
**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No. 16 C-1, Miller Tank Bed Area, Vasantha Nagar, Bengaluru- 560 052.**

Dated: 17th November, 2023

Present

Shri P. Ravi Kumar	.. Chairman
Shri H.M. Manjunatha	.. Member (Legal)
Shri M.D. Ravi	.. Member

N/68/2023

**FURTHER ORDERS ON ADDITIONAL SURCHARGE AS PER THE DIRECTIONS OF THE
ORDERS IN WP No. 10401/2023 AND OTHER CONNECTED PETITIONS ON THE FILE
OF HON'BLE HIGH COURT OF KARNATAKA**

1. In compliance of the Orders of the Hon'ble Appellate Tribunal dated 15.09.2022 in Appeal No. 260/2018 and Appeal No.43 of 2021, to demonstrate the existence of factors like stranded cost due to consumers opting for open access, to justify the levy of Additional Surcharge, the Commission vide its Tariff Orders dated 12.05.2023, had determined the Additional Surcharge of Rs. 1.48 per unit applicable to all Open Access transactions in the State of Karnataka. The said Order was challenged by Soham Renewable Energy India Private Limited and Another Vs. Karnataka Electricity Regulatory Commission and others in W.P. No. 10401 of 2023, wherein the Hon'ble High Court set aside the impugned order in so far as it related to levying additional surcharge. The relevant portion of the Order dated 19.06.2023 of the Hon'ble High Court is reproduced below:

“5. In view of the aforesaid facts and circumstances and the material on record, which indicates that the impugned order has been passed in violative of principles of natural justice coupled with the aforesaid memo filed on behalf of the KERC, without expressing any opinion on the merits/demerits of the rival contentions, I deem it just and appropriate to set aside the impugned order and remit the matter back to the KERC insofar as it relates to levying of additional surcharge of Rs. 1.48 per unit applicable to all open access

transactions for reconsideration afresh in accordance with law after providing/furnishing the data submitted by the PCKL to the petitioner and others and also provide them an opportunity and hearing in this regard.

6. *It is also relevant to state that on 30.05.2023 while staying the impugned order, this Court directed the petitioners to continue to pay surcharge at the rate of 35 paise per unit and the said interim order remains in force even till today. Under these circumstances, though the 2nd respondent – BESCOM has raised bills applying the rates as per the impugned order, in view of the present order, whereby the impugned order is set aside, I further direct the petitioners to continue to pay the additional surcharge at the rate of 35 paise till the 1st respondent-KERC passes appropriate orders in accordance with law. It is needless to state that the said payment by the petitioner at 35 paise per unit would be without prejudice to the rights and contentions of both sides and all rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same."*

In compliance of the directions in Writ Petition No.10401 /2023 dated 19.06.2023 and followed by similar orders passed by the Hon'ble High Court in WP No: 12205 of 2023, Writ Petition No. 12375 of 2023, WP No. 12666/2023, WP No. 13862/2023 and Other Writ Petitions remanded to hear with respect additional surcharge in WP No. 201775/2023, WP No. 201655/2023 pending before the Hon'ble High Court of Karnataka, Dharwad Bench and WP Nos. 13214/2023, 13215/2023, 13228/2023, 13230/2023, 12575/2023, 12763/2023 and 12254/2023 pending before the Hon'ble High Court of Karnataka, Bengaluru Bench, the Commission scheduled a hearing in the matter on 18.08.2023 and issued a public hearing Notice which was published in English newspapers namely – Deccan Herald & Times of India and Kannada newspapers namely – Prajavani & Vijayavani on 18.07.2023. In addition, individual notices were sent to the petitioners, PCKL and the State distribution licensees. The Commission had also uploaded the notice on its website along with the data furnished by PCKL, for information of the stakeholders.

2. In response to the above notice written submissions were made by several stakeholders. The list of stakeholders who made written submissions is

enclosed as annexure to this order. The gist of written submissions made is enumerated below:

- i. Under Section 42(4) of the Electricity Act 2003, the Additional surcharge shall be levied to meet the fixed cost incurred by the distribution licensee arising out of his obligation to supply. Section 86(1)(e) mandates that renewable energy is to be promoted. Therefore, Additional Surcharge should not be calculated and levied in a manner that defeats the provisions of the parent statute.
- ii. The Tariff Policy, 2016 mandates that imposition of additional surcharge should not be so onerous so as to make open access unviable. Further, Additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear the fixed costs consequent to such contract. However, the fixed costs related to network assets would be recovered through wheeling charges. Therefore, Additional Surcharge is levied only for compensating the stranded fixed costs of the distribution licensees, which are attributable to power purchase costs which are unavoidable obligations under the PPAs.
- iii. The Central Government Rules, 2022, specify that Additional Surcharge will not be collected from green energy open access consumers if they are paying fixed charges of the distribution licensees. The KERC Green Energy Open Access Regulations, 2022 also specify that open access consumers paying full fixed charges of the licensee does not have to pay Additional Surcharge. It is submitted that Regulations have to be interpreted and implemented in a manner which is aligned to the Rules. Hence, the words 'full fixed charge' cannot be interpreted in any other manner except fixed charges as determined by the Commission in the retail supply tariff.
- iv. The clarification dated 08.06.2023 issuing clarification by the Commission cannot override the plain meaning of the Central Government Rules and the State Regulations. The said order which in effect amends the regulations cannot be implemented as it was

passed without following due process. It cannot now be held that Additional Surcharge will be recovered from the green energy open access consumers as 'full fixed charges' are not being recovered from the consumers in the State. It is pertinent to note that in the present year, the Commission has increased the fixed charges so that out of Rs.31236.21 Crores an amount of Rs.22202.66 Crores is recovered through fixed charges and remaining by the variable cost which amounts to recovery of 71.08% of the overall fixed cost as against just 57%-20% recoveries in previous years. Therefore, no Additional Surcharge can be recovered from green open access consumers as they are already paying full fixed charges as determined under the retail supply tariff against their contract demand.

