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**BEFORE**  
**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION,**  
**LUCKNOW**

**Petition No.: 995 /2014**

**Present**

1. ShriDesh Deepak Verma, Chairman
2. Shri I. B. Pandey, Member

**IN THE MATTER OF:**

Review Petition under Regulation 150 of UPERC (Conduct of Business) Regulations, 2004 read with Section 94(2) of other related provisions of the Electricity Act, 2003 seeking review of Order dated October 1, 2014 in Petition No. 887 / 2013 & 918 / 2013 and Petition No. 894 / 2013 & 916 / 2013.

**And**

**IN THE MATTER OF:**

M/s RimjihimIspat Limited, 123/307, Fazalganj, Kanpur. .... **Petitioner**

**Vs**

1. U.P. Power Corporation Ltd. through its Managing Director, Shakti Bhawan, Ashok Marg, Lucknow – 226001.
2. Chief Engineer, State Load Despatch Centre, Shakti Bhawan, 14, Ashok Marg, Lucknow.
3. U. P. Power Transmission Corporation Ltd. through its Managing Director, Shakti Bhawan, 14, Ashok Marg, Lucknow.
4. Managing Director, DakshinanchalVidyutVitrana Nigam Ltd., UrjaBhavan, NH-2 (Agra-Delhi Bypass Road), Sikandra, Agra-282007.

..... **Respondents**

The following were present:

1. Shri M. Gufran, Advisor (RAU), UPPCL
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2. Shri D.C. Verma, E.E. (RAU), UPPCL
3. Shri S.A. Rizvi, E.E. (RAU), UPPCL
4. Shri Amarjeet Singh Rakhra, Advocate, UPPCL
5. Shri Durga Prasad, Advisor, RimjhimIspat Limited
6. Shri Naveen Gupta, RimjhimIspat Limited
7. Shri D.D. Chopra, Advocate, RimjhimIspat Limited

### **ORDER**

(Date of Hearing August 18, 2015)

M/s RimjhimIspat Limited herein referred to as “Petitioner” has submitted a Review Petition under the provisions of Regulation 150 of UPERC (Conduct of Business) Regulations, 2004, seeking review of the Order dated October 1, 2014 in Petition No. 887 / 2013 & 918 / 2013 in the matter of approval of Aggregate Revenue Requirement and Tariff for FY 2014-15 for DakshinanchalVidyutVitrana Nigam Limited (DVVNL). As per the submissions made, the Petitioner has also sought Review of the Order in Petition No. 894 / 2013 & 916 / 2013 in the matter of approval of Aggregate Revenue Requirement and Tariff for FY 2014-15 for Uttar Pradesh Power Transmission Corporation Limited (UPPTCL). The main issues being (a) consideration of losses while determining the cross subsidy surcharge and, (b) determination of transmission charge payable by short term open access consumers which has been made equivalent to transmission charges for long term open access consumers. It may be mentioned that the Commission in its Tariff Order for FY 2013-14 dt. May 31, 2013 has approved the following formulation for determination of cross subsidy surcharge:

*“The Commission has computed the cross subsidy surcharge for the relevant consumer categories using the following formula:*

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

*Where*

*S is the cross subsidy 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. In case of UP, this works out to Rs. 6.59 /kWh considering the cost of marginal power purchase sources of Anta, Auraiya, Dadri Gas and Rosa Power Project II.*

*D is the average wheeling charges for transmission and distribution of power which is Rs. 0.620 /kWh*



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*L is the system losses for the applicable voltage level, expressed as a percentage, which is computed as 28%.”*

The Commission in its Tariff Order for FY 2014-15 dt. October 1, 2014 has approved the following formulation for determination of cross subsidy surcharge:

*“The Commission has computed the Cross Subsidy Surcharge for the relevant consumer categories using the following formula:*

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

*Where*

*S is the cross subsidy 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. In case of UP, this works out to Rs. 6.38 / kWh considering the cost of marginal power purchase sources of Bajaj Hindustan, Harduaganj and Rosa Power Project I.*

*D is the wheeling charges.*

*L is the system losses for the applicable voltage level, expressed as a percentage, which is considered as 4% for HT Categories (above 11 KV) and 8% for HT Categories (at 11 KV).”*

