

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

Thiru S.Akshayakumar .... Chairman  
Thiru G.Rajagopal .... Member  
and  
Dr.T.Prabhakara Rao .... Member

**M.P.No.19 of 2016**

Open Access Users Association  
2<sup>nd</sup> Floor, D 21, Corporate Park  
Sector – 8, Dwarka  
New Delhi – 110 075.

... Petitioner  
(Thiru Anand K.Ganesan  
from M/s.MSA Partners  
Advocate for the Petitioner)

Vs.

Tamil Nadu Generation and Distribution  
Corporation Ltd.  
No.144, Anna Salai  
Chennai – 600 002.

...Respondent  
(Thiru M.Gopinathan  
Standing Counsel for TANGEDCO)

**Dates of hearing** : 27-09-2016, 16-11-2016, 22-08-2017  
and 25-10-2017

**Date of Order** : 13-03-2018

The M.P.No.19 of 2016 came up for final hearing on 25-10-2017. After hearing the learned Counsels for both the parties and after perusing the records, the Commission passes the following:-

## ORDER

### **1. Prayer of the Petitioner in M.P.No.19 of 2016:-**

The prayer of the Petitioner in the above M.P.No.19 of 2016 is to re-determine and make applicable the Cross Subsidy Surcharge in accordance with the National Tariff Policy, 2016 with the ceiling limit of 20% of the tariff for the relevant category of consumers.

### **2. Facts of the Case:-**

The petition has been filed to re-determine the Cross Subsidy Surcharge with the ceiling limit of 20% of the tariff for the relevant category of consumer in accordance with the National Tariff Policy.

### **3. Contentions of the Petitioner:-**

3.1. Under Section 42, there is a mandate to introduce open access, subject only to technical constraints and with the payment of cross-subsidy surcharge and additional surcharge if applicable.

3.2. The Government of India, had also framed and notified the National Tariff Policy, 2006 under section 3 of the Electricity Act providing for policy decisions on various aspects in relation to the Electricity Act, 2003. The National Tariff Policy laid considerable emphasis on the open access to be introduced. The National Tariff Policy, 2006 inter-alia, provided as under:

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

8.5.1. x x x x x

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.

x x x    x x x

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.”

3.3. The Commission had vide order dated 20-06-2013 passed in T.P.No.1 of 2013 determined the Annual Revenue Requirements and retail supply tariff applicable for the Respondent, Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) which was made effective from 21/06/2013.

3.4. The said tariff order also determined the cross-subsidy surcharge as applicable on the open access consumers in the State of Tamil Nadu. The cross-subsidy surcharge was determined by the Commission in line with the National Tariff Policy, 2006 as was then applicable.

3.5. The said tariff order was subject matter of appeal by various consumers before the Hon'ble Appellate Tribunal in Appeal No.196 of 2013 and connected matters. The Hon'ble Tribunal disposed of the said appeals vide judgement dated 27-10-2014. The Hon'ble Tribunal while approving the principle adopted by the Commission in line with the provisions of the National Tariff Policy, however only remanded the matter for consideration of calculation mistakes in the determination of the cross-subsidy surcharge.

3.6. Pursuant to the above, the Commission had re-calculated and determined the Cross Subsidy Surcharge vide its Suo-Motu Tariff Order No.9 of 2014 dated 11/12/2014. The said determination was made by the Commission in accordance with the then existing National Tariff Policy and the decision of the Hon'ble Appellate Tribunal. In the said Order dated 11/12/2014, the Commission has determined the cross-subsidy surcharge in terms of the National Tariff Policy, 2006 and at various voltage levels. The cross-subsidy for the various categories is the following range:

Category	CSS (Rs./kwh)
HT Industry	3.25 - 3.50
Railway Traction	2.87- 3.12
Government Educational Institutions	2.36- 2.62
Pvt Educational. Institutions	2.78- 3.04
Commercial and other HT Consumers	4.97- 5.23

3.7. The National Tariff Policy, 2016 while providing an indicative formula for determination of cross-subsidy surcharge, has left the determination in such manner as to be decided by each State Commission. The National Tariff Policy however has placed a ceiling on the cross subsidy surcharge at 20% of the tariff of the relevant category of consumers.

