dated 19.10.2015 filed by the Discoms in the Commission was not made available / received by all the Objectors and observes that the interveners / Objectors who are necessary party to the case, and for that matter any case / proceedings of this Commission, as an abundant caution, should request for a certified copy of all pleadings / replies / rejoinders / Affidavits etc. Alternatively, prior to the date of hearing, they may request the Commission for inspection of the relevant case file. This will not only ensure any miscommunication that may have occurred between the parties but also enable the Responding party to effectively present / argue their case. The Commission, however, in the interim Order dated 14.09.2015 had directed the Petitioners to facilitate the Objectors to have access to the relevant information/data used by the Petitioner(s) for calculating Additional Surcharge. Petitioners were further directed to facilitate the

Objector's access to the PPAs as requested during the hearing on 14.09.2015. Thus, the Commission is of the considered view that it is the responsibility of the parties or their Advocates / Counsels to keep themselves abreast of the case in its entirety. However, the Commission, in the present case has not considered the data filed by the Discoms vide their letter dated 19.10.2015 as the same was not filed on an Affidavit. Further, whether the same has been provided to all the Objectors or not has also not been confirmed by the Discoms.

The Commission has examined in depth the relevant data regarding slot-wise energy surrendered, Open Access availed as well as the calculation submitted for working out average fixed cost during the relevant period to arrive at the per Unit Additional Surcharge in the present case and observes as under:-

The Commission is of the view that the Discoms, as per the statute, are entitled to recover from the Open Access Consumers, additional surcharge estimated on the basis of fixed cost of its stranded power, arising out of its universal supply obligation.

The above was also elucidated by the Hon'ble Supreme Court in its judgment in Civil Appeal No. 5479 of 2013 dated 25th April, 2014. The relevant extract is 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 (emphasis added)".

It is evident from the above judgment that additional surcharge is also in the nature of 'compensatory charge' payable to the Distribution Licensee of the area towards the cost of stranded power attributable to the Open Access consumers. Hence, it is a settled law that Additional Surcharge is leviable.

Thus the Additional Surcharge (AS) becomes leviable if power being drawn by the Consumers under Open Access mechanism is leading to backing down of generation and even after backing down intra-State generation capacity the Discoms are under drawing / power is being surrendered as the generation cannot be backed down further.

Having observed as above, the Commission, based on the pleadings of the parties, has framed the following issues for its consideration and Order thereto.

Issue No. 1: Whether data / details regarding the Additional Surcharge (AS), to be recovered from the Open Access consumers, filed by the Discoms is correct / adequate.

Issue No.2: Whether the Discoms are already recovering the Fixed Cost through Tariff i.e. through demand charges and FSA mechanism.

Issue No. 3: Whether stranded PPAs can be solely attributed to the Open Access consumers.

Issue No. 4: Whether the methodology followed by the Discoms for arriving at the per unit additional surcharge to be recovered from the Open Access Consumers in the FY 2015-16 based on the data for the FY 2014-15 is correct.

In order to find an answer to the above issues, the Commission has examined all the data / information brought on record by the parties as well as various relevant statutes / Regulations occupying the field.

The Commission observes that the interveners have vehemently contested the adequacy of data as well as its correctness. Regarding this the Commission

has analyzed the two aspects i.e. 'adequacy' and 'correctness' of data separately as under:-

Data Adequacy

On the issue of 'data adequacy' to enable the Commission to determine Additional Surcharge with fair degree of accuracy, it is observed that the Discoms, had initially filed data on the basis of a random sample of one day per month from April 2014 to January 2015 wherein the slot wise power surrendered/backed down & Open Access power drawl were reflected for calculating additional surcharge. The Commission subjected the said proposal, initially filed by the Discoms, to the rigors of public / stakeholders hearing on 9.07.2014 and on 14.09.2015. In the said hearings it was clearly established that the sample size considered by the Discoms i.e. one day / month for estimating slot wise power surrendered/backed down and Open Access power drawl for calculating additional surcharge was clearly not adequate besides there was some error regarding inclusion of JSL CPP power in the quantum of power drawn through Open Access to be reckoned for working out surrendered power. In the additional submissions, the Discoms enlarged the data to cover 8-9 days per month (excluding drawl by Jindal from its CPP) i.e. all Tuesdays and Thursdays in a month from April, 2014 to March, 2015 for calculation of additional surcharge. The Commission is of the view that when large volume of data i.e. 96 slots in each day of the year is involved, a sample size of about 30% drawn on a random basis is statistically considered adequate for arriving at a logical conclusion or generalizing on the basis of the sample data so analyzed. Further, whatever small standard error both on the +/- side (prediction error also known as Durbin - Watson statistics) may remain gets automatically corrected as the errors are serially un-correlated. Hence, the Commission holds that the data now submitted by the Discoms is adequate to quantify slot wise power surrendered/backed down and Open access power drawl for calculating additional surcharge.