Further the Commission in its Tariff Order for FY 2015-16 dt. June 18, 2015 has approved the following formulation for determination of cross subsidy surcharge:

*“The Commission has computed the Cross Subsidy Surcharge for the relevant consumer categories using the following formula:*

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

*Where*

*S is the cross subsidy 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. In case of UP, this works out to Rs. 6.63 / kWh considering the cost of marginal power purchase sources of Harduaganj, Bajaj Hindustan, Parabati ST – III and Rosa Power Project.*

*D is the wheeling charges.*

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*L is the system losses for the applicable voltage level, expressed as a percentage, which is considered as 4% for HT Categories (above 11 KV) and 8% for HT Categories (at 11 KV)."*

**PETITIONER'S SUBMISSIONS:**

Petitioner submitted that the UPERC (Terms & Conditions for Determination of Distribution Tariff) Regulations, 2006 hereafter referred as UPERC Distribution Tariff Regulations, 2006 has laid a formula for the calculation of cross subsidy surcharge wherein "L" is the system loss for the applicable voltage level.

Petitioner submitted that the Commission has determined Cross Subsidy Surcharge as Rs. 0.47 / kWh payable by open access consumers of HV-2 category at voltage level above 11 kV. Petitioner submitted that the computed cross subsidy surcharge is erroneous on the following grounds:

- a) The Commission in its Tariff Order for DVVNL for FY 2013-14 had determined the cross subsidy surcharge by taking "L" as the system loss at 28%. However, in the Tariff Order for FY 2014-15 the Commission for HV-2 category at voltage level above 11 kV has considered the system loss at 4% resulting in substantial increase in Cross Subsidy Surcharge.
  - b) Petitioner submitted that the Commission has considered the loss of 4% which is based on the submission of DVVNL vide its letter dated July 2, 2014. Petitioner submitted that the Commission in its In-house paper had considered the losses as 7.80% for consumers connected at high voltage level. However in its Tariff Order the system losses "L" have been considered as 4% without any justification to disbelieve its own assumption of 7.80%.
  - c) Petitioner submitted that the Commission has already taken into account the distribution losses while determining Tariff of the Discom and therefore, there is no justification for computing Cross Subsidy Surcharge by assuming the system loss "L" at 4% as that would be against the letter and spirit of Distribution Tariff Regulations, 2006. Petitioner submitted that consideration of distribution losses in the determination of Tariff and again for calculating cross subsidy surcharge would amount to undue enrichment of the Distribution Licensee on one hand and at the same time double jeopardy for the open access customer.
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- d) Petitioner further submitted that the calculation of Average Billing Rate (ABR) at Rs. 7.44 / kWh does not present the actual average billing rate of the Petitioner. As per calculation arrived after considering the electricity bill of the Petitioner for months of August and September, 2014 computed on the basis of new Tariff effected from October 12, 2014 the ABR inclusive of Regulatory Surcharge comes to Rs. 6.679 / kWh and Rs. 6.849 / kWh and the same is much below the ABR considered by the Commission for purpose of computing Cross Subsidy Surcharge. Petitioner also submitted the sample computation of arriving at the above mentioned actual rates. Petitioner submitted that the ABR considered by the Commission does not represent the actual ABR of the Petitioner.
- e) Petitioner submitted that the Commission while determining the Tariff for HV-2 category consumers (above 11 kV) has taken into account both the Transmission and Distribution Losses. Whereas the system losses "L" at 4% considered in cross subsidy surcharge formula takes into account only the transmission losses. Therefore the ABR goes up significantly and does not represent the actual cost of Electricity as provided under Section 61 of the Electricity Act, 2003. Petitioner submitted that the Commission should have taken into consideration the actual losses as allowed to the Distribution Licensee for the purpose of determination of Tariff under "L" while determining Cross Subsidy Surcharge. The Petitioner further submitted that the cross subsidy surcharge should be charged on the actual cost of electricity and not on the basis of presumptions.

The first hearing on the matter was held on February 24, 2015 in which the Commission discussed the maintainability of the review petition. UPSLDC and UPPTCL submitted their comments on the petition to the Commission. The Commission directed UPPCL to submit their comments and petitioner to submit the replies, if any, on the submissions made by UPPCL, UPPTCL and UPSLDC.