- v. Further, in the past, this Hon'ble Commission in accordance with the parent statute and Tariff Policy, provided reduced Additional Surcharge to consumers drawing power from renewable energy sources through open access. However, in the present year, not only has the tariff order dated 12.05.2023 failed to provide reduced Additional Surcharge to the open access consumers, further, despite the clear wordings of the Central Government Rules that no Additional Surcharge is to be recovered, it has imposed full Additional Surcharge on the green energy open access consumers.
- vi. As per Article 254(1), any provision of State Law if repugnant to the provision of Central Law, then the Parliamentary Law would prevail.
- vii. The Ministry of Power vide its letter dated 13.05.2023 has observed that SERC's GEOA Regulations are not completely aligned with the Rules and the Rules framed under the Act have the force of Law and any violation of the Law is liable for action.
- viii. Further, vide letter dated 02.06.2023, the Ministry of Power Gol replying to Government of Uttar Pradesh has stated that the GEOA Rules are subordinate legislation which is notified after consultation with stakeholders and after being laid before both the houses of Parliament. Therefore, all concerned are duty bound to comply with the Rules.
- ix. Fixed charges are levied to recover the fixed cost incurred for arranging power supply to consumers which includes fixed cost of

generation, transmission and distribution. The Commission in the tariff order for FY24 has increased the fixed charges to recover 71.08% of the total fixed cost as against 57% to 20% in previous years and has also considered the surplus / deficit of previous years. The previous years' fixed cost is also passed on to be recovered under ASC which is not attributable to OA consumers as such consumers have already paid previous years' charges.

- x. A consumer sourcing RE power is under the ambit of contract / fixed demand charges which he is paying to the tune of 71% and the balance in variable cost. Thus, again paying 100% of transmission and wheeling charges will amount to OA Consumers paying 171% of wheeling charges. Further, a consumer under third party open access would pay 271% of above charges. Thus, it is not correct to levy ASC in case of OA from RE sources where the consumers pay the FC. Various factors like old plants, higher maintenance cost, coal linkage, inefficiencies also contribute to stranded cost. Also, preference of DISCOMs to buy RE power which is cheaper results in stranded cost. Thus, as per BESCO the total open access power vis-à-vis stranded power is 26.43% and considering 6859MU under OA the stranded cost would be Rs.0.159 /unit and not Rs.1.48/unit.
- xi. Even if the Commission decided to levy ASC, it shall be 29% of ASC as calculated by the Commission considering the difference of total fixed cost to be recovered and the total fixed cost included in the demand charges.
- xii. Increased ASC would impede industrial growth. It will also force the industries to use fossil fuels which will increase pollution. The increase would lead to reduced production and overall economic output.
- xiii. The methodology adopted for determination of ASC for FY24 is inconsistent with the earlier approach adopted by the Commission.
- xiv. While calculating the backdown energy and corresponding fixed charges, ESCOMs have considered the differential energy corresponding to 100% normative annual plant availability factor and energy scheduled. However, this is incorrect, as even if ESCOMs do not off-take energy up to 85% of Net Annual Plant Availability Factor

- (NAPAF), they do not incur any additional cost, as ESCOMs have to pay 100% of FC even when they procure energy up to 85% NAPAF.
- xv. Considering the submissions made by BESCO that the stranded fixed cost is Rs.414.50 Crores, OA energy of 6859.7MU and back down quantum of 25955MU, the ASC attributable to OA consumers is Rs.0.016 / unit.
 - xvi. The backing down of generators occur due to various reasons such as MoD due to low demand, high RE generation, non-availability of Coal, commercial decision of utilities to source cheaper power etc., The data submitted does not provide the basis for arriving at stranded capacity.
 - xvii. The fundamental premise in Tariff Order FY24 is that a portion of fixed charges is recovered through energy charges. Any ASC should account only for unrecovered portion of FC i.e., embedded in energy charges. In the methodology adopted the fixed charged already recovered through demand charges is not reduced from stranded fixed charges.
 - xviii. PCKL has sold considerable quantum of power in exchange in FY22 and FY23. In such a scenario the issue of stranded FC does not arise.
 - xix. The data furnished by the PCKL for determination of additional surcharges for FY24 pertains to FY22, which is irrelevant. Further, FY22 being a Covid year with gross abnormalities and considerable demand suppression, does not speak well of the bonafide of the data.
 - xx. It is not clear as to whether the stranded energy is reckoned with respect to installed capacity or normative PLF capacity on which FC is based or the declared availability.
 - xxi. For November 21st, stranded energy is claimed with respect to Kudankulam, Kaiga and MAPS Nuclear Power Stations which have must run status and there is no fixed cost.
 - xxii. There is no method or principle specified to arrive at stranded energy. The Commission should have laid down criteria and also determine as to when the stranded cost can be attributed to particular causes. Criteria for declaring that stranded cost is under recovered is to be specified.

