

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in**

Case No. 43 of 2010

**In the matter of
Petition filed by Maharashtra State Electricity Distribution Company Limited
regarding Cross Subsidy Surcharge and Stand by Charges for Open Access consumers**

And

**In the matter of
De novo re-determination of Cross Subsidy Surcharge and issues related to Open
Access.**

**Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member**

ORDER

Dated: 9, September, 2011

1. Maharashtra State Electricity Distribution Company Limited (MSEDCL for the sake of brevity), herein referred to as the “Petitioner” filed a Petition on August 25, 2010 seeking review of the Order dated September 5, 2006 in Case No. 9 of 2006.
2. The prayers made in the Petition are as under:-
 - a) *This Hon'ble Commission be pleased to review the order dated September 06, 2006 in case no. 9 of 2006 passed by this Hon'ble Commission to ensure that Cross Subsidy Surcharge as contemplated by the statute is actually paid by Open Access consumer in respect of the Open Access granted and grant consequential relief;*
 - b) *This Hon'ble Commission be pleased to amend , alter , modify the application for formula in the light of specific issues raised by MSEDCL pertaining to the power scenario in the State to ensure that the CSS is paid as provided by statute;*
 - c) *This Hon'ble Commission be pleased to permit the MSEDCL to apply Standby Demand Charges as per MERC Order in case no.116 of 2008 order dated 9.12.2009 to Open Access consumers except CPP. In case, standby demand is not*

declared and is not approved by MSEDCL, permit levy of penal charges as decided by this Commission;

- d) This Hon'ble Commission be pleased to allow to levy energy charges as temporary or Higher UI charges or marginal cost of power whichever is higher for standby power which will act as a deterrent and the Open Access consumer will only opt for firm power;*
 - e) This Hon'ble Commission be pleased to condone the delay in filing of the present Petition;*
 - f) The Hon'ble Commission be please to rectify the earlier decision on CSS and decide a settle CSS in line with the provision of Electricity Act, 2003.*
 - g) Hon'ble Commission be pleased to permit Petitioner to amend, alter, modify the ground raised in the Petition.*
3. Subsequently, MSEDCL filed additional submissions to its petition vide an affidavit on October 11, 2010 seeking consideration of the following factors and condonation of delay in filing the petition:-
- a) Conduct of the Petitioner – Not a deliberate and intentional delay in filing the present petition.*
 - b) Meritorious matter ought not to be thrown out on ground of limitation.*
 - c) The MERC is entitled and empowered to condone the delay.*
 - d) Condonation of delay – Justice oriented approach.*
4. The submissions made by the Petitioner have been summarized below:-
- a) The Petition has been submitted to seek review of the formula evolved in the Order dated September 05, 2006 in Case No. 9 of 2006 issued by the Commission. The Petitioner has sought review on the ground that there is error apparent on the face of the record as the formula evolved in the said Order does not result in recovery of cross subsidy inbuilt in the current tariff of MSEDCL.
 - b) The Petitioner submitted that post the notification of the Tariff Policy, 2005 by the Ministry of Power, Government of India, the Commission initiated deliberations on the matter. The Commission, vide a public notice dated May 29, 2006 published an approach paper on the subject and invited comments / suggestions from all stakeholders. Thereafter, the Commission issued the Order in Case No. 9 of 2006 and therein adopted the formula for CSS as specified in the Tariff Policy, 2005. The formula which was adopted by the Commission is provided below:-
$$S = T - [C (1 + L / 100) + D]$$

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; and

L is the system Losses for the applicable voltage level, expressed as a percentage, and inclusive of transmission loss. For intra-state transactions, transmission loss prescribed by the Commission for the STU should be considered, while for inter-state transactions, additional loss compensation as provided by CERC in its Open Access Regulations should be considered.

- c) The Petitioner contended that as per the formula stipulated by the Commission, CSS works out to be zero, primarily because the weighted average power purchase cost of top 5% at the margin, after adding the intra-state transmission tariff and voltage-wise losses is less than the average realization from High Tension category. The Petitioner further added that a zero CSS implies that the present tariff structure does not have any cross subsidy, which is incorrect.
- d) The Petitioner further submitted that in the present demand supply situation, there exists a shortage of power and a consumer opting for Open Access will not result in the reduction of power procurement, to the extent of the requirement of the said consumer who has opted for Open Access. The formula as stipulated in the Tariff Policy and adopted by the Hon'ble Commission in its Order in Case No. 9 of 2006 dated September 5, 2006, presumably assumes an ideal situation, where demand of power and availability of power does not mis-match. It is stated that only in such circumstances the distribution licensee (such as MSEDCL) would be able to reduce the quantum of power procured to the extent of the power requirement of the consumer who has opted for Open Access. The Petitioner therefore, submitted that the formula as specified by the Hon'ble Commission in respect of the determination of CSS will sustain only when such an ideal situation exists in future.
- e) The Petitioner further submitted that zero CSS would mean that the subsidized category of consumers will have to share the burden of loss of cross subsidy whenever a consumer who is otherwise providing cross subsidy through tariff, shifts away from the Petitioner and opts for Open Access, which would obviously not be in the interest of the larger section of the consumers.
- f) The Petitioner submitted that as per Regulation 85 (a) of MERC (Conduct of Business) Regulations, 2004 any person aggrieved by a direction, decision or Order of the Commission may, upon the discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or Order was passed or on account of some mistake or error apparent from the face of the record, or any other sufficient reasons, may apply for a review of such Order within 45 days from the day of the direction, decision or Order, as the case may be, before the Commission.

- g) The Petitioner submitted that the time when the Order in Case No.9 of 2006 was issued the impact of the CSS being zero was not assessed and nor were the financial implications of the same adjudged. The Petitioner hence contended that the Order in Case no. 9 of 2006 should be reviewed on the ground that there was an error apparent in the formula evolved and the aspects of operationalization of Open Access were not considered.
- h) The Petitioner submitted that all the referred statutory provisions explicitly provides for payment of CSS by a consumer who opts for open access and the said provisions also stipulate that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee. The Petitioner further submitted that since the CSS as per the formula determined by the Hon'ble Commission in the Case No. 9 of 2006 dated September 5, 2006 resulted in zero, the said formula needs to be considered as erroneous and needs to be considered for appropriate modification. Accordingly, the Petitioner submitted that as a result of the said formula being erroneous, whose impact was not anticipated at the time of determination of formula in Case No. 9 of 2006, it is a mistake or error apparent from the face of the record and therefore this could be used as a basis for reviewing the said impugned Order.
5. The Commission in the said Order in Case No. 9 of 2006 dated September 5, 2006, "In the matter of Methodology for computation of CSS for Open Access transactions" adopted the Tariff Policy formula for the computation of CSS. The Commission in the said Order dealt with issues related to computation methodology and applicability of CSS. The salient features of the same are provided below:-
- a) The Commission ruled that component 'L' pertaining to system losses in the formula for CSS specified in Tariff Policy should include transmission losses. For intra-state transactions, transmission loss prescribed by the Commission for the STU should be considered, while for inter-state transactions, additional loss compensation as provided by CERC in its Open Access Regulations should be considered.
- b) Consumers availing Open Access will have to pay the above CSS except in the following cases:-
- For the quantum of power which is not being supplied by the Utility as per the Orders issued by the Commission from time to time. Currently, load restriction of 10% and 20% is applicable to continuous and non-continuous industry. Therefore, consumers in these categories will be permitted to purchase this quantum of energy without payment of CSS.
 - Open Access consumer's purchasing power from renewable sources of energy.
 - Open Access transactions as on the date of enactment of the EA 2003.
- c) CSS should be calculated for the base year of FY 2006-07 and this surcharge should be reduced to 20% of the opening level of CSS by FY 2010-11.

- d) New consumers will not be exempted from levy of CSS.
 - e) Open Access transactions undertaken using liquid fuel based thermal generation will also have to pay the CSS.
6. Subsequent to the above said Order, the Commission issued an Order in Case No. 54 of 2005 dated October 20, 2006 in the matter of approval of MSEDCL's Annual Revenue Requirement (ARR) for FY 2004-05, FY 2005-06 & FY 2006-07 and determination of Tariff for FY 2006-07. The Commission in this Order computed the Surcharge based on the formula specified by the Commission's Order in Case No. 9 of 2006 which worked out to be zero, primarily because the weighted average cost of power purchase of top 5% at the margin worked out to Rs 4.81 per kWh, which was higher than the average realization of HT categories. Further, the Commission in the subsequent Tariff Orders of MSEDCL till date had decided to continue the CSS to be zero.
7. The Petitioner in the present petition has sought review of the above mentioned Order in Case No. 9 of 2006 on the ground that, with the current CSS being zero, any shift of the industrial consumer out of MSEDCL would result in the loss of cross subsidy generated by such consumer. Presently, this cross subsidy generated is being utilized towards the shortfall in revenue from subsidized consumers. In the event of zero CSS, the consumers remaining with the licensee would have to bear the burden and this might result in tariff shock to them.

Regulatory proceedings & deliberations undertaken by the Commission

8. The Commission had initiated various activities to expedite Open Access for consumers having contract demand above 1 MW and issues thereon from November 30, 2009. Accordingly, the Consultants appointed for the above work submitted the study report on the above matter and the same was uploaded on MERC website on May 11, 2010.
9. Further, the issues of Open Access and Cross Subsidy were discussed as one of the agenda in the 14th State Advisory Committee (SAC), meeting held on June 25, 2010. Shri R B Goenka, Vidarbha Industries Association (VIA), a consumer representative opined on the issues related to Open Access and agreed on the views of consultants appointed by the Commission on applicable legal and policy framework which emphasize encouragement of competition among competing generators and licensees to provide a choice to consumer to seek supply from any source to bring in efficiencies in the system. In addition to the views of Shri R B Goenka, MERC officials also made presentations on the issue of Cross Subsidy. The presentation covered the following points:-
- Progress made so far;
 - Summary of Draft Regulations; and
 - Comments received on the Draft Regulations.

10. The Commission in the 14th SAC meeting held on June 25, 2010 opined that the matter of Cross Subsidy and Open Access is very much inter-related and needs to be examined together. The Commission decided to form a Technical Committee under the Member, MERC. Thereafter the office of the Commission sought representations from MSEDCL, RInfra (Distribution), Tata Power (Distribution), BEST Undertaking (Metering Section), MSETCL and Shri R B Goenka (VIA) for being part of the said Committee. Accordingly, a Committee was formed comprising of Shri Vijay L. Sonavane, Member MERC as Chairman of the Committee; Shri Abhijit Deshpande, Executive Director (Commercial) and Shri Satish Bapat, Superintending Engineer (TRC), representing MSEDCL; Shri S.D. Shrouthy, Executive Director representing MSETCL; Shri K.N. Rajagopal, Dep. Chief Engineer (Tech), representing BEST Undertaking; Shri Vivek Mishra, DGM (Regulatory) representing RInfra; Shri Prashant Joshi, Chief Manager (Regulation) representing TPC; Shri R.B. Goenka, Consumer Representative, representing Vidarbha Industries Association; Shri Puneet Chitkara, Mercados Energy Markets India Pvt Ltd, Shri Anil V. Kale representing ICRA Management Consulting Services Ltd, and Shri Prafulla Varhade, Director (EE) MERC as Member Secretary of the Committee; with other Invitees as follows: - Shri A.V. Deo representing STU; Shri S.G. Kelkar and Shri B.J. Gujarati representing SLDC; and Smt. Shital Khiraiya MERC Co-ordinating Officer. The Commission also conveyed that the Committee may take help from Member (E&C) of CEA and an Economist while finalizing the recommendations. The said committee was expected to comment on the draft documents on Open Access and Road map for cross subsidy reduction. Meanwhile, MSEDCL filed the present Review Petition on August 25, 2010 in the matter of seeking review of the Order dated September 5, 2006 (Case No. 9 of 2006), which inter-alia defined the methodology/formula to be followed for determination of CSS and for determination of Additional Surcharge on the charges of wheeling to be recovered from a consumer and / or person, who has been granted Open Access.
11. The Commission on receipt of the petition issued a notice on September 23, 2010 fixing the hearing on October 12, 2010.
12. Meanwhile, 15th SAC meeting was held on September 24, 2010, wherein Member, MERC made a presentation giving detailed account about the status of the Draft Open Access Regulation and informed the members present that the Technical Committee formed have had three meetings till that SAC meeting. Member, MERC also informed that the Forum of Regulators (FoR) has formed a working group to evolve the Model Intra-State Open Access Regulations under the Chairman, CERC and Member (MERC) was also co-opted as a member of the working group. Member, MERC also informed during the SAC meeting that the final Draft Open Access Regulations will be uploaded on the MERC website and comments/suggestions would be invited on the same.
13. Subsequently, the admissibility hearing on the petition in Case No. 43 of 2010 was held on October 12, 2010. Prior to this, on October 11, 2010 MSEDCL made an

additional submission in which it prayed that though there is delay in filing the present petition but the same should be condoned, as the Commission is entitled and empowered to do so. Further, MSEDCL stated that the present petition is a meritorious matter which ought not to be thrown out on the grounds of limitation.

14. During the hearing on October 12, 2010, the counsel and the officer representative of MSEDCL presented their case requesting the Commission to condone the delay in the review petition and it be reviewed based on the merits of the Case. The Commission having heard the Petitioner opined that CSS is a complex issue and it requires further consultation. The Commission also decided that the issue shall be dealt with after receipt of the Report of the Committee formed for the finalization of the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011.
15. The 16th SAC meeting was held on December 31, 2010 wherein presentations on Draft Open Access Regulations were made. Member, MERC informed that the Technical Committee deliberated on the issues raised in the previous SAC meetings and written comments of all the stakeholders. Thereby, keeping in mind the Model Terms and Conditions of Intra-State Open Access Regulations, 2010, issued by the Forum of Regulators (FoR) and based on discussions with the Committee members, the final drafts of MERC (Distribution Open Access) Regulations, 2011 and MERC (Transmission Open Access) Regulations, 2011 have been prepared which would be uploaded on website of the Commission for comments from stakeholders.
16. The Committee undertook various activities from the date of its constitution briefly stated as follows-

| Date | Details |
|--------------------|--|
| July 14, 2010 | 1 st Meeting of the Committee |
| September 6, 2010 | 2 nd Meeting of the Committee |
| September 23, 2010 | SAC Meeting – Presentation by Member (Technical) on issues raised in Committee Meeting on Open Access |
| October 14, 2010 | 3 rd Meeting of the Committee – Discussion on Model FOR regulations on intra-state open access |
| October 29, 2010 | Preliminary draft of regulations on Transmission and Distribution Open Access sent to all the Committee members inviting their suggestions |
| November 4, 2010 | Comments received from MSEDCL on preliminary draft of Regulations |
| November 11, 2010 | Comments received from Vidarbha Industries Association |
| December 15, 2010 | Discussions with Indian Energy Exchange on preliminary draft Open Access regulations |
| December 24, 2010 | Comments received from Vidarbha Industries Association on preliminary draft Open Access regulations |

| | |
|-------------------|---|
| December 31, 2010 | Legal vetting of preliminary draft Open Access regulations |
| January 12, 2011 | Public Notice issued inviting suggestions and objections on preliminary draft MERC (Transmission Open Access) regulations, 2011 and MERC (Distribution Open Access) regulations, 2011 |
| February 11, 2011 | Comments received from various stakeholders on issues such as Cross subsidy surcharge, Stand by supply, and other operational issues |
| May 19, 2011 | Preliminary exercise undertaken to re-compute the Cross Subsidy surcharge based on the formula specified in the National Tariff Policy. |

17. During the various meetings of the Committee the issue of CSS and related views/comments/suggestions of MSEDCL, RInfra-D, TPC – D and one of the authorized Consumer representative (Vidarbha industries Association (VIA)) were also discussed. Thereafter, considering all the comments and suggestions of stakeholders and Technical Committee members the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011 were issued on January 12, 2011 and comments were invited on the same. However, there was no consensus on the CSS computations.

