

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL NO.186 & 187 of 2012

Dated: 03rd Sept, 2013

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

APPEAL NO.186 of 2012

In the Matter of:

**Sarover Energy Private Limited.,
No.12/1, Next to Canara Bank,
Oriental Insurance Building
Bellary Road, Hebbal,
BANGALORE-560 024**

..... Appellant

Versus

- 1. Karnataka Electricity Regulatory Commission
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 001**
- 2. Bangalore Electricity Supply Company Limited,
K.R. Circle,
BANGALORE-560 001**

..... Respondent(s)

**Counsel for the Appellant : Mr.Anantha Narayana M.G.
Mr. Sridhar Prabhu
Mr. Lokesh R Yadav
Mr. D Manjunatha Rao**

Counsel for the Respondent(s): Mr. Anand K Ganesan
Mrs. Swapna Seshadri for R-1
Mr. D Nagarajan
Mr. Sriranga for R-2

APPEAL NO.187 of 2012

In the Matter of:
BMM ISPAT LIMITED
No.114,
Danapur Village, Hospet Taluk
Bellary District-583 222

..... Appellant

Versus

1. Karnataka Electricity Regulatory Commission
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 001
2. Gulbarga Electricity Supply Company Limited,
Station Main Road,
Gulbarga-585 102

..... Respondent(s)

Counsel for the Appellant : Mr.Anantha Narayana H.G.
Mr. Sridhar Prabhu
Mr. Lokesh R Yadav
Mr. D Manjunatha Rao

Counsel for the Respondent(s): Mr. Anand K Ganesan
Mrs. Swapna Seshadri for R-1
Mr. D Nagarajan
Mr. Sriranga for R-2

J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. The Appellants, the consumers challenging the impugned order dated 30.4.2012 imposing cross subsidy surcharge on the consumers including the Appellants in the Applications filed for the approval of the revised Annual Revenue Requirements and Tariff for the Financial Year-2013 by the Distribution licensees, Bangalore Electricity Supply Company Limited (BESCOM) and Gulberga Electricity Company Limited (GESCOM), have filed these Appeals. Since the impugned order dated 30.4.2012 is the same, this common judgment is being pronounced in both these Appeals.
2. The facts of these Appeals are given separately which are as follows.
3. Let us first refer to the **facts related to Appeal No.186 of 2012.**
4. M/s. Sarover Energy Private Limited is the Appellant herein.
5. Karnataka State Commission is the 1st Respondent. BESCOM, the distribution licensee is the 2nd Respondent.
6. The short facts are follows:

(a) M/s Sarover Energy Private Ltd., the Appellant is a consumer. It has also set-up a Captive Generating Plant. It sources power supply from its Captive Power Plant and also from the Distribution Licensee and is in the process of availing supply from various third party sources. Hence, the Appellant is a Generating Company and an Open Access Customer within the meaning of Open Access Regulations, 2004. As a Generating Company for power supplied under the Open Access to the 3rd party users situated within the jurisdiction of the Bangalore Electricity Supply Company Limited., (2nd Respondent), the Appellant is required to pay the Cross Subsidy surcharge.

(b) On 31.5.2006, the State Commission passed the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2006.

(c) As per the Regulations, the Open Access Customer shall be liable to pay the Cross Subsidy surcharge as determined by the State Commission from time to time as per the formula derived from the National Tariff Policy.

(d) The cross subsidy surcharge is determined under the Tariff Order which was passed by the State Commission in accordance with the Karnataka

Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail sale of electricity) Regulations, 2006.

(e) As per the Regulations, the First Control period under MYT framework is for duration of three (3) years commencing from the FY-08. Thereafter, each Control Period shall be for a period of five (5) years or such period as may be specified by the State Commission from time to time.

(f) In compliance with the Distribution & Retail Sale of Electricity/Regulations, 2006, the Distribution Licensee, (R-2) filed the Annual Performance Review for the year 2010, the expected Revenue Charges and Tariff for the Second Control Period FY 2011-FY 2013 under the MYT framework.

(g) The State Commission, after considering the Tariff Filing of the Distribution Licensee (R-2), passed the order on 7.12.2010 regarding APR for the FY 2010 and approval of ERC for the second Control period FY 11 to FY 13. In that order, the State Commission observed that the Cross subsidy surcharge will not be levied till further orders.

(h) In the subsequent Tariff Policy for FY 2012, the Distribution Licensee had specifically sought for levying

of cross subsidy surcharge. However, the request of the Distribution Licensee was specifically rejected by the State Commission.

(i) In the Tariff Application dated 27.1.2012, the Distribution Licensee requested for the levy of Cross Subsidy Surcharge for the Financial Year 2013.

(j) The State Commission admitted the Petition filed by the Distribution Licensee and went ahead with the determination of the tariff as though Regulations of 2006 and the MYT tariff order 2010 were non est.

(k) The State Commission after the de novo tariff determination exercise, passed the impugned tariff order dated 30.4.2012 on the distribution licensee's approval of revised ARR and Tariff for the Financial Year 2013 imposing cross subsidy surcharge.

(l) Being aggrieved by the same, the Appellant has come before this Tribunal challenging the impugned order dated 30.4.2012 passed by the State Commission in **Appeal No.186 of 2012**.

7. The facts in Appeal No.**187 of 2012** are as follows:

(a) BMM Ispat Limited is the Appellant herein.

(b) Karnataka State Commission is the 1st Respondent.

(c) GESCOM, the distribution licensee, is the 2nd Respondent.

(d) The Appellant is a consumer. It has also set up a Captive Power Plant. The Appellant sources the power supply from its own Captive Power Plant and from the Distribution Licensee and is also in the process of availing power supply from various third party sources. The Appellant is also a Generating Company and an Open Access Customer within the meaning of Open Access Regulations, 2004.

(e) Before 31.5.2006, the State Commission used to determine the Cross Subsidy as per its own methodology, computation and reckonings. However, on 31.5.2006, the State Commission framed Open Access Regulations, 2006 specifying the methodology for determination of cross subsidy surcharge.

(f) As per the Regulations, the Open Access Customer shall be liable to pay the surcharge as determined by the State Commission from time to time under the Formula indicated in the Regulations.

(g) This Formula is derived from the National Tariff Policy.

(h) Until 2006-07, the Distribution Licensees were required to file their calculations relating to the licensed

business only for the ensuing Financial Year covering the licensee's Expected Revenue Charges (ERC) and proposal for modification in tariff.

(i) From the year 2007-08 onwards, the Distribution licensees are required to file their Expected Revenue for Charges (ERC) and Tariff Application as per the MYT principles for the First Control Period 2008-10 and thereafter, each control period shall be for a period of 5 Financial Years and more period as may be specified by the State Commission from time to time.

(j) In compliance of these Regulations, the Distribution Licensee filed the Expected Revenue Charges and Tariff Filing under the MYT principles from the year 2011 to 2013 on 13.8.2010.

(k) The State Commission, after considering the Tariff Filings of the Distribution Licensees, passed the Tariff on 7.12.2010.

(l) In that order, the State Commission decided to reduce the cross subsidy surcharge to zero until further orders. In the subsequent tariff order for the FY 12, the State Commission decided to keep Cross Subsidy as zero even though the Distribution Licensee had sought levy of Cross Subsidy in its Tariff filing.

(m) However, once again, the Distribution Licensee, the second Respondent in the Tariff Application filed on 27.1.2012 requested for the levy of Cross Subsidy Surcharge and requested for the same.

(n) The State Commission admitted the said Petition went ahead with the determination of tariff as if the MYT tariff order 2010 earlier passed, was non est and passed fresh impugned tariff order dated 30.4.2012 on GESCOM's approval of revised ARR and Tariff for the Financial Year 2013, thereby reintroducing the Cross subsidy surcharge in the mist of MYT period.

(o) Feeling aggrieved over this order, this Appellant has filed this Appeal.

8. In both the Appeals the learned Counsel for the Appellants have raised the two primary grounds as under:

(a) The Tariff Regulations of the State Commission do not permit introduction of new elements and criterion during the Control Period in the MYT Tariff order. The State Commission already decided in the previous orders that Cross Subsidy Surcharge would not be levied. Contrary to this order, the State Commission passed the impugned order levying the Cross Subsidy Surcharge. This is bad in law.

(b) The State Commission in the impugned order has not determined the Cross Subsidy Surcharge in accordance with the Formula specified in the National Tariff Policy.

9. On these two grounds, elaborate arguments were advanced by the learned Counsel for the parties.

10. The gist of the arguments advanced by the learned Counsel for Appellants in both these Appeals are as follows:

(a) Earlier, the State Commission after considering the Tariff Filings of the Distribution Licensees passed the order dated 7.12.2010 on the APR for the FY 2010 and approval of ERC for the Second Control Period 2011 to 2013 under the MYT framework. As per the said order, the Cross Subsidy Surcharge was reduced to zero. The said policy order was to continue until further orders. But in the subsequent Tariff Filings for the FY 2012, the Distribution Licensees had specifically sought for levy of Cross Subsidy Surcharge. This request was specifically rejected by the State Commission. Therefore, no Surcharge was levied in the Financial Year 2012. However, the Distribution Licensee filed a Petition on 27.1.2012 under the MYT principles for the FY 2013 with the proposal for the levy of Cross Subsidy Surcharge. In this Application, the

Distribution Licensee had not filed the APR, nor had it sought for the amendment of the MYT Tariff Order 2010. Despite these lacunae, the State Commission admitted the application filed by Distribution Licensee and passed the final impugned order dated 30.4.2012 determining the tariff and levying the Cross Subsidy Surcharge. The said order was passed as though MYT Tariff Order 2010 was non est. Through the said order, the State Commission reintroduced the Cross Subsidy Surcharge in the midst of MYT period. This is bad in law.

(b) The Cross Subsidy Surcharge determined by the State Commission is opposed to the National Tariff Policy. It is also opposed to the Regulations framed by the State Commission. In fact, the State Commission has not considered the Formula contained in the National Tariff Policy and its own Regulations while determining the Surcharge. Once the State Commission has passed the Tariff order during the base year of the Control Period, the same has to be amended in the Petition filed for the Annual Performance Review and truing up, if any amendment has to be conducted. Only upon the amendment of the base tariff, the new tariff petition can be considered. The State Commission did not consider these aspects.

It did not even refer to its earlier orders while dealing with the issue of the Cross Subsidy Surcharge.

(c) Even assuming without admitting that the State Commission has considered the two components of the Surcharge Formula namely **T** (the tariff payable by the relevant category of consumers) and **C** (the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power), the State Commission has failed to deduct the component **D** (the wheeling charges) and **L** (the system losses for the applicable voltage level, expressed as a percentage). Thus, the State Commission has not correctly followed the Formula.

11. On these grounds, the learned Counsel for the Appellants has prayed to set aside the impugned order dated 30.4.2012.
12. The learned Counsel for the State Commission as well as the Distribution Licensees have elaborately argued in justification of the impugned order and contended that the submissions made by the learned Counsel for the Appellants are misconceived and not sustainable.
13. In the light of the rival submissions, the question that would arise for consideration in these Appeals are as under:

(a) **Whether the Cross Subsidy Surcharge determined by the State Commission is in accordance with the Regulations of the State Commission and National Tariff Policy or its own earlier orders?**

(b) **Whether the State Commission has determined the Cross Subsidy Surcharge in accordance with the Formula specified in the National Tariff Policy.**

14. Let us now deal with **each of the issues.**

15. While elaborating the **First Issue**, the learned Counsel for the Appellants submitted that tariff in the present proceedings have been wrongly determined on an annual basis instead of determining for MYT period as provided in the Tariff Regulations.

16. The Tariff determination exercise is carried out by the State Commission in accordance with the provisions of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006. These Tariff Regulations provide for the methodology as well as the procedure to be adopted by the State Commission in regard to the approval of the annual revenue requirements and the determination of tariff.

17. Bearing this in mind, we have to analyse as to whether the State Commission has determined the tariff in accordance with the Tariff Regulations.
18. The contention of the Appellant is that the tariff has to be determined only for the MYT period and cannot be determined on an annual basis.
19. Let us refer to the relevant Regulations.
20. Regulations 2.1 and 2.9 are quite relevant in this regard. Regulation 2.1 is reproduced as below:

2.1 Multi Year Tariff Framework

MYT framework shall be based on the following elements, for calculation of ARR and ERC:

- (i) Control Period, at the commencement of which a forecast of the ARR and ERC shall be filed by the Distribution Licensee for approval of the Commission;*
- (ii) Distribution Licensee's forecast of ARR and ERC during the Control Period shall be based on reasonable assumptions related to the expected behavior of the various operational and financial variables;*
- (iii) Trajectory for specific variables as may be stipulated by the Commission, where the performance of the Licensee is sought to be improved through incentives and disincentives;*
- (iv) Annual Review of performance vis-à-vis the approved forecast and categorization of variations in*

performance into those that were caused by factors within the control of the Distribution Licensee (controllable factors) and those caused by factors beyond the control of the Distribution Licensee (uncontrollable factors);

(v) Mechanism for pass through of approved gains or losses on account of uncontrollable factors;

(vi) Mechanism for sharing approved gains or losses arising out of controllable factors;

(vii) Annual determination of tariff for each financial year within the control period, based on the approved forecast and results of the annual performance review”.

21. As per Regulation 2.1 (vii), Annual determination of tariff for each financial year has to be made within the control period.

22. Now we will see the relevant Regulations 2.9 which deals with the annual determination of tariff which is as under:

2.9 Annual Determination of Tariff

2.9.1 An application for determination of tariff for any financial year shall be made by the Licensee not less than 120 days before the commencement of such financial year in the form specified in KERC (Tariff) Regulations having regard to the following:

a) the approved forecast of ARR and ERC for such financial year, including approved modifications, if any.

b) Approved gains and losses to be passed through in tariffs, following annual performance review.

2.9.2 The application for determination of tariff shall include Surcharge and wheeling charge to be determined under open access by following the methodology specified in these Regulations.

2.9.3 Application for determination of tariff for the first year of the first Control Period may be filed by the Distribution Licensee along with the MYT filing for the first Control period.

2.9.4 The Commission shall issue a Tariff Order after following the procedure prescribed in KERC(Tariff) Regulations read with KERC (General and Conduct of Proceedings) Regulations.

- 23.** As per Regulation 2.9.2, the Application for determination of tariff shall include Surcharge and the same has to be fixed under the methodology specified in the Regulations.
- 24.** The reading of the above Regulations would reveal that in terms of Regulations 2.1 (vii) and Regulation 2.9, the Tariff has to be determined annually which includes the Cross Subsidy Surcharge and Wheeling Charges.
- 25.** The Cross Subsidy Surcharge is a part and parcel of the tariff Regulations. Therefore, the same has to be determined in each tariff order separately.
- 26.** As indicated above, Regulations 2.9.2 specifically provides that the application for determination of tariff shall include the surcharge and the wheeling charges to be determined under open access.

- 27.** According to the State Commission, the tariff has to be determined on an annual basis only and not for a MYT period. While the MYT methodology provides for the norms and parameters and the principles to be adopted for the determination of tariff, the tariff determination exercise needs to be done annually so as to ensure that the tariff reflects the actual cost and expenditure incurred by the licensee.
- 28.** In the present case, the State Commission had carried out the annual performance review for the year 2010-11 only on 28.10.2012 and at that time provisional figures for the year 2011-12 were not fully available.
- 29.** Under these circumstances, the State Commission had decided to conduct the Annual Performance Review for the year 2011-12 with the tariff determination for the year 2013-14.
- 30.** There cannot be any dispute on the point that the Formula of Cross Subsidy Surcharge provided for in the National Tariff Policy is binding and the same has to be followed.
- 31.** In fact, the Full Bench of this Tribunal in RVK Energy v APCPDCL, 2007 ELR (APTEL) 1222 has held that the formula of Cross Subsidy Surcharge as per the National Tariff Policy has to be followed and it is binding considering the objective purpose of the cross subsidy surcharge. In this

Full Bench decision, this Tribunal had directed all the State Commissions to follow the said Formula for determination of Cross Subsidy Surcharge.

32. According to the State Commission, in the present case, it has followed the said Formula for determination of Cross Subsidy Surcharge. It is noticed from the impugned order that the State Commission has incorporated the said Formula which is found available in the Regulations framed by the State Commission.

33. In this regard, Regulations 11(iv) of the Open Access Regulations was specifically amended by the State Commission pursuant to the notification of the National Tariff Policy. The said amendment is as follows:

“The open access customer shall be liable to pay the surcharge as determined by the Commission from time to time. The Commission would determine the surcharge as per the formula indicated below:

Surcharge formula:

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

Where

S is the Surcharge

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

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

D is the Wheeling Charge

L is the system Losses for the applicable voltage level, expressed as a percentage."

- 34.** In view of the above, the contention of the Appellant that the State Commission has not followed the decision of this Tribunal or the National Tariff Policy for determination of Cross Subsidy Surcharge is misconceived.
- 35.** It is also contended by the Appellant that the decision taken by the State Commission earlier in the year 2010 and 2011 that cross subsidy surcharge shall be zero cannot be ignored as the said decision acts as an estoppel on the State Commission for determination of cross subsidy surcharge in the impugned order for the year 2010 and 2011. This contention is also not tenable.
- 36.** The State Commission in the impugned order clearly specified that the decision to make the cross subsidy surcharge as zero was taken in the year 2010-2011 keeping in view of the then prevailing situation of power availability and also to release the utility from purchasing very high cost electricity. The Distribution Licensees have procured the electricity at a very high cost thereby substantially adding to the power purchase cost.
- 37.** In those circumstances, the State Commission during the said period considered prudent that freedom should be

given to the open access consumers to procure electricity from other sources which would in turn relieve the Distribution licensee of purchasing equal and high cost power.

- 38.** This aspect has been considered by the State Commission in the impugned order. The State Commission in the impugned order has rendered a specific finding that the power purchase cost has come down and there is a cap imposed on the distribution licensees for purchase of costly power. The said finding is as follows:

"It is observed that due to shortage situation in the State, ESCOMs are resorting to short term / medium buying of power. The weighted average rate of per unit of power was Rs.4.73 in FY12. Even though the per unit cost of short and medium term procurement of power has declined from Rs.6.35 in FY2010 and Rs.4.94 in 2011 to Rs.4.73 in 2012, the quantum of short / medium term power procured has increased from 1535 MU in FY10 to 7302 MU in FY11. The short term power procured in FY12 was 5302.50 MU. This has significantly impacted on the average cost of power supplied. In view of the above experience, the Commission hereby directs BESCO to plan its requirements in advance and make arrangements for procurement of power on medium and long term basis, so that the power purchase cost would be reasonable.

The Commission in its tariff order dated 28th October 2011, had directed ESCOMs to plan its requirement in advance and make arrangements to tie up for medium and long term power procurement to meet the

anticipated shortfall in supply at a rate not exceeding Rs.4/- per unit. After issuing these directions, the Commission has been closely monitoring the supply and demand positions in the State along with the power purchases made by each ESCOMs. This seems to have contributed to a considerable reduction in the short term power purchase costs. The Commission will continue to monitor the process of procurement of power on short term basis in order to moderate / minimize the cost of such procurement. The Commission therefore directs that any short term / medium term procurement of power in excess of Rs.4.00 per Kwhr shall be made by ESCOMs only with the prior approval of the Commission."

- 39.** Thus, there is a categorical finding in the impugned order that the cost of short term and medium term power procurement has come down substantially over the years. The State Commission had in the previous tariff orders directed the Distribution licensees to plan the power requirement in advance and make sufficient arrangements to tie-up medium and long term power procurement to meet the anticipated shortfall in supply at a tariff not exceeding Rs.4 per unit.
- 40.** That apart, the State Commission has also been continuously monitoring the power position in the State on the demand and supply side along with the power purchases made by the Distribution licensees. Based on the above, the cost of short term power purchases has considerably reduced over the years.

- 41.** The State Commission was of the view that it had made Cross Subsidy Surcharge zero since the 2009 Tariff Order in order to encourage the Open Access and to incentivize the consumers in the State to purchase power from outside the State at reasonable rates. This would relieve the utilities of the extra burden of high cost energy under the situation of power shortage prevailing then. The decision which was taken by the State Commission in that period to keep the Cross Subsidy surcharge as zero was taken keeping in view the situation prevailing at that time when those orders were passed.
- 42.** However, the circumstances that existed at the time of passing of the earlier orders in 2009, 2010 and 2011 and the circumstances that prevailed in State at the time of the passing of the present impugned order are completely different and therefore, the state Commission decided to reintroduce the Cross subsidy surcharge. In fact, the State Commission in the impugned order has taken into consideration the methodology set out in the KERC (Open Access Regulations), 2004.
- 43.** The Electricity Act, 2003 provides for levy of Cross Subsidy Surcharge. The National Tariff Policy clearly mandates that the Regulatory Commissions ought to strike a balance between the requirements of the commercial viability of Distribution Licensees and the Consumer interest.

Therefore, the application filed by the Distribution Licensee requesting for reintroduction of the Cross Subsidy Surcharge is in keeping with the statutory mandate of the Act.

44. That apart, the issue of previous year cross subsidy surcharge was determined at zero level cannot be a relevant issue in this matter since every tariff order is a fresh tariff order which needs to be judged by the applicable legal provisions and taking into consideration the prevailing circumstances. As such, there is no infirmity in the findings given in the impugned order on this issue.
45. Let us now deal with the **next issue**.
46. According to the Appellant, even assuming that the State Commission has adopted the formula specified in the National Tariff Policy, the State Commission has not fully implemented the said formula for the purpose of the determination of the Cross Subsidy Surcharge.
47. Refuting this contention, the learned Counsel for the Respondents submit that the State Commission in the impugned order has followed the said Formula in letter and spirit and determined the Cross Subsidy Surcharge strictly in accordance with the Formula specified.
48. We have gone through the impugned order to find out whether such a contention urged by the Appellants has any basis.

49. On going through the impugned order, it is evident that the State Commission in fact, has not accepted the proposal given by the Distribution Licensee for determination of Cross Subsidy Surcharge considering the average cost of supply. The State Commission has proceeded to determine the Cross Subsidy Surcharge based on the Formula specified in the National Tariff Policy as adopted in the Open Access Regulations of the State Commission.
50. In this regard, the State Commission in the impugned order has made the following observations. While the State Commission while referring to the proposal made by the Distribution Licensee in Appeal No.186 of 2012 namely BESCO, has observed as follows:

"BESCO in the current filings has requested the Commission to reintroduce the cross subsidy surcharge owing to the increase in fixed charges in transmission and distribution business. BESCO has proposed a cross subsidy surcharge of Rs.1.10 per unit which is the difference of realization from the proposed revised tariff for HT industrial consumer and the proposed revised average cost of supply for BESCO.

Since tariff order 2009, the Commission had made the cross subsidy surcharge zero, in order to encourage open access and to incentivise the State consumers (especially industrial and commercial consumers) to purchase power from outside the State at reasonable rates, thereby relieving the utility of the extra burden of high cost energy under shortage situation. The above decision was taken by the Commission keeping in view the prevailing situation of power availability during the

relevant years. Keeping in view the present situation of the power availability, the Commission decides to reintroduce cross subsidy surcharge.

BESCOM has proposed cross subsidy surcharge as the difference of realization from the revised tariff and the average cost of supply, and has proposed cross subsidy surcharge at 110 paise per unit. However, the Commission in its Open Access Regulations has specified the methodology for calculating the cross subsidy surcharge. Based on the methodology specified in the Open Access Regulations the category wise cross subsidy will be as indicated below:

Particulars	HT-1 Water Supply	HT-2a Industries	HT-2b Commercial	HT-4 Residential Apartments
Average Realization rate-Paise/Unit	441	587	790	516
Cost of Supply at 5% margin @ 66 kV and above level	534	534	534	534
Cross Subsidy surcharge paise/unit @ 66 kV & above level	-93	54	256	-18
Cost of supply at 5% margin @ HT level	574	574	574	574
Cross subsidy surcharge paise/unit @ HT level	-133	13	216	-58

As the Cross subsidy surcharge for HT-1 & HT-4 categories is negative, for these categories the surcharges is zero at respective voltage levels. For HT-2a & HT-2b categories, the Commission decides to determine the surcharge at 80% of the cross subsidy worked out above, as the cross subsidy surcharge has to be gradually reduced. Thus, the cross subsidy surcharge is determined as under:

Voltage	HT-2a	HT-2b
66 kV & above	43	205
HT Level -11 kV/33kV	11	173

The wheeling charges and cross subsidy surcharge determined above will supersede from the date of this

order the charges determined earlier and are applicable to all open access/wheeling transactions in the area coming under BESCO.

The Commission directs the Licensees to account the transactions under open access / wheeling separately. Further, the Commission directs the Licensees to carry forward the amount realized under Open Access/wheeling to the next ERC, as it is an additional income to the Licensees."

- 51.** In terms of the above table, the State Commission has considered the cost of supply considering the 5% margin of power purchase cost and considering the voltage of 66 KV and above. This includes the adjustment of losses and wheeling charges at the voltage level.
- 52.** Similar observations have been made by the State Commission with reference to the proposal made by the Distribution Licensee, GESCOM in Appeal No.187 of 2012 in respect of BMM Ispat Limited. They are as follows:

"GESCOM in the current filings has requested the Commission to reintroduce the cross subsidy surcharge to sustain the deficit cost in providing power supply to meet social objectives. GESCOM has worked out cross subsidy surcharge of 290.76 paise per unit at 66 KV level and 146.08 paise per unit at 33 KV level, considering the power purchase at 5% margin excluding liquid fuel and renewable sources.

The Commission has carefully considered the issue raised by GESCOM with respect to cross subsidy surcharge. The decision of the Commission is discussed in the following paragraphs:

The Commission had made the cross subsidy surcharge zero, since tariff order 2009, in order to encourage open access and to incentivise the State consumers (especially industrial and commercial consumers) to purchase power from outside the State at reasonable rates, thereby relieving the State of the extra burden of high cost energy under shortage situation.

The above decision was taken by the Commission keeping in view the prevailing situation of power availability during the relevant years. Keeping in view the present situation of the power availability, the Commission decides to reintroduce cross subsidy surcharge.

However, the Commission in its Open Access Regulations has specified the methodology for calculating the cross subsidy surcharge. Based on the methodology specified in the Open Access Regulations the category wise cross subsidy will be as indicated below:

Particulars	HT-1 Water Supply	HT-2a Industries	HT-2b Commercial	HT-4 Residential Apartments
Average Realization rate-Paise/Unit	441	587	790	516
Cost of Supply at 5% margin @ 66 kV and above level	534	534	534	534
Cross Subsidy surcharge paise/unit @ 66 kV & above level	-93	54	256	-18
Cost of supply at 5% margin @ HT level	574	574	574	574
Cross subsidy surcharge paise/unit @ HT level	-133	13	216	-58

As the Cross subsidy surcharge for HT-1 & HT-4 categories is negative, for these categories the surcharges is zero at respective voltage levels. For HT-2a & HT-2b categories, the Commission decides to determine the surcharge at 80% of the cross subsidy worked out

above, as the cross subsidy surcharge has to be gradually reduced. Thus, the cross subsidy surcharge is determined as under:

Paise/Unit

<i>Voltage level</i>	<i>HT-2a</i>	<i>HT-2b</i>
<i>66 kV & above</i>	<i>43</i>	<i>205</i>
<i>HT Level -11 kV/33kV</i>	<i>11</i>	<i>173</i>

The wheeling charges and cross subsidy surcharge determined above will supersede from the date of this order the charges determined earlier and are applicable to all open access/wheeling transactions in the area coming under GESCOM.

The Commission directs the Licensees to account the transactions under open access / wheeling separately. Further, the Commission directs the Licensees to carry forward the amount realized under Open Access/wheeling to the next ERC, as it is an additional income to the Licensees."

53. These observations would make it clear that the Formula as specified by the National Tariff Policy has been followed by the State Commission in letter and spirit. In fact, the State Commission after working out the Cross Subsidy Surcharge as per the Formula has given further incentives to the consumers by reducing the same by 20% and directing the levy of the Cross Subsidy Surcharge at only 80% of the amount worked out.

54. In the above circumstances, it is not correct to contend that the State Commission has not worked out the cost of the

supply in terms of the Formula specified for determination of Cross Subsidy Surcharge. Hence, the finding on this issue also is justified. As such, the contention of the Appellant on this point also fails.

55. Summary of Our Findings

(i) The cross subsidy surcharge is a part of tariff and has to be determined afresh in every tariff order.

(ii) The State Commission has determined the cross subsidy surcharge on the basis of the formula given in the Tariff Policy which is also adopted in its Tariff Regulations.

56. In view of the above, the Appeals are dismissed as devoid of any merits.

57. No order as to costs.

58. Pronounced in the Open Court on this **03rd day of September, 2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 03rd Sept, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~