The petitioner submitted its counter on the submissions made by the UPSLDC & UPPTCL. UPPCL submitted its comments on the petition.

The Commission conducted the second hearing in the matter on the June 30, 2015. The petitioner filed the counter & rejoinder to the submission of UPPCL. The Counsel of UPPCL submitted that there is no error apparent on the face of record. The Commission has determined the Cross Subsidy Surcharge as per the formula defined in the UPERC

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Distribution Tariff Regulations, 2006 and hence review was not maintainable. The Commission directed the respondents to submit their interpretation of “L-system losses at applicable voltage level” considered in the formula for computation of the cross subsidy. The Commission enquired the petitioner whether it had submitted any comment on the staff paper published by the Commission in which it had taken 7.8% losses or whether it had raised this issue in the public hearing process of the determination of the tariff for UPPTCL and DVVNL, to which the petitioner replied in negative.

In the hearing, the counsel of UPPCL submitted that the petitioner has not been able to make out a case for the review. UPPCL reiterated the judgement of the Supreme Court “Where the error is apparent on the face of record. Error must be such as would be apparent on mere looking of the record without requiring any long drawn process of reasoning. Re-appraisal of entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction which is not permissible in case of review”.

UPPCL submitted that the clause 6.6.2 of UPERC Distribution Tariff Regulation, 2006 defines “L” as “system losses for applicable voltage level expressed as a percentage”.

The counsel of the petitioner submitted that as per the Order 47 Rule 1 of CPC, review will lie in 3 conditions which are: (i) Error apparent on the face of record, (ii) either of the party did not furnish evidence at that time (iii) due to any mistake. The Petitioner further submitted that they could not present the evidence before the Commission at the draft regulation stage. The UPPCL submitted that the petitioner was not at any disability limiting them not to submit the evidence at the draft regulation stage. They are giving colours of review to an appeal.

The petitioner submitted that the Section 39 (2) of Electricity Act, 2003 provides as follows - “Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission”. The petitioner submitted that the Commission has considered the ABR for computation of the cross subsidy and their actual tariff is less than ABR considered by the Commission. The petitioner further submitted that the short term open access consumers are levied transmission charges based on the load applied irrespective of the drawn energy while the long term open access consumers are levied transmission charges based on the actual drawl.

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### **COMMISSION'S ANALYSIS:**

We would now proceed on the following two issues which are relevant in this matter - 1.) determination of the cross subsidy surcharge & 2.) approval of the short term open access charges being made equal to the long term open access charges, the analysis is as follows:

#### **Issue No. 1:**

The Commission has deliberated on the submissions of the petitioner and the respondents. The Commission is of the view that "transmission losses" and "distribution losses at applicable voltage level" should be considered as the "L-system losses at applicable voltage level" for determination of the cross subsidy surcharge as per the formula prescribed in the Clause 6.6.2 of the UPERC Distribution Tariff Regulations, 2006. The Commission has determined the cross subsidy surcharge for the open access consumers for the two categories (i) consumers connected at 11 kV and (ii) consumers at above 11 kV.

The Commission in its earlier Tariff Order dated May 31, 2013 has considered the "L", i.e., the system losses as the total losses for the entire Distribution System, due to the fact that voltage wise losses were not available. Further, it is rightly pointed out by the petitioner that the Commission in its In-house paper assumed the system losses for high voltage level as 7.80% however such level of losses was also an assumed figure and was only for stakeholder's consultation. The Commission had also invited the comments of all the stakeholders. The petitioner somehow had not submitted any comments on the same.

The Commission would like to highlight that in the subsequent submission vide letter dated July 2, 2014, the Distribution Licensees submitted that the actual system loss level for higher voltage level for FY 2014-15 would be around 4% to 5%. Based on the same the Commission considered the "L" i.e. the system losses as 4% for voltage level above 11 kV.

