



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 623/2017

Petition No.: 09/2017

ORDER SHEET

31.07.2017

Before the Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

Premier Cryogenics Limited

-----Petitioner

Assam Power Distribution Company Limited (APDCL)

----- Respondent

In the matter of

Review Petition No. 09of 2017 for review of APDCL's Tariff Order dated March 31, 2017 regarding Truing up for FY 2014-15 and FY 2015-16, ARR for FY 2016-17 to FY 2018-19 and Tariff for FY 2017-18.

CORAM

Shri Naba Kumar Das, Chairperson
Shri Dipak Chakravarty, Member
Shri Subhash C. Das, Member

ORDER

1. The Premier Cryogenics Limited (herein after referred as "the Petitioner") has filed a Review Petition before the Commission for review of APDCL's Tariff Order dated March 31, 2017 regarding the Truing up for FY 2014-15 and FY 2015-16, ARR for FY 2016-17 to FY 2018-19 and Tariff for FY 2017-18 on May 30, 2017.
2. The Petitioner has prayed that Cross-subsidy surcharge (herein after referred as "CSS") should be 8 paise/kwh in place of the computed Cross-subsidy surcharge of Rs. 1.31/kwh. The salient submissions of the Petitioner are:
 - 2.1. Open Access consumers have been paying CSS of 55 paise/kWh as per Tariff Order for FY 2015-16 and FY 2016-17 for HT Industries-II category.
 - 2.2. CSS has been approved as 131 paise/kWh in Tariff Order for FY 2017-18 against APDCL's proposal of 110 paise/kWh, without giving the opportunity to the affected consumers.
 - 2.3. Any increase in the Cross Subsidy is prohibited by the Electricity Act, 2003 as well as various Judgments of Hon'ble Appellate Tribunal for Electricity (APTEL).
 - 2.4. Average Billing Rate (ABR) for HT category of consumers have been erroneously calculated as 873 paise/kWh, by considering incorrect number of contract load for Industrial consumers and units sold to Industrial Consumers. It is not clear from the calculation that how the installed load of 5,06,671 kVA has been worked out considering the growth rate of 2% for HT Industrial consumers and installed load of 4,28,609 kVA for FY 2015-16. Further, the assumption for units sold as 793 MU against units sold of 907 MU for FY 2015-16 as submitted by APDCL in its Petition. The Petitioner requested that ABR may be recalculated for HT Industrial II on the basis of Audited accounts for FY 2015-16.
 - 2.5. The fixed charges should not be included for computation of CSS since Open Access consumers are paying fixed charges to APDCL at the rate approved by the Commission on its connected load.

3. The Petitioner filed the review Petition on May 30, 2017, i.e. within the specified timeline as per the AERC (Conduct of Business) Regulations, 2004. Accordingly the same was admitted.
4. The Commission vide Letter dated June 07, 2017, directed APDCL to submit its view and comments.
5. Further, the Commission vide Notice dated June 07, 2017 scheduled a Hearing on the Review Petition on July 7, 2017.
6. The APDCL submitted their comments on July 04, 2017 on the review Petition filed by the Petitioner. The salient submissions made by APDCL:
 - 6.1. The Commission has computed the CSS as difference Average Billing Rate (ABR) and Average Cost of Supply (ACoS), in line with the same philosophy adopted in Tariff Order for FY 2015-16 dated July 24, 2015.
 - 6.2. As regards the consideration of incorrect contract load and units sold for Industrial consumers, APDCL submitted that the Petitioner has mentioned unit sold of 907 MU as per submission of APDCL for FY 2015-16, which is inclusive of consumption of Open Access consumers. However, the Commission has considered the units sold of 793 MU, which is exclusive of consumption of Open Access consumers.
 - 6.3. The Petitioner has proposed CSS of 8 paise/kWh as difference between tariff payable and ACoS. However, as per the formula stipulated in National Tariff Policy, 2016, the CSS should have been 254 paise/kWh.
 - 6.4. CSS determined by the Commission is in order. However, APDCL prays to pass any such Order, in view of Notification of National Tariff Policy, 2016 by Government of India, which the Commission deems fit and proper in the interest of justice based on the prevalent norms and circumstances and also give APDCL opportunity to recover ARR.
7. As scheduled, a Hearing on the Review Petition was held on July 7, 2017 in the Court Room of the Commission. Mr. Abhijit Baruah represented the Petitioner and Mr. T.N. Devchoudhury, Mr. A. K. Goswami & Mr. P. K. Baishya represented the Respondent.
8. The Petitioner and Respondent re-iterated the submissions already made vide their written submissions. The representative of the Petitioner requested that, he may be allowed to make additional submissions based on the discussions held during the Hearing. The Commission granted the opportunity accordingly.
9. On July 25, 2017, the Petitioner made certain additional submissions. The salient additional submissions made by the Petitioner are:
 - 9.1. In the Tariff Order dated 31.03.2017, it was shown that the ABR for HT Industries-II is Rs 8.73/kwh for FY 2017-18, i.e. increase of Rs 1.31/kwh from the level approved for FY 2015-16. However, the relevant consumer Tariff has not actually increased to that extent.
 - 9.2. The ABR should be considered as Rs 8.15/kwh rather than Rs 8.73/kwh. Accordingly the CSS should be Rs 0.73/kwh not Rs. 1.31/kwh
 - 9.3. The Petitioner further submitted that, ABR should be computed excluding the connected load pertaining to Open Access consumers. Accordingly, ABR would have been Rs 8.41/kwh and CSS Rs 0.99/kwh.