- xxiii. Power purchase capacity contracted for future requirement cannot be treated as stranded for the current year.
- xxiv. OA capacities being established over years cannot be considered to cause stranding of licensees' power purchase capacity. Only new OA (say six-months and after) can be considered as causing stranded capacity.
- xxv. The RE contracted by the licensees also cause stranding of thermal capacity which cannot be considered for ASC.
- xxvi. Clear distinction of stranding of energy and stranding of fixed cost is required, as ASC can be considered only if fixed cost is stranded due to OA transactions.
- xxvii. As per the Tariff order of ESCOMs, the entire ARR of Rs.58110 Crores is recovered through sale of 63735 MU. Hence, the case for levy of additional surcharge does not arise. The fixed cost of power purchase of ESCOMs is Rs.9742 Crores which is fully met out of the total revenue of Rs.22203 Crores. Therefore, there is no requirement to levy additional surcharge for recovering the fixed cost obligation of power purchase. Only in case where the OA sale is part of total sale of power, there arises the need for recovery of ASC.
- xxviii. Out of unrecovered portion of total fixed cost of Rs.8943 Crores, the unrecovered portion of total fixed cost attributable to power purchase is Rs.2797 Crores (31% of 8943 Crores) and the ASC considering the total sales of 63735MU would be Rs.0.439 / unit.
- xxix. While solar is exempted from CSS and ASC, the same should be extended to wind also to have level playing field.
- xxx. The net realization rate for wind generators which are not under GEOA is Rs.2.57 / unit and it is Rs.1.47 / unit for those under GEOA, which is less than the generation tariff of Rs.3.34 / unit and APPC of Rs.4.25 / unit determined by KERC.
- xxxi. It is suggested that OA consumers who are paying CSS and unable to compete, shall be allowed to sell power in the exchange with banking facility of three-months.
- xxxii. The data provided by the distribution licensee does not provide for any adjustment of fixed charges already paid by open access consumers.

It is respectfully submitted that the fixed charges have to be adjusted to arrive at actual stranded fixed costs.

- xxxiii. The Commission has computed the Additional Surcharge for green energy open access consumers by giving effect to the Clarification dated 08.06.2023, which will be in violation of Article-14 of the Constitution. Only such fixed charges may be recovered from distribution licensees' consumers (both embedded open access consumers and regular consumers) as that fixed in the tariff order. The open access consumers cannot be made to pay Additional Surcharge simply because the entire fixed charge of the licensee is allegedly not being passed through in tariff. The additional fixed charges which are not allowed as pass through in the tariff order, cannot be recovered from open access consumers by way of Additional Surcharge.
- xxxiv. For the purpose of the determination of the additional Surcharges for FY 2023-24, BESCO has relied on the back down data of FY 2021-22 and not on basis of stranded power in FY 2022- 23. It is submitted that in all other states the data for reference is taken for the last 6 months of back down to be more realistic. Even if the last 6 months' data cannot be obtained at-least it needs to be of the last financial year and not 2 years' back data. Further, during FY 2021-22, the entire country experienced a sudden drop in the consumption of all the consumers due to pandemic. Thus, the pandemic year's data cannot be taken as a reference for determination and application of the same in the normal operating years and that to after two financial years.
- xxxv. With regard to computation of additional surcharge, the Hon'ble APTEL in its order dated September, 2022 in Appeal No. 260 of 2018, had held the following:

"6. We agree that the basic rationale for imposition of additional surcharge is that the distribution licensees having entered into Power Purchase Agreements (PPAs) based on the demand in the State, under which there is an obligation to pay fixed charges, are entitled to the compensatory relief in the nature of additional surcharge. But, for this it is necessary for the distribution licensee demonstrates that they are unable to schedule power under the PPAs on account of open access customer taking power from other sources, the power procured by the licensees consequently getting stranded, this resulting in

obligation on their part to pay fixed charges, the relief in the nature of additional surcharge being compensatory [SESA Sterlite v. OERC reported in (2014) 8 SCC 444 and Maharashtra State Electricity Distribution Company Limited v JSW Steel Limited & Ors. (2022) 2 SCC 742]"

xxxvi. Further, the Hon'ble Supreme Court has discussed the reasoning for levy of Additional Surcharge in the following Orders:

a. SESA Sterlite v. OERC reported in (2014) 8 SCC 444:

"25. The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts - one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects."

b. Maharashtra State Electricity Distribution Company Limited v JSW Steel Limited & Ors. (2022) 2 SCC 742

"13. Ordinarily, a consumer or class of consumers has to receive supply of electricity from the distribution licensee of his area of supply. However, with the permission of the State Commission such a consumer or class of consumers may receive supply of electricity from the person other than the distribution licensee of his area of supply, however, subject to payment of 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. There is a logic behind the levy of additional surcharge on the charges of wheeling in such a situation and/or eventuality, because the distribution licensee has already incurred the expenditure, entered into purchase agreements and has invested the money for supply of electricity to the consumers or class of consumers of

the area of his supply for which the distribution license is issued. Therefore, if a consumer or class of consumers want to receive the supply of electricity from a person other than the distribution licensee of his area of supply, he has to compensate for the fixed cost and expenses of such distribution licensee arising out of his obligation to supply. Therefore, the levy of additional surcharge under sub-section (4) of Section 42 can be said to be justified and can be imposed and also can be said to be compensatory in nature. However, as observed hereinabove, sub-section (4) of Section 42 shall be applicable only in a case where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the person – distribution licensee of his area of supply."

Therefore, it is a settled principle that one needs to determine stranded capacity and fixed costs under the PPA to determine Additional Surcharge. However, the data submitted by BESCO is in violation of the judgments. Firstly, the data fails to establish that there was stranded capacity as data for the previous financial year has not been provided. Secondly, the break-up of fixed charges under the PPAs has not been provided. There is also a requirement for adjustment of fixed charges already recovered from the open access consumers from the total stranded fixed costs to arrive at Additional Surcharge. The objector has requested the Commission to adjust the fixed charges and T & D charges already collected from the open access consumers to arrive at the actual stranded costs under the PPAs.