3.8. The surcharge formula provided in the National Tariff Order is-

Surcharge formula:

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

where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation.

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation.

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level.

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level.

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licenses, particularly for those having power deficit. The State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Provided further that the Appropriate Commission, in consultation with the Appropriate Government, shall exempt levy of cross subsidy charge on the Railways, as defined in Indian Railways Act, 1989 being a deemed licensee, on electricity purchased for its own consumption.

3.9. The ceiling 20% would ensure that there is adequate competition and the distribution licensee has to necessarily ensure better efficiency to compete with open access sources. The above ceiling of 20% of the tariff is also more than the limit of  $\pm 20\%$  of the Average Cost of Supply within which the tariff can be designed.

3.10. In view of the provision in the National Tariff Policy which has come into force recently, it has become incumbent to determine and align the cross-subsidy surcharge in line with, the now prevalent provisions of the National Tariff Policy. The present applicable cross-subsidy surcharge is in terms of the National Tariff Policy, 2006 which now needs re-determination in view of the present National Tariff Policy, 2016.

3.11. The present tariffs (Average Billing Rate which includes Demand Charges and Energy Charges) determined by the Commission vide its order dated 11/12/2014 applicable to the HT consumers is as under:

Category	Tariff (Rs./kh) (ABR)
HT Industry	8.20
Railway Traction	7.82
Government Educational Institutions	7.32
Pvt Educational. Institutions	7.74
Commercial and other HT Consumers	9.93

3.12. As per the National Tariff Policy, 2016 the cross-subsidy surcharge for the relevant category of consumers to be determined by the Appropriate Commissions shall not exceed 20% of the tariff of the relevant category of consumers. In terms of the above, the ceiling limit for the cross-subsidy surcharge including at various voltage levels shall be as under:

Category	CSS (Rs./kwh)
HT Industry	1.64
Railway Traction	1.56
Government Educational Institutions	1.46
Pvt Educational. Institutions	1.54
Commercial and other HT Consumers	1.98

3.13. The provisions of the National Tariff Policy, 2016 are in furtherance of the object of the Electricity Act to promote competition and ensure that open access is not discouraged. The Commission has also been determining the tariffs and cross-subsidy surcharge in line with the provisions of the National Tariff Policy as applicable and hence the Petitioner is seeking re-determination of the cross-subsidy surcharge in line with the now prevalent National Tariff Policy.

#### **4. Contentions of the Respondent:-**

In the counter affidavit 16-11-2016, the Respondent has contended as follows:-

4.1.1. Section 39 (2) (d) (ii), 40 (c) (ii), 42 (2) and 42 (4) of the Electricity Act, 2003 specifies that the State Commission would permit open access on the payment of the appropriate cross subsidy surcharge under section 42 (2).

4.1.2. Section 42 (2) specifies that the cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission.



#### 4.1.3. Regulation 85 of TNERC (Terms and Conditions for Determination of Tariff)

Regulations 2005, specifies the following in regard to cross-subsidy:-

*(1) The difference between the cost to serve and the revenue realized from the consumer category at the approved tariff level is the cross subsidy. The consumer paying more than the cost to serve is subsidizing consumer and the consumer paying less than the cost to serve is the subsidized consumer.*

*(2) The Commission may endeavour to hold the tariff of the subsidising categories at the nominal rates until the tariff to subsidized categories approaches the cost to serve such categories.*

*(3) The Commission may endeavour to reduce the cross subsidy progressively in accordance with the roadmap to be notified by the Commission.*

*(4) In view of the necessity to make electricity affordable for households of very poor category, the domestic consumers including hut dwellers consuming 30 kWh per month may be designated as lifeline categories requiring minimum level of supply. The tariff for such category may be pegged at 50% of the cost to serve the domestic consumers.*

4.2.1. M/s. OPG Renewable Energy and Tamil Nadu Electricity Consumers Association filed an appeal before the APTEL challenging the tariff order issued by the Commission on 20-06-2013.