Data Correctness

The Commission has scrutinized the correctness of data filed by the Discoms vide their additional submissions subsequent to the hearing held on

14.09.2015 including the provisions of the HERC Regulations as pointed out by the parties. As far as the correctness of data is concerned the sole issue raised by the interveners / Objectors was regarding Jindal CPP Power. The Commission observed that the Discoms, in their revised / additional submissions have admittedly corrected the said error in the data sheet by excluding the power transacted through Open Access by JSL CPP on a bilateral basis. Regarding the correctness of data the only other issue that survives now, as urged by JSL, is the eventual calculation of the proposed Additional Surcharge due to change in data sheet. This shall be dealt by the Commission in the relevant paragraph of the present Order.

The Regulation 22 of the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of Connectivity and Open Access for intra-State Transmission And Distribution System) Regulations, 2012 provides as under:-

"22. Additional Surcharge. - (1) An open access 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 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 subsection (4) of Section 42 of the Act. Provided that such additional surcharge shall not be levied in case open access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

(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 the details regarding the quantum of such stranded costs and the period over which these remained stranded and would be stranded. The Commission shall scrutinize the statement of calculation of such stranded fixed costs submitted by the distribution licensee and determine the amount of additional surcharge.

Provided that any additional surcharge so determined shall be applicable to all the consumers availing open access from the date of determination of same by the Commission.

(4) The consumers located in the area of supply of a distribution licensee but availing open access exclusively on inter-State transmission system shall also pay the additional surcharge.

(5) Additional surcharge determined on per unit basis shall be payable, on monthly basis, by the open access customers based on the actual energy drawn during the month through open access”.

It is evident from the Regulation 22(3) the Discoms are under statutory obligation to submit to the Commission, for its scrutiny, ***on six monthly basis*** (emphasis added) the details regarding the quantum of such stranded costs and the period over which these would be stranded. The Commission observed that the Discoms have provided the requisite data / information for the entire year i.e. the FY 2014-15 for estimating the additional surcharge to be levied in the FY 2015-16. Further, in the considered view of the Commission ‘six monthly basis’ as mentioned in the *ibid* Regulations ought not to be interpreted that data for the each day (96 slots) is to be necessarily provided. It only refers to the periodicity of the data / information to be provided by the Discoms. At this stage, when this Commission has to determine additional surcharge to be recovered prospectively i.e. from the date of the Order, the Commission has considered it appropriate to scrutinize the data / details of the corresponding second half of the FY 2014-15 i.e. from October, 2014 to March, 2015. This, the

Commission believes, shall adequately reflect the behaviour / drawl pattern of the short-term Open Access Consumers and the underdrawl / surrendered power by the Discoms thereto as well the 'seasonal' factor in the 2nd half of the FY 2015-16.

Additionally, the Commission observed that in their additional submission dated 19.10.2015, the Discoms have revised the additional surcharge proposal to Rs. 1.10 / Unit on the basis of the revised per unit Fixed Cost of Rs. 1.21 / Unit as against Rs. 1.12/Unit submitted earlier. However, the same as already stated has not been considered by the Commission.

After due deliberations on the above, the Commission is of the considered view that the merit order stacking, if done, takes into account only the fuel cost of the generating stations and not the fixed cost. Further, the Commission, in its Tariff Order dated 29th May, 2014 for the FY 2014-15 has not specified Fixed Cost and Variable Cost separately. Hence, the Commission finds it difficult to accept the segregation done by the Discoms for arriving at the normative fixed cost of Rs.1.21/Unit. Further, at this stage the Commission, ex-post facto, is not inclined to second guess the dispatch i.e. the source wise power that should have been backed down/ surrendered because of the embedded Open Access Consumers drawing power, under Open Access mechanism, on a short term basis, from sources other than the Discoms. Consequently, for the limited purpose of estimating the additional surcharge and in view of the admitted fact that the power surrendered is not from a specific power plant, the Commission has considered the average fixed cost of power approved by it in the FY 2015-16 as the same was largely based on the actual fixed cost of power in the FY 2014-15.

In view of the above discussions the Commission answers the Issue No-1 in affirmative i.e. data now filed by the Discoms are adequate and correct. Except for the fact that after scrutiny of the data the Commission holds that the computation of per unit Fixed Cost needs certain modification as pointed out above.

