

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri B. K. Das, Chairperson
Shri K.C. Badu, Member
Shri B. K. Misra, Member

Case No. 09/2011

In the matter of: Suo motu Proceeding for Amendment to the Regulation 7 (c) (iii)
of OERC (Terms and Conditions of Determination of Tariff)
Regulation, 2004.

Director (Tariff), OERC

..... Petitioner

Vrs.

East Coast Railway and Others

..... Respondents

Date of Order : 30.05.2011

ORDER

1. In exercise of powers conferred on it under Section 181 of the Electricity Act, 2003, the Orissa Electricity Regulatory Commission had framed OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 which were published in the Orissa Gazette extraordinary No.796 dtd.10th June, 2004. The said Regulations were amended four times which were published in Orissa Gazette No. 1261, dtd. 22.09.2004, No. 1267 dtd. 22.09.2004, No. 558 dtd.24.03.2007 and No.1686 dtd.17.09.2007 respectively. In the meanwhile certain doubts were raised by different consumer groups in the interpretation of one of the provisions of the said Regulations. For clarification of the doubt, the Commission proposed a draft amendment to the OERC (Terms and Conditions for Determination of Tariff), Regulations, 2004 in the interest of the general public. Before finalization of the said amendment the Commission invited opinion / objections within one month of the previous publication under Section 181 (3) of the Electricity Act, 2003. Within the stipulated period of one month after the publication in Newspaper and OERC's website, the Commission received objections from two persons namely Chief Engineer, East Coast Railway and Shri. R P Mohapatra which were considered in detail by the Commission before finalization of amendment.

2. In the said amendment the Commission had proposed that the Regulation 7(c)(iii) which reads as follows:

“For the purpose of computing cross-subsidy the difference between cost-to-serve that category and the average tariff realization of that category shall be considered”.

Shall be substituted by the following Regulation:

“For the purpose of computing Cross-subsidy payable by a certain category of consumer, the difference between average cost-to-serve all consumers of the State taken together and average tariff applicable to such consumers shall be considered.”

3. In response to the said proposal East Coast Railway submitted that in other States cost of supply is determined by consumer category-wise by the DISCOMs, why the same is not possible in Orissa? At least, time frame for achieving the same is to be determined. The objector also cited a judgment dtd. 26.05.2006 in Appeal No. 4 of 2005 of Hon’ble ATE directing PSERC as follows:

“The Commission shall determine the cost of supply of electricity to different class and categories of consumers.”

The objector prayed that the proposed amendment should not be carried out.

4. Another objector Shri R P Mohapatra, brought to the notice of the Commission regarding Section – 61 (g) of the Electricity Act, 2003 which reads as follows:

“That the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies within the period to be specified by the appropriate Commission.”

Again Clause 8.5.1 of the Tariff Policy notified by the Govt. of India provides that

- (a) An Open Access consumer shall pay a Cross Subsidy Surcharge in addition to payment to the transmission Licensee and the Distribution Utility for the Wheeling Charges.
- (b) The Surcharge shall be computed as the difference between (i) the tariff applicable to the relevant category of the consumers and (ii) the cost of the Distribution Licensee to supply electricity to the consumers of the applicable class.
- (c) It has been further stated that 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.

Shri R. P. Mohapatra submitted that in view of the above provisions of Electricity Act, 2003 and Tariff Policy it can be concluded that cross-subsidy is the difference between revenue realized from a consumer less cost of power purchase and cost of distribution, so there should not be any amendment made to the existing provision of Tariff Regulation of OERC.

