

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

‘Vidyut Niyamak Bhawan’, Near I.S.B.T., P.O.-Majra, Dehradun-248171

Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) (Second Amendment) Regulations, 2018.

Statement of Reasons (SoR)

- 1 The Uttarakhand Electricity Regulatory Commission had notified the open access Regulations, namely UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 (hereinafter referred to as “Principal Regulations”). Thereafter, the Commission issued the draft UERC (Terms and Conditions of Intra-State Open Access) (First Amendment) Regulations, 2016. The Commission issued draft UERC (Terms and Conditions of Intra-State Open Access) (Second Amendment) Regulations, 2018 inviting comments/objections/suggestions on the same from the stakeholders on 17.04.2018. Last date of submission of comments/objections/ suggestions was 11.05.2018. Comments/suggestions/objections received by the Commission have been duly analysed before considering them or rejecting the same.
- 2 The Commission also held a public hearing on 29.05.2018 to facilitate oral submission of the stakeholders and other interested persons. The comments/objections/suggestions of the stakeholders have also been considered. List of stakeholders who submitted comments on draft notification is enclosed at Annexure-I. List of participants who attended the hearing is also enclosed at Annexure-II.
- 3 The Statement of Objects and Reasons is being issued with the intent of explaining the rationale which went into finalisation of Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) (Second Amendment) Regulations, 2018. The comments/suggestions/objections received from the stakeholders and public and the views of the Commission on the same are discussed in subsequent paragraphs.

3.1 Regulation 22 i.e. Cross Subsidy Surcharge

3.1.1 In the draft amendment, Regulation 22 of the Principal Regulations was proposed to be substituted, namely:

“22. Cross subsidy surcharge

- (1) If open access facility is availed by any consumer, then such consumer, in addition to transmission and/or wheeling charges, shall pay cross subsidy surcharge determined by the Commission. Cross subsidy surcharge determined on Per Unit basis shall be payable, each month, by such consumer based on the actual energy drawn during the month through open access. The amount of surcharge shall be paid to the distribution licensee.*
- (2) The consumers availing Open Access through dedicated lines even without involving licensee’s Transmission and/or Distribution System shall be liable to pay same surcharge as determined under this Regulation.*
- (3) The consumers availing Open Access exclusively on interstate transmission system shall also pay the same surcharge as determined under this Regulation.*

Provided that no cross subsidy surcharge shall be levied on energy drawn by such consumers, through open access, during the period of power cut imposed by the distribution licensee.

Provided further that such surcharge shall not be levied on a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

Provided also that in case power supply position or the load of such consumers, seeking open access, changes substantially, the Commission may review the Cross Subsidy Surcharge as and when required.

- (4) The cross subsidy surcharge for open access consumers shall be determined in accordance with the following formula:*

Surcharge formula: $S = T - C$

Where,

S is the cross subsidy surcharge;

T is the retail tariff payable by the relevant category of such consumers;

C is the average cost of supply of distribution licensee”

Stakeholders Comments/Suggestions

3.1.2 UPCL submitted that third proviso to the Regulation 22 (3) should not be incorporated in the Regulations. Since the Commission calculates the Cross Subsidy Surcharge during the process of determining the Tariff and ARR of the Distribution Licensee the inclusion of said provision would therefore be in-fructuous.

Commission's View

3.1.3 The third proviso to the Regulation 22 (3) talks of review by the Commission of the Cross Subsidy Surcharge in case power supply position or the load of such consumers, seeking open access, changes substantially. The Commission at any point of time can review its decisions, if in the view of the Commission such review is necessary or expedient. Moreover, Commission has inherent powers to amend or modify tariff determined once in a financial year. Therefore, the suggestion of UPCL is not acceptable.

Stakeholders Comments/Suggestions

3.1.4 UPCL has suggested that since Open Access can be availed by any consumer, not necessarily the consumer of the concerned distribution licensee, therefore there might arise a situation where there would be difficulty in identifying the person/institution which shall be responsible for collecting the cross subsidy surcharge, hence it is necessary to lay down a provision regarding collection of cross subsidy surcharge in such cases.

Commission's View

3.1.5 The Commission is of the view that Cross Subsidy Surcharge is payable only to Distribution Licensee of the area by Open Access Consumers and there is no ambiguity about it. Hence, it is not necessary to lay down a separate provision indicating the agency responsible for collection of Cross Subsidy Surcharge.