- xxxvii. As per Section-42(4) consumer is liable to pay ASC as may have specified by the Commission through Regulations. However, the Commission has determined ASC by way of the tariff order. Therefore, ASC cannot be imposed.
- xxxviii. The ASC is determined based on the data furnished by PCKL. PCKL is neither a licensee nor a statutory entity. The determination should be based on the data and documents furnished by parties and not based on extraneous data.
- xxxix. The payment of FC without taking power can be due to various factor such as power delivered under PPA, drawal of power under UI,

purchase from CGS and open market, captive consumption by OA consumers, MoD, ESCOMs' decision not to purchase costly power. There is no segregation of so-called losses on account the payment of FC without taking power. Hence, OA consumer cannot be penalized.

- xli. Relief cannot go beyond prayer and there was no prayer to fix ASC in tariff petitions filled by ESCOMs.
- xlii. Act does not empower KERC to determine tariff with retrospective effect. However, the tariff order was issued on 12.05.2023 and the tariff was made applicable retrospectively for the energy consumed from first meter reading date falling on or after 01.04.2023.
- xliii. The request of BESCO does not conclusively establish that they are unable to recover the stranded capacity charges an account of open access. Factual details to demonstrate the same is not furnished.
- xliiii. As per Section-42(4) of the Electricity Act, 2003 additional surcharge is to compensate for the power that it stranded due to the obligation of the licensees to pay fixed charges under PPA. In this regard, reference has been made to Hon'ble Supreme Court order in the case of SESA Sterlite Limited V. Orissa Electricity Regulatory Commission and Ors, (2014) 8 SCC 444, para 27 and 30 and Maharashtra State Electricity Distribution Company Limited v JSW Steel Limited and Ors, (2022)2 SCC 742, para 14. Further, reference is also made to the provisions of tariff policy. Does the burden to prove the existence of conditions for levy of additional surcharge is on the distribution licensees in this regard, the following basic data needs to be considered:
 - (i) Whether the distribution licensees have in fact backed down any long term power source, during the time blocks when there was open access consumption;
 - (ii) Whether the distribution licensees have procured power on short term basis. This would obviously mean that the distribution licensees are not able to meet the demand through long term sources, or otherwise the backing down of the long-term sources was due to other considerations such as tariff, and not due to open access consumers;

- (iii) Whether the distribution licensees have effected power cuts or regulated power supply in the State. This would imply that there is insufficient power to meet the demand in the State.
- xliv. The distribution licensees consistently and on RTC basis are purchasing power on short-term, which show that there is shortage of electricity or otherwise the non-scheduling of long-term sources is due to tariff or other reasons.
- xlv. 15-minutes block-wise data of OA consumption is not furnished. The stranded capacity due to OA has to be in the same time block. The distribution licensees have assumed that all OA with drawl has resulted in backing down of long-term power purchase commitments. The backing down is attributed by BESCO to high variable cost under MoD and not due to OA consumers.
- xlvi. In the tariff order, the Commission has increased the fixed charges of HT consumers on the ground BESCO is under recovering the fixed cost due to OA consumers, there is no reason for levying ASC.
- xlvii. While determining the ASC the Commission shall ensure that the same is less than 50% of the wheeling charges, in line with the proposed Electricity Rules of GOI .
- xlviii. The Commission was earlier levying 1/3 of ASC determined and sudden increase in ASC amounts to depromoting renewables.
- xlix. The back down data indicated by PCKL is not on account of OA but because of high cost of power. The additional surcharge based on PCKL data does not adequately demonstrate the existence of factors justifying such levy.
- I. The open access consumers cannot be made responsible for creation of stranded capacity, as ESCOMs are signing PPAs independent of OA consumptions.
- li. The following points needs to be considered during determination and levy of ASC:
- a) Additional surcharge for obligation of supply will only be applicable if 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 which it is not able to meet from the existing revenue.

- b) The Additional surcharge determined should not be so onerous that it eliminates competition.
 - c) If the licensee is able to recover its fixed cost obligations through the retails supply tariff order, then no additional surcharge should be levied. Any fixed cost recovered should be factored while determining ASC.
- lii. As per the tariff order the stranded capacity is more than open access capacity, establishing that backing down is not solely attributable to OA.
 - liii. Fixed cost obligation needs to be calculated based upon actual backing data due to OA drawl, that to in 15-minutes' time block.
 - liv. Fixed cost already recovered under retail tariff needs to be factored.
 - lv. Open access sales is 11% of approved sales for FY24. Proportionate fixed charges would be Rs.2474 Crores which is more than the stranded capacity charges of Rs.1052 Crores, implying that OA consumers are paying more fixed cost.
 - lvi. The stranded capacity will vary month on month and for each ESCOM and charging the same ASC is not correct.
 - lvii. Increase in CSS and ASC for old projects is not reasonable and against promissory estoppel.
 - lviii. The total charges of open access are about 62% of HT tariff and is too high, leaving only 23% of the tariff for the developers.
 - lix. ASC should be determined based on scientific methodology and credible data while computing ASC the short term purchase, load shedding, purchase of RE by DISCOMs to meet RPO has to be considered to compute stranded capacity.
 - lx. The fixation of ASC based on PCKL data, without notice to general public is in violation of natural justice. The Commission cannot merely depend not upon such data and should ensure the correctness or otherwise of the data.
 - lxi. BESCOM & MESCOM have requested to continue the ASC as per tariff order 2023.