The Commission examined the Issue No. 2 i.e. whether the Discoms are already recovering the Fixed Cost through Tariff i.e. demand charges and through FSA mechanism as well. The Objectors / interveners have argued that

the Discoms are already recovering the Fixed Cost of the entire power approved by the Commission through tariff i.e. 'demand charges' and the shortfall, if any, due to stranded Power Purchase Agreement(s)/ generating stations being backed down etc. is being recovered by the Discoms through Fuel Surcharge Adjustment (FSA). In support of this argument the Objector contended that the Demand / Fixed Charges are Rs. 1.70 / Unit and the Wheeling Charges is Rs. 0.86 / Unit (add up to Rs. 2.56). As against this the proposed Additional Surcharge of Rs. 0.82/Unit along with the Wheeling Charge of 0.86/unit adds up to Rs. 1.68/Unit. Hence, as the former (already being recovered by the Discoms) is higher than the latter, there is no justification for claiming Additional Surcharge as there is no under recovery of fixed charges by the Discoms.

Per contra the Discoms have argued that the fixed cost, owing to stranded power, recovered through FSA, is passed on to all the electricity consumers of the Discoms. In case the fixed costs owing to stranded power exclusively on account of Open Access consumers is legitimately allowed to be recovered from the Open Access Consumers through additional surcharge, the same shall obviously be excluded in the FSA for the FY 2014-15.

The Commission has considered the above arguments of the parties and is of the view that the Discoms on its own cannot reduce the sanctioned contract demand of the Open Access Consumers despite the fact that due to their drawl under Open Access mechanism they may not be utilizing their full sanctioned contract demand from the Discoms. The Hon'ble APTEL in its judgment dated 01.08.2014 in Appeal No. 59 of 2013 has held that even if Open Access Consumers maintains full contracted demand with the Distribution Licensee, he is liable to pay for demand charges, which should cover the fixed cost of the Distribution Licensee. In case the Distribution Licensee is not able to recover full fixed cost for the power arranged for such consumers then the Distribution Licensee has liberty to put up a case with supporting documents for the recovery of same for consideration of the State Commission to appropriately compensate the Distribution Licensee so that the burden is not passed on to other consumers.

In the present case, the Commission observes that the issue germane is to examine the stranded PPA which is an admitted fact. Thus, the Commission

shall not go into the details of the adequacy of demand charge determined by the Commission to recover the entire fixed cost of the Discoms. This being a tariff issue shall be taken-up in the relevant ARR / Tariff Order for the FY 2016-17.

The Commission has also considered the submission of the Objectors that Open Access Consumers who are also the Consumers of the Discoms are paying fixed cost / Demand Charges as per the tariff in vogue on their entire sanctioned contract demand besides paying transmission and wheeling charges on the Open Access power. The Commission is of the view that in the present case, the limited issue is to determine Additional Surcharge based on stranded PPAs due to Open Access Consumers. Hence, in the next ARR/Tariff proceedings the Objectors may raise the issue of wheeling charges to be paid by the embedded Open Access Consumers on the power brought from sources other than the Discoms as they are already paying partly or wholly the transmission / wheeling charges as per the tariff Order and the wheeling charges are to be paid by the non-embedded Open Access Consumers. The Commission shall examine the submissions on merit and relief, if any, shall be considered accordingly.

Additionally, during the proceedings in the present case a reference was made to the Order passed by the Gujarat Electricity Regulatory Commission (GERC) wherein GERC, while determining Additional Surcharge to be paid by the Open Access Consumers, allowed some relief on account of the fixed/demand charges being paid by the embedded Open Access Consumers. On this issue the Commission had directed the Objectors to examine the details and methodology including the underlying data adopted / considered by the GERC while allowing relief on account of demand charges already recovered by the Discoms from the Open Access Consumers for arriving at the net stranded charges recoverable. The Commission observes that none of the Objectors provided any data / details regarding the same. However, the Discoms in their supplementary submissions have commented on the Gujarat Model for calculation of Additional Surcharge but have not provided any calculation for adjustment of the fixed charges as per the methodology adopted by GERC. It has also been submitted by them that while calculating additional surcharge they have followed Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and

Open Access for intra-State Transmission and Distribution System) Regulations, 2012. It has further been stated that as per the Section 22 of the aforesaid Regulations, Additional Surcharge is to be recovered only if there is a stranded capacity due to Open Access. The Commission has examined the arguments of both the Objectors as well as the Discoms in this regard and intend to agree with the argument of the Discoms that as per Regulation 22 (2) of HERC Open Access Regulations, 2012, cited herein earlier, only the cost of stranded power purchase commitments has to be considered for calculation of Additional Surcharge and the Discoms have worked out the additional surcharge accordingly. Hence, at this stage, the Commission is constrained to consider any such relief and shall restrict the determination of Additional Surcharge based on the stranded PPAs during the relevant period as per the statute/ Regulations and the relevant judgments available in the matter.

