

**BEFORE THE HON'BLE TELANGANA STATE ELECTRICITY  
REGULATORY COMMISSION**

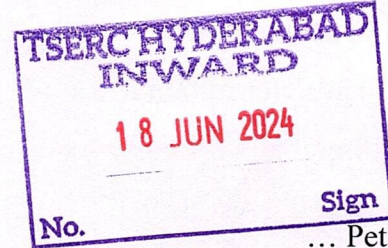
AT ITS OFFICE AT 11-4-660, V<sup>TH</sup> FLOOR, SINGARENI BHAVAN,  
RED HILLS, HYDERABAD, TELANGANA – 500 004

**I.A. No. 9 of 2017 in O.P. No. 16 of 2005  
I.A. No. 10 of 2017 in O.P. No. 13 of 2006  
I.A. No. 11 of 2017 in O.P. No. 5 of 2007  
I.A. No. 12 of 2017 in O.P. No. 73 of 2012  
I.A. No. 13 of 2017 in O.P. No. 74 of 2012  
I.A. No. 14 of 2017 in O.P. No. 75 of 2012  
I.A. No. 15 of 2017 in O.P. No. 76 of 2012  
I.A. No. 16 of 2017 in O.P. No. 77 of 2012  
O.P. No.13 of 2017 & O.P. No. 14 of 2017**

In the matter of fresh determination of Cross Subsidy Surcharge to be levied for the FYs 2005-06 to 2014-15 in respect of the Open Access consumers by TSDISCOMs under Section 42 of the Electricity Act, 2003 pursuant to directions given by the Hon'ble High Court in its Common Order dated 12.02.2020 in W.P. No. 21936 of 2018 & others.

BETWEEN:

TSSPDCL & TSNPDCL



... Petitioners

OBJECTIONS FILED ON BEHALF OF THE OBJECTOR:

M/s. Ind-Barath Energies Ltd.,

...Objector

1. It is submitted that the objector is a limited company incorporated under the provisions of Companies Act, 1956 having its Office at Hyderabad. The objector company is inter-alia engaged in the business of generation and sale of electricity. The objector has setup a non-conventional energy project based on Biomass in the year 1999 at Miryalaguda, Nalgonda District, with 6 MW Capacity. The objector has entered into a power wheeling and purchase agreement with the erstwhile APSEB on 04.01.1999 for wheeling of power to its scheduled consumers.

## **BACKGROUND:**

2. It is humbly submitted that the erstwhile APERC for the undivided state of Andhra Pradesh State for the first time determined the Cross Subsidy Surcharges (CSS) by adopting embedded cost method for computing surcharge for different consumer categories vide order dated 21.09.2005 in OP No. 16 of 2005, and Order dated 29.08.2006 in O.P. No. 13 of 2006, for FY 2005-06 and FY 2006-07 respectively. The erstwhile APERC also initiated proceedings in O.P. No. 5 of 2007 for determining the CSS and AS for FY 2007-08 by issuing a public notice. However, as the erstwhile Commission considered that it required some more time to complete the proceedings, passed interim order dated 28.03.2007 provisionally extending the rates of applicability of rates of CSS determined for 2006-07 from 01.04.2007 till the commission passes a final order subject to adjustment. No proceedings were initiated by APERC relating to FY 2007-08 to 2011-12. Aggrieved with the method of determination of CSS by the erstwhile APERC, some companies challenged such determination for FY 2005-06 and FY 2006-07 before Hon'ble APTEL (Appellate Tribunal for Electricity) which has vide order dated 05.07.2007 in Appeal Nos. 169-172 of 2005 & 248-249 of 2006 allowed the appeals and directed the erstwhile APERC to compute the cross subsidy surcharge, which consumers are required to pay for use of open access in accordance with the Surcharge Formula specified in para 8.5 of the National Tariff Policy, 2006 for FY 2006-07 and subsequent years. The erstwhile APERC carried the matter in appeal vide Civil Appeal Nos. 4936-4941 of 2007 before the Hon'ble Supreme Court challenging the order of the Hon'ble APTEL. By order dated 05.05.2008, the Hon'ble Supreme Court stayed the order of the Hon'ble APTEL and by subsequent order dated 04.12.2009, the interim order dated 05.05.2008 was made to remain operative till final disposal of the Civil Appeals. The Hon'ble Supreme Court dismissed the Civil Appeal Nos. 4936-4941 of 2007 on 31.03.2016.