3. The Commission conducted the public hearing on 18.08.2023. the gist of submissions made during the public hearing is as follows:
 1. Sri. Gopal Choudhary, Advocate for Matrix Wind Energy Pvt. Limited, submitted the following:
 - a. The Additional Surcharge (ASC) attributable to open access consumers need to be considered whereas PCKL while computing ASC has considered the cost of energy backed down which is attributable to various reasons. With the data considered by PCKL ASC cannot be determined.
 - b. The levy of ASC will add to the cost of purchase by the OA consumers and will affect the generators directly.
 - c. The consumer has the Contract Demand (CD) with the licensee and the maximum demand recorded will be normally less than the CD. However, the consumer pays fixed charges for the maximum demand recorded or 85% of the CD whichever is higher. This fixed charge recovered from the consumers is not factored in the calculations.
 - d. The computation should consider the stranded cost and not the stranded capacity. The onus lies on the distribution licensees to prove that the fixed cost is stranded due to open access.
 - e. The stranded capacity data considered is for FY22, which was a Covid year and is not representative, as the demand was low and backing down was high. However, the Fixed Charges (FC) of FY23 is considered for computing the ASC, which is not correct. Thus, the case for levying ASC is not made out.
 - f. PCKL has not given the availability data of 15-minute block-wise. It is not known whether the stranded energy is worked out with respect to the declared capacity in each 15-minute block.
 - g. PCKL has not listed the reasons for backing down. The backing down may not be only due to OA transactions it may be due to other reasons like MoD, purchase of cheaper power based on commercial decisions, IEX purchases, backing down of CGS stations etc. PCKL should have considered only such stranded

capacity and cost attributable to OA transactions alone while computing ASC.

- h. PCKL in the month of November, 2021 has considered the cost of atomic power stations, which have a single part tariff while computing ASC. This is not correct.
- i. The FC of February, 2023 is considered for computation of ASC which does not tally with the FC arrived at from the Tariff Order 2023.
- j. The Commission should lay down the criteria to arrive at the stranded energy. The stranded capacity pertaining to new power stations should not be loaded on to existing OA consumers as these plants are created for future demands.
- k. The licensees should forecast OA consumption for future years and should enter into PPA only after ascertaining the demand requirement of ESCOMs. Over procurement leads to backing down which cannot be attributed to OA.
- l. The Commission in its Tariff Order, 2023 has approved an ARR of Rs. 58,110 Crores which includes total fixed cost of Rs. 31,146 Crores including power purchase fixed cost of Rs.9742 Crores. Further, in the same Tariff Order the revenue realized through tariff is Rs. 58,110 Crores which includes Rs. 22,203 Crores of fixed cost recovery through demand charges and Rs.8943 Crores of fixed cost recovery through energy charges. Thus, when the entire fixed cost of Rs. 31,146 Crores is recovered through Tariff there is no stranded fixed cost and therefore ASC cannot be levied. The GEOA Regulations of the Commission also specified that if full FC is recovered in Tariff ASC cannot be levied.

2. Sri Sridhar Prabhu, Advocate, representing Kare Power Resources Pvt., Ltd., Brindavan Hydropower Pvt Ltd., Pioneer Power Corporation Ltd., Narayanapur Power Company Pvt. Ltd., Dalmia Cement (Bharat) Ltd., and Graphite India Ltd., made the following submissions:
 - a. The stranded assets are referred to in Clause 4.6.3 of the grid code under transmission planning, which specify that The long term

applicants seeking transmission service are required to indicate their end-to-end requirements well in advance, considering time required for implementation of the transmission project, to the STU so as to make-available the requisite transmission capacity and minimize situations of congestion and stranded assets. Thus, at the planning stage, care should be taken to see that stranded assets are minimized.

- b. The power purchase agreements of CGS stations and several State generating stations are not approved by the Commission. Therefore, the fixed cost of such stations cannot be considered in the computation of OA charges.
- c. Section-42 (4) mandates the Commission to specify additional surcharge through Regulations. With no such Regulations in place ASC cannot be levied.
- d. As per the KERC 2004 OA Regulations, the ASC has to be determined on a case to case basis. The Commission in the Tariff Order, 2023 has determined a generic ASC and not on a case to case basis as envisaged in the Regulations.
The Commission informed that the Regulation has been amended and as per the First Amendment the need for determining ASC on a case to case basis is done away with.
- e. The consumers who are responsible for stranded cost has to be identified to levy ASC.
- f. The GEOA Regulations specify that if full fixed charges are paid, ASC cannot be levied. Since, the OA consumers are paying the FC as determined by the Commission, ASC cannot be levied. If ASC is levied again it will amount to double charging of the same cost.
- g. PCKL is not a licensee. Therefore, study need to be done by KERC and the licensee should have furnished the data.
- h. In terms of grid code, SLDC should endeavor to ensure that stranded assets are not created. SLDC should also give reasons for backing down attributing such back down to each source.

- i. Referring to Dalmia Cement, it was submitted that OA consumer will pay ASC plus FC whereas a generator under open access pays only ASC. Thus, OA consumer is being charged twice for the same cost.
3. Sri. Vivek Ranjan, Amplus Solar submitted the following:
 - a. There is inconsistency in the approach in determining the ASC. The Commission in the Tariff Order, 2023 has followed an approach which is different from the approach adopted in the earlier orders. Therefore, to have consistency the methodology has to be specified through Regulations as done in MERC.
 - b. The fixed cost is being paid up to 85% availability and only if it less than 85% there would be financial implications. Thus, ASC should be computed with respect to the availability.
 - c. The fixed charges realized through Tariff is not factored.
 - d. As per the MoP Order dated 28.06.2023, as per the draft Electricity Amendment Rules, the ASC should be 50% of the wheeling charges. The Commission may consider adopting the same.
4. Sri. Ashu Gupta, DISPA while reiterating the written comments furnished, made the following submissions:
 - a. The open access consumers having contract demand with the licensee would pay the fixed charges as determined by the Commission in its tariff orders. The payment of 100% transmission & wheeling charges amounts to paying the same charges twice.
 - b. A consumer sourcing RE power is under the ambit of contract / fixed demand charges which he is paying to the tune of 71% and the balance in variable cost. Thus, again paying 100% of transmission and wheeling charges will amount to OA Consumers paying 171% of wheeling charges. Further, a consumer under third party open access would pay 271% of above charges. Thus, it is not correct to levy ASC in case of OA from RE sources where the consumers pay the FC.