4.2.2. In the order dated 27-10-2014 in the said appeals, the APTEL directed the State Commission to notify road map for reduction of cross subsidy as per tariff policy after following due process of law.

4.2.3. The APTEL also directed the State Commission to determine the voltage wise cost of supply in the tariff order for the year 2015-16 and the Commission has started the process to determine voltage wise cost of supply.

4.3.1. M/s Indus Towers has filed an appeal before the APTEL in Appeal No.68 of 2015 challenging suo-motu tariff order issued by the Commission on 11-12-2014 with the prayer to direct the State Commission to determine the voltage wise and category wise cost of supply and to implement the same for the future years.

4.3.2. The APTEL by orders, dated 30-11-2015, dismissed the appeal petition and directed the State Commission to implement the voltage wise / category wise cost of supply in the next tariff order and the State Commission was also directed that the cross subsidy of the subsidising categories has to be reduced every year to bring it down to the level of + 20%.

4.4.1. The National Tariff Policy notified by the Ministry of power in January 2016 specifies the following in regard to cross subsidy.

4.4.2. Clause 8.3.2 provides that for achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within  $\pm 20\%$  of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

4.4.3. Proviso to clause 8.5.1 specifies that provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

4.5. It is submitted that determination of cross-subsidy within +20% level is the final-objective which could not be achieved immediately. It could be reached over the period by reducing the cross subsidy level gradually. The cross subsidy of the subsidising categories has to be reduced every year in the manner as may be specified by the Commission to bring it down to the level of +20% of average cost of supply.

4.6. It is submitted that the present cross subsidy surcharge was determined in suo-motu tariff Order No.9 dated 11-12-2014 much earlier to the issue of National Tariff Policy dated 28-01-2016.

4.7. It is always open to the petitioner to raise the issue in any subsequent tariff determination process that may be initiated by the Commission.

4.8. Clause 8.3.2 of National Tariff Policy provides that for achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a road map such that tariffs are brought within  $\pm 20\%$  of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

4.9. Proviso to clause 8.5.1 of National Tariff Policy specifies that Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

4.10. The Cross subsidy level could not be brought within the level of  $\pm 20\%$  immediately. It could be brought to the level of  $\pm 20\%$  over the period in accordance with the roadmap to be notified by this Commission as envisaged in para 8.3.2 of Tariff Policy, 2016.

4.11. The petitioner has to wait till notification of Regulations for road map for reduction of cross subsidy as envisaged in Electricity Act, 2003 based on the National Tariff Policy 2016 by the Commission. Therefore, the present petition, before issue of notification of road map for reduction of cross subsidy, is a pre-matured one and as such liable to be dismissed.

## **5. Additional Submissions of the Petitioner:-**

In its additional submissions filed on 09-05-2017, the Petitioner has submitted as follows:-

5.1. The Hon'ble Supreme Court has been pleased to decide the issue that a Policy issued by the Government of India or any of its Departments is a mandatory change in law and is binding on all parties including the Regulatory Commission.

5.2. In its recent Judgment dated 11.04.2017 in Civil Appeal No. 5399-5400 of 2016 & Batch - Energy Watchdog v Central Electricity Regulatory Commission &Ors Honourable Supreme Court has held as under -

"Both the letter dated 31st July, 2013 and the revised tariff policy are statutory documents being issued under Section 3 of the Act and have the force of law. This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sources is cut down, :the PPA read with read with these documents provides in clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law has not occurred. Further, for the operation period of the PPA, compensation for any increase/decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. This being the case, we are of the view that though change in Indonesian law would not qualify as a change in law under the guidelines read with the PPA, change in Indian law certainly would."

5.3. The Hon'ble Supreme Court has laid down that the National Tariff Policy is a statutory document having the force of law and is binding on all.

5.4. In view of the above, there is an urgent need for the Commission to decide the present petition and determine the CSS in terms of the provisions of the National Tariff Policy, 2016.

## **6. Hearing held on 25-10-2017:-**

In the hearing held on 25-10-2017, the Commission directed that parties to file their Written Submissions within two weeks. But no Written Submissions are filed by both the parties.