Analysis and Decision

10. Having heard the Petitioner and APDCL and after taking on record the submissions made by the Petitioner and APDCL, the Commission's analysis and decision arrived at is discussed in the following paragraphs:
 - 10.1. The Commission has conducted the Public Hearing on the Petition filed by APDCL on February 28, 2017 before the issuance of Tariff Order for FY 2017-18. All the consumers and stakeholders were given enough opportunity for submission of their comments and views on written form as well as during Hearing. The Petitioner was also one of the Stakeholders who submitted comments during the proceedings for passing of MYT Order.
 - 10.2. As regards the determination of CSS, the Commission in the Order dated March 31, 2017, has stated as under:

"7.5 Cross-Subsidy Surcharge

7.5.1 The Open Access consumers are liable to pay the CSS to compensate the utility for any loss of revenue due to the shifting of the consumer to the Open Access system. Eligible consumers with a connected load of 1 MW and above shall be allowed Open Access. Accordingly, HT category V (C): HT-II Industry

consumers may opt for Open Access. In future, if the connected load limit for Open Access is reduced, then HT IV – HT I Industry may also opt for Open Access.

7.5.2 In the Tariff Order dated July 24, 2015, the Commission had determined the CSS for Open Access customers for FY 2015-16, as the difference between the ABR and ACoS for the category.

7.5.3 Accordingly, the CSS for HT-II Commercial Category, HT-IV (i) and HT-IV (ii) Bulk Supply category, HT-V (C) HT Industry category, and HT-VII Oil & Coal category, computed in accordance with the above philosophy, is shown in the Table below:

Table 1: Cross-Subsidy Surcharge for FY 2017-18 (Rs/kWh)

Category	Cross-Subsidy Surcharge
HT-II - HT Commercial category	2.11
HT-IV (i) - HT Bulk Supply Government Educational Institutions	0.35
HT-IV (ii) - HT Bulk Supply Others	1.70
HT-V (C) - HT Industry above 150 kVA category	1.31
HT-VII - Oil & Coal	1.51

....” (As modified vide Erratum Order dtd 07.04.2017)

10.3. As the above said method for computation of CSS has been adopted by the Commission in line with Tariff Order for FY 2015-16. Hence, there is no error apparent on the methodology adopted by the Commission for computation of CSS

10.4. Further, Review Petitioner contented that the increase in Cross Subsidy is prohibited by the Electricity Act, 2003 and Judgments of Hon’ble APTEL. In this regard, the Commission notes that Section 61 of the Electricity Act, 2003 stipulates that tariff progressively should reflect the cost of supply of electricity. Section 42(2) of the Electricity Act, 2003 stipulates that CSS shall be utilized to meet the requirements of current level of cross-subsidy. Further, the Tariff Policy stipulates that the tariffs should be brought within $\pm 20\%$ of the Average Cost of Supply (ACoS).

The Commission in the Tariff Order dated March 31, 2017 had approved the cross-subsidy for HT-V (C) - HT Industry above 150 kVA category at level of +18%, which is within +20% of the ACoS of 742 paise/kWh. Also, ABR for many of the consumer categories have been brought within 80% to 120% of the ACoS in the said Order. As regards the determination of Cross-Subsidy, the Commission in the APDCL’s Tariff Order dated March 31, 2017 opined as mentioned below:

“6.2.3 In determining the ARR and the retail supply tariff of APDCL for FY 2017-18, the Commission has been guided by the provisions of the EA 2003, National Electricity Policy (NEP), Tariff Policy, and the MYT Regulations, 2015.

6.2.4 Section 61 of the EA 2003 lays down the broad principles and guidelines for determination of retail supply tariffs. The basic principle is to ensure that tariff should progressively reflect the cost of supply of electricity and gradually reduce the cross subsidies between categories. The EA 2003 lays down special emphasis on safeguarding of consumers’ interest and also requires that the costs should be recovered in a reasonable manner. The EA 2003 mandates that tariff determination should be guided by factors which “encourage competition, efficiency, economical uses of resources, good performance and optimum investment”.

.....

6.2.6 The Commission has carried forward the process of tariff rationalization in this Order to ensure that the tariffs of most categories are within +20% of the ACoS, while at the same time ensuring that no category is faced with a tariff shock. For categories, where the tariffs are beyond +20% of the ACoS, the Commission has ensured that the cross subsidies have been reduced.”

10.5. The approach adopted by the Commission for determining the Cross-subsidy for each of the consumer categories is in line with the provisions of the Electricity Act, 2003

10.6. Regarding the Contract Demand of HT Industries-II, the APDCL’s submission in this

regard has been considered. With regard to contention of the Petitioner that the Contract Demand should be considered after deducting Contract Demand pertaining to Open Access consumers, it is clarified that as the Open Access consumers have not surrendered their Contract Demand from APDCL, the same has to be considered part of total Contract Demand of that category.

- 10.7. The Energy Sales figure has been projected by the Commission based on the energy sales growth during the past years. It is to be noted that the Commission is not bound to accept the sales figure submitted by the APDCL. The Commission has not considered the energy sales towards the Open Access consumers while computing the ABR for HT Industries-II category. Since, ABR for each consumer category has to be determined based on projected energy sales and applicable tariff.
- 10.8. The Tariff is determined for the upcoming years and the estimated revenue to be earned is computed based on the projected figures of sales and contract demand. Therefore, the contention of the Petitioner for computation of ABR for FY 2017-18 based on the Audited Statement of Accounts for FY 2015-16 is not correct.
- 10.9. As regards consideration of Fixed Charges for calculation of CSS, the Commission clarifies that the CSS has to be computed as the difference between the Tariff and the Cost, which reflects the cross-subsidy component. The Tariff Policy states that "T is the tariff payable by the relevant category of consumers". The Tariff payable by the consumers comprises two components, viz., Demand Charge and Energy Charge. Hence, the Commission has considered the Tariff as Average Billing Rate, which comprises the Demand Charges as well as Energy Charges.

If the Tariff Policy had intended that only the Energy Charges should be considered for the purpose of calculating the CSS, then the Tariff Policy would have stated accordingly, rather than stating "T is the tariff payable by the relevant category of consumers". Out of the total cost of supply around 60%-70% is fixed in nature. On the other hand, the Fixed Tariff component of the consumers is only 10%-20% of the total Tariff. Therefore, in case the concept proposed by Petitioner is adopted, the fixed charge payable by the consumer will be much higher than the present level.

Thus, the fact that the Open Access consumers are paying the Fixed Charges does not mean that the Fixed Charges should be excluded while calculating the CSS.

In view of the above, the Commission rules that there is no error apparent on face of record regarding the computation of CSS for FY 2017-18 for HT Industries-II category. The Commission finds no merit in the submission of the Petitioner. Hence, no relief has been granted against this review Petition.

With the above observations and decisions on the issue submitted for review, the review Petition filed by the Petitioner stands disposed of.

(S. C. Das)
Member, AERC

(D. Chakravarty)
Member, AERC

(N. K. Das)
Chairperson, AERC