As regard the computation of ABR i.e. the component "T" in the formula for cross subsidy surcharge, the petitioner in its Review Petition has compared its actual ABR with the ABR computed by the Commission which was based on average billing determinants consolidated for all the consumers in respective categories. The computation done by the Commission was at the consolidated level for all the consumers, and it was neither practical nor justified to compare such ABR with the ABR of a specific consumer as has been done by the petitioner. The argument given by the petitioner that the cross subsidy surcharge should be charged on the actual cost of electricity and not on the basis of presumptions does not

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stand good as the whole exercise of tariff determination is based on estimations and the actual figures of losses, average billing rate, billing determinants would always vary from the approved figures which are based on estimations. As the tariff is determined well in advance before it is made effective, the Commission could have only estimated the charges on the best available data which the Commission has undertaken with due care. However it seems that the above calculations have caused undue hardship, especially to the existing consumers.

**Directions on Issue No. 1:**

The Commission in its Tariff Order dated October 1, 2014, has rightly computed the cross subsidy surcharge as per the relevant provisions of the Distribution Tariff Regulations, 2006. However the Commission realises that provisions made in the Tariff Orders for FY 2014-15 & FY 2015-16 regarding open access cross subsidy surcharge has failed in operationalization of open access in the State despite power prices being low in the power exchanges. Therefore to promote open access in the State, the Commission directs that provisions regarding open access surcharge made in the Tariff Orders for FY 2014-15 & FY 2015-16 be kept in abeyance and all open access consumers may be levied the cross subsidy surcharge as per rates approved in the Tariff Orders for FY 2013-14 only. The Commission would be revisiting the issue of cross subsidy surcharge etc. in its next Tariff Order with a view to promote open access as mandated by the Electricity Act, 2003. Further the Commission directs UPPCL to file a detailed report within a month on the various aspects of open access and reasons why it is not being operationalized. Also UPPCL / SLDC are directed to submit within 15 days, the details of all open access consumers in the State along with the quantum of power wheeled through open access, charges levied etc. for FY 2012-13, FY 2013-14 & FY 2014-15.

**Issue No. 2:**

As regards the issue of transmission charges being equal for short term & long term open access consumers, the Commission has gone through the submissions made by the petitioner. It has been observed that the petitioner has not been able to submit any new information that was not available with the Commission at the time of finalization of the Tariff Order dated October 1, 2014 in the matter of ARR / Tariff determination for UPPTCL for FY 2014-15. It has also been noted that the proposal of the licensees to approve the Transmission Charges for short term open access at the same level as approved for long term open access was placed in the public domain for stakeholder's comments. However the petitioner failed to submit any comments on the same.

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Further, UPPTCL in its ARR / Tariff Petition had submitted the details of the revenue released from open access in last 5 years which has increased from Rs. 1.49 Crore in FY 2007-08 to Rs. 33.82 Crore in FY 2012-13 (Provisional). The same had also been highlighted in the Tariff Order for FY 2014-15 dated October 1, 2014. The Commission has also detailed the reasoning for approving the short term open access charges and the long term open access charges at the same level in the mentioned Tariff Order. The relevant extract of the Commission's Tariff Order for FY 2014-15 is also reproduced below for reference:

Quote

*7.14.13 As regards the prayer of the Petitioner to approve the transmission charges for short-term Open Access at the same level of long-term Open Access, **the Commission has done a detailed analysis of the provisions of the Regulations and the practice followed in the other States.***

*7.14.14 The Commission has issued the UPERC (Terms and Conditions for Open Access) Regulations, 2004 vide notification dated 7 June, 2005. Regulation 15(1)(d) of the UPERC (Terms and Conditions for Open Access) Regulations, 2004 specify as under:*

**“The short-term open access customer shall pay 25% of the annual transmission or wheeling charges as determined by the Commission for that year based on average capacities served by such systems.....”**

*7.14.15 The rationale and purpose of providing the short-term Open Access charges at 25% of the charges payable by the long-term Open Access users was that short-term Open Access customers will be using only surplus transmission capacity with low priority and if and when available, and accordingly the charges would be at the lower level.*

*7.14.16 The Commission in its Order dated 15th April, 2008 (Tariff Order for FY 2007-08 & FY 2008-09) approved the transmission charge for short-term Open Access as 25% of the Transmission Charge for long-term Open Access.*