The Commission has also examined the illustration provided by the Objector i.e. demand/ fixed charges Rs. 1.70 / Unit and observes that the same is not correct. The demand charges, as determined by the Commission in its Order dated 7th May, 2015, for the H.T. Industry Consumers is in fact Rs.170/kVA/month of the sanctioned contract demand. Consequently, the same in per unit term would work out to about Rs. 1.07/unit considering ALF (Average Load Factor) of 0.22 (which could be higher in the case of a typical HT Industry Consumers leading to lower per unit demand charge). Hence, the entire illustration relied upon by the Objector is erroneous. Further, the contention of the Petitioners that the Discoms are recovering the entire fixed cost pertaining to power purchase through fixed charges provided in the tariff, is also not correct as the fixed charges being recovered in terms of Rs. per unit, as may be seen, do not cover even the entire wheeling and transmission charges which add up to Rs. 1.21/unit (transmission charges 36 paisa/unit plus wheeling charger @ 85 paisa/unit). Thus the fixed charges being recovered from these consumers do not contain any part of fixed cost pertaining to power purchase.

Additionally, the Commission observed that the stranded PPAs could be due to mismatch in demand and supply of power from time to time in Haryana. Given the long gestation period in setting up a power plant including the power evacuation lines it is incumbent upon the Discoms to tie-up power on a long

term basis so as to avoid uncertainties of short-term drawl of power including under UI mechanisms which at times i.e. during peak periods may not be available or available at very high rates. In the present case before this Commission, the Respondents are short-term Open Access and not long-term Open Access Consumers wherein the Discoms, in view of the reduced contact demand, can modify their plan for power procurements. Consequently, the Commission is of the considered view that the proportionate share, even if it is miniscule, as pointed out by the Respondents, of the stranded PPAs attributable to the short-term open access consumers has to be recovered from such consumers only through additional surcharge. Further, as admitted by the Discoms, any recovery of fixed costs owing to stranded power due to Open Access consumers is recovered from the Open Access consumers through additional surcharge, the same shall be excluded in the FSA for the FY 2014-15. This effectively shall reduce the burden of FSA on the portion of power drawn from the Discoms (no FSA is currently being levied on the Open Access Power) by the Open Access Consumers also.

In view of the above discussions the Commission, subject to the observations on the FSA answers the Issue No. 2 in negative.

The Commission has examined the Issue No. 3 i.e. whether stranding of power can be solely attributed to the Open Access Consumers and observes that it is an admitted fact that only a small percentage of stranded PPAs is due to the Open Access Consumers. Further, as earlier discussed, only the proportionate share of the residual stranded PPA is to be recovered as additional surcharge on per unit basis as per the statute. **Hence, the Issue No. 3 is answered in negative.**

The Commission has examined at length the Issue No. 4 i.e. whether the methodology followed by the Discoms for arriving at the per unit additional surcharge to be recovered from the Open Access Consumers in the FY 2015-16 is correct or not, and observed as under:-

At the outset, the Commission observes that the Discoms have considered full year data i.e. the FY 2014-15 for working out per unit Additional Surcharge. In the considered view of the Commission, as already stated, the appropriate

reference point as per the Regulations, ought to be the corresponding six monthly data of the FY 2014-15, and has accordingly accounted for the same.

The Commission has further examined the submission of the Respondent (JSL) regarding inclusion of JSL CPP data in the quantum of power (MW) to be considered for calculation of Additional Surcharge. On perusal of data (additional submissions) filed by the Discoms, subsequent to the hearing held on 14.09.2015, it is observed that the yearly average quantum has been revised from 142.83 MW (1251.18 MUs) to 113.36 MW (993.03 MUs) and the average quantum of open access power from 158.34 MW to 124.48 MW after excluding bilateral transactions of JSL CPP power. Hence, to this extent data stands corrected. At this juncture the Commission observed that the variable having major impact on the quantification of the Additional Surcharge is the per unit Fixed Cost and the quantum of Open Access power as such is of much lesser significance in the overall scheme of things.