## **7. Findings of the Commission:-**

7.1. The prayer of the petitioner in this petition is to re-determine the cross subsidy surcharge in accordance with the National Tariff Policy, 2016 with a ceiling limit of 20% of the tariff for the relevant category of the consumers. Before proceeding to discuss the merits of the prayer of the petitioner, it is necessary to set out the background of the implementation with regard to determination of cross subsidy surcharge in accordance with the National Tariff Policy. This is necessitated, in view of the fact that the cross subsidy surcharge is interlinked with the cross subsidy and therefore, any reduction in the cross subsidy surcharge can be effected only when there is a corresponding reduction in the cross subsidy. It has been the view for quite some time that the National Tariff Policy has only a guiding force and it is not binding on the State Commissions. The judgement of the Hon'ble APTEL in Maruti Suzuki India Limited Vs Haryana ERC (order dated 04-10-2012 in Appeal No.200 of 2011) propounded the said position of law on the strength of the pronouncement of the Hon'ble Apex Court in A.P.Transco Vs Sai Energy Renewable Pvt Limited (reported in (2011) 11 SCC 34). However, subsequently there were directions from the APTEL to the Commission to determine the cross subsidy on the basis of National Tariff Policy in Appeal No.68 of 2015 in the matter of Indus Tower Limited (Judgment dated 30-11-2015) and Appeal Nos.196 & 199 of 2013 in the matter of Tamil Nadu Spinning Mills Vs TNERC (judgment dated 27-10-2014) for notification of

road map for reduction of cross subsidy as per National Tariff Policy. As a consequential measure of compliance, the Commission also notified a roadmap for reduction of cross subsidy in the tariff order issued in 2017 in Tariff Petition No.1 of 2017 dated 11-08-2017. The Commission also determined the cross subsidy surcharge for the period 2017-18 in line with the National Tariff Policy in the said Tariff Petition dated 11-08-2017. However, it is seen from para 3.12 above that the contention of the Petitioner is for determination of CSS in terms of National Tariff Policy, 2016 in respect of the tariff covered by the Commission's order in T.P.No.1 of 2013 dated 20-06-2013 with effect from the date of coming into force of National Tariff Policy, 2016. The orders issued by the Commission generally take effect prospectively and not retrospectively. The tariff orders issued by the Commission also normally take effect from the date on which it is issued. In this connection, it is to be noted that the cross subsidy surcharge has been dealt with as an allied issue in the tariff order and the orders in regard to cross subsidy surcharge are normally to take effect prospectively i.e., from the date of issue of tariff order.

7.2. However, the prayer of the petitioner in this petition seeks implementation of the National Tariff Policy in the matter of fixation of cross subsidy surcharge at the cap level of +20% for the year 2016-17 also. This raises a question whether the effects of tariff policy issued by the Government of India shall stand implemented from the date of its publication by Gol or from the date of order of the Commission. In order to understand the issue fully, it is further necessary to examine the contours of National Tariff Policy and the concept of reduction of cross subsidy with a view to move towards  $\pm$  20% of average cost of supply. Here again, it may be noted that there are two vital factors which require consideration. Firstly, in our opinion, the

National Tariff Policy is only a visionary document which sets out the larger vision for development of electricity sector and rationalization of electricity tariff. We are of the view that the said policy does not have the mandatory force as equivalent to the regulations of the Commission especially with regard to immediacy of implementation of the policy issues contained therein. We have considered the contentions of the counsel for the petitioner that the National Tariff Policy is having a force of law. We have also gone through the judgement of the Apex Court in Energy Watchdog case (Civil Appeal No.5399-5400 of 2016, dated 11-04-2017) which is relied upon by the petitioner to support his case. However, we are of the considered view that the observations of the Apex Court in the Energy Watchdog (in Civil Appeal No.5399-5400 of 2016 and batch) case that the provisions of the NTP have the force of law were made in a different context and would not fit into the present scheme of things. It may be seen that the Apex Court in the said case was examining the grant of compensatory tariff to a generator on account of necessity to buy imported coal in view of shortage of indigenous coal and in the said context, the Apex Court made an observation to the effect that the NTP has the force of law in view of the fact that the NTP was not considered in the decision taken by the appropriate authorities. However, the facts of the present case are different. The Commission has already implemented the NTP with regard to reduction of cross subsidy as directed by the APTEL, albeit, in a phased manner and also determined the cross subsidy surcharge at the level of +20% of average cost of supply as postulated in the NTP in its Tariff Petition No.1 of 2017 dated 11-08-2017. It may not be out of place here to mention that the judgement of the APTEL in Appeal No.200 of 2011 is the one which is directly addressing the point i.e., whether the NTP is binding on the Commission and whether the regulations of the Commission are subservient to the NTP. The APTEL



