

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/Petition No.- 25 of 2025**

**Case No. HERC/Petition No.- 26 of 2025**

**Date of Hearing : 05.08.2025**

**Date of Order : 06.08.2025**

**IN THE MATTER OF:**

Petition filed under Section 42 of the Electricity Act 2003 and Regulations 22 of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and its amendment from time to time for determination of Additional Surcharge for First (1st) Half of FY 2025-26 and approval for levying the same to the Open Access consumers till the issuance of the next order.

**Petitioners**

1. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

**Respondents**

General Public

**Present on behalf of the Petitioner(s)**

1. Shri Puneet Kundu, SE/RA, UHBVNL
2. Shri Sankalp Parihar, SE/RA, DHBVNL
3. Shri Pardeep Goyat, XEN/RA, UHBVNL
4. Shri Shubham Tripathi, Consultant, DHBVNL

**Present on behalf of the Respondents**

1. Nil

**Quorum**

**Shri Nand Lal Sharma  
Shri Mukesh Garg**

**Chairman  
Member**

**ORDER**

1. The instant petition(s) have been filed by the distribution licensees in Haryana viz. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar (hereinafter referred to as "DISCOMs) for determination of Additional Surcharge for the 1<sup>st</sup> half of the FY 2025-26 onwards on the basis of actual data of backdown, DAM power purchase and open access data of 1<sup>st</sup> half of the FY 2024-25 i.e. April, 2024 to September, 2024.
2. The DISCOMs have submitted as under:
  - a) The methodology for determination of additional surcharge, was approved by the Hon'ble Commission in its order dated 16.11.2015 in the Case No PRO-05 of

2015, which was further re-examined and upheld by the Hon'ble Commission, in its order dated 06.03.2020 (Case No. PRO -40 of 2019 and PRO-01 of 2020).

- b) The Commission in its Order dated 18.11.2024 (Case No. HERC/Petition No. – 53 & 54 of 2024) for determination of Additional Surcharge for 2nd Half of FY 2023-24 has directed that the data need to consider for determination of Additional Surcharge shall be corresponding to the same half for the immediate previous financial year rather the data of previous half of the same year. Accordingly, in the fitness of the things the direction was issued to file Petition for Additional Surcharge for 2nd Half of FY 2024-25 based on the data of 2nd Half of FY 2023-24.
- c) Accordingly, the Admissible stranded power for Additional Surcharge and estimated Open Access Units for H1 of FY 2025-26 has been considered equivalent to First (1st) Half of FY 2024-25.
- d) To ensure that only the power stranded/surrendered due to Open Access consumers is considered for determination of Additional Surcharge, the lower of the Open Access power and surrendered power net of power purchased on DAM basis in each time slot has been taken into account to calculate the quantum of stranded power for determination of Additional Surcharge.
- e) That based on the time slot wise stranded power, the total quantum of backing down of power, eligible for computation of Additional Surcharge, has been determined.
- f) That the admissible quantum of power backed down is further multiplied by the per unit fixed charge (Rs. kWh) approved by this Hon'ble Commission to determine the total amount of Additional Surcharge.
- g) That the per unit average fixed charges, approved by the Commission, in the tariff order dated 28.03.2025 (Case No. HERC/Petition no. - 66 of 2024 & HERC/Petition no - 67 of 2024), is Rs. 1.44 per kWh.
- h) Accordingly, the per unit Additional Surcharge is determined by dividing the total Additional Surcharge with the estimated Open Access Units (MUs) in the first half of the FY 2025-26, on an assumption that the quantum of power bought by the consumers under open access mechanism, will be the same as that in the first half of the FY 2024-25.
- i) The details of the backing down, attributable to Open Access in MW and MUs, for calculation of Additional Surcharges and power brought under Open Access mechanism, is given in the table below:-

**Month-wise Stranded Power & Open Access Power**

Month	A= Stranded Power i.e. Min. of OA & backdown	B= A converted into MU	C= Open Access Purchase	D= C converted into MU
	MW	MU	MW	MU

April, 24	25.71	18.51	26.85	19.33
May, 24	13.96	10.39	22.40	16.67
June, 24	19.58	14.10	24.98	17.99
July, 24	28.23	21.01	33.28	24.76
August, 24	10.27	7.64	10.73	7.98
September, 24	19.94	14.36	20.83	15.00
H1 of FY 2024-25		<b>86.00</b>		<b>101.73</b>

- j) The calculation of total Additional Surcharge and Rupees per unit (Rs / Unit) to be recovered from the Open Access consumers in the first half of the FY 2025-26 and onwards, as submitted by the DISCOMs, is as follows:

#### Calculation of Additional Surcharge

SN	Particulars	Units	Value
1	Admissible stranded power for Additional Surcharge	MU	86.00
2	Effective Fixed Charges as per Tariff Order dt. 28.03.2025	Rs/kWh	1.44
3	Cost of stranded power eligible for Additional Surcharge	Rs Cr.	12.36
4	Estimated Open Access Units for H1 for FY 2025-26 (considered equivalent to H1 of FY 2024-25)	MU	101.73
5	Additional Surcharge recoverable from Open Access Consumers during H1 of FY 2025-26 and onwards	Rs/kWh (rounded off)	<b>1.21</b>

- k) That the DISCOMs have proposed to recover Additional Surcharge of Rs 1.21 per unit from the open access consumers, calculated on the basis of details of the slot wise surrendered power and slot wise open access power, considering data of all days.
- l) In view of the above, following prayers have been made:-
- The instant petition for additional surcharge may kindly be approved;
  - Additional Surcharge of Rs. 1.21/kWh may kindly be allowed to recover from Open Access consumers in first half of FY 2025-26 and thereof till the issuance of subsequent Order;
  - Condone any inadvertent omissions/errors/shortcomings and permit the petitioners to add/change/modify/alter this filing and make further submissions as may be required during the proceedings in the matter;
  - Pass the necessary order as may be deemed fit for recovery of Additional surcharge from the Open Access Consumers.

### Proceedings in the Case

3. In order to take the process forward, the Commission issued a Public Notice in two Newspapers having wide circulation in Haryana i.e. The Dainik Tribune (Hindi) and The Tribune (English) both dated 16.05.2025, for inviting comments/objections from the general public/stakeholders, on or before 05.06.2025 and intimating that hearing shall be held on 10.06.2025 in the court room of the Commission. The said public notice was also hosted on the website of the Commission under the heading "Public Notice".

4. In response to the ibid public notice, M/s IEX has filed its comments / objections. UHBVNL has filed their reply on the comments filed by M/s. IEX, vide memo no. Ch-21/SE/RA-744/Vol-IV dated 26.06.2025. Accordingly, the comments filed by M/s. IEX along with the reply of the UHBVNL are briefly set out as under:-

**Comments filed by M/s. IEX**

Ministry of Power issued Electricity (Amendment) Rules, 2024 on 10.01.2024 clarifying that additional surcharge shall not be applicable on the Open Access Consumer to the extent of contract demand being maintained with the distribution licensees. The relevant extract of the Electricity (Amendment) Rules, 2024 is provided below:

***“(3) Additional Surcharge–*** *The additional surcharge levied on any Open Access Consumer shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned:*

*Provided that for a person availing General Network Access or Open Access, the additional surcharge shall be linearly reduced from the value in the year in which General Network Access or Open Access was granted so that, if it is continued to be availed by this person, the additional surcharge shall get eliminated within four years from the date of grant of General Network Access or Open Access:*

*Provided further that the additional surcharge shall not be applicable for Open Access Consumer to the extent of contract demand being maintained with the distribution licensees:*

*Provided also that the additional surcharge shall be applicable only for the Open Access Consumers who are or have been consumers of the concerned Distribution licensee.”*

Accordingly, it is understood from the above rules that Additional Surcharge shall not be applicable on OA Consumer to the extent of contract demand being maintained with the distribution licensees.

**Reply filed by Discoms:**

Distribution licensees are mandated under Section 43 of the Electricity Act, 2003 to fulfil the universal service obligation, which requires DISCOMs to ensure 24x7 power supply to all consumers within the licensed area. In order to meet this statutory obligation, distribution licensees are compelled to enter into long-term Power Purchase Agreements (PPAs) with generators to secure adequate power availability.

However, when consumers opt for open access and procure power from sources other than the distribution licensee, the power already contracted under these long-term

PPAs often remains unutilized. This results in stranded capacity, especially in terms of fixed charges payable to generators which the distribution licensee is obligated to pay regardless of actual demand. Further, the detail of Fixed Cost Obligation of DISCOMs is as under: -

Sr. No.	Particular	UHBVN	DHBVN	Total (Rs. Cr.)
1	Approved Fixed Cost of DISCOMs to run its operations. (Fixed O&M Cost)	3242.25	3809.01	7051.26
1(a)	Operation and maintenance expenses	1835.84	2263.56	4099.4
1 (b)	Depreciation	494.96	604.38	1099.34
1(c)	Interest and Finance charges	580.31	632.42	1212.73
1(d)	Return on Equity	331.14	308.65	639.79
2	Approved Power Purchase Expense of DISCOMs	16221.58	22403.88	38625.46
2(a)	Fixed Cost of Power Purchase			11445
2(b)	Variable Cost	9407.74	13023.33	22431.07
2(c)	Transmission Cost	2013.87	2735.52	4749.39
4	Total Fixed Cost Obligation of DISCOMs(1+2(a))			18496.26
5	Estimated recovery through Fixed Charges			5891

In addition to payments to generators, fixed charge tariff also covers other essential fixed costs incurred by the distribution licensee to run its operations. These include Operation & Maintenance (O&M) expenses, interest costs, administrative expenses and other necessary expenditures. For the sake of brevity, these cumulative expenses may be referred to as **Fixed O&M Cost**. Considering the recovery of fixed O&M Cost through fixed charges, it is evident from the table above that the DISCOMs are able to recover only around 83% of the total fixed O&M Cost amounting to Rs. 7051.26 Cr. that leads to a deficit of around Rs. 1160 Cr. Furthermore, if the fixed cost of power purchase is also considered, the total deficit of the DISCOMs increases to around Rs. 12,605 Cr. This clearly depicts that the recovery through fixed charges is insufficient to cover the total fixed Cost obligation of the DISCOMs. Thus, DISCOMs are wholly dependent on the variable Tariff to recover the deficit and to sustain the business. Moreover, since fixed costs are typically embedded in both the fixed and variable components of the electricity tariff, the recovery through contracted demand becomes insufficient, creating financial strain on the DISCOMS. The revenue gap created by unrecovered fixed costs eventually burdens other consumers, who face higher retail tariffs to compensate for the shortfall. Additionally, the Hon'ble Supreme Court has upheld the levy of Additional Surcharge in case of MSEDCL v. JSW Steel Limited and others (2022) 2 SCC 742 dated 10.12.2021. The operating part of the judgement is reproduced below: -

*"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 licence 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”.*

Therefore, exempting open access consumers from the payment of Additional Surcharge would significantly exacerbate the issue. It would shift the financial burden of stranded capacity and unrecovered fixed costs onto other consumer categories. Stranded capacity is a real and costly issue that cannot be simply offset by selling the surplus power on short-term markets like the Day-Ahead Market (DAM), due to unpredictable demand and price volatility.

To ensure fairness in the computation of the Additional Surcharge, only that portion of stranded power which is directly attributable to open access consumers is considered. Specifically, the lower of the open access quantum or the corresponding backing down (net of DAM power purchase) is evaluated on a time-slot basis for accurate assessment of the Additional Surcharge.

The legal foundation for levying the Additional Surcharge is clearly established under Section 42(4) of the Electricity Act, 2003, which states:

*"Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee... such consumer shall be liable to pay an 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."*

Furthermore, Regulation 22 of the HERC (Terms and Conditions for Intra-State Open Access) Regulations, 2012, and its subsequent amendments, reinforces this by stating:

*"Additional Surcharge. - (1) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge in addition to wheeling charges and cross-*

*subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of Section 42 of the Act.”*

This legal position has been further affirmed by the Hon'ble High Court of Karnataka in its judgment dated 20th December 2024 in WP No. 11235 of 2024 and related matters, which held:

*"The power to regulate transmission, including all aspects related to open access, lies exclusively with the State Commission under Sections 42(2) and 181 of the Electricity Act. Consequently, the Central Government does not have the authority to frame rules pertaining to these matters."*

Furthermore, out of 34 States and Union Territories, Additional Surcharge is applicable in 17 — comprising 12 States and 5 Union Territories — such as Gujarat, Punjab, Telangana, and Madhya Pradesh, in accordance with the prevailing regulations in their respective jurisdictions.

In light of the above legal, regulatory, and financial considerations, the proposal for the levy of Additional Surcharge for the first half of FY 2025–26 has been duly submitted before the Hon'ble Commission in accordance with the provisions of the HERC (Terms and Conditions for Intra-State Open Access) Regulations, 2012.

#### **Commission's Analysis and Order**

5. The Commission observed that since both the petitions i.e. petition no. 25 and 26 of 2025 are identical; therefore, it would be appropriate to hear them as a bunch matter and decide them through the present common order. Accordingly, both the cases were heard on 10.06.2025, as scheduled. The parties present during the hearing, reiterated the contents of their respective filings, which for the brevity has not been reproduced herein again.
6. The Commission has considered the objections filed by M/s. IEX as well as the reply of the petitioner (s) thereon. It is observed that while passing the order dated 06.03.2020 (Case No. HERC/PRO-40 of 2019) approving the Additional Surcharge to be recovered w.e.f. 22.10.2019, the Commission had, at length, dealt with the issue of payment of demand charges by embedded open access consumers. The relevant extract of the order dated 06.03.2020, is reproduced hereunder: -  
*"Having answered the above issues, the Commission is of the considered view that apprehension of the open access consumers that fixed cost of power purchase is being recovered from them twice i.e. in form of demand charges as part of tariff and in form of Additional Surcharge, is unfounded. In case the recovery of fixed cost of power purchase methodology is applied, then the Additional Surcharge to be levied on open access consumers will be more. In order to reduce the burden on the open access*

consumers, the DISCOMs have proposed to continue with the methodology of calculation of Additional Surcharge, as was adopted in the earlier Orders of the Commission.

The Commission observes that the additional surcharge has to be determined under Section 42 of the Electricity Act, 2003. Since the Discoms has an universal obligation to supply power, it has to enter into long term agreements for purchase of power from various generating stations for meeting the entire demand of the state. As such, when these embedded consumers draw power from any other person under Open Access, the fixed cost of the supply taken by these consumers from elsewhere is still payable by the licensee, making it a stranded capacity for the Discoms. However, as per the situation currently obtaining in Haryana only a part of the stranded generation capacity to the extent of the quantum of Open Access power scheduled by such consumers out of the total quantum of power surrendered by the Discoms can be attributed to the Open Access consumers. The Commission further observes that the distribution licensees have been able to conclusively prove, backed with calculations, that their long term power purchase commitments do get stranded most of the times when power is drawn by embedded open access consumers from other sources and the Discoms have to bear the fixed cost of such stranded power which ultimately get passed on to other consumers. It would not be fair if the cost incurred by distribution licensees for the power purchase commitments stranded on account of power drawn by open access consumers from other sources is passed on to other consumers as that would amount to cross-subsidizing of the open access consumers by other consumers.”

(refer page 69 and 70 of the *ibid* order dated 06.03.2020)

Further, Electricity (Amendment) Rules, 2024 issued by the Ministry of Power on 10.01.2024 and referred by M/s. IEX itself provides that “the additional surcharge shall be applicable only for the Open Access Consumers who are or have been consumers of the concerned Distribution licensee.”

The Commission has also examined the legal position set out by the petitioner (s) herein referring to Section 42(4) of the Electricity Act, 2003 as well as Regulation 22 of the HERC (Terms and Conditions for Intra-State Open Access) Regulations, 2012, and its subsequent amendments, which clearly provides for the liability of open access consumers to pay additional surcharge to meet the fixed cost of the distribution licensee arising out of its obligation to supply which has remained stranded. The same has also been vindicated by Hon’ble Supreme Court in its judgement dated 10.12.2021 in case of MSEDCL v. JSW Steel Limited and others (2022) 2 SCC 742.



The Commission has also examined the judgement of Hon'ble High Court of Karnataka dated 20th December 2024 in WP No. 11235 of 2024 and related matters, wherein it has been held as under:

*"The power to regulate transmission, including all aspects related to open access, lies exclusively with the State Commission under Sections 42(2) and 181 of the Electricity Act. Consequently, the Central Government does not have the authority to frame rules pertaining to these matters."*

The Commission observes that the Additional Surcharge is being levied in line with the provisions of Section 42(4) of the Electricity Act, 2003 and Regulation 22 of the HERC (Terms and Conditions for Intra-State Open Access) Regulations, 2012 as well as formula provided in the National Tariff Policy, 2016 including the methodology suggested by the Hon'ble APTEL in its judgement dated 30.05.2011 (Appeal No. 102,103 & 112 of 2010). Discoms have also elaborated and addressed the concerns raised by the intervenor which is in sync with the earlier order of this Commission. Therefore, no further deliberations on the same is required.

7. The Commission has carefully examined the regulations occupying the field and earlier orders passed in the matter of the determination of additional surcharge.
8. The Commission has examined the proposed Additional Surcharge keeping in view of the Regulation 22 of the Haryana Electricity Regulatory Commission (Open Access) Regulations, 2012, which casts an obligation on the DISCOMs to file the requisite data regarding quantum of stranded power on six monthly basis and forms the basis for determination of Additional Surcharge by the Commission. Accordingly, the DISCOMs have filed the relevant data. The same has been examined as under: -
  - a) That the petitioner has worked out backing down quantum day-wise and slot-wise for six months of the FY 2024-25 (1st half), from the implemented schedule and the entitlements as per their last revision, for a particular day. To ensure that only the power stranded/surrendered due to open access consumers is considered for determination of additional surcharge, the lower of the open access power and surrendered power net of power purchased on DAM basis in each time slot has been taken into account to calculate the quantum of stranded power for determination of the Additional Surcharge.
  - b) That due to the change in the declared capacity of the inter-state generator during the day, the change in entitlement of the State from that particular generator is automatically accounted for.
  - c) It has been further observed that the generating units which are not at bar due to less demand have not been considered and only the backing down of running units has

been considered for arriving at the stranded cost of power for determination of the additional surcharge.

- d) While calculating the fixed cost for estimating the Additional Surcharge, the DISCOMs have taken the average fixed cost approved by the Commission in its ARR order dated 28.03.2025, for the FY 2025-26.
- e) Accordingly, the Additional Surcharge, recoverable from the Open Access consumer(s) has been determined as per the details provided in the table below:-

Months	MW	MU	OA (MW)	OA (MU)
	A= Stranded Power lower of OA & backdown (MW)	B= A converted into MU	C= Open Access Purchase (MW)	D= C converted into MU
April, 24	25.71	18.51	26.85	19.33
May, 24	13.96	10.39	22.40	16.67
June, 24	19.58	14.10	24.98	17.99
July, 24	28.23	21.01	33.28	24.76
August, 24	10.27	7.64	10.73	7.98
September, 24	19.94	14.36	20.83	15.00
<b>Total</b>		<b>86.00</b>		<b>101.73</b>
Quantum considered for Addl. Surcharge (lower of the power backed down/surrendered and open access power)				MU 86
Per Unit Fixed Cost of Power Purchase for the FY 2025-26				Rs/kWh 1.44
Cost of stranded power eligible for Additional Surcharge				Rs. Cr. 12.36
Estimated Open Access Units for H1 of FY 2025-26 (considered same as in H1 of FY 2024-25)				MU 101.73
Additional Surcharge to be applicable on OA Consumers				Rs /kWh 1.21

**It is observed that the methodology as well as the calculations placed on record by the Discom (s) are in order. Hence, the Commission orders that Rs. 1.21/kWh shall be the Additional Surcharge applicable from the date of this order and shall be applicable to the consumers of Uttar Haryana Bijli Vitran Nigam (UHBVN) and Dakshin Haryana Bijli Vitran Nigam (DHBVN) who avail power under the Open Access mechanism in terms of the Haryana Electricity Regulatory Commission (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012, from any source other than the distribution licensees. The additional surcharge shall continue to be effective till the same is revised / amended by the Commission.**

9. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 06.08.2025.

Date: 06.08.2025  
Place: Panchkula

(Mukesh Garg)  
Member

(Nand Lal Sharma)  
Chairman