5. Considering the above objections the Commission would like to reiterate the statement of objects and reasons of pre-publication notification which has already answered the objections as stated above. East Coast Railway argue in favour of determination of cost of supply by consumer category-wise. But, voltage-wise cost determination is the first step in determining the consumer-wise cost of supply. For voltage-wise cost determination, it is important that the accounting system of the Licensees are oriented towards capturing costs voltage-wise at the point of origin as and when these are incurred. The Commission has also emphasized the requirement for segregation of network cost in terms of voltage level (LT, HT & EHT). This has not been possible due to various reasons- such as determination of voltage-wise and consumer category-wise technical and non-technical losses, essential for determining cost of supply. At present in the absence of 100% working meters at the level of consumers and distribution transformer, it is quite impossible to determine the exact percentage of loss both at technical and commercial level. The distribution network of Orissa is such that it is technically not possible to segregate the common cost between different voltage levels. The accounting system of the DISCOMs may also be required to establish a basis for allocating common costs to all the voltage level which they have not been able to do till date. The submission of DISCOMs regarding cost allocation during tariff filing does not have technical or commercial data support. There will be a conjectural element, in the determination of cost of supply in spite of all scientific rigours, especially because the distribution and transmission networks are un-segregated. Because of such conjectural element, estimates of cost of supply would differ from one stakeholder to another. The direction of Hon'ble ATE vide its judgment dtd. 26.05.2006 on Appeal No. 4 of 2005 to PSERC is a direction to a State where feasibility of determining cost of supply of electricity to different class and categories of consumers might be possible. In this connection the observation of Forum of Regulators (FOR) constituted under Section 166 (2) of the Electricity Act, 2003 may be considered which in their Third Meeting held on 20th - 21st April, 2006 stated that a uniform formula for cross subsidy surcharge for the whole country was

neither desirable nor practicable, given the wide diversity in power sector reforms and socio-economic development.

6. Section 62 of the Electricity Act, 2003 empowers OERC to determine tariff for retail sale of electricity. While doing so, the Commission is to be guided by National Electricity Policy and Tariff Policy under the provision of Section 61 (i) of the said Act. The term cross-subsidy has not been defined either in the Electricity Act, 2003 or in the National Electricity Policy and the Tariff Policy. None of them also provide for methodology for computing cross-subsidy. We only get indirect indication of calculating it. There is subtle difference between cross-subsidy and cross-subsidy surcharge. The objector Shri Mohapatra has equalized cross-subsidy surcharge which has been defined in the Tariff Policy with cross-subsidy. Section 42 (2) Proviso 2 states that “Provided that such Open Access shall be allowed on payment of a surcharge in addition to charges for wheeling as may be determined by the State Commission.” Section 42 (2) Proviso 3 states that “Provided that **such surcharge and cross-subsidy** shall be progressively reduced in the manner as may be specified by the State Commission.” From the above readings it can be construed that surcharge and cross-subsidy are two different entities. Cross-subsidy is a sub-set of cross-subsidy surcharge. Open Access Surcharge is collected to compensate the distribution licensee for financial losses incurred by them including loss of cross-subsidy due to open access transaction. But depending upon the mode of calculation adopted, the cross-subsidy differs. However, the Clause 8.3 of the Tariff Policy requires tariff to be within $\pm 20\%$ of the *average cost of supply* by 2010-11. Again as per para 5.5.2 of the National Electricity Policy, the Tariff for consumers of BPL category should be at least 50% of the *average (overall) cost of supply*. From conjoint reading of the above provisions of National Tariff Policy and Electricity Policy, the cost of supply can be construed to mean the average cost of supply by the Licensee at different voltage taken together. The Commission is on the path of reducing cross-subsidy.
7. In view of our above observation, present Regulation 7 (c) (iii) of OERC (Terms and Conditions for Determination of Tariff) Regulation, 2004 is not feasible for the DISCOMs to implement. Any regulation without its practical implementation is not sustainable under Law. The Commission has already directed DISCOMs for 100% metering and when that work is completed the Commission would re-visit the current amendment.

8. Therefore, we direct that the proposed amendment be accepted as such and published for information of general public in the next issue of Orissa Gazette.

Sd/
(B.K. Misra)
Member

Sd/
(K.C. Badu)
Member

Sd/
(B.K. Das)
Chairperson