As discussed earlier in this Order, the Commission is not inclined to accept the methodology adopted by the Discoms for estimating the stranded Fixed Cost. Hence, the Commission has considered the Fixed Cost for the power purchase allowed by it in the FY 2015-16 as the same was largely allowed on the basis of actual data for the FY 2014-15 i.e. Rs. 51238.61 Million. Further, in order to arrive at the per unit Fixed Cost, the quantum of drawl of power by the Discoms from various generating stations allowed by the Commission in the FY 2015-16 i.e. 56070.92 Million Units has been considered. Accordingly, the average Fixed Cost works out to Rs. 0.91/ Unit (rounded off).

The details of the Additional Surcharge to be recovered from the Open Access consumers in the FY 2015-16 is as under:-

Month	Date of the Month	Average Quantum to be considered for Additional Surcharge eligibility for the selected days per slot (MW)	Average Quantum of Open Access for the selected days per slot (MW)
Oct-14	2/Oct/15	16.35	47.59
	7/Oct/15	43.84	52.48
	9/Oct/15	9.15	9.15
	14/Oct/15	30.21	30.21
	16/Oct/15	48.22	48.22
	21/Oct/15	71.54	83.50
	23/Oct/15	66.48	66.48
	28/Oct/15	107.29	114.82
	30/Oct/15	118.13	128.80
	Monthly Average	56.80	64.58
Nov-14	4/Nov/15	157.12	157.12

	6/Nov/15	165.23	166.53
	11/Nov/15	170.67	170.67
	13/Nov/15	182.03	182.03
	18/Nov/15	219.62	221.66
	20/Nov/15	223.60	227.55
	25/Nov/15	126.11	229.92
	27/Nov/15	217.34	221.17
	Monthly Average	182.71	197.08
Dec-14	2/Dec/14	62.94	172.29
	4/Dec/14	160.07	190.73
	9/Dec/14	201.00	215.79
	11/Dec/14	178.70	197.06
	16/Dec/14	185.02	208.62
	18/Dec/14	164.97	205.71
	23/Dec/14	167.41	167.41
	25/Dec/14	99.58	162.98
	30/Dec/14	122.68	122.68
	Monthly Average	149.15	182.59
Jan-15	1/Jan/15	112.22	114.94
	6/Jan/15	133.98	155.84
	8/Jan/15	147.62	159.16
	13/Jan/15	170.14	183.72
	15/Jan/15	161.89	162.47
	20/Jan/15	125.42	169.55
	22/Jan/15	177.76	177.76
	27/Jan/15	150.39	150.39
	29/Jan/15	179.45	179.45
	Monthly Average	150.99	161.48
Feb-15	3/Feb/15	126.09	136.82
	5/Feb/15	145.14	145.14
	10/Feb/15	174.61	175.02
	12/Feb/15	170.21	179.92
	17/Feb/15	168.00	168.00
	19/Feb/15	177.62	177.62
	24/Feb/15	174.41	174.41
	26/Feb/15	197.40	177.62
	Monthly Average	166.69	166.82
Mar-15	3/Mar/15	166.43	166.43
	5/Mar/15	155.67	155.67
	10/Mar/15	173.17	173.45
	12/Mar/15	156.90	156.90
	17/Mar/15	197.13	197.13
	19/Mar/15	159.49	200.87
	24/Mar/15	183.28	183.28
	26/Mar/15	168.95	168.95
	31/Mar/15	194.84	194.84
	Monthly Average	172.87	177.50
	Half Yearly average (October, 2014 to March, 2015)	146.54	158.34
	Total Units of Power in MUs to be considered for Additional Surcharge (182 days X 146.54 MW) X 24 Hrs. / 1000	640.07	691.63
	Effective Fixed Cost considered for the purpose of estimating Additional Surcharge	0.91	

	Total Additional Surcharge for the FY 2015-16 (Rs. Millions) (640.07 MUs X Rs. 0.91)	582.46	
	Open Access Units estimated for October 2015 to March 2016 (considering same open access scenario as in October 2014 to March 2015) in MUs	691.63	
	Per Unit Additional Surcharge applicable on the same Quantum of Open Access (Rs./unit) (Rs. 582.46 Millions / 691.63 MUs)	0.84	

Hence, the Commission decides that the Open Access Consumers shall pay an Additional Surcharge of 84 paise per unit on the power drawn by them under the Open Access mechanism from the date of this Order.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 16th November, 2015.

Date: 16.11.2015

Place: Panchkula

(M.S. Puri)

Member

(Jagjeet Singh)

Chairman