- c. As per BESCOM's submission in the Tariff Petition Rs.414 Crores is the stranded cost. Considering the Open access consumption of 6825MU, 26% of the above cost is attributable to OA. Thus, the ASC works out to 15.9Paise / unit and not 148 Paise / unit.
 - d. Only the back down charges of thermal stations attributable to OA need to be considered.
 - e. Referring to the 2019 Tariff Order it was submitted that there are certain calculation errors and therefore, the ASC determined at Rs.1.71 / unit is not correct.
 - f. As done in other Commissions, data of previous six-months' needs to be considered. However, FY22 data considered by PCKL for computing ASC for FY24 is irrelevant.
 - g. The landed cost of OA power with the ASC of Rs.1.48 / unit is higher. As per the Tariff Policy, such charges cannot be high.
5. Mrs. Mandakini Gosh, representing Clean Max, Solar presented the following:
- a. The embedded consumer pays FC. Therefore, as per GEOA Rules, such consumers need not pay ASC.
 - b. The GEOA Regulations of KERC has added the word 'Full' to the fixed charges which is not envisaged in the GEOA Rules. As per Section 181 of EA 2003, the Regulations should be consistent with the Act and the Rules framed thereunder. In case of inconsistency the Rules will prevail.
 - c. The data considered pertains to FY22 which is a pandemic year and is not representative.
 - d. Back down data is not correlated to the open access transactions. Without such correlation being established, ASC cannot be levied. Further, 15-minutes' open access data needs to be considered as per Hon'ble APTEL's Order. In this matter, the Commission enquired as to whether Clean Max would provide 15-minutes data of open access transactions. It was replied that as

per WBA schedules are being furnished and SLDC is having the data.

e. As per the Tariff Order 71% of the fixed cost is recovered through demand charges. The remaining which is embedded in energy charges can only be recovered.

6. Sri Rajendra M.C, Advocate for Soham informed that written submission has been made and additional submissions would be filed shortly.
7. Sri Annaiahchari raised issues pertaining to Tariff slabs which was not the matter of the current proceedings.
8. Sri Gurudath, representing Manjushree, submitted that when there is no demand, there is stranded energy attributable to OA consumers. All the charges like transmission, wheeling and FC is loaded on industrial consumers, who are being penalized. In addition to Tariff increase, the increase in ASC is an additional cost which would affect the industries. Hence, ASC should not be levied. KERC should balance the interest of generators and the consumers.
9. Sri. SV Nesargi, DGEPL submitted the following:
 - a. The cost of open access transactions will be around Rs.9.40/unit considering all the charges, as against the energy charges of Rs.7.40/unit determined by the Commission. This means that the wind generator who is not under GEOA has to sell power at Rs.2.57 / unit and under GEOA at Rs.1.47 / unit, which is far below the generic tariff determined by the Commission at Rs.3.34 / unit. Therefore, with the current charges third party open access is not viable.
 - b. In addition to above the sale of power by DISCOMs at Rs.6 / unit under DERS scheme is affecting the third party sale under OA.
 - c. The proposed OA charges affects only 25% of the OA transactions, as solar generators and CPPs are exempted from ASC.

- d. ASC should be removed and CSS should be limited to 15% of the category tariff instead of 20%.
 - e. Wind generators with WBA should be allowed three-months banking period with 8% banking charges and should be allowed to sell power in the market.
10. Sri. Shivakumar, representing Fortune Five Hydel Projects while reiterating written comments, submitted the following:
- a. As per the Tariff Order, 71% of the fixed cost is being recovered through demand charges. Thus, 71% of fixed cost of power purchase cost of Rs.9742 Crores is being recovered through demand charges. Thus the balance power purchase fixed cost of Rs.2825 Crores embedded in energy charges needs to be recovered. Considering the total sales of 63735MU the unrecovered portion of FC to be recovered will be 44 paise / unit.
 - b. The Commission in its earlier orders has given concession to RE sources at 30% of the recoverable FC. Thus, for RE projects 13 paise / unit may be levied.
11. Sri. J. Benakappa, submitted that the ratio of fixed cost to variable cost in the ARR is 53.6:46.4. Part of the fixed cost is recovered as demand charges by consumers. The above fixed cost realized is not accounted by PCKL in the calculation of ASC. Thus, for FY21 & 22 considering 53.6% of Rs.10516846401 the stranded cost would be Rs.4627412416. therefore, the ASC should be 4627412416 / 7102 MU, which is equal to 68.70paise / unit.
- Alternately considering the stranded cost details furnished by the ESCOMs in the Tariff Petition the ASC will be 6849.57/7758.32, which is equal to 88.20 paise / unit. As per KERC Regulations, if Full FC is recovered ASC should not be levied.
12. PCKL made a detailed presentation on the methodology adopted for computing ASC and submitted the following:

- a. The matter is referred to the Commission for the reason that PCKL data was not given. The data has now been published by the Commission.
 - b. The stranded capacity is worked out considering the declared availability.
 - c. The OA consumers are bearing the stranded cost to the extent of energy wheeled and the entire cost is not loaded to OA consumers.
 - d. As per Tariff Order only 71% of fixed cost is being recovered through demand charges. Hence, there is under recovery of fixed cost which needs to be recovered.
 - e. If KERC notes any data having flaws, PCKL is ready to revise the ASC accordingly.
13. Advocate representing ESCOMs submitted that Backed down data submitted by PCKL is correct. OA consumers are bearing only the extent of stranded capacity charges. ESCOMs have been requesting enhancement of FC, the Commission has considered the same in the latest Tariff Order. ESCOMs do not recover full fixed cost in the Tariff. As regards High Court Order, only data to be made transparent and shared to the stakeholders, no flaw in the data furnished to the Commission.
14. Renew Power submitted the written comments and submitted that the Commission should specify Regulations on ASC and also indicate in the ARR the breakup of fixed cost clearly.
4. After going through the written submissions of the parties and after hearing the stakeholders, the following issues would arise for our consideration:
- 1. Issue No. (1): What methodology should be adopted for determining the additional surcharge and what should be the ASC for FY24?**
 - 2. Issue No. (2): What Order?**

Issue No. (1): What methodology should be adopted for determining the additional surcharge and what should be the ASC for FY24?

The Commission in its Tariff Order 2023 dated 12th May 2023 had determined the Additional Surcharge of Rs.1.48/unit for FY24. The decision of the Commission in the above order is reproduced below:

“Commission's views and decision:

The Commission keeping in view the orders of the Hon'ble ATE, vide its letter dated 19.01.2023 and 09.02.2023, had directed the PCKL to furnish month-wise consolidated data of standard capacity based on 15-minutes' time-block data and the open access capacity for the month along with the average month wise fixed cost / MW. Accordingly, the PCKL submitted the data vide its letter dated 16.03.2023. the consolidated data furnished by PCKL is as follows:

Month	Capacity stranded MW	Open Access capacity including wheeling for the month (MW)	Average fixed cost for the month Rs./MW
Apr-21	2333	649	1151932
May-21	2957	666	1173102
Jun-21	2092	818	1111461
Jul-21	2111	868	1120003
Aug-21	3149	835	1058383
Sep-21	4280	851	976678
Oct-21	2590	798	1021783
Nov-21	3043	780	1215063
Dec-21	2042	753	979290
Jan-22	1197	758	1183060
Feb-22	2997	996	969827
Mar-22	2555	970	1060280
TOTAL	2612	812	1085072

The Commission notes that while arriving at the above data PCKL has considered total backed down data based on 15-minutes' time-block-wise MW-data. Also the month-wise open access energy is considered to arrive at the month-wise open access capacity in MW. The Commission has relied upon the above data furnished by PCKL to arrive at the additional surcharge. The Commission has compared the stranded capacity with the open access capacity and has considered

lower of the stranded capacity and open access capacity to arrive at the stranded cost attributable to the open access transactions. Accordingly, the Commission has worked out the Additional surcharge as follows:

Month	Capacity stranded MW	Open Access capacity including wheeling for the month (MW)	Stranded Capacity attributed to OA transactions- (MW)	Average fixed cost for the month Rs./MW	Stranded Cost attributed to OA transactions – Rs.
1	2	3	4	5	6=(5x4)
Apr-21	2333	649	649	1151932	747603868
May-21	2957	666	666	1173102	781285932
Jun-21	2092	818	818	1111461	909175098
Jul-21	2111	868	868	1120003	972162604
Aug-21	3149	835	835	1058383	883749805
Sep-21	4280	851	851	976678	831152978
Oct-21	2590	798	798	1021783	815382834
Nov-21	3043	780	780	1215063	947749140
Dec-21	2042	753	753	979290	737405370
Jan-22	1197	758	758	1183060	896759480
Feb-22	2997	996	996	969827	965947692
Mar-22	2555	970	970	1060280	1028471600
TOTAL	2612	812	812	1085072	10516846401
OA / Wheeling Cons. in MU as per PCKL					7102.33
Addl. Surcharge (Rs. / unit)					1.48

Accordingly, the Commission determines the ASC for FY24 of Rs.1.48 /Unit which shall be applicable to all open access transactions other than for captive use."

The Commission in the above order had not extended any concession in the ASC for OA consumers procuring power from RE sources. However,

in the earlier orders the Commission had extended considerable concessions to OA consumers procuring power from RE sources, which is tabulated below:

paise/ Unit

Tariff Order	ASC determined	ASC allowed for OA transactions other than RE sources after Rounding off	ASC allowed for RE sources after Rounding off
Tariff Order dated 30.05.2019	117	60 (50% of ASC determined)	15 (25% of 60 paise)
Tariff Order dated 04.11.2020	165	80 (50% of ASC determined)	20 (25% of 80 paise)
Tariff Order dated 09.06.2021	187	90 (50% of ASC determined)	23 (25% of 90 paise)
Tariff Order dated 04.04.2022	215	120 (55% of ASC determined)	35 (30% of 118 paise)

Thus, the lower ASC for RE sources was due to the concession extended in above orders. The Commission is of the view that such concessions cannot be extended forever and needs to phased out.

As stated earlier, the above Tariff Order, 2023, was challenged before the Hon'ble High Court of Karnataka, mainly on the ground that the PCKL data was not made public, and the ASC was determined without giving an opportunity of being heard. As directed by the Hon'ble High Court, the Commission held the public hearing in the matter, duly providing the PCKL's data. Several stakeholders submitted written comments and made oral submissions during the public hearing, which is already discussed in earlier paragraphs. Among other things, the main objection was that while arriving at stranded cost attributable to OA transactions, the Commission should have considered 15-minutes block-wise data of OA consumption. The Commission notes that such data is not available at present for all OA transactions, especially for wheeling transactions. In the absence of 15-minutes data for all OA transactions,

ASC cannot be determined as suggested by Stakeholders. Thus, alternate approach needs to be adopted to arrive at stranded cost.

In this regard, the Commission also notes that:

- A. MERC has determined the ASC as the variable cost/unit of Thermal stations.
- B. GERC has considered stranded energy and has allocated the stranded energy to OA and consumers of Licensee. The entire OA energy plus allocated energy is considered as attributable to OA transactions. Accordingly, the generation fixed cost is allocated to OA consumers to arrive at ASC.
- C. WBERC has adopted a complex formula, which includes CSS also in computation of ASC.

Thus, there is no common approach adopted by SERCs in computing the ASC and it varies from State to State.

In the above context, the Commission notes that few of the stakeholders have suggested to consider the fixed cost embedded in the energy charges to arrive at ASC. In fact, Fortune Five Hydel Projects Private Ltd., has computed ASC considering only the fixed cost of generation. The Commission notes that when fixed cost is embedded in the energy charges, whenever a consumer draws energy from OA, the entire fixed cost embedded in the energy charges is not recovered and thus there would be under recovery of fixed cost to the extent of fixed cost embedded in the energy charges. Thus, as per Section 42 of EA,2003, which mandates that OA consumers shall be liable to pay an additional surcharge on the charges of wheeling, to meet the fixed cost of such distribution licensee arising out of his obligation to supply, the OA consumers need to pay entire fixed cost embedded in the energy charges. It is pertinent to note that the Act specifies Stranded fixed cost and not the Stranded capacity for computation of ASC, which was also highlighted by one of the advocates during public hearing.

In view of the above, the Commission has computed the fixed cost embedded in energy charges as follows:

Total Fixed cost as per Tariff Order 2023: Rs.31146.21 Crores

Fixed Cost recovered through Demand Charges: Rs.22202.66 Crores

Balance fixed cost embedded in energy charges: Rs.8943.55 Crores

Total energy sales by ESCOMs to its consumers:63734.88 MUs

FC/unit embedded in energy charges = $8943.55 \times 10 / 63734.88 = \text{Rs.}1.403$

Thus, Rs.1.40/unit of fixed cost embedded in the energy charges is determined as the ASC. However, most of the stakeholders have requested to continue the concessions extended in earlier Tariff Orders. The Commission notes that, with more and more integration of RE sources, concessions cannot be extended forever and such concessions need to be removed fully in a phased manner. As such, the Commission decides to levy Rs.1.40/unit as the ASC for FY24 for all the OA consumers. However, in respect of OA consumers procuring power from RE sources, considering the request of stakeholders, the Commission decides to levy 50% of the above ASC and after rounding off, the Commission decides to levy 70 paise/unit as the ASC for FY24.

Before parting, the Commission notes that several stakeholders have contended that when the entire ARR is recovered through Tariff, there is no stranded cost and therefore, the ASC need not have to be levied. In this context, the Commission would like to clarify that while computing, the tariff, the Commission has not considered the OA sales, as OA sales depends upon market and other conditions and cannot be estimated reasonably. If the sales to OA consumers had been considered, the tariff for other consumers of the licensee would have come down. This implies that the tariff for consumers of the licensees is front loaded. Thus, the Commission during APR, would consider the amount realised from OA transactions including CSS & ASC as 'other income' which is deducted from the expenditure (ARR) during true-up.

Hence, Issue-1 is ordered accordingly.

Issue No. (2): What Order?**Hence, the following order****ORDER**

The Commission, for the Financial Year 2023-24, has determined Additional Surcharge(ASC) of Rs.1.40 per unit. Further, the Commission decides to allow 50% concession in ASC for all OA consumers who procure electricity from renewable sources and decide to levy Additional Surcharge of 70paise/unit for such OA consumers. The above ASC shall not be applicable for Captive Consumption. The amount of ASC already paid by OA consumers shall be adjusted and the difference shall be paid to or received from the distribution licensees, as the case may be.

Sd/-
(P. RAVI KUMAR)
Chairman

Sd/-
(H.M. MANJUNATHA)
Member (Legal)

Sd/-
(M.D. RAVI)
Member

Annexure:

1. Clean Max Enviro Energy Solutions Private Limited.
2. Distributed Solar Power Association (DiSPA).
3. Nexus Shanthiniketan Retail Private Limited.
4. AMPLUS Energy Solutions Private Limited.
5. Fortune Five Hydel Projects Private Limited (Petitioner before Hon'ble High Court).
6. Matrix Wind Energy Private Limited (Petitioner).
7. Solar Power Developers Association.
8. Doddanavar Global Energy Private Limited (DGEPL).
9. Kare Power Resources Pvt., Ltd., Brindavan Hydropower Pvt Ltd., Pioneer Power Corporation Ltd., Narayanapur Power Company Pvt. Ltd., Dalmia Cement (Bharat) Ltd., and Graphite India Ltd., represented by Sri Sridhar Prabhu, Advocate.
10. BESCOM & MESCOM represented by Advocate Sri Shahbaaz Hussain.
11. Cessna Garden Developers Private Limited, Pluto Cessna Business Parks Private Limited, Pluto Business Parks Private Limited.
12. Renewable Energy Developers Association of Karnataka.
13. Indian Energy Exchange Limited.
14. Bagamane Green Power LLP.
15. Soham Renewable Energy India Private Limited.
16. ReNew Power Private Limited.
17. BPREX Pharma Packaging India Private Limited.
18. Kumara Swamy Mineral Exports Private Limited.
19. Sri J. Benakappa, EB Electricity Management Services.