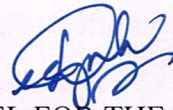
3. After a long lapse of more than five years, the erstwhile APERC suo-moto initiated proceedings for determination of CSS for FY 2007-08 to 2012-13 by issuing public notice dated 16.07.2012. Objections were filed contending that APERC has no power to determine any tariff or charges or surcharge with retrospective effect in respect of past periods and further that no provision specifically provides for determination of CSS retrospectively under the Electricity Act, 2003 nor any Regulation made there-under provides for such exercise of power and that any decision or order of APERC can have only prospective effect from the date of publication/modification for future transactions and therefore APERC cannot determine CSS for the period FY 2007-08 to FY 2011-12 and for 2012-13. Though APERC initiated single proceedings without any OP numbers, passed six separate and distinct orders in O.P. Nos. 5 of 2007 & 73 to 77 of 2012 which are in identical terms.
4. It is submitted that the orders dated 26.10.2012 passed by APERC were assailed in W.P. No. 34215 of 2012 and batch by various consumers on the ground that the Commission did not have any powers to determine CSS retrospectively besides adopting methodology which was set-aside by APTEL. This Hon'ble Court passed interim orders suspending the order passed by APERC. In view of the orders of the Hon'ble Supreme Court dated 31.03.2016, the Hon'ble High Court by a common order dated 20.06.2016, set aside the orders of the erstwhile APERC and remitted back the matters to APERC or the TSERC for consideration afresh keeping all the legal and factual objections at large.
5. It is humbly submitted that in accordance with the orders of the Hon'ble Supreme Court and Hon'ble High Court, the APERC re-determined the CSS for FY 2005-06 to FY 2012-13 and FY 2015-16 by following the due process contemplated under the Act, Regulations and Rules. The APERC by said order though has re-determined CSS for the period FY 2005-06 to FY 2012-13 and FY 2015-16 for all the years CSS determined for OA consumers having HT-1(A) - Industry General drawing power at 33 kV & 132 kV Voltage level were

determined as "0", therefore none of the consumers had any grievance. The said determination was made in respect of two DISCOMs, APEPDCL & APSPDCL.

6. It is respectfully submitted that the DISCOMs, i.e., TSSPDCL and TSNPDCL filed applications vide I.A. No. 9 of 2017 in O.P. No. 16 of 2005, I.A. No. 10 of 2017 in O.P. No. 13 of 2006, I.A. No.11 of 2017 in O.P. No. 5 of 2007, I.A. No. 12 of 2017 in O.P. No. 73 of 2012, I.A. No. 13 of 2017 in O.P. No. 74 of 2012, I.A. No. 14 of 2017 in O.P. No. 75 of 2012, I.A. No. 15 of 2017 in O.P. No. 76 of 2012, I.A. No. 16 of 2017 in O.P. No. 77 of 2012, O.P. No. 13 of 2017 requesting the Hon'ble TSERC to re-determine the Cross Subsidy Surcharge for the financial years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and also filed O.P. No. 14 of 2017 for determining CSS for financial year 2014-15. Though the original petitions pertaining to the years from 2005-06 to 2013-14 were never before the Hon'ble Commission and though the Hon'ble Commission has no jurisdiction to adjudicate the applications filed by the TSSPDCL along with TSNPDCL for these years, the interlocutory applications were numbered and it appears that these applications have been put up on the website of the Hon'ble Commission calling for objections as can be seen from the order. Further, for the year 2013-14, the erstwhile Commission determined 'Nil' CSS for the said year vide order dated 13.08.2013 in O.P. No. 54 of 2013 and though a review petition was preferred, it was dismissed vide order dated 22.01.2014 in R.P. No.1 of 2013 and the order has become final. Strangely the TSSPDCL and TSNPDCL have filed O.P. No. 13 of 2017 seeking fresh determination of CSS for the very same year. For the year 2014-15 the TSSPDCL has not filed applications for determination of CSS and as such it was not determined by this Hon'ble Commission. Later, after a lapse of 3 years, the TSSPDCL has filed O.P. No. 14 of 2017 for determination of CSS for the period 2014-15, which is not lawful.

7. It is submitted that the Hon'ble TSERC proceeded to re-determine CSS without proper notice to the affected parties and accordingly by Common Order dated 06.04.2018 re-determined the CSS for the FYs 2005-06 to 2014-15. The above said order was challenged in W.P. No. 21936 of 2018 & batch before the Hon'ble High Court of Telangana, in which initially there was stay for enforcement of CSS was granted and subsequently by judgment dated 12.02.2020, all the WP's came to be disposed and remanded the matter back to this Hon'ble Commission for re-determination after giving notice to all the affected parties. The Hon'ble High Court has while remanding observed that the WP's are entitled to raise all legal objections and factual objections on merits of the matter.
8. It is submitted that the present exercise of re-determination of CSS shall be confined only to Open Access users who fall under Regulation No. 2 of 2005 at the relevant period and those who had special authorization or permission from the State Government under Sec. 43(1)(c) of the Electricity (Supply) Act, 1948 cannot be brought under the purview of levy of CSS in view of Electricity (Removal of Difficulties) Second Order, 2005 issued by Central Government and which has been upheld by the Hon'ble High Court by allowing the Writ Petitions filed by the generators i.e., W.P. No. 12630 of 2006 & Batch and dismissing the W.P. No. 8252 of 2008 filed by the DISCOMs challenging the Removal of Difficulties Order. As the objector generates power and exports its entire capacity to third party consumer under the Power Wheeling and Purchase Agreement. Therefore, the CSS now sought to be determined by this Hon'ble Commission shall not apply to the consumers of the Objector as they do not fall under regime of Regulation No. 2 of 2005.
9. It is submitted that considering the Judgment of the Divisional bench of the Hon'ble High Court of Telangana upholding the Electricity (Removal of Difficulties) Second Order, 2005 issued by Central Government. The Hon'ble Commission may be pleased to hold that the consumers who have purchased power from the objector and such consumption was falling within the period

under determination of CSS, the Discoms are not entitled to recover such CSS from the scheduled consumers of the generator.



COUNSEL FOR THE OBJECTOR

PLACE : HYDERABAD

DATE : 15.06.2024

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY  
COMMISSION  
AT HYDERABAD

I.A.No. 9 of 2017/O.P. No. 16 of 2005 \* BATCH

Between:

TSSPDCL \* TSNPDCL

Plaintiff  
Petitioner

Versus

Defendant  
Respondent

I/We

M/S. IND - BARATH ENERGIES LIMITED

do hereby appoint and retain  
**CHALLA GUNARANJAN**  
**M. SRIDHAR**  
**DEEPAK CHOWDARY**

Advocates

Advocate/s to appear for me/us in the above Suit/Case and to conduct and prosecute and defend the same and proceedings, that may be taken in the respect of any application for execution or any Decree or Order passed therein I/We empower my/our Advocate to appear in all miscellaneous proceedings in the above Suit matter ill all Decree or Orders are fully satisfied or adjusted to compromise and to obtain the return of Documents and draw any moneys that might be payable to me/us the said suit or of matter and notice I/We do further empower my/our Advocate to accept on my/our behalf, service of all or any appeals or petitions filed in any Court of appeal reference or revision with regard to said suit or matter before the disposal of the same in this Hon'ble Court.

For IND BARATH ENERGIES LIMITED

Authorised Signatory

Certified that the executant who is well acquainted with English and this Vakalatnama and the contents of the Vakalatnama were read out and explained in Telugu/Urdu/Hindu to the executant or he/she/they being unacquainted with English who appeared to have perfectly understood the same and signed/put his/her/their name or mark in my presence.

Identified by: M. Sridhar Advocate.

Executed on this the 16 day of June 2024.

See  
Advocate  
**S. CHAIRAPANI**  
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BEFORE THE TELANGANA STATE  
ELECTRICITY REGULATORY  
COMMISSION AT HYDERABAD

O.P. No.

of 20

Between:

TSSPREL & TSNPDCL

Petitioner

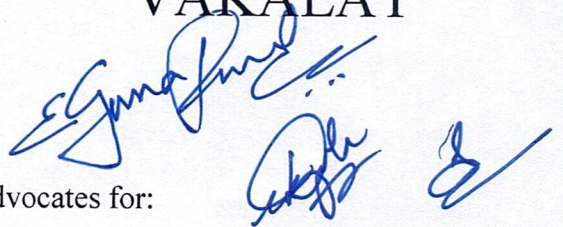
And

M/s. 2ND - BARATH ENERGIES  
LIMITED

Respondent

VAKALAT

Advocates for:



Filed on: 15-06-2024

Address for service of the said Advocate/s

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