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7.14.17 The Commission has issued the UPERC (Terms and Conditions for Open Access) (First Amendment) Regulations, 2009 vide notification dated 18th June, 2009. **The Commission vide the above stated amendment Regulation removed the above stated provision for Transmission charges for short-term Open Access in the main Regulations.**

7.14.18 Regulation 15 of the UPERC (Terms and Conditions for Open Access) (First Amendment) Regulations, 2009 specifies as under:

*“(1) Transmission charges and Wheeling charges*

*The Transmission charges and/or Wheeling charges for use of the transmission system of a transmission licensee and/or the distribution system of a distribution licensee shall be regulated as under:*

*(a) Transmission charges and wheeling charges payable by a (long-term or short-term) open access customer shall be determined by the Commission in terms of the regulations framed by the Commission for determination of tariff for transmission and distribution licensee respectively.*

*Provided that where a transmission system and/or a distribution system has been constructed for exclusive use of an open access customer, the transmission charges and/or wheeling charges for whole of the system including such additional system shall be paid by open access customer.*

*Provided also that the average capacity, for transmission system shall be sum of generating capacities connected to the transmission system and contracted capacities of other transactions handled by the system of the licensee while in case of distribution system, it shall be sum of import of power at each interface point of exchange of power at electrical boundary of distribution licensee and generation from captive power plants, co-generation plants and plants generating electricity from renewable sources of energy located in the area of such license.*

*(b) In case intra state transmission system and/or distribution system is used by an open access customer in addition to inter-state transmission system, transmission charges and wheeling charges shall be payable for use of intrastate transmission*

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*Model Terms and Conditions of Intra-State Open Access Regulations issued by the Forum of Regulators, September 2010, specify as under:*

*“20. Transmission Charges*

*Open Access customer using transmission system shall pay the charges as stated hereunder:*

*.....*

*(2) For use of intra-State transmission system – Transmission charges payable to State Transmission Utility/ transmission licensee by an open access customer for usage of their system shall be determined as under:*

$$\text{Transmission Charges} = \text{ATC}/(\text{PLST} \times 365) \text{ (in Rs./MW-day)}$$

*Where,*

*ATC= Annual Transmission Charges determined by the Commission for the State transmission system for the concerned year.*

*PLST= Peak load projected to be served by the State transmission system in concerned year.*

*Provided that transmission charges shall be payable on the basis of contracted Capacity/ Scheduled Load or actual power flow whichever is higher. For Open Access for a part of a day, the transmission charges shall be payable on prorata basis:*

*.....”*

*7.14.24 Also, the revenue earned by the Petitioner through Open Access has increased substantially in the recent years as shown in the Table given below:*

**Table 7.18: Revenue from Open Access (Rs. Crore)**

<b>Particulars</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>
	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>	<b>Provisional</b>
Revenue from Open Access	1.49	33.24	70.84	49.45	33.82

**7.14.25 The trend of revenue from Open Access for the Petitioner shows considerable increase in the energy transacted through Open Access.**



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**7.14.26 Also, the Commission has observed that transmission charges for long-term Open Access and short-term Open Access are equal in the States like Punjab, Delhi, Gujarat, Rajasthan, Maharashtra, Tamil Nadu.**

7.14.27 In light of the above, the Commission is of the view that there is merit in the prayer of the Petitioner to approve the transmission charges for short-term Open Access at the same level of long-term Open Access.

7.14.28 Hence, in accordance with the provisions of UPERC (Terms and Conditions for Open Access) Regulations, 2004 and amendments thereto and the Transmission Tariff Regulations, the Commission has approved the transmission charges for short-term Open access at the same level of long term open access. **...(Emphasis added)**

Unquote

From the above, it is clear that stand of the Commission to put short term and long term open access transmission charges at the same footing is justified.

**Directions on Issue No. 2:**

In view of the above discussion and detailed reasoning given by the Commission in its Tariff Order dated October 1, 2014, there is no merit in the submission of the petitioner to keep the open access transmission charges for short term and long term at different levels.

With these directions on the above two issues, the petition is disposed of.

**(I. B. Pandey)**

**Member**

**(Desh Deepak Verma)**

**Chairman**

Place: Lucknow

Date: 3<sup>rd</sup> November, 2015

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