18. The 17th SAC meeting was held on March 25, 2011 wherein presentations on Open Access Regulations and Cross Subsidy Roadmap were made again. The Commission during the meeting informed that three new persons have been invited for this meeting and they would be permanent special invitee for the SAC meetings. The persons invited were as follows:-

- Shri Harry Dhaul, Independent Power Producers Association of India;
- Shri Jayant Deo, Indian Energy Exchange; and
- Smt Rupa Devi Singh, Power Exchange of India

19. During this 17th meeting of SAC, Shri Harry Dhaul made a detailed presentation and explained the following issues:-

- In the present context, Open Access is unviable because of multiplicity and pancaking of charges such as wheeling, transmission, operating, administrative, cross subsidy, electricity duty, tax on sale of electricity, standby charges, demand charges, etc.;
- Benefits of Open Access;
- Consumers & Regulatory issues in the transition phase;
- Investor concerns;
- Distribution Companies concerns;
- IPPAI's recommendation.

20. On April 5, 2011, MSEDCL filed two Writ Petitions before the Hon'ble High Court of Judicature at Bombay, viz., Writ Petition No. 553 of 2011 and Writ Petition No. 666 of 2011 with prayers before the Hon'ble High Court to direct MERC to expeditiously

dispose of Case No. 43 of 2010 by passing a reasoned Order and to restrain MERC from finalization of Draft MERC Open Access Regulations, 2011 till such time Case No. 43 of 2010 is not disposed of. MSEDCL also prayed before the Hon'ble High Court to restrain MERC from disposing of any further applications for Open Access being filed by the consumers. However, the Hon'ble High Court was pleased to reject the prayers made for interim relief vide its Order dated May 4, 2011 in Writ Petition (Lodging) NO.666 Of 2011.

21. The Hon'ble High Court *inter alia* held as follows:-

“10. Besides, the order about which grievance is made was passed as far back as on 5/9/2006. The petitioner took no steps to challenge it immediately. In fact, a remedy of appeal was available to the petitioner under Section 111 of the said Act which the petitioner did not avail. That order has assumed finality. The MERC (Distribution Open Access) Regulations 2004 were not challenged by the petitioner. They have also assumed finality. This also disentitles the petitioner from getting any interim relief.”

“12. So far as draft regulations are concerned, since they are not finalized, they are subject to changes. In fact, they were put for suggestions and objections of the petitioner. In our prima facie opinion, the petitioner is trying to prejudge the validity, legality and efficacy of the regulations. It would be premature to opine on the draft regulations at this stage. Their finalization cannot be stayed.”

“13. In view of the above, the prayer for interim relief is rejected. We make it clear that the MERC would be at liberty to raise the preliminary objection about the maintainability of this petition on the ground of availability of an alternative remedy at the final hearing.”

22. The Hon'ble High Court passed the following Order in Writ Petition (Lodging) No.553 Of 2011:-

“1. Counsel are agreed that the facts involved in this petition are similar to those involved in Writ Petition (Lodging) No.666 of 2011. Counsel are also agreed that same issues are involved in both the petitions. By order dated 4/05/2011, we have issued Rule in Writ Petition (Lodging) No.666 of 2011 and rejected prayer for interim relief.

2. In the circumstances, for the reasons stated in the said order, we issue Rule in this petition. For the reasons stated in the said order, prayer for interim relief is rejected.”

23. In the above Writs, the Counsel of the Commission submitted that the pending review application is likely to be disposed of within a period of five months from the date of the aforementioned Order. The said Writs have been admitted but are pending final disposal.

24. Since, there was no consensus on the part of the aforesaid Committee on the CSS computations, the Commission issued a notice on May 13, 2011 to consider multiple interlinked issues including petition in Case No. 43 of 2010 for determination of CSS and additional surcharge to be recovered from a consumer and/ or person who has been granted open access, Draft Open Access Regulations, 2011 and implementation of Open Access. The said Notice was issued to the concerned stakeholders. The Commission at that time considered necessary to firm up further course of action and identify issues on which decisions were required, precisely, in a transparent and open manner in respect of the following inter-related matters:-
- a) Case 43 of 2010 filed by MSEDCL
 - b) Further action on the draft MERC (Distribution Open Access) Regulations, 2011 and the objections and suggestions received thereon.
 - c) Order issued on May 4, 2011 by Hon'ble Bombay High Court in Writ Petition (Lodging) No. 666 of 2011
 - d) Order issued on May 4, 2011 by Hon'ble Bombay High Court in Writ Petition (Lodging) No. 553 of 2011.
 - e) Implementation of Open Access and finding the appropriate tradeoff so that all the "material concerns" of the State Government , HT Consumers, LT Consumers , Generators , Renewable Energy Generators, Investors, Utilities including MSEDCL are addressed to the extent possible.
 - f) Deciding on the methodology to be adopted for fixation of CSS for consumers who opt for Open Access.
 - g) Deciding on the methodology to be adopted for provision of standby arrangements and fixation of standby charges for consumers who opt for Open Access.
25. The Commission in the said notice also mentioned that some advance thinking needs to be done on the subject for which the study paper of Shri Daljit Singh, Prayas Energy Group titled "*Open Access: Methods for calculation of Cross Subsidy Surcharge and Assessment of the Financial Impacts on Utilities*" was enclosed with the notice. The Commission along with the notice enclosed copies of the petition in Case No. 43 of 2010, Impugned Order, Hon'ble Bombay High Court's Orders dated May 4, 2011, draft MERC (Distribution Open Access) Regulations, 2011 and study paper for reference of the stakeholders and invited comments/suggestions thereon. Further, a hearing on May 31, 2011 was scheduled and communicated vide this notice.
26. Meanwhile, MSEDCL challenged the aforesaid Orders dated May 4, 2011 passed by the Hon'ble Bombay High Court before the Hon'ble Supreme Court by filing a Special Leave Petition (SLP). By Order dated May 23, 2011, the said SLP came to be dismissed by the Hon'ble Supreme Court.
27. The Commission subsequently decided to carry out a series of hearings scheduled on May 31, 2011, July 6, 2011, July 8, 2011 and July 26, 2011, apart from the

admissibility hearing on the petition in Case No. 43 of 2010 and for matters to be considered by the Commission on issues of Open Access and CSS.

28. During the hearing held on May 31, 2011, MSEDCL made a presentation before the Commission outlining the requirement for review of the CSS formula as set out in Order in Case No. 9 of 2006 and the financial impact of zero CSS. Representations from organizations such as TPC-D, BEST, RInfra-D, Government of Maharashtra (GoM), Prayas Energy Group, etc. and consumer representatives were also heard by the Commission on the review petition filed by the MSEDCL. During the hearing Secretary, (Energy), Industries, Energy and Labour Department, GoM submitted that GoM's views on the issues related Open Access have already been submitted through its Letter dated April 18, 2011 which needs to be considered while deciding on the present matter. The Commission upon hearing the various stakeholders, was, inter alia, of the view that the Cross Subsidy Surcharge ought to be determined de-novo and directed the four distribution utilities, i.e., MSEDCL, BEST, TPC-D and RInfra-D to submit through affidavit their proposal on CSS computation indicating methodology along with detailed calculation and full justification by June 20, 2011. Further, the Commission directed that a series of hearings would be held on 6th, 7th and 8th of July, 2011 for the de novo re-determination of CSS for Open Access consumers. The CSS computation methodology submissions along with the recommended methodology by each licensee were made on June 20, 2011 by MSEDCL, June 21, 2011 by RInfra-D and June 22, 2011 by TPC-D & BEST. MSEDCL also submitted addendum to the Petition on June 24, 2011. On July 5, 2011, MSEDCL made further additional submissions pertaining to the computation methodology of CSS.
29. During the hearing held on July 6, 2011, various methodologies were presented by each of the licensees and the views of stakeholders were heard by the Commission. The hearing scheduled for three consecutive days for hearing the methodologies proposed for computation of CSS by each of the licensees concluded in a single day, i.e., July 6, 2011. While concluding the hearing on July 6, 2011 the Commission informed the attendees that it may be worthwhile for the stakeholders to inform the Commission their views/comments on the issue of methodology of CSS which is pending before the Hon'ble Supreme Court in Andhra Pradesh Electricity Regulatory Commission vs. RVK Energy Pvt Ltd and Others in SLPs challenging Hon'ble Appellate Tribunal's judgment dated July 5, 2007 in Appeal Nos.169, 170, 171, 172 of 2005 and 248 & 249 of 2006 directing APERC to fix CSS by following the Tariff Policy. Further, the Commission also informed that specific issue of CSS of MSEDCL was also taken up in the 24th meeting of Forum of Regulators (FoR) held on June 16, 2011. Further, the Commission gave an opportunity to the stakeholders to present/submit their views on the above minutes of the 24th meeting of the FoR and on the case between APERC and the Distribution Utilities in Supreme Court, in the hearing scheduled on July 8, 2011. The hearing on July 7, 2011 was cancelled by the Commission as all the stakeholders had presented their views on the same day itself, i.e., July 6, 2011 as against the scheduled three days, i.e., 6th to 8th July, 2011.

30. During the hearing held on July 8, 2011 the representatives sought time to give their comments on the minutes of 24th meeting of FoR. The Commission accepting the request decided to hold a hearing on July 26, 2011. In the meantime MSEDCL, TPC-D and RInfra-D submitted their comments to the Commission on the issues arising in Andhra Pradesh Electricity Regulatory Commission Vs. RVK Energy Pvt Ltd and Others *Supra* and on the issues of Open Access discussed in the 24th meeting of the FoR.
31. During the hearing of July 26, 2011, IEX presented its views on the review petition and argued that the review petition does not hold any merit, and is hopelessly time barred, and should be dismissed. The counsel of MSEDCL refuted the arguments of IEX. Both the parties requested some more time for filing their respective submissions in writing. The Commission granted time till July 30, 2011. The final submissions by MSEDCL & IEX were filed on August 1, 2011.
32. The Commission thereafter deliberated on the CSS for each of the licensees and on other relevant issues.

Legal & Regulatory Provisions

33. Section 2 (47) of the EA 2003 defines Open Access, while Section 42 of the EA 2003 mandates the Distribution Licensees to provide open access to eligible consumers subject to payment of CSS, additional surcharge and other applicable charges.
34. Section 42 of the EA 2003 specifies the Duties of distribution licensee and provisions for open access which are re-produced below:-

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

Provided that such open access shall be allowed on payment of a surcharge 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 in the manner as may be specified by the State Commission:

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

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 by regulations, provide

such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.”.

35. The proviso to Section 86 (1) (a) of the EA 2003 mandates the Commission to determine the wheeling charges and surcharge thereon where Open Access has been permitted for a category of consumers.
36. The Government of India notified the Tariff Policy (TP) under Section 3 (1) of the EA 2003. Paragraph 8.5 of the said Tariff Policy specifies the Methodology for calculation of CSS, additional surcharge and wheeling charges for Open Access consumers. This is extracted below:-

“8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

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

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

Surcharge formula:

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

Where

S is the surcharge

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

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

D is the Wheeling charge

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

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

8.5.2 No surcharge would be required to be paid in terms of sub-section (2) of Section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under Section 43(A)(1)(c) of the Electricity Act, 1948 (now repealed) and on the electricity being supplied by the distribution licensee on the authorization by the State Government under Section 27 of the Indian Electricity Act, 1910 (now repealed), till the current validity of such consent or authorizations.

8.5.3 The surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or the CTU, depending on whose facilities are used by the consumer for availing electricity supplies. In all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area the licensee from whom the consumer was availing supply shall be paid the amounts collected.

8.5.4 The additional surcharge for obligation to supply as per Section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.

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

8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.”

37. The Commission is in the process of finalization of the MERC (Distribution Open Access) Regulations, 2011 and MERC (Transmission Open Access) Regulations, 2011. The draft of the Regulation had been issued on January 12, 2011 for previous publication in response to which comments/suggestions have been received. The Commission is evaluating the comments/suggestions received on the draft Regulations.

38. Maintainability of the Review Petition

MSEDCL's Submission

- a) The Petitioner submitted that Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004 provides that any person aggrieved by a direction, decision or Order of the Commission can apply for review of such decision, direction or Order. The Petitioner submitted that the time when the Order in Case No. 9 of 2006 was issued the impact of the CSS being zero was not assessed and nor were the financial implications of the same adjudged. The Petitioner hence contended that the Order in Case no. 9 of 2006 should be reviewed on the ground that there was an error apparent in the formula evolved and the aspects of operationalization of Open Access were not considered. The Petitioner in its submission on October 11, 2010 made additional submissions in which it submitted as below:-
- i. Conduct of the Petitioner – Not a deliberate and an intentional delay in filing the present petition. The petitioner stated that though there is delay in filing the present petition for review of the Order dated September 5, 2006, this being a meritorious matter the same ought not be thrown out on the grounds of limitation. The Petitioner stated that though there is a delay in filing the petition but the petition should not be dismissed on this sole ground.
 - ii. MERC is entitled and empowered to condone the delay; and
 - iii. Condonation of Delay – Justice oriented approach.

Other Stakeholder Submission

- b) Representative of Vidarbha Industries Association (VIA) submitted that as per Regulation 85(a) of MERC (Conduct of Business) Regulations, 2004 any person aggrieved by a direction, decision or Order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or Order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such Order, within forty five (45) days of the date of the direction, decision or Order, as the case may be, to the Commission.
- c) VIA stated that the Review Petition was not filed within 45 days of the impugned Order of the Commission. Further, there is no discovery of new or important matter or evidence which was not within the knowledge of the petitioner or was not produced by the petitioner at the time when the impugned Order was passed by the Commission. Furthermore, there is no mistake or error apparent from the face of record for which the Review Petition is filed. Therefore, the Commission should reject the Petition.

- d) IEX submitted that since the CSS has been determined by the Commission in accordance with the Tariff Policy, there is no need to rectify the earlier decision on CSS, as prayed by MSEDCL. MSEDCL needs to ensure that the objects of the Tariff Policy and the EA 2003 are achieved in order to promote the development of the electricity industry, competition and the interests of the consumers. MSEDCL has not demonstrated sufficient cause for condoning the delay in filing the Review Petition. On this ground alone, the Review Petition ought to be dismissed by the Commission.