has categorically observed on the basis of the judgement of the Apex Court in A.P.Transco Vs Sai Renewable Pvt. Ltd. [(2011) 11 SCC 34] that the NTP is not binding on the Commission. In the said judgement, the APTEL also came out with a categorical pronouncement that the State Commissions ought to be guided by the Tariff Policy only at the time of framing regulations and thereafter the Commissions are bound only by their own regulations. The judgement of APTEL has also been pronounced on the strength of the judgement of the Supreme Court in PTC India Vs CERC (reported in (2010) 4 SCC 603) wherein the APTEL interpreted the judgement of the Supreme Court to the effect that the regulations of the Commission are not subservient to the NTP and the Commissions shall be guided by the NTP, only while framing the regulations.

7.3. Having said so, we now proceed to examine whether there is any provision in the regulations of the Commission which makes it mandatory to implement the NTP from the date of its implementation. Obviously, we do not see any such provision to such effect. The regulation 85(3) of the Tariff Regulations of the Commission provides only for progressive reduction of cross subsidy in accordance with the road map to be notified by the Commission. The regulation 87 provides that till such time cross subsidy is eliminated, the open access consumer shall pay surcharge in addition to wheeling charges. Thus, a comprehensive reading of the regulations of the Commission make it patently clear that the surcharge shall be computed as per the TNERC Open Access Regulations and there is no stipulation that the NTP is to be given effect from the date of its notification in the matter of cross subsidy surcharge or for that matter any other or all the provisions in the NTP. It is also conspicuous to note that even the tariff policy has no provision to the effect that the

same is strictly implementable from the date of its publication. A combined reading of the NTP, the tariff regulations and the judgements of the APTEL in Appeal No.200 of 2011 dated 04-10-2012 which has been delivered on the strength of the decisions of the Apex Court in PTC India Limited and A.P.Transco's case would set out the position of law that it is only the regulations of the Commission which have to be followed for implementation of the cross subsidy surcharge. We are of the firm view that the NTP is a piece of visionary document for the guidance of the Commission and it is not having the force of law as the regulation of the State Commission has and more is to be implemented from the date of its publication. The petitioner, in our opinion, even while placing reliance on Energy Watchdog case has not read the said judgement with reference to the judgements of the Apex Court in PTC India and A.P.Transco's case which have been referred to in the judgement of APTEL which would have made it clear that the NTP is only a policy document which is implementable only through the regulations of the Commission and not as such. The question of force of law with reference to NTP as discussed in the judgement of the Supreme Court in Energy Watchdog case should be seen in the context of total failure to consider the NTP which lead to the observations that NTP has the force of law. The instant case, before us stands on the different footing. Here the NTP has been considered and implemented as may be seen from the road map drawn for the reduction of cross subsidy and determination of surcharge for 2017-2018. It is to be noted that the Commission is moving towards the object of NTP and there is no total disregard of the provisions in the NTP so as to make the judgement in Energy Watchdog case applicable here. Further, it may be seen that for the purpose of drawing a road map for the reduction of cross subsidy and fixing cross subsidy surcharge at  $\leq 20\%$  level certain pre-requisite such as collection of data from the

licensee is required and for this purpose, the exercise can be taken up only upon filing the ARR or relevant details by the licensee.

7.4. Further, in the above Tariff Order also, the Commission has determined the Cross Subsidy Surcharge for FY2017-18 as 20% of the ABR of that category of consumers.

7.5. Hence, Commission is consciously moving towards reduction of Cross Subsidy and is endeavouring and gradually move towards attaining the desired level of  $\pm 20\%$  of the Average Cost of Supply (ACOS).

7.6. With respect to determination of Cross Subsidy Surcharge for FY 2016-17 as requested by the Petitioner based on the formula provided in the revised National Tariff Policy, 2016, it can be seen that the Suo-motu Tariff Order was issued on 11-12-2014, effective from 12-12-2014 and the next Tariff order was issued on 11-08-2017 effective from 11-08-2017 and since there was no tariff order in-between, the Commission has not determined the Cross Subsidy Surcharge for 2016-17.

7.7. The revised National Tariff Policy was published on 28<sup>th</sup> January 2016 and the Petitioner has filed this petition seeking determination of CSS for FY2016-17 on 22nd August 2016. Filing of ARR on or before 30<sup>th</sup> November is specified in 5(1) of the Tariff Regulations, 2005. In respect of FY 2017-18, TANGEDCO filed the Miscellaneous Petition No. 31 of 2016 seeking time extension upto January 31, 2017 as the participation in UDAY will have direct impact on the profitability of

TANGEDCO. Commission granted the request of TANGEDCO. TANGEDCO filed the Tariff Petition on January 27, 2017 and the same was admitted by the Commission on January 31, 2017 vide T.P. No.1 of 2017. Upon filing of the Tariff Petition, Commission initiated the proceedings for Determination of Tariff and adopted the procedure for Tariff Order FY 2017-18 as per section 62 and section 64 of the Electricity Act, 2003. In the said Petition, TANGEDCO has filed the ARR for FY2016-17 to FY2018-19. Commission determined the retail Tariff, wheeling charges and Cross Subsidy and Cross Subsidy Surcharge for FY2017-18 and notified the road map for reduction of Cross Subsidy to the level of  $\pm 20\%$ .

7.8. To determine the Cross Subsidy Surcharge for any year, ABR of that category and Average Cost of Supply of that year is required. Commission can determine this only based on the Aggregate Revenue Requirement of that year. In the Tariff Petition dated 11-08-2017, Commission determined the ARR of FY2016-17 to FY 2018-19 and further determined the Tariff applicable to all classes of consumers (HT & LT) for FY 2017-18. The Commission in its Tariff Petition in T.P. 1 of 2017, dated 11-08-2017, has determined the Cross Subsidy Surcharge for FY 2017-18 as per the formula specified in the National Tariff Policy dated 28-01-2016 restricting to 20% of ABR. The ABR reflects the revenue realizable in that category by the consumption of that category.

7.9. Finally, on 25-10-2017, Commission directed both the parties to file their written submissions within two week's time but both TANGEDCO as well as the Petitioner have not filed any written submissions. Hence, it is construed that after issue of the Tariff Petition dated 11-08-2017, there were no grievance with respect to

both the parties in the matter of Cross Subsidy Surcharge determined by the Commission. As the Commission has determined the Cross Subsidy Surcharge for FY2017-18 limiting to 20% of ABR of that category of consumers, Commission has adhered to the guidelines issued in the National Tariff Policy dated 28<sup>th</sup> January 2016 while issuing the immediate next Tariff Order.

7.10. In addition to the determination of the CSS at 20% of ABR, Commission has also notified a road map for reduction of cross subsidy gradually to meet the +20% of Average Cost of Supply. In the Tariff Order itself it has been observed by the Commission that the Commission will endeavour to ensure that the above approved trajectory for reduction of cross-subsidy is adhered to the extent possible, subject to the above constraints, as no consumer category can be subject to a tariff shock, on account of reduction of cross-subsidy. In view of the same, we are to hold that the order of the Commission in regard to the implementation of cross subsidy surcharge shall take effect only from the date as mentioned in the order in T.P.No.1 of 2017 dated 11-08-2017 and not for the period prior thereto. The prayer of the petitioner for determination of cross subsidy surcharge for the period 2016-17 in line with NTP, therefore fails. In the result, the petition is dismissed.

## **8. Appeal**

An appeal against this Order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd .....)  
**(Dr.T.Prabhakara Rao)**  
**Member**

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Akshayakumar)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission