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SYNOPSIS AND LIST OF DATES

1. The Appellants are short term open access consumers as defined under Section 2(15) of the Electricity Act, 2003, operating in the area of supply of HPSEBL and receiving electricity by it.
2. The State Commission has enacted the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 and the the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010. Subsequently the State Commission has allowed Open Access to all consumers having contract demand of above one MVA and to all generators irrespective of their installed capacity. Currently, there are only short-term open access consumers in the State. The grant of STOA, however, might be subject to a payment of Additional Surcharge by the consumer availing STOA. There was no additional surcharge applicable on the open access consumers.
3. The Commission passed order dated 18.02.2016 in Petition No. 103 of 2015 whereby the State Commission has decided that Himachal Pradesh State Electricity Board Limited has determined the Additional Surcharge to be recovered from the short-term open access consumers in Himachal Pradesh. The State Commission has worked out an additional surcharge of Rs. 78 paise per kWh only to be paid on the open access consumption to the extent to which they avail open access for the period 24.02.2016 to 31.07.2016. The Appellants herein being short-

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term open access users are aggrieved by the exorbitant amount of additional surcharge which has been wrongfully and erroneously calculated by the State Commission under Section 42(4) of the Electricity Act, 2003

4. The Appellants have filed the Instant appeal challenging the legality and validity of the impugned order passed by Commission before this Hon'ble Appellate Tribunal.

LIST OF DATES

06.01.2006	The National Tariff Policy, 2006 was notified by the Central Government.
21.08.2006	Ld. Himachal Pradesh Electricity Regulatory Commission enacted the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006.
02.05.2010	Ld. Himachal Pradesh Electricity Regulatory Commission enacted the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010.
12.06.2014	Ld. Himachal Pradesh Electricity Regulatory Commission passed the MYT Order for FY15 to FY19 for Himachal Pradesh State Electricity Board Limited for approval of the Aggregate Revenue Requirement (ARR) for the Third MYT Control Period (FY15 - FY19) and determination of

	Wheeling and Retail Supply Tariff for FY15 under Sections 62, 64 and 86 of the Electricity Act, 2003.
19.09.2014	Ld. Himachal Pradesh Electricity Regulatory Commission passed the Order dated 19.09.2014 for approval of Detailed Procedure for Short Term Open Access in intra-State transmission and/or distribution system as per Regulation 5 of the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010.
10.04.2015	Ld. Himachal Pradesh Electricity Regulatory Commission passed the First Annual Performance Review Order for 3rd Control Period (FY 15-FY19) & Determination of Tariff for FY-16 for HPSEBL ("First APR Order")
September 2015	Himachal Pradesh State Electricity Board Limited filed Petition No. 103/2015 for determination of Additional Surcharge on the consumers availing STOA before the Ld. Himachal Pradesh Electricity Regulatory Commission.
02.10.2015	A public notice inviting objections/suggestions from the stakeholders in Petition No. 103/2015 by the Ld. Himachal Pradesh State Electricity Regulatory Commission.
30.01.2016	A public hearing in Petition No. 103/2015 was conducted by the Ld. Himachal Pradesh Electricity Regulatory Commission.
18.02.2016	Impugned Order dated 18.02.2016 was passed by the Ld. Himachal Pradesh Electricity Regulatory Commission in

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	Petition No. 103 of 2015
	Hence, the present Appeal.

MEMO OF PARTIES
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION
APPEAL NO OF 2016

BETWEEN:

1. Birla Textile Mills

Sai Road, Bhatouli Khurd,
P.O. Baddi, Distt Solan- 173205.

2. Inox Air Products Ltd.,

Vill. Kunjahl, Industrial Area, Barotiwala,
Distt Solan – 174103 (HP)

3. Open Access Users Association

2nd Floor, D-21, Corporate Park,
Sector-21, Dwarka,
New Delhi, Delhi 110075

...Appellants

AND

1. Himachal Pradesh Electricity Regulatory Commission

Keonthal Commercial Complex,
Khalini, Shimla,
Himachal Pradesh 171002

2. Himachal Pradesh State Electricity Board Limited

Vidyut Bhawan, Kumar House,
Chaura Maidan, Shimla,
Himachal Pradesh 171004

3. Himachal Pradesh State Load Despatch Centre

Keonthal Commercial Complex,

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Khalini, Shimla,
Himachal Pradesh 171002

...Respondents

Filed by:

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Place: Delhi

Date: 04.04.2016

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW
DELHI**

APPELLATE JURISDICTION

APPEAL NO OF 2016

BETWEEN:

- 1. Birla Textile Mills**
Sai Road, Bhatouli Khurd,
P.O. Baddi, Distt Solan- 173205.
- 2. Inox Air Products Ltd.,**
Vill. Kunjahl, Industrial Area, Barotiwala,
Distt Solan - 174103 (HP).
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2nd Floor, D-21, Corporate Park,
Sector-21, Dwarka,
New Delhi, Delhi 110075

...Appellants

AND

- 1. Himachal Pradesh Electricity Regulatory Commission**
Keonthal Commercial Complex,
Khalini, Shimla,
Himachal Pradesh 171002
- 2. Himachal Pradesh State Electricity Board Limited**
Vidyut Bhawan, Kumar House,
Chaura Maidan, Shimla,
Himachal Pradesh 171004
- 3. Himachal Pradesh State Load Despatch Centre**
Keonthal Commercial Complex,
Khalini, Shimla,
Himachal Pradesh 171002

...Respondents

Appeal against the Order dated 18.02.2016 passed by the Himachal Pradesh Electricity Regulatory Commission in Petition No. 103 of 2015 determining the Additional Surcharge payable under Sub-Section (4) of Section 42 of the Electricity Act, 2003.

1. Details of the Appeal

The present Appeal is being filed against order dated 18.02.2016 passed by the Himachal Pradesh Electricity Regulatory Commission ("**State Commission**") in Petition No. 103 of 2015 ("**Impugned Order**") whereby the State Commission has determined the Additional Surcharge to be recovered by the Himachal Pradesh State Electricity Board Limited ("**HPSEBL**") from the short-term open access consumers in Himachal Pradesh. The State Commission has worked out an additional surcharge of Rs. 78 paise per kWh only to be paid on the open access consumption to the extent to which they avail open access for the period 24.02.2016 to 31.07.2016. The Appellants herein being short-term open access users are aggrieved by the exorbitant amount of additional surcharge which has been wrongfully and erroneously calculated by the State Commission under Section 42(4) of the Electricity Act, 2003 (EA 2003) and the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006.

The Impugned Order dated 18.02.2016 passed by the State Commission is annexed hereto and marked as **Annexure A-1**.

2. **Date on which the Order appealed against is communicated and proof thereof, if any:**

The Impugned Order was communicated to the Appellant on 18.02.2016 by an email from the State Commission.

3. **The Address for service of the Appellant is same as that of the advocate on record:**

i.	Address of Counsel	Mandakini Ghosh & Parinay Deep Shah J& S Chambers, G-64, Upper Ground Floor, Lajpat Nagar-1 New Delhi- 110024
ii.	Phone:	011-41680707
iii.	Email	<u>mandakini@jnschambers.com</u>

4. **The address of the respondents for service of all notices in the appeal are as set out hereunder:**

- (i) Himachal Pradesh Electricity Regulatory Commission**
Keonthal Commercial Complex,
Khalini, Shimla,
- (ii) Himachal Pradesh State Electricity Board Limited**
Vidyut Bhawan, Kumar House,
Chaura Maidan, Shimla,
- (iii) Himachal Pradesh State Load Despatch Centre**
Keonthal Commercial Complex,

Khalini, Shimla

5. Jurisdiction of the Appellate Tribunal:

The Appellants declares that the subject matter of the appeal is within the jurisdiction of this Hon'ble Tribunal.

6. Limitation

The Impugned Order dated 18.02.2016 was communicated to the Appellant No. 1 and 2 by an email on the same date by an email.

The Appellant declares that the present appeal is filed within the period of limitation as provided in Section 111 (2) of the Electricity Act, 2003.

7. Facts of the Case:

The facts and circumstances which led to the filing of the instant appeal are set below:

- 7.1. The Appellants are short term open access consumers as defined under Section 2(15) of the Electricity Act, 2003, operating in the area of supply of HPSEBL and receiving electricity by it. Appellant No. 1 is a unit of Chambal Fertilizers and Chemicals Limited, engaged in the production of quality yarn. Appellant No. 1 has a contracted demand of 12000 KVA with Respondent No. 2 and is sourcing 72 Mus per month from IEX through short-term open access. Appellant No. 2 is a large scale manufacturer of industrial gases. Appellant No. 2 has a

contracted demand of 7000 KVA with the Respondent No. 2 and has sourced 29788 MWh from the power exchange through open access during the period of 01.04.2015 to 31.03.2016.

Appellant No. 3, Open Access Users Association was formed in the year 2012 under Societies Registration Act XXI of 1860. Today, Appellant No. 3 has almost 265 Industries ranging from steel cement, aluminum, automobiles, textiles, plastic, paper, glass and fertilizers as its Members. The Appellant No. 3 has been working pro-actively to facilitate issues related to open access for industries and facilitating a competitive power market in the country.

- 7.2. Respondent No. 1, Himachal Pradesh State Electricity Regulatory Commission is the Electricity Regulatory Commission for the State of Himachal Pradesh and is discharging functions under the provisions of the EA 2003.
- 7.3. Respondent No. 2 is the distribution licensee in the state of Himachal Pradesh. The Respondent No. 2 was constituted on 1st September, 1971 in accordance with the provisions of Electricity Supply Act (1948) and has been reorganized as Himachal Pradesh State Electricity Board Ltd. w.e.f. 14.06.2010 under the Company's Act 1956. Respondent No. 2 is responsible for supply of uninterrupted & quality power to all categories of consumers in Himachal Pradesh under the EA 2003.
- 7.4. The Respondent No. 3 is the State Load Despatch Centre under Section 31 of EA 2003. The Respondent No. 3 is *inter alia*

responsible for the optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State.

- 7.5. In terms of Section 42 (1) of the Electricity Act, 2003, it is the duty of the distribution licensee of the area of supply to develop and maintain an efficient, coordinated and economical distribution system and to supply electricity in accordance with the provisions contained in the Act. In terms of Section 43 of the Electricity Act, the distribution licensees have the universal service obligation to serve all the owners/occupier of the premises in his area of supply.
- 7.6. Sections 42 and 43 of the Electricity Act, 2003, which are relevant for the present Appeal provide as under:

42. "(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(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 may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

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

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated 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.

(3) *Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.*

(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."*

"43. Duty to supply on request

(1) *Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):*

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price determined by the Appropriate Commission .

(3) If a distribution licensee fails to supply the electricity within a period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

7.7. *Clause 5.8.3 of the National Electricity Policy notified by the Ministry of Power, Govt. of India, reads as under*

"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 the 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. The amount of surcharge and additional surcharge levied from consumers who are permitted open access should not become so onerous that it eliminates competition that is intended to be fostered in generation and supply of power directly to consumers through the provision of Open Access under Section 42(2) of the Act. Further it is essential that the Surcharge be reduced progressively in step with the reduction of cross-subsidies as foreseen in Section 42(2) of the Electricity Act 2003."

7.8. In pursuance of the above provisions and in exercise of powers under Section 3 of the Electricity Act, 2003, the Central Government on 6th January 2006 notified the National Tariff Policy, inter alia providing 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 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.

.....

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 cost related to network assets would be recovered through wheeling charges."

7.9. The State Commission on 21.08.2006 enacted the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 ("**Additional Surcharge Regulations, 2006**").

Regulation 6 of the Additional Surcharge Regulations provides that:

"6. Additional surcharge- (1) An open access consumer shall also pay to the distribution licensee an additional surcharge to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.

(2) Additional surcharge will be payable by any consumer including any consumer who puts up a captive plant for his own use.

(3) The additional surcharge for obligation to supply as per sub-section 4 of section 42 of the Act shall 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.

(4) Each distribution licensee shall submit to the Commission, details of fixed costs, which the licensee is incurring towards his obligation to supply.

(5) In determining the additional surcharge, the Commission shall scrutinize the details of fixed costs submitted by the distribution licensee and invite and consider objections, if any, from the public and affected parties.

(6) The additional surcharge shall be determined on annual basis and it can be collected either as one-time payment or on monthly basis."

A copy of The Additional Surcharge Regulations, 2006 is attached hereto and marked as Annexure A-2

7.10. The State Commission on 02.05.2010 enacted the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010 ("Open Access Regulations, 2010"). The Open Access Regulations 2010 only provides for levy of cross subsidy surcharge on the STOA consumers. The Regulations do not specify recovery of Additional Surcharge from STOA consumers. The Regulations, inter alia, provide as under:

"27. Surcharge.-(1) In addition to the wheeling charges, an open access customer, other than the captive generating customer, availing open access in distribution shall pay a surcharge specified by the Commission in the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006.

(2) The amount of surcharge shall compensate for the loss in the current level of cross -subsidy from the category of consumers to which the open access customer belongs and shall be paid to the respective distribution licensee of the area of supply.

(3) The surcharge shall be progressively reduced in the manner as specified by the Commission in the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006."

A copy of Open Access Regulations, 2010 is attached hereto and marked as Annexure A-3.

7.11 In terms of the provisions quoted above, the State Commission has allowed Open Access to all consumers having contract demand of above one MVA and to all generators irrespective of their installed capacity. Currently, there are only short-term open access consumers in the State. The grant of STOA, however, might be subject to a payment of Additional Surcharge by the consumer availing STOA. There was no additional surcharge applicable on the open access consumers till February, 2016. The amount of power being sourced through short-term open access on an yearly basis is approximately 1800 Lakh units per annum.

7.12 The Additional Surcharge is payable by an Open Access Consumer receiving power from a person other than the distribution licensee to the extent of the fixed charges commitment of the distribution licensee which is unavoidable and is in addition to the charges for usage of network assets recoverable through wheeling charges. In terms of Regulation 6(3) the Additional Surcharge is only payable by consumers availing STOA if it is conclusively proved by the distribution licensee that the obligation of the licensee is and continues to be "stranded". The State Commission has not specified a methodology for measuring stranded power and the fixed costs that become unavoidable liabilities for the distribution licensee caused by stranded power due to short-term open access.

7.13 The State Commission passed the MYT Order for FY15 to FY19 on 12.06.2014 for approval of the Aggregate Revenue Requirement (ARR) for the Third MYT Control Period (FY15 - FY19) and determination of Wheeling and Retail Supply Tariff for FY15 under Sections 62, 64 and 86 of the Electricity Act, 2003 of HPSEBL. The tariff order was applicable from 1.08.2014. The State Commission also reiterated the need for Respondent No. 2 to file a petition for determination of additional surcharge. The relevant portions of the aforesaid Order are extracted below:

"2.3.7 HPSEBL should examine various possibilities for disposal of surplus power, including following options:

- a. Advance/medium term tie up for sale of surplus power on the pattern the GoHP does for its free and equity power*
- b. Sale of Peaking power, Renewal power etc. on premium*
- c. Banking on premium by exploring strategic options like fortnightly/monthly quantum, peak hours quantum, additional quantum in return etc.*
- d. Transfer of SOR share to GoI unallocated pool for first few years from projects in HP like Chamera-III, Paroati, Rampur, Koldam etc.*
- e. Transfer of SOR share to host State having deficit like w.r.t. projects located in J&K, Uttrakhand and Delhi*
- f. Sale to other partner States*
- g. Surrendering if it makes economic sense*
- h. Banking Subject to Prudency*

7.8.22 The Petitioner has been undertaking banking agreements as a matter of routine and without any commercial prudence with

other state utilities for utilizing its surplus during summer and meeting its deficit during winter months. But it is important to note that the power banked by the Petitioner during summer is returned after a lag of four-six months which has carrying cost implications on the Petitioner. Also, it is important for the utility to understand that the cost of the power available for banking is at the marginal cost of power as per the merit order...

The Commission in its previous tariff orders had indicated the same to the Petitioner and had instructed to be cautious in its power purchase planning. In the APR Order for FY14, the Commission had stated:

"6.92 Moreover, the cost of power procured during summer months to be (forward) banked should be carefully strategized. Banking occurs when surplus available is lent to other entities for return during deficit times and such surplus comes at a cost. Such cost is the most expensive power at the margin in the merit order. The utility ought to avoid banking of costly power that is procured from thermal sources in summer, relying instead on buying economical power that is available for purchase during winter months."

7.8.23 However, it is observed that the Petitioner has not undertaken any significant steps in this matter. The Commission is of the view that the Petitioner should be able to bank only such surplus power which are cheaper or at the price as near as power available in the market or bilateral sources or under unallocated quota of Government of India in a manner that it is able to get a minimum of 20% additional power at the time of return during winters, which would compensate for additional cost of banking

transaction and carrying cost of 4-6 months and the acceptable differential between summer and winter market prices...

7.8.24 As per the demand-supply analysis, the Commission has observed that after meeting the power requirement within the State (including the losses and contingency reserve of additional 350 units) and banking requirements at a reasonable purchase rates for meeting the deficit power during winters, the utility shall be left with surplus power. This surplus power is the most expensive power in the merit order which is primarily available from thermal CGS. The Petitioner should either avoid purchasing power from such stations by surrendering their allocation on longer time periods or should make appropriate arrangements for disposal of such surplus power in a manner that average cost of procurement of such surplus power is realized.

7.8.25 The merit order for each year has been prepared based on the power purchase cost from each station and considering the status of plant i.e. owned generating station, must run stations, power purchase towards renewable power obligations, etc. The merit order for each year of the third Control Period is summarized in tables below:

Table 119: Merit Order for FY15

Stations	Units	Cost	Per Unit
Must Buy Power			
Own Generating Stations*	2,087	303	145

Stations	Units	Cost	Per Unit
Free Power	424	122	287
NPCIL	173	52	301
BBMB & Others	1,094	66	60
NJPS	1,689	427	253
SHPs including at APPC	1,272	341	268
Baspa	1,050	284	270
Singrauli Solar	100	45	450
Solar Power	5	6	1,147
Parbati III	56	25	450
Rampur	45	20	450
Kol dam HEP	16	7	450
Total (Must Buy Plants)	8,010	1,697	212
Chamera I	71	11	161
Salal	2	0	169
Total Power at State Periphery	8,083	1,709	211
Contingency power			
Salal	30	5	169
Uri	73	13	179
Rihand-1 STPS	245	54	220
Tanakpur	2		224
Total Contingency	350	72	206
Banking Power			
Tanakpur	15	3	224
Rihand-3 Units-1,2	118	27	225
Rihand-2 STPS	236	54	229
Chamera II	53	14	264
Dhauliganga	40	11	284
Koteshwar	33	11	331
Unallocated Power	400	134	334
Unchahar-I	50	18	366
Unchahar-II	86	31	367
Chamera III	40	16	391
Anta (G)	79	31	396
Tehri	103	41	396
Banking Power	1,254	392	312
Remaining Banking power- (Free Power)	298	86	287
Total Banking Power	1,553	477	308
Surplus Power			
Dadri (G)	180	72	403
Unchahar-III	57	24	412
Auriya (G)	91	39	434

Stations	Units	Cost	Per Unit
Surplus Power	327	135	413
Grand Total	10,313	2,394	232

*including own generation from less than 25MW projects

7.8.27 The cost of the surplus power is the most expensive which ranges from Rs. 4.03/kWh to Rs. 4.34/kWh during FY15. As per the submissions of actual power purchase and sales for FY14, it is observed that the sale of surplus power by the Petitioner in IEX is at an average rate of Rs. 2.19/kWh which is substantially lower

than the average procurement cost. The Commission therefore directs the Petitioner to undertake adequate measures for avoiding the burden of its inefficient power purchase planning on the consumers. The Commission may disallow any such inefficiency to be passed at the time of true-up.

7.8.33 The Commission approves the power purchase quantum and cost from various sources as discussed above for supply within the State, including for contingent surplus and banking. However, expenses for purchase of power not required for supply within the State but is unavoidable shall be treated as purchase of surplus power under PPA obligation (not as power for supply) and will be provided in the ARR as separate item of expense. However, in line with the Commission's view expressed above, HPSEBL should be prudent in purchase of energy and its banking arrangements.

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9.5.1 The additional surcharge payable by consumers availing open access has to be determined in accordance with sub-section (4) of section 42 of the Act and the Sub-regulation 3 of regulation 6 of HPERC (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006. The Commission requested HPSEBL to submit the proposal for levying of additional surcharge to open access consumers and substantiate its claim in this regard. However, no proposal was submitted by HPSEBL."

(Emphasis Supplied)

The relevant extracts of the MYT Order for FY15 to FY19 passed the State Commission on 12.06.2014 for approval of

the Aggregate Revenue Requirement (ARR) for the Third MYT Control Period (FY15 - FY19) is annexed herewith as **Annexure A-4**.

7.14. In terms of Regulation 2 (14) and Regulation 5 of the Open Access Regulations, 2010, Himachal Pradesh State Load Despatch Centre ("SLDC") is the nodal agency for arranging Open Access. Therefore, SLDC had submitted the detailed draft procedure for Short-Term Open Access ("STOA") in intra-state transmission/-or distribution system to the State Commission. HPSEBL, being one of the stakeholders, had submitted its comments on the draft procedure. However, the State Commission vide its Order dated 19.09.2014 under para 4(p)(ii) allowed HPSEBL to file a separate petition to deal with stranded costs due to availing of STOA by consumers.

7.15. The State Commission on 10.04.2015 passed the First Annual Performance Review Order for 3rd Control Period (FY 15-FY19) & Determination of Tariff for FY-16 for HPSEBL ("First APR Order"). The tariff order was applicable from 1.04.2015. The relevant extracts of the aforesaid Order are as follows:

Table 71: Monthly Demand Supply Position - FY16

Month	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Sales (MU)	648.56	679.74	696.58	718.67	694.51	708.82	685.53	686.26	711.49	722.29	716.83	760.82	8,437.93
Losses	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	12.60%	
Monthly Demand (MU) Discom Purgatory	742.06	777.74	797.93	822.26	794.83	810.73	784.96	784.06	814.06	826.42	830.17	880.80	9,694.38
Monthly Availability (MU) Discom Purgatory	640.18	682.97	1,065.82	1,106.55	1,206.26	989.58	689.87	491.32	406.93	379.06	381.46	576.42	8,897.39
Deficit Power (MU) Discom Purgatory	101.87	-	-	-	-	-	94.90	292.76	407.14	447.37	448.71	304.38	2,086.73
Deficit Power (MU) Ex Bus	106.59	-	-	-	-	-	97.94	303.44	421.99	463.69	464.72	316.49	2,182.85
Surplus Power (MU) Discom Purgatory	-	106.23	369.82	364.27	411.62	178.80	-	-	-	-	-	-	1,329.74
Surplus Power (MU) Ex Bus	-	109.07	373.67	377.56	426.54	166.02	-	-	-	-	-	-	1,373.26
Net Surplus/ (Deficit) (Ex Bus)	(106.59)	109.07	373.67	377.56	426.54	166.02	(97.94)	(303.44)	(421.99)	(463.69)	(464.72)	(316.49)	(794.81)

“5.7.26 In view of the directions of the Commission with respect to surrender of costly power, the Petitioner has already written to the Government for surrendering the costly power available from gas based stations of Anta, Auriya and Dadri with effect from 01.04.2016. Therefore, the Commission has not considered availability of energy from these stations during FY16.

5.7.37 Based on the analysis of month-wise energy demand and supply considering the firm sources, it is observed that the Petitioner shall be in a deficit. This shortfall is primarily due to the surrender of costly power as well as non-availability of power from Bhabha station due to break-down.”

The relevant extracts of the First APR Order are annexed herewith as **Annexure A-5**.

7.15. In pursuance of the aforesaid Orders dated 12.06.2014, 19.09.2014 and 10.04.2015, HPSEBL in September 2015, filed Petition No. 103/2015 for determination of Additional Surcharge on the consumers availing STOA. HPSEBL in its petition has cited the following methodology for calculating Additional Surcharge:

“(i) The amount of power surrendered from power plants & IEX drawl power by Open Access consumer on a slot wise basis for months 1 May’14, Aug’14, Dec’14, Jan’15, Feb’15 & Mar’15 has been considered.

(ii) Since, the quantum of power surrendered from every day are not from a specific power plant, and fixed cost associated with every power plant is different, therefore, petitioner has calculated an effective per unit fixed cost slot wise for each month and is obtained by the following formula:

<i>Effective Fixed Cost per unit</i>	<i>= Total Fixed Cost paid per slot</i>
	<i>in month/Total energy</i>
	<i>surrendered per slot in month</i>

The fixed cost associated with these major plants that are backed down for surrendering the power are the plants in which HPSEBL has a certain percentage of power allocation. Since, the Petitioner has also paid wheeling charges per unit of power from generating station to its state periphery, therefore, the total fixed cost per unit paid by the petitioner is calculated as effective fixed cost plus wheeling charges paid per unit.

(iii) Correspondingly, surrendered power and IEX drawl power by open access consumer per slot in a month has been taken and 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 amount of the IEX drawl power by open access consumer per slot and the surrendered power for the corresponding slot is taken as the quantum for the stranded power for the month due to open access consumer.

(iv) Effective per unit fixed cost is calculated as shown in the calculations in Annexure- 1.

(v) Similarly, Stranded Energy and Fixed Cost (including Wheeling charges) paid by HPSEBL have been calculated for each month slot wise.

(vi) Finally, the per unit Additional Surcharge applicable on open access consumer has been calculated as follows:

<i>Additional Surcharge (per unit)</i>	<i>=Fixed Cost paid (Rs Lakhs) due to Stranded Energy/Stranded Energy (Lus) due to open access consumer</i>
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.....”

7.16. Based on the aforesaid methodology, HPSEBL computed the additional surcharge as below:

“Table 1: Additional Surcharge

<i>Month</i>	<i>Stranded Energy (Lus) due to OA Consumer</i>	<i>Fixed Cost Paid (Rs Lakhs) due to Stranded Energy</i>
<i>May'14</i>	<i>20.57</i>	<i>37.47</i>
<i>Aug'14</i>	<i>18.01</i>	<i>33.17</i>
<i>Dec'14</i>	<i>52.10</i>	<i>94.90</i>
<i>Jan'15</i>	<i>83.70</i>	<i>154.67</i>
<i>Feb'15</i>	<i>132.14</i>	<i>240.34</i>
<i>Mar'15</i>	<i>141.70</i>	<i>262.44</i>
<i>Total</i>	<i>448.21</i>	<i>822.99</i>
<i>Additional Surcharge (Per unit)</i>		<i>1.84</i>

3.3 In view of the above, HPSEBL requests the Hon'ble Commission to kindly approve the Additional Surcharge of Rs. 1.84 per unit for Short term open access consumers.”

A copy of Petition No. 103 of 2015 filed before the State Commission is attached hereto and marked as **Annexure A-6**.

7.17. The State Commission on 02.10.2015 issued a public notice inviting objections/suggestions on the aforesaid petition from the stakeholders. The State Commission vide its letter dated 06.10.2015, also requested the major stakeholders, including the Industries Associations of the State, the Small Hydro Power Associations of the State, State Government, Directorate of Energy and HIMURJA to send their objections/suggestions.

7.18. The Appellants being short term open access consumers and association of open access consumers submitted their separate objections/suggestions regarding the methodology determined by the Respondent No. 2. The Appellants also appeared on the public hearing held on 30.01.2016 and submitted detailed oral arguments regarding the erroneous methodology formulated by the Respondent No. 2 for calculation of Additional Surcharge.

Copies of the written submissions submitted by all three Appellants are annexed hereto as **Annexure A-7 (Colly)**.

7.19. The State Commission vide the Impugned Order dealt with the comments of 13 stakeholders as well as Respondent No. 2, while determining the Additional Surcharge for consumers availing STOA. The State Commission in the Impugned Order while agreeing that the methodology followed by Respondent No. 2 is flawed *and has great scope for improvement*, has still computed the rate of additional surcharge to be 78 paise/kWh. The State Commission levied the Additional Surcharge prospectively, i.e.,

w.e.f 24th February, 2016 and shall remain applicable upto 31.07.2016. The relevant extracts of the Impugned Order read as under:

“(i) The HPSEBL has identified the generating sources from which the capacities have been stranded during different time blocks due to short term open access. These sources include Anta-gas, Anta- LNG, Anta-LF, Auriya-G, Auriya -LNG, Auriya -LF, Dadri-G, Dadri-LNG, Dadri-LF, Unchahar-I, Unchahar-II, Unchahar-III, Rihand-I, Rihand-II, Rihand-III, Kahalgaon-II, Dadri-II, Jhajhar and Singrauli Projects. In this connection, the Commission would like to refer Table 73 of the tariff order dated 10th April, 2015 containing merit order for power purchase which clearly considers the power from Unchahar-I, Unchahar-II, Unchahar-III, Kahalgaon-II and NTPC bundled power (solar) as surplus to the requirement of consumers. The power from Rihand-III project has been considered under a contingent provision only. In this back ground the power from the costlier projects from which HPSEBL is not expected to purchase power under normal situations cannot be considered to have been stranded due to short term open access and accordingly, the fixed cost for the shares from such projects shall not be accounted for while computing the additional surcharge rate. The Commission finds that it will be a fair proposition to consider the fixed costs of Anta (gas), Auriya (gas) Rihand-I, Rihand-II and Rihand-III projects for determination of the rate of additional surcharge. Even though the quantum of total power surrendered from these projects is more than the quantum of short term open access, the impact to be considered

shall be restricted to the same due to STOA as the Commission shall work out only per kWh rates.

(ii) The per unit rates of fixed costs for the power stranded from various sources have been computed by dividing the payments made with the units received. This is a faulty procedure and the per unit cost shall be determined on the basis of expected net generation, as given in MYT order, which translates to about 73% load factor for the projects being considered, as aforesaid.

(iii) The Average rate of fixed cost per kWh, calculated on the basis of fixed charges for the aforesaid projects, has been computed as per the details in Table-3.

Table-3

Fixed cost relating to Generating Capacity (at injection points)

Name of Plant	Capacity in MW	Expected Generation (Net) MUs as per Table-106 of MYT order 12.06.2014 (MU)	Annual Fixed Cost in (Rs. Lacs)	Annual fixed charges (Paise/kWh)
1	2	3	5	6
Anta Gas Plant	419.33	2210.44	20765.00	93.94
Auraiya (Gas)	663.36	2730.72	24312.90	89.00

Rihand-I	1000	7006.53	52794.1	75.34
Rihand-II	1000	7159.68	62708.6	87.58
Rihand-III	1000	6968.24	88419.70	126.88
Total	4082.69	26075.61	249000.3	95.49
<i>Average rate of fixed cost rate at Injection Points</i>				95.49
<i>(Paise/kWh)</i>				

(iv) The rate of 52 paise/kWh, as accounted for by HPSEBL on account of POC/transmission charges is exorbitantly high. Moreover no break-up of this component has been given by HPSEBL. The Commission finds if appropriate to compute such rates based on applicable average rates for POC charges, reliability charges and HVDC charges of Power Grid and Transmission Charges of HPPTCL and the expected net generation...

(vii) Based on the findings in the preceding paragraphs, the rate of additional surcharge works out to 78 paise/kWh as per details given in Table -5.

Table-5

Computation of Additional Surcharge Rate

Sr. No.	Description	Fixed Cost at Injection point in Paise/kWh	Fixed Cost Projected at Consumer end in Paise /kWh
1	2	3	4
A)	Generating Capacity	95.49 (As per Table -3)	103.96
B)	Transmission Capacity (i) Power Grid System (ii) HPPTCL System	16.43 (As per Table-4) 1.61 (As per Table-4)	17.89 1.69
C)	Total Fixed Cost at Consumer end (A+B)		123.54
D)	Net Recovery through Demand charges Eligible for adjustment (Paise /kWh)		44.76
E)	Balance payable in shape of Additional Surcharge in Paise/ kWh (C-D)		78.78 (Say 78 Paise/kWh)

The Commission observes that this rate of 78 paise per kWh is less than even 43% of the rate claimed by HPSEBL."

7.20. In the circumstances and aggrieved by the order dated 18.02.2016 on the aspect of wrongful determination of Additional Surcharge allowed, the Appellant is filing the present appeal before the Hon'ble Tribunal.

8. (i) FACTS IN ISSUE

8.1. The Appellants are aggrieved as the State Commission has wrongfully calculated the quantum of Additional Surcharge to be provided in terms of subsection (4) of section 42 of the Electricity Act, 2003 read with Regulation 6 of the Additional Surcharge Regulations, 2006 and Regulation 27 of the Open Access Regulations, 2010 notified by the State Commission. The Impugned Order has made short-term open access unviable due to the increased open access charges in the State. The Impugned Order is based on wrongful and arbitrary calculations. Accordingly, the Impugned Order is liable to be set aside and the Additional Surcharge is to be calculated afresh on the basis of complete and correct data.

8.2. The Respondent No. 2 had proposed to calculate the additional surcharge on the following formula:

<i>Effective Fixed Cost per unit</i>	=	<i>Total Fixed Cost paid per slot</i>
	<i>in</i>	<i>month/Total energy</i>

	<i>surrendered per slot in month</i>
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<i>Additional Surcharge (per unit)</i>	<i>=Fixed Cost paid (Rs Lakhs) due to Stranded Energy/Stranded Energy (Lus) due to open access consumer</i>
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8.3. In Petition No. 103/2015, the Respondent No. 2 had provided the number of units allegedly stranded due to short-term open access users. The Respondent No. 2 had calculated the stranded power by comparing the power surrendered from numerous NTPC generating stations with the units procured by open access consumers through short term open access. The Respondent No. 2 has then worked out the per unit rates of fixed costs for the power stranded from various sources by dividing the Fixed Cost paid (Rs Lakhs) due to Stranded Energy divided by the Stranded Energy (Lus) due to open access consumer. However, the State Commission has rejected the above formula and proceeded to determine the Additional Surcharge on the basis of the fixed costs of Anta (gas), Auriya (gas) Rihand-I, Rihand-II and Rihand-III projects for determination of the rate of additional surcharge. The State Commission has calculated the per unit cost on the basis of expected net generation for the entire period of FY 2014-15, as given in MYT order, dated 12.06.2014 which translates to

allegedly about 73% load factor for the aforementioned projects . The State Commission acknowledges that the power surrendered by the Respondent No. 2 from these NTPC plants are more than the quantum of short-term open access. However, the impact to be considered shall be restricted to the same due to STOA as the State Commission will only work out the per unit fixed cost.

8.4. It is pertinent to note that the methodology followed by the State Commission in the Impugned Order was not part of the petition submitted by the Respondent No. 2. The State Commission did not propose the methodology of calculating the Additional Surcharge only on the basis of the per unit fixed cost of five NTPC generating stations at the time of hearing. Such methodology was at variance with the Respondent No. 2's methodology where it sought to, albeit mistakenly, calculate the fixed cost per unit of stranded power for every time slot. The methodology under the Impugned Order was not even discussed during the public hearing stage. As a result, the Appellants did not have the opportunity to provide their objections/suggestions on the viability of the formula devised by the State Commission. In fact, the State Commission has not correlated the fixed costs to the allegedly stranded units of power caused by STOA. As a result, the State Commission has violated the principles of natural justice by passing the Impugned Order without affording the

stakeholders adequate opportunity to comment on change in methodology for computation of Additional Sur-charge.

- 8.5. Further, the State Commission has recorded as follows in the Impugned Order:

"7.29.3 Commission's View: The Commission observes that the systematic data relating to stranded capacity based on an objective approach is an important input for determining the additional surcharge. The Commission partly agrees with the view of objectors with regard to the qualitative content of the data submitted by HPSEBL and feels that there is a lot of scope of improving the quality of data. It also agrees that the rate of Rs. 1.84 per kWh, as proposed by HPSEBL, is totally unrealistic and unreasonable. The Commission however does not accept the plea that claim should be rejected straightway particularly when the Commission intends to apply the rate of additional surcharge from a prospective date only and the rejection of claim would amount to absolving the short term open access consumers from paying the additional surcharge even to the extent it is legitimately due, which is, in fact, already over due.

...

The Commission shall accordingly also evolve methodology for determination of additional surcharge with a reasonable and objective approach which shall also ensure that only such fixed costs which are attributable to short term open access are included for the purpose of determining additional surcharge. " (emphasis supplied)

8.6. Admittedly, the State Commission was aware that the data provided by the Respondent No. 2 had *great scope for improvement*. However, instead of directing the Respondent No. 2 to better the data, the State Commission chose to discount the data provided by the Respondent No. 2 and use its' own methodology to compute the Additional Surcharge. The State Commission has refrained from directing the Respondent No. 2 to better its' data as the State Commission reasoned that it intended to apply the rate of additional surcharge from a prospective date only and the rejection of claim would amount to absolving the STOA consumers from paying the additional surcharge which is allegedly already overdue. Therefore, the State Commission proceeded to levy the erroneously calculated Additional Surcharge based on flawed data, instead of calling on the Respondent No. 2 to submit correct data that would conclusively prove that power in the state was indeed stranded due to STOA.

8.7. As per Section 61 of the EA 2003, while determining the tariff, the State Commission is guided by Tariff Policy. Moreover, while determining the Additional Surcharge it is necessary to refer Section 61 of the EA 2003, Clause 8.5.4 of Tariff Policy and Regulation 6 of the Additional Surcharge Regulations. From a combined reading of the aforementioned provisions, it is clear that only the fixed costs related to stranded power purchase commitment is to be considered to derive Additional

Surcharge. The Additional Surcharge is for compensating the Respondent No. 2 for the fixed charges paid by the distribution licensee towards the stranded power in the given year, in the event the consumers opt for Open Access and procure power from sources other than the distribution licensee.

- 8.8. However, the Respondent No. 2 had provided no conclusive evidence of the fixed cost of power that was stranded due to open access. It had merely provided the details of the average cost of power for a number of NTPC stations (Annexure 3 of the Respondent No. 2' petition no. 103 of 2015) and the details of fixed costs paid for the surrendered energy from those NTPC plants for the period May, August, December, 2014 and January, February, March, 2015. There is no identification or conclusive evidence that such generating capacities has been and will continue to be stranded solely due to such open access consumers. From the data provided by the Respondent No. 2 and the Impugned Order, no one can ascertain the amount of MUs backed down conclusively due to power purchase through open access and the fixed costs for the same. The total amount of Stranded Power Procurement cost is required to be worked out on daily basis to be apportioned amongst the open access customers importing power during the period when additional surcharge is leviable. The Impugned Order has failed to follow such methodology.

8.9. It is stated that while the State Commission acknowledged that the data submitted by Respondent No. 2 had scope for improvement, it made no attempt to direct the Respondent No. 2 to conclusively prove and derive the stranded capacity due to STOA. The State Commission should have considered the hourly data of surplus capacity (available capacity - scheduled capacity) vis-à-vis scheduled capacity of OA consumers. However, the Respondent No. 2 has instead submitted the details of surrendered power over May, August, December, 2014 and January, February, March, 2015 corresponding to the power drawn by STOA from the power exchange. It is pertinent to note that the State Commission has not considered the issue of actual units of stranded power due to STOA. It has instead, determined the Additional Surcharge by simply averaging the fixed costs of generating stations on the basis of expected generation as projected for 2014-15. The State Commission failed to accurately determine the stranded power on the basis of - (i) Total contracted capacity in MW; (ii) Hourly availability declared by the generator in MW; (iii) Hourly schedules given by the petitioner in MW; (iv) Hourly schedules of Open Access transactions by the Open Access consumers in MW; (v) Total fixed charges paid by the Appellant; (vi) Total energy scheduled by the petitioner in MUs; (vii) Total energy consumed by the Open Access consumers from their respective licensees in MUs; and total energy scheduled by Open Access consumers for third parties.

The aforementioned data would determine the stranded generation capacity caused by STOA in an authentic manner.

8.10. Since, the State Commission has failed determine the actual amount of stranded power due to open access, consequently, the Impugned Order contains no finding by the State Commission on the amount of fixed costs paid by Respondent No. 2 for the stranded power due to open access. The State Commission has without any cogent reason considered the five generating stations of NTPC. The State Commission has relied on the projection at Table 106 of the Tariff Order dated 12.06.2014 and determined the Additional Surcharge on the basis of the per unit fixed cost of the five NTPC stations namely - Anta, Auriya, Rihand I, II and III which is to be levied on the units of open access.

8.11. It is stated that determining the Additional Surcharge on the basis of fixed costs of the five NTPC stations is flawed and erroneous. Firstly, the State Commission has calculated the fixed cost on the basis of projections instead of calculating the fixed costs based on the actual number of units received from the five NTPC stations by the state. The actual number of units received by the Respondent No. 2 has been computed on the basis of Northern Regional Account and is annexed and marked as Annexure A-8 herein. The State Commission has also failed to consider the actual units of power that was

backed down/surrendered from these generating stations and determine the fixed costs paid by Respondent No. 2 for the actual energy surrendered for open access. The Impugned Order also fails to compute which specific power was surrendered and also fails to prove in which PPA there was an "unavoidable burden" of payment of fixed cost. Further, both the information submitted by Respondent No. 2 and the Impugned Order contain no finding or discussion on the reasons why the power was surrendered by the Respondent No. 2. It is not necessary that the Surrendering/backing down of power is solely because of open access. There could be multiple reasons as to why the power was surrendered by the Respondent No. 2 from the five NTPC generating stations like - power demand going down on account of other reasons such as rains, lower requirement, festival/gazetted holidays, etc.

- 8.12. It is pertinent to note that the power from the NTPC stations like Anta, Auriya and Dadri has been considered to be expensive thermal power. The tariff order dated 12.6.2014 records that the Respondent No. 2 has been directed to plan their power purchase in an efficient manner so as to avoid costly thermal power. The State Commission has also stated that it would attempt to isolate the retail tariff from the impact of power purchase from costly generating stations like Anta and Auriya. Therefore, the State Commission seems to have considered the most expensive surplus power in the state to calculate the Additional Surcharge. It appears, that the

Impugned Order is attempting to pass on the burden of the high procurement costs of the NTPC power to the open access consumers in the State. The relevant extracts of the tariff order dated 12.06.2014 is as below:

5.2 Power Purchase

5.2.1 The objectors have made the following objections and observations on the Petition filed by the Petitioner for the 3rd MYT Control Period:

d) **The Objectors questioned the need for power procurement from certain plants such as Anta, Auria and Dadri etc., which were at a substantially higher tariff.**

5.2.5 The Commission is of the opinion that the HPSEBL needs to maintain an optimal mix of power purchase from different sources for ensuring reliable supply to its consumers throughout the year. Accordingly, the HPSEBL is encouraged to plan its power procurement in the best interest of the consumers. The Commission has time and again impressed upon the management of HPSEBL the need for devising a mechanism for short term sale and purchase of power so as to reduce the power purchase cost of HPSEBL. The Commission in this Order has suggested HPSEBL for considering power purchase cost including unit rate of purchase from alternate sources i.e. GoHP free power, unallocated quota of CGS, market purchases etc., which are reasonably priced as compared to some of the costly generation sources. The Commission will look into isolating the retail tariff from the impact of costly power purchase, in merit order, in excess of State requirement.

8.13. Further, the State Commission has calculated the average fixed costs of the aforementioned generating stations on the basis of the expected generation for the entire FY 2014-15. The State Commission has failed to consider that admittedly there was no STOA sought by consumers in the months of April, June, July, September, October, November, 2014. Therefore, the State Commission should have calculated the fixed costs on the basis of actual stranded generation capacity for only the months when there was STOA and not the whole year.

8.14. Therefore, the basic flaw in methodology adopted in the Impugned Order is non-identification of stranded capacity which is the direct result of open access power, i.e. identification of power in those time blocks, where the generating capacity is available but not scheduled solely due to consumers availing power via open access. After identifying the stranded power, the calculations should then consider the total fixed costs paid by Respondent No. 2 for the same. However, the State Commission has simply calculated the average of the fixed costs of the five NTPC generating stations for the entire FY 2014-15 without first ascertaining the actual number of units surrendered from the stations in the months during which STOA was availed by consumers; and second, enquiring whether the power surrendered from the aforementioned generating stations was at all due to open access. Thirdly, the State Commission failed to consider the actual amount of fixed costs paid by the Respondent No. 2 for generating capacities stranded solely due to consumers availing STOA. Therefore, it appears that the Impugned Order erroneously seeks to recover the fixed costs of expensive surplus power as Additional Surcharge from the open access consumers.

The rationale behind the levy of Additional Surcharge is that the power purchase commitment of Discoms continues to be stranded or there is an unavoidable incidence to bear fixed cost consequent to its consumers availing STOA. It is stated

that in any event, the Respondent No. 2 has contracted capacity in excess of the contract demand of the consumers and the capacity would have remained stranded even if there would have no open access at all. From a perusal of tariff order dated 12.06.2014, it is clear that the Respondent No. 2 has erred in the load projections of the state resulting in costly surplus thermal power. This is apparent from the merit order for FY 2014-15 at table 119 of the tariff order dated 12.6.2014.

- 8.15 While formulating the merit order for the FY 2014-15, the State Commission has looked into isolating the retail tariff from the impact of costly power purchase in the merit order in excess of State requirement. From reviewing the merit order for FY 2014-15 at para 7.13 above, it appears that out of the five NTPC stations used for calculation of additional surcharge; power from Rihand III has been allocated for the contingency reserve power in the state, i.e. in case of any unforeseeable difficulty i.e. shutdown of any large generating station, increase in sales within State, etc.; power from Rihand I and II, Anta has been allocated for banking of power by the Respondent No. 2; and lastly power from Auriya has been considered as surplus in the state. Therefore, it is absolutely erroneous to treat any power from Anta, Auriya, Rihand I, II and III as stranded. It is clear from the tariff order dated 12.06.2014 that the power from the aforementioned NTPC generating stations is for contingency reserve, banking and surplus and not envisaged to be scheduled to the consumers of the state. In fact, the power from the aforementioned

stations have been envisaged to be sold outside the state. However, the State Commission has not enquired whether the allocated power was sold outside the state. As a result, it is quite likely that the Respondent No. 2 has failed to sell the allocated power at the rates prescribed in the tariff order and is now attempting to mask the surplus power as stranded due to STOA. The relevant extracts of tariff order dated 12.6.2014 is as below:

Revenue from Sale of Power Outside State

- 8.1.27 The Petitioner has not projected any revenue from surplus power to be available during the Third Control Period.
- 8.1.28 The Commission in Chapter 7 of this Tariff Order has talked about the need for HPSEBL to show commercial prudence in its power arrangements and avoid purchasing of costly surplus power. The same has been treated in the ARR as purchase of surplus power under PPA obligation and the sale of this surplus power have been considered similar to the purchase cost to exclude any impact of the difference in purchase and sale cost of this surplus power on the consumers in the State.
- 8.1.29 The Commission has also allowed for contingency buffer of 350 MU to maintain continuous supply in the State in case of any unforeseeable difficulty i.e. shutdown of any large generating station, increase in sales within State, etc. In case the power remains unused, the same is estimated to be sold at the average rate of purchase of contingent power in the merit order for the respective year. Further, the Commission has also considered availability of higher quantum with respect to the energy banked by the utility. The quantum required to meet the deficit during winter months may not be entirely arranged by the petitioner from banking arrangement; therefore, the Commission has considered only 50% of the additional energy quantum (20% of the energy banked) available under the banking arrangement to be sold as surplus. This additional power has been considered to be sold at a rate equal to average power purchase cost of the banked power for the respective year.

8.1.30 The projected revenue from sale of power outside State is tabulated as follows:

Table 155: Revenue from Sale of Power outside the State

Parameters	Units	FY15	FY16	FY17	FY18	FY19
Sale of contingency buffer	MU	350	350	350	350	350
Rate of sale	Rs./kWh	2.06	1.96	2.13	2.37	2.55
Revenue from sale of contingency buffer (A)	Rs.Cr.	72.09	68.52	74.49	83.06	89.35
Sale of additional Quantum from banking	MU	155.25	163.06	183.07	196.93	218.74
Rate of sale	Rs./kWh	3.08	2.98	3.08	3.05	3.09
Revenue from sale of additional quantum from banking (B)	Rs.Cr.	47.74	48.61	56.43	60.03	67.55
Sale of surplus power	MU	327	406	493	629	703
Rate of sale	Rs./kWh	4.13	4.26	4.45	4.49	4.63
Revenue from sale of surplus power (C)	Rs.Cr.	135.31	173.29	219.11	282.27	325.73
Total revenue from sale of power outside State (A)+(B)+(C)	Rs.Cr.	255.15	290.42	350.03	425.37	482.64

It is evident that the Respondent No. 2 has inefficiently planned its power purchase. Instead of cancelling PPAs which are financially unviable, the Impugned Order seeks to burden a small segment of consumers on account of failure of the Discoms to review the unviable PPAs. The Respondent No. 2 has been historically advised to bank its power in an efficient fashion. However, the Respondent No. 2 has continuously disregarded such directions. As a result, the power has become surplus and the Respondent No. 2 is attempting to recover the fixed costs of power it should have ideally banked under Additional Surcharge. The State Commission, by its tariff order dated 27.4.2013 for the second control period and APR for 2014 had directed the Respondent No. 2 to prudently bank its power. However, in tariff order dated 12.6.2014 at para 7.8.22-7.8.24, the State Commission observes that the Respondent No. 2 has failed to take any significant steps in this

regard as a result of which it has surplus power during the summer months.

8.16 It is stated that while calculating the Additional Surcharge, the State Commission has not considered the power that was sold by the Respondent No. 2 on the power exchange. The State Commission should have considered that Respondent No. 2 has sold more units of power on the exchange than that sourced by the open access consumers via the power exchange. Therefore, the State Commission should have considered that there is no question of stranded capacity as the State Commission has recovered both the variable and fixed costs for the units of power originally procured by the Respondent No. 2 and not utilized by STOA consumers as it was procuring power on the power exchange. Now, by seeking to recover the fixed costs for the number of units procured by open access consumers on short term, the Impugned Order is enabling unjust enrichment to accrue to the Respondent No. 2. A chart comparing the monthly injection of power by Respondent No. 2 on the IEX and the units of short-term power procured by the open access consumers in the state is annexed hereto as **Annexure A-9**.

8.17 It is stated that the STOA consumers pay demand charges for the contract demand maintained with the Respondent No. 2. The demand charges, to a certain extent, off-set the Respondent No. 2's liabilities towards the fixed cost of generation. However, the State Commission has only

subtracted 44 paise/unit as demand charges from the per unit fixed cost of generation (based on the average of fixed costs of the 5 NTPC generating stations) to derive the Additional Surcharge. Therefore, the State Commission has erroneously made a per unit deduction. It is submitted that the State Commission should have first identified the actual fixed cost of stranded power as paid by the Respondent No. 2 for the units availed via STOA, and compared it with the total demand charges paid by the open access consumers and regular consumers of the state against the contract demands maintained with the Respondent No. 2. The Additional Surcharge should have then been calculated to compensate the difference if any. The Impugned Order is flawed as it makes a per unit deduction without considering the actual amount of demand charges recovered and off-setting the same against the payments made for the allegedly stranded units of power.

8.18 It is pertinent to note that the Impugned Order has resulted in making open access completely unviable in the State of Himachal Pradesh. The levy of Additional Surcharge has made open access prohibitively expensive. Such calculation of Additional Surcharge based on incomplete/flawed data is yet another effort to strangle open access and defeat the spirit of the EA 2003, Tariff Policy and the National Electricity Policy. The aforementioned statute along with the policies mandate implementation of open access and cautions that the levy of cross-subsidy surcharge, additional surcharge and wheeling

charge should not make open access onerous. In the present case, the levy of additional surcharge has made power sourced through open access incompetent in comparison to power supplied by the Respondent No. 2.

8. (ii) QUESTIONS OF LAW

The Appellant submits that the grounds of appeal by itself elaborate the questions of law, which require determination. In any event, and without prejudice to the grounds of appeal, the questions of law, which are raised by the Appellants, can be summarized as below:

- A. Whether in the facts and circumstances of the case, the State Commission has correctly derived the methodology for determination of the Additional Surcharge payable by the Open Access consumers to the distribution licensee as per the provisions of subsection (4) of section 42 of the Electricity Act, 2003 read with Regulation 6 of the Additional Regulations, 2006 and Regulation 27 of the Open Access Regulations, 2010?
- B. Whether the State Commission was correct in introducing a new methodology for calculating the Additional Surcharge in the Impugned Order which was not informed to the stakeholders/open access consumers?

- C. Whether the State Commission has violated the principles of natural justice?
- D. Whether the State Commission has correctly proceeded with determination of Additional Surcharge despite noting that the data submitted by Respondent No. 2 had great scope for improvement?
- E. Whether the State Commission is right in failing to determine the stranded generation capacity caused due to STOA?
- F. Whether the State Commission should have determined the rate of Additional Surcharge without considering the total fixed costs paid by the Respondent No. 2 towards actual stranded power?
- G. Whether the State Commission was correct in determining Additional Surcharge on the basis of the projected generation and fixed costs for five NTPC generating stations?
- H. Whether the State Commission should have considered that as per the Merit Order for 2014-15, the power from the five NTPC generating stations have been actually considered for contingency reserve, banking and surplus power for the state?
- I. Whether in the facts and circumstances of the case, the State Commission is right in computing the Additional Surcharge to be as high as 78 paise per/kWh?
- J. Whether the State Commission has erred in relying on insufficient data to compute the Additional Surcharge?

- K. Whether Respondent No. 2 has failed in efficient banking of power, resulting in surplus power, the cost of which is being borne by STOA consumers under the guise of Additional Surcharge?
- L. Whether the State Commission has erred by not considering that for the period 2014-15, the units of power sold by Respondent No. 2 on the IEX is far more than the units procured by STOA consumers?
- M. Whether the State Commission has erred by not computing the total demand charges paid by the open access consumers and off-setting the same against the fixed costs for the stranded power?

9. **Grounds raised with legal provisions**

- A. BECAUSE the Impugned Order is arbitrary and illegal and cannot be sustained as per the provisions of the EA 2003, Tariff Policy and the National Electricity Policy;
- B. BECAUSE the State Commission has violated the principles of natural justice by changing the methodology for computing the Additional Surcharge without giving the open access consumers an opportunity to submit comments/suggestions on the changed methodology. Therefore, the Impugned Order is liable to be set aside. The Additional Surcharge is to be calculated afresh after giving the stakeholders adequate opportunity to submit

comments/suggestions on the correctness of the methodology to be employed for calculating Additional Surcharge.

- C. BECAUSE the State Commission has erred in calculating the Additional Surcharge at an exorbitant rate of 78 paise per kWh. The calculation of additional surcharge has to be carried out by the State Commission, keeping in mind the true purport of subsection (4) of section 42 as well as the basic scheme of Electricity Act, 2003 read along with sub regulation (3) of Regulation 6 of the Additional Surcharge Regulations, 2006. The aforementioned provisions mandate that the Additional Surcharge is to be levied to compensate the distribution licensee for the fixed costs of its' stranded generation capacities. Therefore, Additional Surcharge could have been levied on the Appellants only if Respondent No. 2 conclusively demonstrated that its obligation, in terms of existing power purchase commitments, has been or continues to be stranded and there was unavoidable obligation to bear fixed costs. In the present case, the Impugned Order fails to determine the power purchase commitments that are stranded due to open access and is therefore, in complete contravention to the EA 2003 and the Additional Surcharge Regulations. Accordingly, the Impugned Order is legally untenable and liable to be set aside.
- D. BECAUSE The State Commission has failed to compute the stranded generation capacity caused solely due to STOA. The Respondent No. 2 had simply submitted the power surrendered from numerous NTPC power plants without providing the

reasons for the surrender of power. Consideration of surrendered power by Respondent No. 2 does not sufficiently prove stranded capacity. The Respondent No. 2 has failed to conclusively prove that the power surrendered for the period May, August, December, 2014- January, February, March, 2016 is solely due to consumers opting for open access instead of taking supply from the distribution licensee. The Impugned Order contains no discussion regarding whether the generation capacity would have remained stranded if there had been no STOA in the state. It is submitted that only the cost of stranded power purchase commitments has to be considered for calculation of Additional Surcharge. It is therefore reiterated that the Impugned Order is completely flawed as it fails to ascertain the quantum of generation capacity stranded due to STOA.

- E. BECAUSE the State Commission has failed to compute the actual fixed cost paid by Respondent No. 2 for the stranded power caused solely due to STOA. The State Commission has simply calculated the average fixed costs from five NTPC generating stations based on the projections stated in tariff order dated 12.06.2014. The State Commission has not considered the actual amount of power received by the State from the NTPC generating stations. Further, the State Commission has failed to consider that as per tariff order dated 12.6.2014, the power from the five NTPC generating stations has been allocated towards contingency reserve, banking and surplus power that is meant for sale outside the state. Therefore, the State Commission has erred by

considering the average fixed costs of power which is not meant for scheduling to the consumers of the state. Such calculation is completely arbitrary and unrealistic and cannot be sustained.

- F. BECAUSE the State Commission has erred in considering the fixed costs of Anta (gas), Auriya (gas) Rihand-I, Rihand-II and Rihand-III projects, when both Anta and Auriya have been recognized as costly thermal stations in the tariff order dated 12.06.2014. The State Commission has considered the highest fixed costs to calculate the Additional Surcharge without correlating it to actual stranded power. This has artificially increased the rate of Additional Surcharge. Further, the State Commission has calculated the average fixed costs of the aforementioned generating stations on the basis of the expected generation for the entire FY 2014-15. The State Commission has acted erroneously by failing to consider that admittedly there was no STOA sought by consumers in the months of April, June, July, September, October, November, 2014. Therefore, the State Commission should have calculated the fixed costs on the basis of actual stranded generation capacity for only the months when there was STOA and not the whole year. Such calculation is arbitrary and legally untenable and results in unfairly burdening the open access consumers. The Impugned Order is liable to be set aside and the Additional Surcharge should be calculated afresh on a holistic consideration of complete and correct data.
- G. BECAUSE Respondent No. 2 has failed to put on record correct and complete data. The Respondent No. 2 has sought to load the

entire cost of surrendered power on the Appellants without providing any details regarding the load shedding, energy cuts, backing down of the power plants, etc. which may have influenced the calculations carried out by the State Commission. Therefore, the Impugned Order is flawed as it is based on incomplete data and liable to be set aside.

- H. BECAUSE the State Commission has erred by not considering that Respondent No. 2 has failed to follow numerous directives issued by the State Commission to bank its power effectively. As a result, the State is surplus in the summer months and in deficit in winters. The Impugned Order erroneously seeks to pass on the fixed cost of the surplus power to the open access consumers. The Additional Surcharge is actually passing the costs of inefficient banking onto the open access consumers which is legally untenable. The State Commission has erred by not directing the Respondent No. 2 to produce the details of the units banked as directed under tariff order dated 12.06.2014 and reviewed whether such banking has affected surplus power in the state.
- I. BECAUSE the State Commission while calculating additional surcharge has failed to consider whether the stranded generation capacity is a result of the inefficient power planning by the Respondent No. 2. The distribution licensee has failed to exercise due diligence while entering into long term power purchase agreements giving rise to surplus power in the state which is now being passed off as 'stranded power'. Respondent No. 2 has

signed long term PPAs without linking it with the supporting accurate demand forecast resulting in having to surrender power from the expensive thermal power sources. It is pertinent to note that consumers such as Appellant No. 1 have been buying power through open access since May 2014 and Appellant No. 2 has been buying power through open access since 2013. Therefore, Respondent No. 2 was aware of the power that was likely being scheduled by the open access consumers over the year. Moreover, the quantum of power purchased through open access is a miniscule percentage of the actual demand of the state. Consequently, 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 for Additional Surcharge. Therefore, it is arbitrary that a small quantum of power being sourced through STOA is being loaded with such erroneously calculated Additional Surcharge. The Respondent No. 2 should instead be directed to evaluate its own pattern of purchases and take remedial measures instead of passing off the burden of its inefficient power purchase on to the open access consumers. Accordingly, the Impugned Order is completely flawed and based on incomplete inconsideration of facts.

- J. The State Commission has failed to review details of the number of units sold by the Respondent No. 2 on the power exchange. The State Commission erred by failing to consider the impact of the revenue earned by the inter-state sale of power. It is also pertinent

to note that since the units sold on the power exchange exceeds the units procured by the open access consumers, there can be no question of stranded generation capacity and consequently no imposition of additional surcharge on the open access consumers.

- K. BECAUSE the State Commission has incorrectly computed the impact of demand charges while calculating the Additional Surcharge. All the consumers of the state including the embedded open access consumers are liable to pay a contract demand charge against the contract demand maintained by them with the Respondent No. 2. The State Commission has erroneously considered a per unit impact of the demand charges paid by the open access consumers. The State Commission should have instead calculated the entire amount of demand charges paid by the consumers of the state to evaluate the extent to which it compensates for the fixed costs incurred by Respondent No. 2. The State Commission failed to consider whether by recovering Demand/ Fixed Charges from Open Access consumers in addition to the non-Open Access consumers, the Respondent No. 2 has failed to recover the fixed cost of the generating sources. It is submitted that only if the Respondent No. 2 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, reliance may be placed on the judgment of this Hon'ble Tribunal dated 01.08.2014, in Appeal No. 59 of 2013. This Hon'ble Tribunal has held at para 21 that - *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. Consequently, it is necessary that the State Commission should have considered if there is any actual under-recovery of fixed costs of generating sources, instead of calculating the average per unit fixed cost of generation and then subtracting the per unit demand charges paid by open access consumers from the same.

- L. BECAUSE in terms of clause 8.5.1 of the Tariff Policy and the National Electricity Policy, the Additional Surcharge cannot be so onerous that it constrains the introduction of competition. There is a mandate on State Commission to calculate Additional Surcharge in such a manner that the consumer is not burdened to the extent that it cannot avail Open Access. The Impugned Order has resulted in an exorbitant increase in open access charges as a result of which, it is no longer competitive/viable for consumers to procure power through short-term open access.
- M. BECAUSE it is pertinent to note that the total number of open access consumers in the State are hardly 8-9 against the total number of electricity consumers being 21 lac and even comparing with the total number of industrial consumers being around

35,000 in the State. If we look at the consumption also, the total sale during FY 2014-15 was approved as 8217 MUs out of which industry accounted for 4688 MUs. The Licensee has claimed backing down of 44.8 MU, which is less than 1% of the total sale to industry or less than 0.5% of the total sale. Against total projected annual revenue of Rs. 4544.09 crore for FY 2014-15, the likely revenue from Additional Surcharge is estimated as Rs.4.48 crore, which is less than 1% of the total revenue. Such a high incidence of Additional surcharge on 9 open access consumers is a crippling burden which will be unfairly and illegally borne by the 9 open access consumers in the state.

N. The Appellants crave leave to add to the grounds mentioned above and states that the contentions are in the alternate and without prejudice to one another.

10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the impugned order dated 18.02.2016 passed by the State Commission.

11. GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON

As mentioned in Para 9 of the Appeal.

12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.

An application for interim directions has been filed alongwith the appeal.

13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIUBNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL.

N.A.

14. DETAILS OF INDEX

An index containing the details of the documents to be relied upon is enclosed.

15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI.

HDFC Bank DD No. 009792 dated 30.03.2016 for INR 102,000/-

16. LIST OF ENCLOSURES.

Same as filed in the Index.

17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED.

Yes

- 18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS.**

Yes

- 19. WHETHER THE COPY OR MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.**

No

- 20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:**

The material particulars are those which are filed along with the appeal. Should it be necessary, the Hon'ble Tribunal may call for the record of proceedings before the commission in the present matter.

- 21. RELIEFS SOUGHT.**

In view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8 and the grounds of appeal stated in para 9, the appellant prays for the following reliefs:

(a) Allow the appeal and set aside the order dated 18.02.2014 passed by the State Commission to the extent challenged in the present appeal;

(b) This Hon'ble Tribunal may also direct the Respondent No. 2 to refund the amount of additional surcharge already paid by the Appellant No. 1 & 2 @ of 78 paise/unit on the short-term open access power availed from 24.02.2016 under the Impugned Order;

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() to pass such other or further orders as this Hon'ble Tribunal may deem appropriate.

Dated at New Delhi on this 04 day of April, 2016

Counsel for Appellant


Appellant

Declaration by Appellant

The Appellant(s) above named hereby declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals(s)/fair reproduction of the originals/ true translation thereof.

Verified at New Delhi on this 04 day of April, 2016


Appellant

VERIFICATION

I, Anil Kumar Jain, aged about 50 Years working as Joint Executive President, representing Birla Textile Mills, do hereby verify that the contents of Paras 1 to 7 are true to my knowledge (derived from official record) and Para 8^{h^o 20} believed to be true on legal advice and that I have not suppressed any material facts.

Date: 04.04.2016

Place: New Delhi


Appellant

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**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW
DELHI**

APPELLATE JURISDICTION

APPEAL NO OF 2016

M/S Birla Textile Mills

M/S INOX Air Products Ltd. & Ors.

...Appellants

Versus

Himachal Pradesh Electricity Regulatory Commission & Ors.

...Respondents

AFFIDAVIT

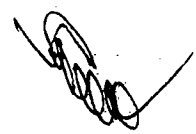
I, Anil Kumar Jain aged around 50 years, son of Late Sh. Pukh Raj Jain, working as Joint Executive President/Authorized Signatory of Birla Textile Mills (A unit of Sulej Textiles and Industries Ltd.), residing at B-1, Birla Textile Mills, Sai Road, Baddi, Himachal Pradesh currently at New Delhi do hereby solemnly affirm and state as follows:

1. I say that I am the Joint Executive President/Authorized Signatory of Birla Textile Mills (A unit of Sulej Textiles and Industries Ltd.) and am competent to swear the present affidavit.
2. I say that I have read the contents of the accompanying appeal filed by the appellant and I have understood the

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contents of the same.

3. I say that the contents of the present appeal filed by the Appellants are based on the information available with the appellant in the normal course of business and believed by me to be true.
4. I say that the Annexures to the appeal are the true and correct copies of their original.



DEPONENT

VERIFICATION

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

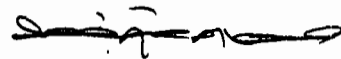
Verified at New Delhi on this 04. day of April, 2016



DEPONENT

() to pass such other or further orders as this Hon'ble Tribunal may deem appropriate.

Dated at New Delhi on this 04 day of April, 2016



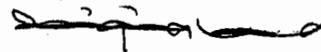
Counsel for Appellant

Appellant

Declaration by Appellant

The Appellant(s) above named hereby declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals(s)/fair reproduction of the originals/ true translation thereof.

Verified at New Delhi on this ___ day of April, 2016



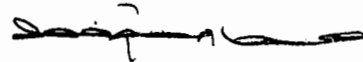
Appellant

VERIFICATION

I, V.M. Nayyar, aged about 59 Years working as General Manager, representing INOX Air Products Ltd., do hereby verify that the contents of Paras 1 to 7 are true to my knowledge (derived from official record) and Para 8 to 20 believed to be true on legal advice and that I have not suppressed any material facts.

Date: 04.04.2016

Place: New Delhi



Appellant

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**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW
DELHI**

APPELLATE JURISDICTION

APPEAL NO OF 2016

M/S Birla Textile Mills

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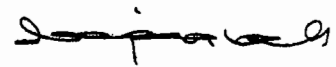
I, V.M. Nayyar aged around 59 years, son of Late Sh. Raghbir Das, working as General Manager/Authorized Signatory of INOX Air Products Ltd., residing at House No. 1427, Sector-50B, Progressive Enclave, Chandigarh-160047, currently at New Delhi do hereby solemnly affirm and state as follows:

1. I say that I am the General Manager/Authorized Signatory of the Appellant No. 2, INOX Air Products Ltd. and am competent to swear the present affidavit.
2. I say that I have read the contents of the accompanying appeal filed by the appellant and I have understood the contents of the same.
3. I say that the contents of the present appeal filed by the

62

Appellants are based on the information available with the appellant in the normal course of business and believed by me to be true.

4. I say that the Annexures to the appeal are the true and correct copies of their original.

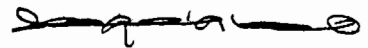


DEPONENT

VERIFICATION

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

Verified at New Delhi on this 04. day of April, 2016





DEPONENT

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() to pass such other or further orders as this Hon'ble Tribunal may deem appropriate.

Dated at New Delhi on this 04th day of April, 2016




Appellant


Counsel for Appellant

Declaration by Appellant

The Appellant(s) above named hereby declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals(s)/fair reproduction of the originals/ true translation thereof.

Verified at New Delhi on this 04th day of April, 2016




Appellant


VERIFICATION

I, MR. Amit Ailawadi , aged about 47 Years working as Secretary , representing Open Access Users Association, do hereby verify that the contents of Paras 1 to 7 are true to my knowledge (derived from official record) and Para 8 believed to be true on legal advice and that I have not suppressed any material facts.

Date: _____

Place: New Delhi


Appellant


Appellant

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**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW
DELHI**

APPELLATE JURISDICTION

APPEAL NO OF 2016

Open Access Users Association & Ors.

...Appellants

Versus

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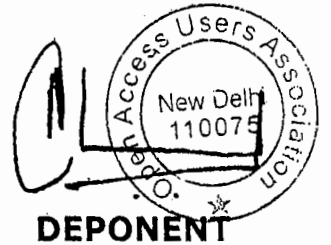
I, Mr. Amit Ailawadi aged around 47 years, son of Mr. Surinder Kumar Ailawadi , working as Secretary of Open Access Users Association, residing at B-1/580 Janakpuri, New Delhi -, currently at New Delhi do hereby solemnly affirm and state as follows:

1. I say that I am the Secretary of the Appellant No. 1, Open Access Users Association and am competent to swear the present affidavit.
2. I say that I have read the contents of the accompanying appeal filed by the appellant and I have understood the contents of the same.
3. I say that the contents of the present appeal filed by the

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Appellants are based on the information available with the appellant in the normal course of business and believed by me to be true.

4. I say that the Annexures to the appeal are the true and correct copies of their original.



VERIFICATION

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

Verified at New Delhi on this ^{04th} day of April, 2016