Commission's views:

- e) Certain extracts from the impugned Order in Case No. 9 of 2006 dated September 5, 2006 are as follows :-

“Regulatory Process

11. *REL submitted the proposed methodology for computation of cross-subsidy surcharge, vide their letter dated 10th September 2004. Similarly, TPC submitted “Cost to serve methodology” vide their letter dated 12th October 2005. However, MSEDCL submitted neither the methodology for ‘Cost to serve’ nor ‘computation of cross-subsidy surcharge’. Further, submission made by REL was under MERC (Distribution Open Access) Regulations, 2004 and not under revised Regulations of the Commission. Therefore, the Commission had no proposal on record under MERC (Distribution Open Access) Regulations, 2005. In view of this, **the Commission directed the distribution licensees to submit their proposals for calculation of cross-subsidy surcharge vide its letter dated 10th January 2006. None of the distribution licensees submitted their proposals in this regard within the time period stipulated in the Commission’s letter. However, REL resubmitted its proposal on 26th June 2006, after the public hearing.***
12. *Meanwhile, the Government of India notified the Tariff Policy (TP) on 6th January 2006, which prescribes the formula for determination of Cross Subsidy Surcharge for open access transactions. The Commission felt that the same could be adopted after taking into account any State specific issues.*
13. *In this context, the Commission appointed ‘ABPS Infrastructure Advisory’ (ABPS Infra) as its Consultant to prepare an ‘Approach Paper on Methodology for computation of Cross-Subsidy Surcharge for Open Access transactions’ within the State, for initiating deliberations amongst various stakeholders.*
14. *The Commission, vide its public notice dated 29th May 2006 published the Approach Paper prepared by the Consultant to the Commission and invited comments/suggestions from all stakeholders. The Public Hearing*

was held on Tuesday, 20th June, 2006 at 11.00 hours at Centrum Hall, 1st Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai 400 005.

15. *Upon detailed scrutiny of various objections, comments, and suggestions made by licensees and other key stakeholders as part of their written submissions as well as during the Public Hearing, the Commission hereby issues this Order covering principles for 'implementation of Cross Subsidy Surcharge for open access transactions' as elaborated under subsequent paragraphs. This Order shall be applicable for all distribution licensees and open access users.*

.....”(emphasis added)

- f) The above extract corroborates the fact that the Commission undertook due public consultation process as required under Regulation 87 of the MERC (Conduct of Business) Regulations, 2004 where all the utilities (including the petitioner) were party to the proceedings. An approach paper on “Methodology for computation of CSS for Open Access transactions” was also issued by the Commission to undertake deliberations amongst the stakeholders. Further, the comments of the petitioner were also considered while passing the impugned Order in Case No. 9 of 2006 dated September 5, 2006.
- g) Further, the impugned Order also specified that the Commission while deciding on the methodology of computation of CSS had also considered the Tariff Policy issued by the Ministry of Power, Government of India, in line with the provisions of the EA 2003. In fact the Tariff Policy was notified on January 6, 2006 while the exercise for finalizing the methodology for computation of CSS was being undertaken by the Commission. Further, the Commission vide the Order in Case No 9 of 2006 dated September 5, 2006 specified the formula for CSS, in line with the Tariff Policy with minor clarifications such as inclusion of the transmission losses in the system losses ‘L’. Therefore, the Commission substantially adopted the formula for CSS computation as prescribed by the Tariff Policy.
- h) The Commission was under statute (Sec. 3, 86(4)) of EA 2003 mandated to adopt the cross subsidy surcharge formula provided in the statutory Tariff Policy notified by the Central Government under Section 3 of EA Act, 2003. Consequent to adoption of the CSS formula, if CSS works out to zero, the Commission is not required to make it a positive figure in order to meet the requirements of current level of cross subsidy. The zero cross subsidy surcharge is not required to be increased to a number which enables it to be progressively reduced.
- i) However, the scenario of Tariffs (ABR) and weighted average Power Purchase cost of top 5% at the margin (C) for the licensees has changed and the same would have an impact on the CSS. Therefore the Commission is concerned and has decided to rework the CSS computation.
- j) In view of the above, two issues /propositions need to be evaluated viz-

- A. Should the review petition be dismissed on the ground that the same was filed after immense delay?
- B. If the Commission de novo re-determines cross subsidy surcharge prospectively would it redress the grievance of the Petitioner?
- k) The above issues / propositions are examined herein below-

A. Should the review petition be dismissed on the ground that the same was filed after immense delay?

- i. Law on treating delay - The relevant considerations, in determining whether delay or laches should be put against a person who approaches a court after immense delay are well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the Petitioners.
- ii. Taking the above into account, the Commission is of the view that consumers who have obtained Open Access based on the impugned Order which was passed in the year 2006 and in terms of which the CSS came to be calculated as zero would be ones whose rights would be disturbed if the Review Petition were allowed despite the immense delay of MSEDCL in filing the present review petition. The Commission does not find a reasonable explanation for the delay either. The Petitioner's contention that it could not assess the adverse financial implications of the formula for CSS as it was not within its knowledge is not acceptable as more than four years elapsed after the passage of the impugned Order and MSEDCL did not take any steps earlier to seek a review
- iii. Further, review is to be filed within a stipulated time of 45 days from the date when the impugned Order was passed in terms of Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004, the extract of which is provided below:-

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of

some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

- iv. If review of the impugned Order is granted then such a review Order would harm innocent parties because then the revised CSS would have to be paid by those consumers who had obtained and availed Open Access on the basis of the formula in the impugned Order. Hence, the question of condoning the delay in filing the Review Petition cannot and does not arise.
- v. Though the Order of the Hon’ble Bombay High Court was an interim Order, in its Order dated May 4, 2011 in Writ Petition (Lodging) NO.666 Of 2011, the Hon’ble High Court inter alia held as follows:-

*“10. Besides, the order about which grievance is made was passed as far back as on 5/9/2006. The petitioner took no steps to challenge it immediately. In fact, a remedy of appeal was available to the petitioner under Section 111 of the said Act which the petitioner did not avail. **That order has assumed finality.** The MERC (Distribution Open Access) Regulations 2005 were not challenged by the petitioner. They have also assumed finality. This also disentitles the petitioner from getting any interim relief.” {**Emphasis supplied**}*
- vi. In view of the above, the immense delay of more than four years in filing the present review petition is not condoned.
- vii. However, if the Review Petition in Case No. 43 of 2010 is simpliciter allowed then under law the decision contained in the MERC Order dated September 5, 2006 and the methodology adopted for computation of Cross Subsidy Surcharge as given in Annexure 3 to the said Order dated September 5, 2006 would stand to be reviewed and altered with retrospective effect. In such a situation it is likely to cause confusion and public inconvenience and bring in its train new injustices, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties being Open Access consumers who have already availed of open access by not paying any Cross Subsidy Surcharge as it was hithertofore zero. Review of Order dated September 5, 2006 will have to be refused because the rights accrued to others by the delay in filing the review petition should not be disturbed and that the Commission should not harm innocent parties being the open access consumers who had already availed of open access in terms of the impugned Order.
- viii. Moreover, The Hon’ble Supreme Court has held in a catena of judgments that the scope of review proceedings is limited. That decision cannot be re-heard and corrected by review proceedings. Review cannot be an appeal in disguise. Errors must be such that they stare at the face and should not

need detection through detailed and complicated reasoning. Any decision must be corrected in appeal and not in review proceedings. Scope of an application for review is much more restricted than that of an appeal. No such ground for taking a review of the earlier decision of the Commission has at all been made out by the present review Petitioner.

- ix. Further, the Review Petition preferred by the Petitioner is time barred and is not within the stipulated timeline of 45 days from the date of Order, i.e., September 5, 2006, therefore the review Petition as is filed deserves to be dismissed and is hereby dismissed and not maintainable.

B. If the Commission de novo re-determines Cross Subsidy Surcharge prospectively would it redress the grievance of the Petitioner?

- i. The Commission while deciding on the CSS had also observed through the Order that, as that the power demand and supply scenario was very different in 2006 in comparison to the present scenario. During 2006, all the consumers in the MSEDCL area were subjected to load shedding of 2.5 hours per day in urban as well as rural areas. Agriculture dominated areas were also subjected to Load Shedding of 11-12 hours per day. Also, the Industrial consumers were forced to cut down their power requirement on staggering day. The Commission while deciding on the CSS had also observed through the respective Order that, at that time there were load restrictions of 10% and 20% for continuous and non-continuous process industries respectively in MSEDCL area.
- ii. Therefore, any external power sourcing during that time was encouraged to enable to meet the requirement of the industries in the State and any impediment through CSS would have led to slow down in the development of the State economy. Therefore, the Commission considering the need of the hour had determined and continued with zero CSS for any additional power brought into the State. Presently, the power demand supply situation has changed drastically with licensees meeting the appropriate power requirements of the consumers. In fact, MSEDCL has communicated to the Commission vide Letter dated June 18, 2011 that, with effect from 1st January 2011, they have withdrawn the load shedding form almost all areas of Maharashtra except few pocket were the same was not possible due to transmission bottlenecks. Further it was submitted that, Industrial Load Shedding on Staggering day was also to be withdrawn from 1st July 2011 onwards. In effect, presently, there is no load shedding in the State of Maharashtra except few cases where Transmission bottlenecks are existing and Load Management schemes of Ag consumers. Therefore, the changed situation has necessitated the Commission to revisit the issue of CSS.
- iii. Additionally, the scenario of Tariffs (ABR) and weighted average Power Purchase cost of top 5% at the margin (C) for the licensees has changed

and the same would have an impact on the CSS. Therefore, the changed situation has necessitated the Commission to revisit the issue of CSS. After taking into consideration inter alia the Technical Committee's views (although there was no consensus), views of Licensees, GoM and stakeholders, the Commission is of the view that the CSS formula in the September 5, 2006 Order cannot be reviewed with retrospective effect as that it will result in an anomalous situation of past Open Access consumers paying a surcharge which was not determined at the relevant time. At the time that such OA consumers availed open access they were not supposed to pay any CSS based on the 2006 Order which was in accordance with the formula provided in the Tariff Policy. However, in order to avoid this anomalous situation on one hand and on the other hand to balance the twin objectives of protecting the distribution licensee and protecting the consumer interests the Commission thought it fit to de novo determine the cross subsidy surcharge prospectively. In this manner (A) the 2006 Order will remain unaltered; (B) Cross Subsidy Surcharge will be recomputed based on the present values of the components of the CSS formula (C) past OA consumers would not be burdened with a charge that had not been determined as on the date of availing Open Access and (D) the new distribution Open Access Regulations 2011 could be finalized

- iv. Further, the Commission in the Order in Case No. 72 of 2010 dated July 29, 2011 ruled on the issue of applicability of CSS for change over consumers from RInra – D to TPC – D in line with the Judgment of the Hon'ble Supreme Court of India dated July 8, 2008 in Civil Appeal No. 2898 of 2006 with Civil Appeal No. 3466 and 3467 of 2006. The Commission in the referred Order ruled that the CSS would be applicable for Group II consumers since these consumers continue to be consumers of RInra – D for wires and the CSS has to be levied, to meet the requirements of the current level of cross subsidy.
- v. The Commission in the present Order has computed the CSS applicable for each of the consumer categories of RInra – D for which CSS would be levied if they opt for changing over as per the Group II consumers as categorized under Order in Case 72 of 2010 dated July 29, 2011.

39. Cross Subsidy Surcharge Computation Methodology

Computation Methodology Proposed by MSEDCL

- a) MSEDCL made its submission on various methods that can be used for the computation of CSS. The submissions were made on June 20, 2011. The various methods proposed by MSEDCL are described in the subsequent Para's.
- b) **Alternative I:** - MSEDCL submitted that CSS can be computed as the difference between the Average billing Rate (ABR) of the particular Category and the Average Cost of Supply (ACoS), i.e., $CSS = ABR - ACoS$. MSEDCL submitted that the reason for proposing this alternative is owing to the ease of implementation of the formula as the ABR's are readily available in the tariff Orders.
- c) **Alternative-II:** - MSEDCL submitted that the CSS can be computed as the difference between the ABR of the particular category and ABR of the Agricultural Category, i.e. $CSS = ABR_C - ABR_{AG}$. As per MSEDCL the reason behind this alternative is that whenever a consumer opts for Open Access, either the quantum of power being purchased by the distribution licensee will reduce or the spare quantum of power now available will be consumed by such consumers who are subjected to restricted consumption (i.e. load shedding). If it is presumed that even though a consumer opts for Open Access, the quantum of power procured is not reduced and is diverted for sale to consumers presently subjected to load shedding. The financial loss on account of reduction in revenue because of a consumer opting for Open Access will get compensated to some extent by additional revenue that would be available to the distribution licensee on account of additional sale to the consumers who are presently subjected to the load shedding. MSEDCL submitted that it has proposed to withdraw the load shedding in the State with effect from July 1, 2011, subject to Demand –Supply position, except the load management schemes and restricted power supply to the agricultural consumers. Therefore, in such a scenario the quantum of power consumption that would be freed would get diverted to Agricultural consumers and MSEDCL's revenue income will get reduced to the extent of difference between the ABR of the consumer opting for Open Access and ABR of Agricultural consumers.
- d) MSEDCL further suggested a variant of Alternative-II, **Alternative-IIA**. As per Alternative-II A, MSEDCL presumed that the freed power of Open Access consumers would be utilized by presently subsidized consumers who are subjected to restriction on power supply, then the CSS payable by the consumer opting for Open Access would be different. The CSS would be $CSS = ABR_C - ABR_S$, where ABR_C is the Average Billing Rate of the category to which the consumer opting for Open Access belongs and ABR_S is the Average Billing Rate of all such categories of consumers, which are presently subsidized.

- e) **Alternative- III** - MSEDCL has submitted that this alternative considers the same formula determined by Commission in the Order in Case No. 9 of 2006 dated September 5, 2006 which is also in line with the formula specified in the Tariff Policy. MSEDCL in this alternative has suggested that the 'C' which is weighted average cost of power purchase of top 5% at the margin should consider only the variable component of the costliest power, which in case of MSEDCL is generation from RGPPL. MSEDCL submitted that if MSEDCL is burdened with the fixed charge component of the costliest power, the CSS so determined would never completely neutralize the present level of cross subsidy inbuilt in tariff and therefore non –consideration of the fixed charge component would be in accordance with the principles laid down in the Act.”
- f) MSEDCL also submitted that other than CSS, MSEDCL has serious reservations / concerns about other issues involved in the implementation of Open Access, some of which can be shortlisted as below:
- i. Stand – By Supply / Stand By Supply Charges for drawal of power by Open Access consumer from Grid;
 - ii. Exemption from Payment of Cross Subsidy Surcharge to RE Sources;
 - iii. Technical Constraints / Real Time Operations;
 - iv. Open Access for Non Conventional Energy;
 - v. One Day Ahead Power procurement for Open Access / Power Exchanges;
 - vi. Additional Surcharge / Stranded Assets;
 - vii. Impact on Distribution Loss due to migration of high end consumers from the GRID;
 - viii. Wheeling Charges compensation; etc.
 - ix. Infirm Power; and
 - x. Co-ordination with various agencies for stable system operation.
- g) In this submission MSEDCL made the following prayers:
- i. The Hon'ble Commission may be pleased to take on record the submissions as above and may be further pleased to consider the same for finalizing the CSS payable by the consumer opting for Open Access;
 - ii. The Hon'ble Commission may also be pleased to approve CSS as per **ALTERNATIVE-I** as proposed above, since the said alternative appropriately compensates the distribution licensee to the extent of loss of current level of cross subsidy on account of consumer opting for Open Access;

- iii. The Hon'ble Commission in case considers to determine the CSS as per the Formula determined by the Hon'ble Commission by its Order dated September 5, 2006 (Case No. 43 of 2005), then the Hon'ble Commission may be pleased to approve the CSS as per **ALTERNATIVE-III** as proposed above;
- h) The Hon'ble Commission may further be pleased to permit MSEDCL Company to make additional submissions on other issues, including following issues and such Additional submissions may also be considered at the time of finalizing of CSS;
 - i. Stand-by Supply / Stand by Supply Charges for drawal of power by Open Access consumer from Grid;
 - ii. Exemption from Payment of Cross Subsidy Surcharge to RE Sources;
 - iii. Technical Constraints / Real Time Operations;
 - iv. Open Access for Non Conventional Energy;
 - v. One Day Ahead Power procurement for Open Access / Power Exchanges;
 - vi. Additional Surcharge / Stranded Assets;
 - vii. Impact on Distribution Loss due to migration of high end consumers from the GRID; and
 - viii. Wheeling Charges compensation; etc.
 - ix. Infirm Power;
 - x. Co-ordination with various agencies for stable system operation.
- i) MSEDCL in the submission dated July 5, 2011 changed stand, by recommending adopting Alternative IIA, as it said that it will move towards power sufficient scenario in few months. Additionally it prayed that
 - i. The Hon'ble Commission may be pleased to approve CSS as per Alternative IIA as proposed in the submission made on June 20, 2011.
 - ii. Alternatively, Hon'ble Commission may think Alternative III which is in line with the provisions of Tariff Policy and Hon'ble Commission's Order dated September 5, 2006.
 - iii. The Hon'ble Commission may also be pleased to allow MSEDCL to withdraw the below mentioned prayers

“3)This Hon'ble Commission be pleased to permit the MSEDCL to apply Standby Demand Charges as per MERC Order in case no.116 of 2008 order dated 9.12.2009 to Open Access Consumers except CPP. In case, standby demand is not declared and is not approved by MSEDCL, permit levy of penal charges as decided by this Commission;

4)This Hon'ble Commission be pleased to allow to levy energy charges as temporary or Higher UI charges or marginal cost of power whichever is higher for standby power which will act as a deterrent and the Open Access consumer will only opt for firm power;”

- j) On June 26, 2011 MSEDCL made an addendum to the additional submissions made on the methodology for the computation of CSS. In the addendum MSEDCL made submissions on the following:-
- i. Standby Supply charges for drawal of power by open access consumers from GRID;
 - ii. Exemption from payment of Cross Subsidy Surcharge to RE sources;
 - iii. Technical constraints /real time operations;
 - iv. Open access for non conventional energy and infirm power;
 - v. One day ahead power procurement for open access/ power exchange;
 - vi. Additional surcharge/ stranded asset, wheeling charges compensation;
 - vii. Impact on distribution loss due to migration of high end consumers from the GRID; and
 - viii. Coordination with various agencies for stable system operation.
- k) MSEDCL submitted that it believes that the principles of Open Access cannot be implemented unless the most vital issues which are mentioned above are settled in the manner acceptable to all the stakeholders.

Computation Methodology Proposed by TPC-D

- a) Tata Power Company (TPC-D) made the submission of its views on the issues involved in the determination of CSS. The submissions were made on June 22, 2011. TPC-D clarified in its submissions that it has considered the requirement of cross subsidy that would arise based on the energy settlement under the Final Balancing and Settlement Mechanism (FBSM).
- b) Further, TPC has submitted that CSS should not be applied to consumers switching from one licensee to another within the same area of licence, in line with the provisions of Section 42 (3) and Section 49 of the EA 2003. Hence, the proposed methodology does not pertain to consumers availing open access in a parallel licensing scenario.

Submission on the Approach and Methodology

- c) In its submissions on the approach and methodology for computation of CSS, TPC had proposed to make suitable changes to the Marginal/Avoided Cost methodology based on variable cost-based Merit Order. This methodology, in its original form assumes that only the marginal variable power purchase cost is avoidable. However, in the FBSM scenario, the cost that is actually avoidable is

the short term power purchase during the peak hours (12 hours of the day) and the marginal Merit Order Despatch (MoD) price in the long term tie up during off peak hours. Further, TPC submits that it would be incorrect to consider only the top 5% of the power being procured in MoD as it would disregard the time of power purchase. TPC has submitted that it would be prudent to consider the avoidable power purchase cost separately for peak demand periods and non peak demand periods.

- d) TPC submitted that it believes that it would be appropriate to consider the maximum external power purchase rate approved by the Commission as the Marginal Variable Power Purchase Cost during the peak hours under the FBSM scenario. To assess the Marginal Variable Power Purchase Cost that can be avoided during off peak hours under FBSM scenario, TPC has analysed the impact of the lower requirement on the schedules from the contracted sources of TPC. Since Tata Power-Distribution has a significant contracted capacity from Tata Power-Generation, any reduction in demand would affect the generation from Tata Power-Generations' units as well. Hence, as per TPC, the avoidable power purchase cost would primarily be from the most expensive available thermal unit of Tata Power Generation. In this regard, TPC has submitted that considering the approved energy charge rate from Unit 6, which is the most expensive unit, it would be inappropriate as Unit 6 is already operating at its technical minimum of 150 MW. As such, there is no further scope of avoiding any power purchase from this Unit. Hence, the next most expensive Unit, namely Unit 5, can be considered for the purpose of computing non-peak avoidable power purchase cost.
- e) TPC submits that the average rate of the peak and off peak marginal avoidable cost can then be considered as the Avoidable Marginal Variable Cost of Power Purchase for the computation of CSS.
- f) Further, in order to compare the Marginal Variable Cost of Power Purchase with the ABR of a particular consumer category, it is necessary to gross up Marginal Variable Cost of Power Purchase, first with transmission losses and then with wheeling losses.
- g) Since the wheeling charges recovered by the licensee are on the units entering the distribution system of the distribution licensee, it is proposed that the wheeling charges be grossed up by the appropriate wheeling losses. Therefore, the formula proposed by TPC for computing CSS under the FBSM scenario is as follows:

CSS Category X = Average Billing Rate_{Category X} minus

[(Marginal Variable Power Purchase Cost/(1 – Transmission Loss))/(1 – Wheeling Loss)] minus [Wheeling Charges/(1 – Wheeling Loss)] where,

Marginal Variable Power Purchase Cost/kWh = (MERC approved bilateral power purchase rate + MERC approved variable rate for long-term contracted capacity)/2

Computation Methodology Proposed by RInfra-D

- a) Reliance Infrastructure Ltd (RInfra) made the submission of its views on the issues involved in the determination of CSS. The submission was made on June 20, 2011. RInfra's comments on the key issues are summarized in the following Para's.
- b) RInfra has recommended that the determination of CSS be based on avoided cost of power purchase. Given the difficulty in forecasting variables such as the likely quantum of consumers switching to alternate supply, their consumption mix (contribution to load curve and thus purchase at different times in the day), frequency and pattern of migration, which critically impact the determination of CSS at the beginning of the year, RInfra has suggested that a likely (notional) cost (rate) be assigned to such avoided power. The identification of such a rate would have to be based on a probability assessment, so that the assigned rate does not deviate too much from the actual rate.
- c) Avoided cost of power purchase method seeks to compensate the licensee for the likely negative revenue impact (or revenue gap) due to exit of a consumer and its consequences on the tariffs of balance consumers. However, the question of financial viability and whether the risk of negative financial impact is fully covered or not depends crucially on how the avoided cost of power purchase is determined.
- d) In this regard, RInfra has suggested that the Commission consider the rate of avoided power purchase to be equal to the rate of most expensive full year RTC power contract of the licensee for the ensuing year, the year for which CSS is being determined. This would represent round the clock avoidance of power purchase caused due to the consumer moving away to alternate supply.
- e) RInfra has expressed reservations with respect to the Tariff Policy formula on the grounds that the power so determined as top 5% is likely to only represent such power which is purchased during certain hours of the day and only for peaking months during the year. Consequently, it cannot be considered to represent the full year, round the clock avoidance of power purchase caused by permanently moving away of a consumer to alternate source of supply.
- f) As per RInfra, this method provides economic signals to the Open Access consumers as well it does to the distribution licensee. It considers the highest price of the RTC contract of the licensee and thus provides a signal to the Open Access user for contracting power below this price and remain reasonably economical even after paying surcharge, while also not encouraging generation beyond what is otherwise contractable by the distribution licensee.
- g) If the avoided cost of power purchase method as proposed by RInfra is adopted by the Commission, the surcharge would have to be determined on a year to year

basis, based on the respective tariff year's highest price RTC power contract of the licensee.

- h) RInfra has further submitted that the wheeling charges be grossed up for computation of CSS. Considering all aspects of the Surcharge formula:

$$CSS = T - (C / (1-L) + D)$$

Where,

T is the tariff payable by consumer at his doorstep consumption (i.e. that recorded in the meter in his premises),

C is the avoided cost of power purchase at bus-bar,

L is loss level of the relevant voltage level in distribution system, plus losses of transmission system; and

D is wheeling charge.

- i) As per RInfra, both 'T' and 'C/(1-L)' are at consumer end. It is therefore necessary that the element 'D' or Wheeling Charge is also as applicable at consumer end, in order to ensure that all the elements of the formula remain comparable and additive. This is also necessary to ensure that the network cost incident on all network users – own consumers and change-over consumers is uniform. Uniformity in allocation of network costs is an integral aspect of non-discriminatory usage of network.
- j) RInfra has submitted that the Commission may revise the methodology for determination of Wheeling Charges and levy of the same on change-over consumers in as much as determining the Wheeling Charges by spreading over the allocated HT network and LT network costs over a common denominator of energy at consumption end for all users of network – own supply and change-over supply.
- k) If this is done, wheeling charges will be applied to consumption end units for change-over consumers and the element "D" in CSS formula will be such wheeling charge, which will not require grossing-up at all.

Computation Methodology Proposed by BEST

- a) Brihanmumbai Electric Supply & Transport Undertaking (BEST) submitted its submissions on CSS computations on June 22, 2011. BEST submitted that being a local authority, they are exempted from Distribution Open Access as per Section 42(3) of the EA 2003 and also Regulation 19 of the existing MERC (Distribution Open Access) Regulation, 2005. In the submission, BEST submitted that the issue of Open Access is only of academic interest to the Undertaking.
- b) For the computation of CSS, BEST suggested that the formula prescribed in the Tariff Policy (TP) be applied and in computing C only prior period approved long & medium term costs are to be considered.

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

Computation Methodology Submissions by Other Stakeholders

- a) Various stakeholders in the process also submitted their views on the matter of CSS and its computations.
- b) Shri Ashok Pendse of Thane Belapur Industries Association (TBIA) proposed a methodology of computation of CSS, wherein computation of the landed cost of power purchase through Open Access to each category of consumers was done. The computation of landed cost of power considered the source wise power consisting of central generating stations, intrastate stations and Power Exchange. Thereafter, transmission charges, wheeling charges and impact of transmission & distribution losses were considered for arriving at the landed cost of power. The landed cost of power purchase was compared to existing tariff for two scenarios, i.e., inclusive of demand charges and exclusive of demand charges to arrive at the impact of open access per unit. In case of loss, the CSS levied was zero and in case difference between the existing charges was more than landed cost of power a positive CSS was suggested.
- c) In the 24th Meeting of the FoR which was held on June 16, 2011, Shri Sushanta K. Chatterjee, Deputy Chief Regulatory Affairs, CERC presented a Case Study of issues on implementation of Open Access. He as an illustration presented the case of MSEDCL for levy of CSS. Shri Chatterjee presented five scenarios under which he simulated five different situations for computation of impact on MSEDCL due to Open Access quantum and CSS.
 - i. Scenario I: All the consumers of 1 MW and above opt for Open Access and Distribution Company avoids the variable cost of power procurement (in descending order in Rs./unit
 - ii. Scenario II: 10% of eligible consumers opt for open access and Distribution Company avoids the variable cost of power procurement (in descending order in Rs./unit).
 - iii. Scenario III: 10% of eligible consumers opt for open access and Distribution Company sells power available to its existing consumers at the rate of average revenue realization.
 - iv. Scenario IV: All eligible consumers opt for Open Access and Distribution Company sells power available to its existing consumers at the rate of average revenue realization.
 - v. Scenario V: 10% of eligible consumers opt for Open Access and distribution company sells power available to new consumers of same category
- d) In each of the scenario Shri Chatterjee computed an impact on the ARR and impact on the Average Cost of Supply.

- e) A study paper on Open Access & CSS of Shri Daljit Singh, Prayas Energy Group was issued by the Commission as an enclosure with the notice on May 13, 2011. Shri Daljit Singh in his Study Paper dated February 17, 2005 discussed various concerns with recommended methods like Long Run Incremental Cost, Marginal Unit Cost and Average Cost of Supply for calculation of CSS. It also estimated revenue loss for utilities due to Open Access. The analysis in the study paper showed that most of methods understate the cross subsidy revenues and only partially compensate the licensees for the loss of revenue. Furthermore, the maximum surcharge that can be imposed and still make Open Access economically viable is inadequate to compensate the utilities. Hence, for the success of Open Access, it recommends the State Electricity Regulatory Commission's to consider the joint effect of three items: 1) trajectory of level of the surcharge 2) LT Tariffs and losses 3) trajectory of HT tariffs.

Commission's Views on the Computation Methodology

- a) The Commission analysed the proposed mechanisms provided by each of the distribution licensees. Though each of the distribution utilities has described various methodologies such as Average Cost of Supply, Category wise cost of supply, alternate/diverted sales, Marginal/Avoided Cost method, etc., each of the licensees have recommended to adopt Marginal/Avoided Cost method similar to the formula specified by the Tariff Policy with modifications for the component of 'C'.
- b) Each of the utilities recommended that 'C', the component for weighted average power purchase cost be computed based on their recommended source and price while adopting the formula specified by the Tariff Policy. The Tariff Policy provides for 'C' to be computed as the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power. Whereas, the distribution licensees have recommended considering highest priced Round The Clock (RTC) power, variable cost of marginal power purchase cost, etc. The Commission observed that it was inconsistent with the formula specified by the Tariff Policy.
- c) Further, the Hon'ble Appellate Tribunal for Electricity in its Judgment dated July 5, 2007 in Appeal Nos. 169, 170, 171, 172 of 2005 & 248 and 249 of 2006 held that the formula for CSS calculation provided in the Tariff Policy is in tune with the spirit of the EA 2003 and must be followed by APERC as well as all the Regulatory Commissions. Extracts of the said Judgment is provided below:-

*"We find that the formula for calculating surcharge given in the Tariff Policy is in tune with the spirit of the Electricity Act and **must be adopted and followed by the APERC and all the Regulatory Commissions.** Even de hors the Tariff Policy, **the Surcharge Formula needs to be adopted as we find that it is more in tune with the object of the Act than the Embedded Cost Method as adopted by the APERC.**"(Emphasis Added)*

- d) Though, the above judgment has been challenged by the APERC and the appeal is pending before the Hon'ble Supreme Court as there is no decision of the Hon'ble Supreme Court which can be considered in the present case. However, the Commission respectfully opines on similar lines that the formula prescribed by the Tariff Policy is in tune with the objective of the EA 2003. The Tariff Policy while specifying the formula has also clearly provided for the reasons for keeping each of the components of the formula. Therefore, the Commission is convinced of the fact that there is no infirmity in the formula specified by the Tariff Policy which would have been arrived after appropriate deliberations.
- e) Further, Section 86 (4) of the EA 2003 requires the Commission to be guided by the Tariff Policy while discharging its functions. The relevant portion is reproduced below:-

“86

(1).....