Stakeholders Comments/Suggestions

3.1.6 UPCL has stated that as no rationale was given in the SoR for Open Access Regulations, 2010 & Open Access Regulations, 2015, for exempting long term/ Medium term open access consumers from levy of cross subsidy

surcharge, therefore, there is no justification to provide rational for the same in the SoR of the present Draft Regulations as the retrospective assumption will create complexity and will impact prejudice the right of UPCL and ultimately have adverse impact upon certain consumers of the State.

UPCL further submitted that, since the Commission, in the SoR, has itself recognised Cross Subsidy Surcharge as compensation to the Distribution Licensee, therefore, cross subsidy surcharge is payable by all subsidizing consumers opting for open access without any discrimination irrespective of the supply and demand position in the State. UPCL further stated that present amendment should be issued as a clarification of earlier Open Access Regulations to remove the ambiguities if any, in the provisions of the English version of the existing Regulations and consequently the date of applicability should not be 01.04.2018 but the same should be the date by which the respective Open Access Regulations, 2010 and 2015 were made effective.

3.1.7 UPCL further stated that three judgements quoted in SoR, one, judgement of Hon'ble APTEL, dated 09.02.2010, was issued before the issuance of UERC Open Access Regulations, 2010 and two judgements one by Hon'ble Supreme Court and another by Hon'ble APTEL were issued before issuance of the Principal Regulations. All the said judgements justified imposition of Cross Subsidy Surcharge on all the subsidizing consumers opting for open access. Had the Commission deferred from the intent of the above Orders then the Commission would have deliberated on the issue before finalizing of the above Regulations which was not done meaning thereby, that the Commission never intended to deviate from the mandate of the Electricity Act, 2003 or from the intent of the judicial pronouncement.

3.1.8 Open Access User Association (OAUA) also contended that power surplus or deficit has no role to play on levy of Cross Subsidy Surcharge and therefore, requested the Commission not to allow the draft amendment. Further, the Association has also sought clarity on the methodology adopted for calculation of Cross Subsidy Surcharge.

Commission's View

3.1.9 The Commission, as is mandated by the Act, exempted Long term/Medium term open access consumers from the levy of cross subsidy surcharge, to promote Open Access, while framing the now repealed UERC Open Access Regulations, 2010 and the Principal Regulations. The Commission feels that the issues raised by UPCL in its written comments now, should have been raised during the proceedings carried out before finalization of the aforesaid Open Access Regulations. The Commission its Order dated 12.04.2018 had very categorically stated that Long-term/Medium-term open access consumers would have worked out the economics and viability of cost of power sourced through open access without factoring in the levy of cross subsidy surcharge, therefore, they cannot be burdened by levy of cross subsidy surcharge retrospectively which was then not applicable as per the Regulations. Therefore, the Commission does not accept the comments/suggestions of UPCL including its suggestion that date of applicability of Cross Subsidy Surcharge on long-term/medium term open access consumers should not be 01.04.2018 but should be the date on which the respective open access regulations 2010 and 2015 were made effective.

3.1.10 With regard to the contention of Open Access User Association the Commission is of the view that under the light of the judicial pronouncement made by Hon'ble Supreme Court and Hon'ble APTEL it is mandatory for every subsidizing consumer to pay Cross Subsidy Surcharge when it decides not to take supply from the Distribution Licensee of the area. With regard to the clarity sought by the Association regarding methodology adopted for Cross Subsidy Surcharge, the Commission is of the view that methodology for determination of Cross Subsidy Surcharge is in vogue since notification of UERC Open Access Regulations, 2010 and no change in such methodology has been proposed in the present in the instant amendment.

By order of the Commission,

(Neeraj Sati)
Secretary

Annexure-I

List of Stakeholders

Sr. No.	Name	Designation	Organisation	Address
1.	Sh. L.M. Verma	Director (F)	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeta Gabar Singh Bhawan, Kanwali Road, Dehradun.
2.	Sh. Vedant Sonkhiya	Legal Officer	Open Access User Association (OAUA)	2 nd Floor, D-21, Corporate Park, Sector- 21, Dwarka, New Delhi- 110075

Annexure-II

List of Participants

Sr. No.	Name	Designation	Organisation	Address
1.	Sh. Muneer Alam	Executive Engineer	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeta Gabar Singh Bhawan, Kanwali Road, Dehradun.
2.	Sh. Anuraj Sharma	Advocate	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeta Gabar Singh Bhawan, Kanwali Road, Dehradun.