.....

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under Section 3.”

- f) It may also be noted that the National Tariff Policy also prescribes the raison d'être for CSS in the following terms:-

“8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

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

- g) It appears that the methodologies propounded by the Distribution Licensees have not kept in mind the above cardinal principle for determination of the CSS. The methodologies propounded by the licensees are designed primarily to compensate the licensee for the loss of cross subsidy, which is only the first limb

of the principle. The proposed methodologies appear to have ignored the other and equally important limb of the same principle which is that the level of CSS should be such that it does not deter the consumer from availing open access. Apart from not being a deterrent to consumers to avail open access, the charges must be such as to encourage open access. Hence a balance has to be drawn between the twin and competing ideals of protecting the licensee and encouraging open access. Ex neccesitus, if the CSS is fixed at a level which fully equals the loss of cross subsidy element without anything more, the guiding principle behind the CSS determination would be completely lost.

- h) The Commission is of the view that Open Access is the mandate of the EA 2003 and is one of the defining precepts of the new Act. If the CSS is fixed at a level which only protects the cross subsidy loss of the licensee without encouraging the consumer to avail open access, one of the cornerstones of the Section 42 (2) of the EA 2003 would be considerably blunted.
- i) Even in this perspective, if the NTP enshrines the above objective of CSS and also specifies a formula to achieve such objective and there is nothing shown by any of the licensees as to why such formula should not be adopted, the Commission is of the view that the formula prescribed by the NTP ought to be adopted.
- j) Therefore, after considering all the provisions of the EA 2003 and also the provisions of the Tariff Policy issued in consonance with the Section 3 (1) of the EA 2003, the Commission decides to adopt the formula prescribed by Para 8.5 of the Tariff Policy. The computation and applicability of the CSS is dealt in the subsequent relevant Section.

Other Issues for the Consideration of Commission

40. Standby Supply charges for drawal of power by Open Access consumers from GRID

MSEDCL's submission

- a) MSEDCL submitted that EA 2003 does not envisage any obligation on the distribution licensee for providing "Stand-by Supply" to a consumer who has opted for Open Access, whereas the MERC (Distribution Open Access) Regulations, 2005 inter-alia permits a consumer to enjoy stand-by support from the distribution licensee even though such consumer has opted for power supply from supplier other than the distribution licensee. MSEDCL submitted that this clause casts an obligation upon the distribution licensee to ensure that the power supply to the consumer does not get interrupted only in circumstances like unforeseen disruption or termination of supply by such supplier on account of bankruptcy, insolvency or any other reason.
- b) MSEDCL also submitted that in the event of power failure, the Open Access consumer will automatically start drawing power from the GRID resulting in

imbalance in GRID. MSEDCL further submitted that such drawal from the GRID will adversely affect the demand supply situation resulting in either distressed load shedding or procurement of additional power by the distribution licensees at the particular point of time resulting in UI penal charges. In such a scenario though the MSEDCLs own consumer would suffer but the delinked consumer will enjoy unjust enrichment.

- c) MSEDCL further submitted that the statute does not cast any obligation on the distribution licensee to permit stand-by supply, however the MERC (Distribution Open Access) Regulations, 2005 provides for the same. MSEDCL submitted that because the EA 2003 is the main legislation, any subordinate regulation cannot override the same and hence calls for review. MSEDCL submitted that the standby arrangement is discretionary and therefore distribution licensee has the right to refuse the same. So the distribution licensee may allow standby supply to such Open Access consumers whosoever may agree to the terms prescribed by the distribution licensee.

TPC-D Submission

- d) TPC-D submitted that standby charge is determined in the Regulation 20.1 of the draft MERC (Distribution Open Access) Regulations, 2011. Regulation 20.1 stipulates that 'standby' shall be provided in the event of unforeseen disruption or termination of supply by the supplier. In this regard, it may be appropriate to specify the extent beyond which an imbalance would be considered as 'standby'. TPC has requested the Commission to amend the draft Regulations so as to clearly stipulate 'events' that would necessitate utilities to provide 'standby' to open access consumers.

Other Stakeholder Submission

- e) IEX submitted that the provisions of Section 86 (1) (a) of the EA 2003 do not provide for the determination of any form of tariff but only for determination of a surcharge. Therefore, it would be beyond the powers of the Commission to apply a standby demand charge or levy penal charges, which would be in the nature of tariffs. Further, the distribution licensee has to provide metering and other facilities to the consumers, the costs for which need to be taken into account while deciding the charges for provision of back up supply.
- f) Prayas Energy Group submitted that standby supply provided to Open Access consumer should be charged at temporary supply rates.
- g) Shri Ponrathnam on issue of standby supply submitted that that an Open Access consumer is also a consumer of person engaged in business of supplying electricity to public. He stated that as per Section 42(4) of EA 2003, such Open Access consumers are liable to pay additional surcharge on wheeling to distribution licensee, which would be fixed by State Commission. It is mandatory for Commissions indulgence in the amount paid to the distribution licensees to the

extent of wheeling charges and surcharge thereon, as per Section 86 of EA 2003. Hence, standby supply to Open Access Consumer is under the purview of MERC.

Commission's views

- h) The objective of the EA 2003 to develop the electricity industry and promoting competition is achieved to a great extent by creating conducive Open Access environment. The Open Access transactions are solely driven by availability of competitively priced power and quality un-interrupted supply. The Commission is of view that in the event distribution licensees do not provide standby requirement/support to the Open Access consumers such a situation will lead to a huge impediment to the Open Access transactions in the State. Moreover, it is not only the distribution licensee which stands to gain on imposition of standby charges but even the open access consumer gains on the provision of standby support. It is likely that standby requirement of power by the Open Access consumers during any financial year would arise majorly out of emergency shutdown or planned shutdown of the source generators which cannot be avoided.
- i) Further, the Forum Of Regulators (FoR) formed under Section 166 (2) of the EA 2003 issued a Model Terms and Conditions of Intra-State Open Access Regulations in September, 2010. The FoR in the Clause 25 of the Model Regulations took into account the standby power requirement of the Open Access consumers and went on to provide for the standby charges for drawl of power by Open Access consumers from the distribution licensee including provisions for stand by arrangements. The extract of the provision is reproduced below for reference:-

“25. Standby charges for drawal of power by open access customer from distribution licensee

In cases of outages of generator supplying to open access customer under open access, standby arrangements should be provided by the distribution licensee for a maximum period of 42 days in a year, subject to the load shedding as is applicable to the embedded consumer of the licensee and the licensee shall be entitled to collect tariff under Temporary rate of charge for that category of consumer in the prevailing rate schedule subject to the condition that such tariff shall not exceed the highest consumer retail tariff in the prevailing rate schedule:

Provided that in cases where temporary rate of charge is not available for that consumer category, the standby arrangements shall be provided by the distribution licensee for a maximum of 42 days in a year and on payment of fixed charges of 42 days and energy charges for that category of consumer in the prevailing rate schedule:

Provided further that in case of stand by arrangements sought by continuous process industries, the licensee shall charge on the basis of actual costs involved in arranging power:

Provided also that open access customers would have the option to arrange stand-by power from any other source.”

- j) The above provision in the Model Regulation is a demonstrative provision arising out of real practicalities but cannot be adopted without being adjudged about the pros & cons of the provision. The Commission is also in the process of finalisation of Draft MERC (Distribution Open Access) Regulations, 2011 which deals with the standby supply and corresponding charges. The Regulations before being notified may need to inter alia stipulate ‘events’ that would necessitate utilities to provide ‘standby’ to Open Access consumers. However, standby requirement is a legitimate expectation of the Open Access consumers from the distribution licensee and should be provided for by the distribution licensee. At the same time, the Commission recognizes that to provide standby arrangements for large OA consumers may prove a considerable drain on the resources of a licensee and this issue would be appropriately addressed while finalizing the aforesaid Regulations.
- k) Therefore, the Commission directs that till the finalisation of the draft MERC (Distribution Open Access) Regulations, 2011 the provisions of the Para 8.5.6 of the Tariff Policy notified by the Ministry of Power needs to be followed by the licensees. Para 8.5.6 of the Tariff Policy is provided below:-
- “8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.”*
- l) Therefore, in case of requirement the incumbent distribution licensee shall provide standby supply to the Open Access consumers in lieu of the payment of temporary tariff of the respective consumer category equivalent to the energy consumed.

41. Cross Subsidy Surcharge exemption and Open Access for Renewable Energy (RE) Sources

MSEDCL’s Submission

- a) MSEDCL submitted that in the Order dated September 5, 2006, the Commission decided against levying any CSS on consumers who opt for Open Access by sourcing power from renewable sources of the energy. MSEDCL submitted that Commission has considered the mandate of EA 2003 which provides the Commission with the power to frame/develop policies for encouraging Open Access, as it can exempt the Open Access consumers from payment of CSS in case such consumer is sourcing power from renewable sources of energy.
- b) MSEDCL submitted that the function of Commission is limited to providing suitable measures of connectivity with the GRID and sale of such power to any person. MSEDCL feels that as mandated by EA 2003 the Commission has taken all steps for the promotion of power generation from renewable sources and all

such directives issued by the Commission in this regard are being followed by the distribution licensees in the State. MSEDCL quoting Regulation 13 of MERC (Distribution Open Access) Regulations, 2005 prayed that the provision of exemption to RE sources from payment of CSS being inconsistent with the EA 2003 needs to be reviewed.

- c) MSEDCL also submitted that the renewable energy by its nature is infirm power and therefore its desired quantum at a particular time cannot be regulated from a renewable energy source such as wind, solar, etc as the generation from renewable sources depends more or less on the nature.
- d) MSEDCL submitted that as with wind and other sources that it would never be possible to match the generation and requirement of the consumer which means that the consumer would therefore draw power from the GRID which can adversely affect the demand supply situation resulting in either the distress load shedding in the areas of the distribution licensee or procurement of power at costly rates as may be prevailing at that time. MSEDCL submitted that owing to the above mentioned reasons and practical difficulty in allowing the Open Access consumer to source power from renewable sources, the Commission may not permit Open Access.

Other Stakeholder Submission

- e) Shri Ponrathnam submitted that there is no legal provision for MSEDCL to deprive Open Access to renewable energy with infirm power. He also stated that there is non-discriminatory provision for use of transmission lines or distribution system or associated facilities with such lines or system by any licensees or consumer or person engaged in generation.
- f) Indian Wind Power Association (IWPA) submitted that banking facility is necessary for promotion of Renewable Energy (RE) sources. It also briefed on the regulatory support for sale of RE generated power through Open Access route by highlighting various provisions of draft Open Access regulations. However, IWPA has also brought to notice various clauses in Draft MERC (Distribution Open Access Regulations), 2011 which render Open Access to infirm energy virtually impossible or unviable. Thus, it has requested commission to draft a separate Open Access Regulation exclusively for infirm/renewable power to avoid misinterpretations of draft regulations by various entities.

Commissions Views

- g) The contention of MSEDCL the jurisdiction of the Commission is limited to provide measures for connectivity with the grid and sale of such power to any person, is incorrect. Section 86 (1) (e) of EA 2003 provides as follows:-

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a)

(b)

.....

(e) ***promote*** co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;..... {Emphasis supplied}

(f)

- h) Further, Para 5.2.20 of National Electricity Policy (NEP) provides for promotion of renewable energy sources as follows:-

*“5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, **efforts will be made to encourage private sector participation through suitable promotional measures.....(emphasis added)**”*

- i) Therefore, NEP provides for promotional measures to be introduced in order to increase the share of generation from renewable energy sources.

In this connection, the observations of the Hon’ble Appellate Tribunal for Electricity in the Judgment dated 26-4-2010 in Appeal No. 56 of 2009 titled Century Rayon Vs MERC may also be referred to: “21. *It is no doubt true that the generation of electricity from renewable sources is to be promoted as per Section 86(1)(e) of the Act. It is equally true that co-generation of electricity is also to be promoted as it gives several benefits to the society at large. Various records produced by the Appellant would also indicate that the co-generation produces both electricity and heat and as such it can achieve the efficiency of up to 90% giving energy saving between 15-40% when compared with the separate production of electricity from conventional power stations and production of steam from boiler. It is adopting most efficient way to use emissions significantly. It also reduces investments into electricity transmission capacity, avoids transmission losses and ensures security of high quality power supply. Because of these benefits being derived from the production of electricity through co-generation plant, the legislature intended to use the word “to promote” both the co-generation as well as the generation from the renewable source of energy. fuel. The benefits that are derived from co-generation are many. Co-generation helps save energy costs, improves energy security of supply, and creates jobs. Co-generation can be based on a wide variety of fuels and individual installations may be designed to accept more than one fuel. Co-generation is the most efficient way of generating electricity, heat and cooling from a given amount of fuel. Co-generation helps reduce CO2 emissions significantly. It also*

reduces investments into electricity transmission capacity, avoids transmission losses and ensures security of high quality power supply. Because of these benefits being derived from the production of electricity through co-generation plant, the legislature intended to use the word “to promote” both the co-generation as well as the generation from the renewable source of energy.”

Though the above observations of the Hon’ble Tribunal were rendered in a different context, they clearly bring out the necessity of encouraging and promotion of Renewable and co-generation sources.

- j) The Commission views that increase in generation from renewable sources is also environmentally beneficial policy and it is also the mandate of the EA 2003 as per the provisions of Section 86 (1) (e) thereof read with Para 5.2.20 of the NEP. However, considering the submissions of the distribution licensees and the parties representing the RE Sector, the Commission is of the view that some CSS must be levied on OA transactions by RE Sector instead of continuing with the exemption. Therefore, the Commission decides to fix CSS as 25% of the applicable CSS for open access consumer purchasing power from renewable sources of energy.. This would compensate the distribution licensees and yet not demote promotion of RE Sector.
- k) The Commission, in order to arrive at 25% of the applicable CSS for the Open Access transactions through power purchase from renewable energy analysed the practices of other State Electricity Regulatory Commission’s (SERCs). The result of the analysis shows that the policy of exemption from CSS for Renewable Energy sources varies across States. Few states such as Tamil Nadu, Chhattisgarh, Andhra Pradesh, etc have reduced level of surcharge, say 50% of the applicable surcharge. The comparison of applicable CSS in other states for Open Access transactions through power purchase from renewable energy sources is provided below:-

| Sl. No. | State | Status of CSS | Reference Order |
|---------|---------|---------------|--|
| 1. | Gujarat | Exempted | GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 |
| 2. | Delhi | Exempted | DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2011 |

| | | | |
|----|----------------|---------------------------------|--|
| 3. | Chhattisgarh | 50% of Applicable Surcharge | CSERC (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based on non-conventional sources of energy) Regulations, 2008. dated 22/05/2008, |
| 4. | Tamil Nadu | 50% of the Applicable Surcharge | Comprehensive Tariff Order on Wind Energy Order No. 1 of 2009 dated 20/03/2009 |
| 5. | Andhra Pradesh | 50% of Applicable Surcharge | O. P. No. 16 of 2005, dated 21st September 2005 (In the matter of determination of Surcharge and Additional Surcharge under Sections 39, 40 and 42 of the Electricity Act, 2003) |
| 6. | Rajasthan | Exempted | Policy for Promoting Generation Of Electricity from Wind, 2011 & Policy for Promoting Generation Of Electricity from Biomass |

- l) Section 42 (3) of the EA 2003 provides the duty of a distribution licensee to be a common carrier providing non-discriminatory Open Access consumer for Open Access sought by a consumer from a generating company or any licensee. The Section 42 (3) of the EA 2003 is reproduced below:-

“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.”

- m) It is mandatory on the part of the distribution licensee to provide Open Access to any eligible consumers seeking Open Access from any generator. Therefore, Open Access by a consumer from renewable sources is inevitable and needs to be permitted.
- n) The mandate of the EA 2003 to promote generation of electricity from Renewable Sources cannot be achieved without permitting Open Access. The RE generator owners are already wary of the various regulatory developments in the State in

respect to generation & consumption of electricity generated from renewable energy and the decision on the future investment in these sources are dependent on the Open Access scenario.

- o) The Commission in the recent past has been receiving various petitions/grievance from the aggrieved renewable generators of not getting co-operation of MSEDCL for Open Access related matters. It has been observed that MSEDCL has been delaying grant of Open Access to many eligible generators and delaying in providing Credit Notes for the third party sale units though the energy is being injected to the MSEDCL network. Energy is generated and fed into the grid; it is sold and appropriate revenue is realized by MSEDCL. However, Credit Notes for the third party sale is inordinately withheld/delayed by MSEDCL. These actions need to be deprecated. MSEDCL is directed to provide hassle free non-discriminatory Open Access to the RE generators.

42. Technical Constraints/Real Time Operations

MSEDCL's Submission

- a) MSEDCL submitted that EA 2003 provides that the distribution licensee shall be under obligation to provide mandatory Open Access subject to technical constraints, but the Commission has not considered the technical constraints involved while permitting Open Access to a consumer and/or a person. MSEDCL submitted that the real time recording of the energy flow (from Open Access source to Open Access consumer) is posing some difficulties since the availability of appropriate metering arrangement is a hurdle. The Automatic dislocation of power supply from GRID to the Open Access consumer immediately within a period of 15 minutes from the interruption in power supply from suppliers end is most crucial since such arrangement will avoid the Open Access consumer drawing power from the grid as standby power without the permission of the concerned distribution licensee.
- b) MSEDCL also submitted that going forward the Open Access consumers will increase and in such a scenario the instructions will need to be passed on real time basis to all the concerned which needs proper infrastructure and manpower for monitoring , controlling and maintaining record of Open Access users.

Other Stakeholder Submission

- c) Maharashtra State Load Dispatch Centre (MSLDC) submitted that it is envisaged that Open Access consumers may increase on large scale. Each Open Access transaction has a commercial impact; hence monitoring of these transactions & passing of instructions by MSLDC in real time to the concerned licensee is needed. In view of the above, concerned distribution licensee need to have a proper infrastructure for monitoring; controlling and maintaining record of Distribution Open Access users. Monitoring visibility of Open Access user is essential at control centre & SLDC.

Commission's Views

- d) The Commission views that the points raised by MSEDCL and MSLDC are of operational issues for scheduling & despatch of power on real time basis. Therefore, it is in the purview of the MERC (State Grid Code) Regulations, 2006 and needs to be taken up by the SLDC. The Commission therefore directs the SLDC to evaluate all the technical and real time operations constraints in the Open Access transactions thereby designing appropriate measures for the same. The Commission is also of the view that it would be the obligation of the licensee and SLDC to ensure that adequate metering and other technical arrangements are in place to facilitate non-discriminatory Open Access which is the mandate of the EA 2003.
- e) Further, the Commission is in the process of finalization of the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011. The SLDC may provide appropriate submissions on specific technical constraints so as to enable the Commission to consider the same while finalization of the draft Regulations.
- f) However, the Commission points out that these issues of technical and real time operations constraint should not be a reason for not granting Open Access to eligible applicant consumers..

43. Day ahead power procurement for open access/ power exchange,

MSEDCL's Submission

- a) MSEDCL has submitted that the holistic reading of the provisions of EA 2003 provides that (i) the Open Access has to be introduced in the phases and ii) it is to be introduced keeping in mind all the relevant factors which include the cross subsidies and operational constraints, (iii) it is to be introduced in accordance with a legal framework that is to be mandatorily specified through regulations (iv) without a proper regulatory framework in place no Open Access should be introduced or allowed. MSEDCL submitted that supply of power from Energy Exchange has series of problems such as the following:
 - i. The MERC (Distribution Open Access) Regulations, 2005 do not cover Open Access transactions related to purchase of power from energy exchanges.
 - ii. As per existing MERC (Distribution Open Access) Regulations, 2005, Open Access consumers are required to be given standby power supply. In the present power deficit scenario and on short notice MSEDCL in order to comply with this direction would be constrained to restrict its own demand by proportionately increasing load shedding of its own consumers or it would be required to procure short term costly power. Both the above mentioned consequences would have adverse consequences for the consumers of MSEDCL.

- iii. MSEDCL submitted that as it has entered into long term PPAs with generating companies, the movement of consumers towards Open Access would result into the difficulty of utilizing the power that has already been contracted. Such a situation would result in the financial implications for MSEDCL and would in turn affect the distribution licensees own consumers.
 - iv. MSEDCL submitted that the Act mandates that the State Commissions to make regulations towards providing encouragement to competition and also the enabling Regulations for inter and intra-state trading of electricity and Power Exchanges.
 - v. MSEDCL submitted that in the event when the rates differ amongst the members of power exchanges, the consumer intending to source power from power exchange would get an opportunity to receive power at competitive rates resulting in gaming which is not at all envisaged in the EA 2003. It further submitted that the Open Access consumers sourcing power from power exchanges would draw power from power exchange only when the cheaper power is available and may shift to GRID whenever the situation is not encouraging which would mean that the Open Access consumer would get preferential treatment.
- b) MSEDCL therefore submitted that the Open Access consumer need to have firm source of power arrangement so as to avoid gaming resulting in undue benefit to select few consumers at the cost of interests of large number of low end consumers.

TPC-D Submission

- c) TPC has sought clarification on the Proviso 1 of Regulation 4.2.1 of the draft MERC (Distribution Open Access) Regulations, 2011 which provides for processing of Open Access application by a consumer for purchasing power on day-ahead basis from the power exchange. TPC submits that it would be difficult for the utility to schedule its generation if such day-ahead Open Access transactions are allowed. Therefore, TPC has requested the Commission to disallow any day-ahead Open Access power purchase transactions at this point of time.

Other Stakeholder Submission

- d) Indorama Synthetics (India) Ltd submitted that in order to meet its captive power requirement in emergencies, Indorama has been purchasing power from exchanges through Open Access in the past, and would be required to do so in the future as well. In this regard, it was granted permission to purchase power from exchanges (IEX/PXIL) to the tune of 10 MW for the period ending August 31, 2010. The Commission directed MSEDCL to grant permission vide its Order dated March 1, 2011, which has not been complied with yet.

- e) Indorama further submitted that Open Access consumers such as itself have already incurred additional cost of 20% to 22% on account of administrative charges to MSEDCL, State and Central transmission charges and losses, fees to exchange and margin of traders, etc. If CSS is imposed, it would be an additional burden on the Open Access consumers, thereby discouraging competition. In view of the above, Indorama has submitted that the Commission affirm its previous Order of Nil CSS and dispose the current proceedings so that the benefit of availing cheaper power from the power exchanges can be availed at the earliest.
- f) Shri Ponrathnam submitted that that since Open Access is national phenomenon; the MERC Regulations should not be inconsistent with CERC Regulations.

Commission’s View

- g) The Commission, as per Section 66 of EA 2003 and in line with the Para 5.7 of National Electricity Policy (NEP), recognizes that there is a clear mandate to promote and develop power market. The Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 defines “Power Exchange” and “Collective Transactions” as below:-

“Power Exchange” means the power exchange established with the prior approval of the Commission.

“Collective Transaction” means a set of transactions discovered in power exchange through anonymous, simultaneous competitive bidding by buyers and sellers.

- h) The CERC (Open Access in Inter-State Transmission) Regulations, 2008 Regulation 6 (1) provides as below:-

“6 (1) An open access customer or the power exchange (on behalf of buyers) intending to avail open access for use of”

- i) Therefore, the CERC has recognized the role and position of the Power Exchange in the Open Access transactions and hence has provided for in the Regulations.
- j) Further, the CERC in exercise of powers under the Section 66 read with Section 178 (2) (y) of the EA 2003 and in line with Para 5.7.1 (f) of NEP notified (Power Market) Regulations, 2010 on January 20, 2010.
- k) The CERC vide the above mentioned Regulation provided for Over The Counter (OTC) market and exchange markets wherein various instruments are being introduced for short term market as well as long term market. Therefore, all the transactions being undertaken in the power exchanges are in consonance with the provisions of EA 2003, CERC (Open Access in Inter-State Transmission) Regulations, 2008 amended from time to time and CERC (Power Market) Regulations, 2010.
- l) The Central Electricity Regulatory Commission has notified the Central Electricity Regulatory Commission (Open Access in inter-State Transmission)

Regulations, 2008, as amended from time to time, read with the “Procedure for Scheduling” notified by the Central Transmission Utility, laying down the framework which is also applicable to intra-state entities who are persons whose metering in the energy accounting will be done by the State Load Despatch Centre, as also applicable to consumers who are eligible to avail open access pursuant to the Distribution Open Access Regulation, 2005 notified by the Commission.

- m) The Commission does not sustain the contention that the Commission needs to disallow any day-ahead Open Access power purchase transactions at this point of time. When day-ahead Open Access power purchase transactions have been allowed by the CERC, it would create an anomalous situation if this Commission were to contradict the CERC’s Power Market Regulations, 2010 that permit day-ahead Open Access power purchase transactions, and in terms whereof “*Day ahead contract*” means as follows:-

“(k) “Day ahead contract” means contracts where transaction occurs on day (T) and delivery of power is on the next day (T+1) and which are scheduled by Regional Load Despatch Centre or National Load Despatch Centre;”

- n) In view of the above position, the Commission is of the view that there is currently no vacuum in the regulatory framework providing for sourcing of power by consumers via the platform of power exchange. However, if there are any specific operational issues the same could be taken care of while finalizing the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011. All the stakeholders may bring before the Commission specific operational issues with full justification and concrete proposals in this regard to enable the Commission to consider the same in such process.
- o) It may also be noted that the Power Exchange is only a technical and financial platform for buyers and sellers of electricity to transact commercially. Electricity does not flow from or to the Power Exchanges. The flow of electricity between any buyer and seller on the power exchange is no different from the flow of electricity in any bi-lateral contract.

44. Stranded Assets/Additional Surcharge/Wheeling charges compensation

MSEDCL’s Submission

- a) MSEDCL submitted that many IPP’s intend to operate substantial amount of capacities under merchant route but with competition catching up and with MSEDCL tying up substantial capacities under long term route, these IPPs would try to woo HT consumers offering them power at cheaper rates which would result in substantial stranded capacity at the MSEDCL’s end.

- b) MSEDCL submitted that therefore the consumers should not be provided Open Access without the levy of requisite charges on account of stranded assets.

TPC's Submission

- c) TPC submitted that in the event of the utility being subjected to any stranded capacity costs or costs on account of power purchase commitments due to consumers opting for power procurement via Open Access, the Commission may prescribe an appropriate 'additional surcharge' for the Open Access consumers who wish to avail supply from a person other than a distribution licensee of his area of supply.

Commission's View

- d) Section 42 (4) of the EA 2003 provides for additional surcharge as specified by the Commission over and above the CSS which needs to be borne by the Open Access consumers. The relevant Section is reproduced below:-

*“(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.**”*

- e) Further, the Para 8.5.4 of the Tariff Policy specifies that this additional surcharge becomes payable only if it is demonstrated that the obligation of the licensee to bear the fixed cost under the contract becomes unavoidable due to stranding of the asset. The relevant Para is reproduced below:-

*“8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable **only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.**”*

- f) Therefore, the Commission views that additional surcharge can be determined and be applicable only when a licensee can demonstrate that grant of open access to a particular consumer has led to stranded asset or obligation of bearing fixed cost has become unavoidable even after lower drawl of power from the corresponding source. The Commission is of the view that there cannot be any general finding in this regard particularly when MSEDCL has not come forth with any specific illustrations or calculations to justify their claim.
- g) Therefore, Commission decides that the additional surcharge would be computed on a case to case basis.

45. Impact of Distribution Loss

MSEDCL's Submission

- a) MSEDCL submitted that with the EHV and HT consumers opting for Open Access, the overall loss of distribution licensee will increase. Therefore the Commission should re-determine the loss reduction trajectory with the due regard to the reduction of EHV sales on account of Open Access for computing efficiency gain/loss.

Other Stakeholder Submission

- b) M/s Maharashtra Elektros melt Limited (MEL) prayed that the Commission direct MSEDCL to segregate voltage level wise losses and submit voltage wise cost of supply to MERC to decide the amount of wheeling charge and CSS to be levied on Open Access consumers. It also submitted that MSEDCL submit T&D loss data and technical & commercial losses separately to decide reduction in commercial loss level achieved in Control Period from FY 2007-08 to FY 2009-10.

Commission's View

- c) The Commission opines that the distribution loss of the licensee and redetermination of loss reduction trajectory is an operational performance parameter of the licensee and needs to be dealt in the tariff process under Sections 62 and 64 of the EA 2003.
- d) Therefore, this issue cannot be decided in the present proceedings.

46. Other suggestions by stakeholders

- a) Open Access should be a long term approach and not short term: - Consumer Representatives submitted that Open Access should be a long term approach and not short term. This is necessary to ensure that the provision for Open Access does not lead to a situation where large consumers selectively choose between licensee and market depending upon short term rates of electricity, i.e., there is a need to avoid gaming opportunities which can burden non-Open Access consumers. Short term Open Access increases power purchase uncertainty as well as metering and billing complexity. Hence minimum short term duration for which a consumer can avail Open Access should be one year.
- b) Open Access consumer returning back to licensee: - Consumer Representatives submitted that whenever an Open Access consumer decides to avail supply from the incumbent licensee once again, he or she needs to be treated differently and should be required to enter into at least a three year contract with the licensee. Further such consumers should be subjected to different tariff than tariff applicable for similar consumers who have never availed Open Access.
- c) Metering and billing of Open Access consumers: - Prayas Energy Group submitted that open access consumers should be given a mandate to install special

Energy Meter (SEM). This will ensure transparency and accountability in the metering and billing and will ease out operational issues. Further the Commission should undertake periodic independent metering and billing audits as well as energy audit of all Open Access transactions to ensure that interests of non-Open Access consumers have not been adversely affected.

Commission's View

- d) The EA 2003 does not state or envision that Open Access should be a long term approach and not short term one. Development of Market under Section 66 would inevitably lead inter alia to a situation where large consumers selectively choose between licensee and market depending upon short term rates of electricity. There could be possibilities of gaming too. In the absence of any specific instance of gaming, a general omnibus finding cannot be given. The statute has provisions in terms whereof a distribution licensee could complain regarding any such instance. There could also be a whistle blowing policy.
- e) These issues pertain to Open Access implementation and needs to be considered through the Regulations. Therefore, the Commission would, while finalizing the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011 consider the above issues appropriately.

47. Computation of Cross Subsidy Surcharge

- a) The Commission after having analysed all the submissions and the computation methodologies, has decided in the Para 39 above to compute the CSS based on the formula specified by the Tariff Policy. The Commission while computing the CSS adopted the latest Tariff Orders pertaining to the FY 2010-11. The Commission highlights that the computation of CSS needs to be based on the approved values of each of the components such as the Average Billing Rate (ABR), Losses (L), C (weighted average power purchase cost of 5% top at margin) and wheeling charges.
- b) The Commission highlights that limitation of adopting the values for calculating the components of formula pertaining to FY 2010-11 is due to delay in submission & approval of MYT Petition for the 2nd Control Period (FY 2011-12 to FY 2015-16). The Commission is yet to receive petitions for the above mentioned period and hence approved ARR & tariff of FY 2011-12 was not available for the estimation of CSS. To best suit the estimation the Commission adopted the following Tariff Order's for the respective distribution utilities:-

| Sl. No. | Distribution Utility | Order Details |
|---------|----------------------|--|
| 1. | RInfra – D | Order in Case No. 72 of 2010 dated July 29, 2011 |

| | | |
|----|---------------------|--|
| 2. | MSEDCL ¹ | Order in Case No. 111 of 2009 dated September 12, 2010 and Order in Case No. 69 of 2010 dated December 2, 2010 |
| 3. | TPC – D | Order in Case No. 98 of 2009 dated September 12, 2010 |

- c) Further, while considering the stack of power purchase on merit order basis for each licensee, the approved stack was taken for computation of ‘C’ with exception of RInfra – D. In case of RInfra – D, the approved stack in the Order in Case No. 72 of 2010 considered the power purchase from the bilateral as single source instead of each bilateral source wise stacking. The stack of bilateral consists of power source with prices as high as Rs 8.51/kWh to prices as low as Rs 2.98/kWh. Therefore, the Commission viewed that it would be in-appropriate not to consider the merit order stacking based on bilateral source wise price specifically since the quantum and price of power purchase from bilateral is substantial to be qualified in the top 5% at margin for the licensee as per Tariff Policy.
- d) Therefore, the Commission viewed that to correctly represent the component of ‘C’, source wise bilateral purchase needs to be considered for RInfra – D. The Commission for this purpose adopted the actual power purchase of RInfra – D for FY 2010-11.

Cross Subsidy Surcharge Formula

- e) As mentioned above, the Commission is adopting CSS formula as specified through the Para 8.5.1 of the Tariff Policy. The formula for CSS is provided below:-

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

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

- f) As the system losses have not been defined in the Tariff Policy, the system losses have been taken to be losses at the voltage level of the consumer category and include the transmission losses corresponding to the source of power purchase component ‘C’ in the specified formula.

¹ Order in Case No. 69 of 2009 is an order on the review petition for review of Order in Case No. 111 of 2009, vide which additional revenue recoveries were approved by the Commission

Computation of 'C' for Surcharge Computation

'C' for RInfra – D

- g) Computation of 'C' for RInfra – D is based on the approved power purchase quantum and price from the Order in Case No. 72 of 2010 dated July 29, 2011. The merit order stack for the power purchased excluding renewable source is analysed in the table below:-

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|--|------------------------|------------------------|
| 1 | Bilateral | 3,560.00 | 5.62 |
| 2 | TPC-G | 1,287.00 | 3.33 |
| 3 | DTPS | 3,688.00 | 2.40 |
| | Sub-Total (Units excluding Renewable and Liquid fuel generation) | 8,535.00 | 3.88 |
| 4 | RPO | 529.00 | 3.93 |
| 5 | Imbalance Pool | (242.00) | 7.56 |
| | Total for FY 2010-11 | 8,822.00 | 3.79 |

- h) Therefore, from the above it was observed that RInfra –D's purchase of power from bilateral constitute around 42% of the total power purchased quantum excluding quantum purchased from renewable source & energy set off due to imbalance pool. Therefore, computation of 'C' for RInfra – D can be taken as the price of power from bilateral to be the weighted average power purchase cost of top 5% at the margin. Therefore, the 'C' computed for RInfra – D is Rs 5.62/kWh.
- i) The above computation of 'C' by the above merit order stacking provides a result of Rs 5.62/kWh as 'C' which as a matter of fact is misrepresentation as the actual source wise bilateral power purchase rate varies widely and the consideration of actual source wise bilateral power purchase rate would provide near to accurate results. Further, Rs 5.62/kWh as 'C' would lead to very high CSS as the component of 'C' computed in this manner is way lower as compared if computed on source wise bilateral power purchase which is the correct manner for computation.
- j) Therefore, the Commission undertook an analysis of the actual source wise bilateral power purchase cost for FY 2010-11 as against the approved average

power purchase rate from bilateral sources. The results of the analysis were found to be more appropriate by the Commission as rate for 'C' was more accurate for consideration at top 5% at the margin.

- k) The table below shows the computation of 'C' by using actual power purchase costs and the rate arrived is Rs 7.35/kWh to be used for computation of CSS.

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|--------|------------------------|------------------------|
| 1 | SCL | 11.34 | 8.51 |
| 2 | IAML | 4.29 | 8.29 |
| 3 | PTC | 11.76 | 8.02 |
| 4 | IAML | 5.40 | 7.61 |
| 5 | GEPL | 1.19 | 7.59 |
| 6 | LPTL | 129.40 | 7.47 |
| 7 | RETL | 74.79 | 7.27 |
| 8 | GEPL | 19.73 | 7.23 |
| 9 | GEPL | 157.98 | 7.20 |
| 10 | GEPL | 9.62 | 6.80 |
| 11 | LPTL | 37.89 | 6.44 |
| 12 | RETL | 16.18 | 6.08 |
| 13 | GEPL | 1,404.50 | 6.05 |
| 14 | LPTL | 0.80 | 5.95 |
| 15 | RETL | 383.00 | 5.94 |
| 16 | RETL | 516.12 | 5.85 |
| 17 | GEPL | 63.93 | 5.78 |
| 18 | PPDPL | 151.84 | 4.24 |

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|--|------------------------|------------------------|
| 19 | GEPL | 128.41 | 3.95 |
| 20 | RETL-IEX | 448.47 | 3.74 |
| 21 | TPC-G | 1,251.66 | 3.41 |
| 22 | RETL-PXI | 10.78 | 3.09 |
| 23 | LPTL | 16.83 | 2.98 |
| 24 | Dahanu | 3,699.53 | 2.60 |
| 25 | IPTPL | 5.84 | 2.24 |
| 26 | AMNEPL | 29.12 | 2.21 |
| 27 | KISPL | 1.97 | 1.51 |
| 28 | KISPL | 0.39 | 0.00 |
| 29 | IRSL | 4.43 | -2.83 |
| | Sub-Total (Units excluding Renewable and Liquid fuel generation) | 8,597.18 | 4.01 |
| 30 | RETL (Tembhu) | 1.11 | 4.25 |
| 31 | RINL (Wind) | 73.74 | 3.65 |
| 32 | AAA Sons (Wind) | 0.00 | |
| 33 | JSPL (Wind) | 56.23 | 3.17 |
| 34 | GEPL (Wind) | 71.45 | 4.79 |
| 35 | MSEDCL - Banking Return | 2.35 | 0.00 |
| 36 | Infirm (No cost - pool) | 0.97 | 0.00 |
| | Total for FY 2010-11 (Actuals) | 8,803.03 | 4.01 |

- 1) Therefore, from the above it was observed that RInfra – D purchase of power from bilateral constitute more than 42% of the total power purchased quantum excluding quantum purchased from renewable source. Therefore, computation of ‘C’ for RInfra-D can be taken as the price of power from bilateral considering each bilateral source to be the weighted average power purchase cost of top 5% at the margin. Therefore, the ‘C’ computed for RInfra-D is Rs 7.35/kWh.

‘C’ For MSEDCL

- m) Computation of ‘C’ for MSEDCL is based on the approved power purchase quantum and price from the Order in Case No. 111 of 2009 dated September 12, 2010. The merit order stack for the power purchased excluding renewable source is analysed in the table below:-

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|------------------------|------------------------|------------------------|
| 1 | RGPPPL | 11,000.00 | 4.69 |
| 2 | CPP | 392.00 | 4.40 |
| 3 | NTPC-GANDHAR | 1,314.00 | 4.36 |
| 4 | DODSON II | 43.00 | 3.54 |
| 5 | MSPGCL-Parli Unit 7 | 795.00 | 3.23 |
| 6 | NTPC-Kahalgaon STPS-I | 61.00 | 3.20 |
| 7 | MSPGCL-Paras Unit 4 | 792.50 | 3.13 |
| 8 | NTPC-Kahalgaon STPS-II | 511.00 | 2.91 |
| 9 | DODSON I | 21.00 | 2.97 |
| 10 | MSPGCL-Nasik | 5,394.24 | 2.85 |
| 11 | NPCIL-TAPP 3&4 | 1,934.00 | 2.74 |
| 12 | MSPGCL-Bhusawal | 2,946.27 | 2.72 |
| 13 | NTPC-Farakka STPS | 129.00 | 2.71 |
| 14 | IPP – JSW | 1,310.00 | 2.70 |
| 15 | NTPC-Sipat TPS | 2,242.00 | 2.64 |

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|---|------------------------|------------------------|
| 16 | MSPGCL-Paras | 337.45 | 2.58 |
| 17 | MSPGCL-Khaparkheda | 5,458.81 | 2.45 |
| 18 | MSPGCL-Parli | 4,172.35 | 2.43 |
| 19 | NTPC- KAWAS GAS | 1,345.00 | 2.39 |
| 20 | NTPC-VSTP III | 2,211.00 | 2.35 |
| 21 | NPCIL-KAPP | 368.00 | 2.17 |
| 22 | MSPGCL-Koradi | 6,015.64 | 2.10 |
| 25 | SSP | 635.00 | 2.05 |
| 23 | PENCH | 240.00 | 2.05 |
| 24 | NTPC-VSTP II | 2,652.00 | 1.89 |
| 26 | MSPGCL-Chandrapur | 14,898.24 | 1.83 |
| 27 | MSPGCL-Uran | 5,745.20 | 1.81 |
| 28 | NTPC-Talcher STPS | 84.00 | 1.60 |
| 29 | NTPC-VSTP I | 3,395.00 | 1.44 |
| 30 | NTPC- KSTPS | 5,096.00 | 1.15 |
| 31 | NPCIL-TAPP 1&2 | 1,206.00 | 0.95 |
| 32 | MSPGCL-Hydel | 3,934.00 | 0.89 |
| | Sub-Total:- (Units excluding Renewable and liquid fuel generation) | 86,678.69 | 2.43 |
| 33 | Renewable Source | 4,114.00 | 4.93 |
| | Total for FY 2010-11 | 90,792.69 | 2.67 |

n) Therefore, from the above it is observed that MSEDCL purchase of power from RGGPL constitute around top 13% of the total power purchased quantum excluding quantum purchased from renewable source. Therefore, computation of

‘C’ for MSEDCL can be taken as the price of power from RGPPL to be the weighted average power purchase cost of top 5% at the margin. Therefore, the ‘C’ computed for MSEDCL is Rs 4.69/kWh.

‘C’ For TPC – D

- o) Computation of ‘C’ for TPC – D is based on the approved power purchase quantum and price from the Order in Case No. 98 of 2009 dated September 12, 2011. The merit order stack for the power purchased excluding renewable source is analysed in the table below:-

| Sr. No. | Source | Energy Purchased (MUs) | Per unit Cost (Rs/kWh) |
|---------|--|------------------------|------------------------|
| 1 | TPC-G Unit 6 | 1,210.14 | 5.92 |
| 2 | Actual External Power Purchase for April 2010-June 2010 | 102.00 | 4.84 |
| 3 | Short-term External Power Purchase | 205.00 | 4.70 |
| 4 | TPC-G Unit-8 | 317.00 | 3.45 |
| 5 | TPC-G Unit 5 | 1,185.08 | 3.17 |
| 6 | TPC-G Unit 7 | 439.17 | 2.07 |
| 7 | TPC-G Hydel | 516.48 | 1.83 |
| 8 | TPTCL | 0.00 | |
| | Sub Total (Units excluding Renewable and liquid fuel generation) | 3,974.88 | 3.85 |
| 9 | TPC-G Unit-4 (Excluded as it is liquid Fuel) | 47.25 | 7.72 |
| 10 | RPS (Excluded) | 257.00 | 3.93 |
| | Total for FY 2010-11 | 4,279.13 | 3.84 |

- p) Therefore, from the above it was observed that TPC – D purchase of power from TPC – G Unit 6 constitute around 30 % of the total power purchased quantum excluding quantum purchased from renewable source and liquid fuel. Therefore, computation of ‘C’ for TPC – D can be taken as the price of power from TPC – G

Unit 6 to be the weighted average power purchase cost of top 5% at the margin. Therefore, the 'C' computed for TPC – D is Rs 5.92/kWh.

Average Billing Rate (ABR) for all Distribution Utilities

- q) The ABR has been taken as provided in the Tariff Order's as specified in Para 47 b) for the respective distribution utilities.
- r) Further, it is to be noted that the ABR of MSEDCL has been taken as the collective impact of Order in Case No. 111 of 2009 and Order in Case No. 69 of 2010, wherein the Commission had approved additional recovery of revenue from the respective consumer categories.

System Loss 'L'

- s) The system losses for each of the licensees are taken from the respective Tariff Order's referred in the above sections. The approved wheeling losses at the respective voltage level and the transmission losses are used to arrive at the grossed up total system losses for each of the licensees.

| Losses FY 10-11 | Tata Power | MSEDCL | Rinfra |
|--|--------------|--|---------------|
| System Losses for LT | | | |
| Transmission Loss (%) | 4.85% | 4.85% | 4.85% |
| Wheeling Loss LT (%) | 0.65% | 14.00% | 9.00% |
| Total System Losses for LT (%) | 5.47% | 18.17% | 13.41% |
| System Losses for HT | | | |
| Transmission Loss (%) | 4.85% | 4.85% | 4.85% |
| Wheeling Loss HT (%) | 0.65% | 6.00% (33 kV) | 1.50% |
| | | 9.00% (22/11kV) | |
| Total System Losses for HT (%) | 5.47% | 10.56% (33 kV) 13.41% (22/11kV) | 6.28% |
| System Losses for EHV | | | |
| Transmission Losses | 4.85% | 4.85% | 4.85% |
| Wheeling Losses EHV | 0.00% | 0.00% | 0.00% |
| Total System Losses for EHV (%) | 4.85% | 4.85% | 4.85% |

- t) The system losses for EHV are also determined and considering wheeling losses as 0%, the total transmission losses are equivalent to the transmission losses. Further, it is noted that only intra-state transmission losses has been considered as the sources identified for computation of 'C' pertain to generation sources connected to the intra-state network.

Wheeling Charges 'D'

- u) The wheeling charges for each of the voltage level are taken from the respective Tariff Orders which is provided below.

| Wheeling Charges (Rs per unit) | RInfra – D | MSEDCL | Tata Power |
|--|------------|--------|------------|
| Wheeling Charges for LT Network | 0.88 | 0.36 | 0.38 |
| Wheeling Charges for HT Network (11kV) | | 0.21 | |
| Wheeling Charges for HT Network (33 kV) | 0.46 | 0.04 | 0.19 |
| Wheeling Charges for EHT Network | 0.00 | 0.00 | 0.00 |

Category wise Cross Subsidy Surcharge Applicable

- v) The category wise CSS applicable arrived on consideration of the components ABR, C, L & D from the above referred respective sections. The CSS is thus provided below:-

Cross Subsidy Surcharge For RInfra – D

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|-----------------------------------|------------|------|-------|-------|------------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) | |
| HT Consumers (Below 66kV) | | | | | | | | |
| Industry | 6.94 | 7.35 | 1.50% | 4.85% | 6.28% | 0.46 | (1.33) | - |
| Commercial | 8.53 | 7.35 | 1.50% | 4.85% | 6.28% | 0.46 | 0.26 | 0.26 |
| Group Housing | 5.00 | 7.35 | 1.50% | 4.85% | 6.28% | 0.46 | (3.27) | - |
| Temporary Supply | 10.49 | 7.35 | 1.50% | 4.85% | 6.28% | 0.46 | 2.22 | 2.22 |
| EHV Consumers (Above 66kV) | | | | | | | | |
| Industry | 6.94 | 7.35 | 0.00% | 4.85% | 4.85% | 0.00 | (0.77) | - |
| Commercial | 8.53 | 7.35 | 0.00% | 4.85% | 4.85% | 0.00 | 0.83 | 0.83 |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|------------------------------------|------------|------|-------|-------|------------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) | |
| Group Housing | 5.00 | 7.35 | 0.00% | 4.85% | 4.85% | 0.00 | (2.71) | - |
| Temporary Supply | 10.49 | 7.35 | 0.00% | 4.85% | 4.85% | 0.00 | 2.79 | 2.79 |
| LT Consumers | | | | | | | | |
| Non Domestic | | | | | | | | |
| <i>Up to 20 kW</i> | 7.71 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (1.51) | - |
| <i>> 20 kW & < 50kW'</i> | 10.05 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | 0.84 | 0.84 |
| <i>Above 50kW</i> | 11.12 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | 1.90 | 1.90 |
| Industrial | | | | | | | | |
| <i>Below 20kW load</i> | 7.13 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (2.09) | - |
| <i>Above 20kW load</i> | 7.53 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (1.69) | - |
| BPL | 0.58 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (8.64) | - |
| Residential Single Phase | | | | | | | | |
| 0-100 units | 2.35 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (6.86) | - |
| 101-300 units | 5.05 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (4.17) | - |
| 301- 500 units | 7.97 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (1.24) | - |
| 500 and Above | 9.24 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | 0.03 | 0.03 |
| Residential Three Phase | | | | | | | | |
| 0-100 units | 2.24 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (6.98) | - |
| 101-300 units | 5.57 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (3.65) | - |
| 301- 500 units | 7.91 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (1.31) | - |
| 500 and Above | 9.19 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (0.02) | - |
| Agriculture | 0.54 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (8.68) | - |
| Advertisements | 17.56 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | 8.35 | 8.35 |
| Street Lighting | 8.59 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (0.63) | - |
| Temporary Religious | 3.61 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (5.61) | - |
| Temporary Others | 14.72 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | 5.51 | 5.51 |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|------------------------------|------------|------|-------|-------|------------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) | |
| Crematorium & Burial Grounds | 3.62 | 7.35 | 9.00% | 4.85% | 13.41% | 0.88 | (5.59) | - |

Cross Subsidy Surcharge For MSEDCL

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|---|------------|------|-------|-------|-------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| EHV Consumers (66kV and Above) | | | | | | | | |
| Industry | | | | | | | | |
| <i>Express Feeder</i> | 5.84 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 0.92 | 0.92 |
| <i>Non Express Feeder</i> | 5.43 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 0.52 | 0.52 |
| <i>Seasonal Industry</i> | 7.12 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 2.20 | 2.20 |
| Commercial | | | | | | | | |
| <i>Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.59 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 3.67 | 3.67 |
| <i>Others</i> | 8.88 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 3.97 | 3.97 |
| <i>Non Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.07 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 3.16 | 3.16 |
| <i>Others</i> | 8.40 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 3.49 | 3.49 |
| Railways | 6.04 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 1.12 | 1.12 |
| Public Water Works | | | | | | | | |
| <i>Express Feeder</i> | 4.19 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | (0.72) | - |
| <i>Non Express Feeder</i> | 4.12 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | (0.79) | - |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|---|------------|------|-------|-------|--------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| Agriculture | 2.49 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | (2.43) | - |
| Bulk Supply | | | | | | | | |
| <i>Residential Complex</i> | 4.34 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | (0.57) | - |
| <i>Commercial Complex</i> | 7.06 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | 2.15 | 2.15 |
| Others | 2.96 | 4.69 | 0.00% | 4.85% | 4.85% | 0.00 | (1.95) | - |
| HT Consumers (33kV) | | | | | | | | |
| Industry | | | | | | | | |
| <i>Express Feeder</i> | 5.84 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 0.61 | 0.61 |
| <i>Non Express Feeder</i> | 5.43 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 0.21 | 0.21 |
| <i>Seasonal Industry</i> | 7.12 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 1.89 | 1.89 |
| Commercial | | | | | | | | |
| <i>Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.59 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 3.37 | 3.37 |
| <i>Others</i> | 8.88 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 3.66 | 3.66 |
| <i>Non Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.07 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 2.85 | 2.85 |
| <i>Others</i> | 8.40 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 3.18 | 3.18 |
| Railways | 6.04 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 0.81 | 0.81 |
| Public Water Works | | | | | | | | |
| <i>Express Feeder</i> | 4.19 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | (1.03) | - |
| <i>Non Express Feeder</i> | 4.12 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | (1.10) | - |
| Agriculture | 2.49 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | (2.73) | - |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|---|------------|------|-------|-------|--------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| Bulk Supply | | | | | | | | |
| <i>Residential Complex</i> | 4.34 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | (0.88) | - |
| <i>Commercial Complex</i> | 7.06 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | 1.84 | 1.84 |
| Others | 2.96 | 4.69 | 6.00% | 4.85% | 10.56% | 0.04 | (2.26) | - |
| HT Consumers (22/11 kV)) | | | | | | | | |
| Industry | | | | | | | | |
| <i>Express Feeder</i> | 5.84 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 0.31 | 0.31 |
| <i>Non Express Feeder</i> | 5.43 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (0.10) | - |
| <i>Seasonal Industry</i> | 7.12 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 1.59 | 1.59 |
| Commercial | | | | | | | | |
| <i>Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.59 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 3.06 | 3.06 |
| <i>Others</i> | 8.88 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 3.35 | 3.35 |
| <i>Non Express Feeder</i> | | | | | | | | |
| <i>Educational Institutions & Hospitals</i> | 8.07 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 2.55 | 2.55 |
| <i>Others</i> | 8.40 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 2.88 | 2.88 |
| Railways | 6.04 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 0.51 | 0.51 |
| Public Water Works | | | | | | | | |
| <i>Express Feeder</i> | 4.19 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (1.33) | - |
| <i>Non Express Feeder</i> | 4.12 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (1.41) | - |
| Agriculture | 2.49 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (3.04) | - |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|-------------------------------------|------------|------|--------|-------|--------|------------|--------------|----------------|
| | (Rs./Unit) | | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| Bulk Supply | | | | | | | | |
| <i>Residential Complex</i> | 4.34 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (1.18) | - |
| <i>Commercial Complex</i> | 7.06 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | 1.54 | 1.54 |
| Others | 2.96 | 4.69 | 9.00% | 4.85% | 13.41% | 0.21 | (2.56) | - |
| LT Consumers | | | | | | | | |
| Non Domestic | | | | | | | | |
| <i>Up to 20 kW</i> | | | | | | | | |
| <i>Institutions, Hospitals</i> | | | | | | | | |
| <i>0-200 Units</i> | 4.93 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (0.97) | - |
| <i>Above 200 Units</i> | 7.47 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 1.57 | 1.57 |
| <i>Others</i> | | | | | | | | |
| <i>0-200 Units</i> | 5.10 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (0.80) | - |
| <i>Above 200 units</i> | 7.58 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 1.68 | 1.68 |
| <i>'> 20 kW & < 50kW'</i> | 8.81 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 2.91 | 2.91 |
| <i>Above 50kW</i> | 10.95 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 5.05 | 5.05 |
| Industrial | | | | | | | | |
| <i>Below 20kW load</i> | 4.27 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (1.63) | - |
| <i>Above 20kW load</i> | 6.09 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 0.20 | 0.20 |
| BPL | 0.90 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (5.00) | - |
| Domestic | | | | | | | | |
| <i>0-100 Units</i> | 2.95 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (2.95) | - |
| <i>101-300 Units</i> | 5.05 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (0.85) | - |
| <i>301-500 Units</i> | 6.71 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 0.81 | 0.81 |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|---------------------------|------------|------|--------|-------|--------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| <i>500 -1000Units</i> | 7.66 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 1.76 | 1.76 |
| <i>above 1000 units</i> | 7.83 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 1.93 | 1.93 |
| Agriculture | 2.03 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (3.86) | - |
| Advertisements | 17.58 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 11.68 | 11.68 |
| Public Water Works | 2.26 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (3.63) | - |
| Street Lighting | 3.65 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (2.25) | - |
| Temporary Others | | | | | | | | |
| <i>Other Purpose</i> | 12.19 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | 6.29 | 6.29 |
| <i>Religious Purpose</i> | 3.43 | 4.69 | 14.00% | 4.85% | 18.17% | 0.36 | (2.46) | - |

Cross Subsidy Surcharge For TPC – D

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|-----------------------------------|------------|------|-------|-------|-------|------------|--------------|----------------|
| | (Rs./Unit) | (%) | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| HT Consumers (Below 66kV) | | | | | | | | |
| Industry | 5.20 | 5.92 | 0.65% | 4.85% | 5.47% | 0.19 | (1.23) | - |
| Commercial | 5.51 | 5.92 | 0.65% | 4.85% | 5.47% | 0.19 | (0.92) | - |
| Group Housing | 4.37 | 5.92 | 0.65% | 4.85% | 5.47% | 0.19 | (2.06) | - |
| Temporary Supply | 9.01 | 5.92 | 0.65% | 4.85% | 5.47% | 0.19 | 2.58 | 2.58 |
| Railways | 4.99 | 5.92 | 0.65% | 4.85% | 5.47% | 0.19 | (1.44) | - |
| EHV Consumers (Above 66kV) | | | | | | | | |
| Industry | 5.20 | 5.92 | 0.00% | 4.85% | 4.85% | 0.00 | (1.01) | - |
| Commercial | 5.51 | 5.92 | 0.00% | 4.85% | 4.85% | 0.00 | (0.69) | - |

| Consumer Category | ABR | C | WL | TL | L | D | Computed CSS | Applicable CSS |
|-------------------------------------|------------|------|-------|-------|-------|------------|--------------|----------------|
| | (Rs./Unit) | | (%) | (%) | (%) | (Rs./Unit) | (Rs./Unit) | (Rs./Unit) |
| Group Housing | 4.37 | 5.92 | 0.00% | 4.85% | 4.85% | 0.00 | (1.83) | - |
| Temporary Supply | 9.01 | 5.92 | 0.00% | 4.85% | 4.85% | 0.00 | 2.81 | 2.81 |
| Railways | 4.99 | 5.92 | 0.00% | 4.85% | 4.85% | 0.00 | (1.21) | - |
| LT Consumers | | | | | | | | |
| Non Domestic | | | | | | | | |
| <i>Up to 20 kW</i> | 4.88 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.74) | - |
| <i>'> 20 kW & < 50kW'</i> | 5.47 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.15) | - |
| <i>Above 50kW</i> | 5.50 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.12) | - |
| Industrial | | | | | | | | |
| <i>Below 20kW load</i> | 5.05 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.57) | - |
| <i>Above 20kW load</i> | 5.47 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.15) | - |
| Domestic | | | | | | | | |
| (0-100 Units) | 1.76 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (4.86) | - |
| (101-300 units) | 3.29 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (3.33) | - |
| (> 301-500 Units) | 4.97 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (1.65) | - |
| Above 500 units | 5.71 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | (0.91) | - |
| Advertisements | 14.09 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | 7.47 | 7.47 |
| Temporary Others | 11.19 | 5.92 | 0.65% | 4.85% | 5.47% | 0.38 | 4.57 | 4.57 |

48. Other Conditions of Cross Subsidy Surcharge

Applicability of Cross Subsidy Surcharge for Consumers Opting for Open Access

- a) The CSS provided in the Para 47 above for all the Open Access consumers would be applicable as per the provisos to Section 42 (2) of the EA 2003. The CSS under this Order shall be applicable to all consumers of all distribution licensees in the

State of Maharashtra, who opt for open access, under the MERC (Distribution Open Access) Regulations, 2005 as amended from time to time.

- b) The CSS under this Order shall be applicable from the date of this Order.

Applicability of Cross Subsidy Surcharge for Change-over Consumers

- a) The Commission in the Order in Case No. 72 of 2010 dated July 29, 2011 on RInfra – D’s petition for true-up for FY 2008-09, APR for FY 2009-10 and tariff determination for FY 2010-11 viewed that it was necessary to give a ruling on the issue of applicability of the CSS for the change-over consumers of RInfra – D.
- b) The Commission in the above referred Order cited the extract of the Judgment of the Hon’ble Supreme Court of India dated July 8, 2008 in Civil Appeal No. 2898 of 2006 with Civil Appeal No. 3466 and 3467 of 2006, wherein the Hon’ble Supreme Court ruled as under:-

*"The concept of wheeling has been introduced in the 2003 Act to enable distribution licensees who are yet to install their distribution line to supply electricity directly to retail consumers, **subject to payment of surcharge in addition to the charges for wheeling** as the State Commission may determine....." (emphasis added)*

- c) Therefore, based on the above citation of the Judgment, the Commission decided that the CSS will be applicable for group of consumers specified by the Commission from the date of migration, Further, the Commission classified three groups of consumers of RInfra – D and directed the applicability of CSS as provided below:-

| Particulars | Applicability of Charges to | | |
|-------------------------------|-----------------------------|----------|-----------|
| | Group I | Group II | Group III |
| Cross Subsidy Surcharge (CSS) | No | Yes | No |

Where

Group I :- Consumers who are receiving supply from RInfra – D through RInfra – D’s wires

Group II :- Consumers who are receiving supply from TPC – D through RInfra – D’s wires

Group III :- Consumers who are receiving supply from TPC – D through TPC – D’s wires

- d) The change-over of consumers from RInfra – D to TPC –D is a unique case pursuant to the interpretation of the Licenses of TPC-D by Hon’ble Supreme

Court. Hence, the present case of Group II consumers who are receiving supply from TPC – D by using RInfra – D’s wires, must pay CSS as determined in this Order.

- e) There must be uniformity in approach. Consumers availing open access were subject to the impugned Order dated September 5, 2006 in Case No. 9 of 2006, and accordingly their CSS was zero even when some of them migrated to TPC-D for supply. However, they must pay CSS as determined by this Order. The CSS specified through this Order for this group of consumers shall be applicable henceforth as the rate of CSS has been determined in this Order.

With the above, the present case in the matter of Case No. 43 of 2010 and De novo re-determination of Cross Subsidy Surcharge and issues related to Open Access, stands disposed of.

Sd/-
(Vijay.L.Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman