

MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

1stFloor(Front Block Left Wing),New Administrative Building
Lower Lachumiere, Shillong–793 001
East Khasi Hills District, Meghalaya

Case No.8 /2023

In the Matter of

Review petition filed under section 94(1) (F) of the Electricity Act 2003 Read with Regulation 22 of Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations 2014, read with Amendments and Regulation 21 of Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations 2007 read with amendments, seeking Review of Order dated 11th April 2023 in MSERC Case no.25 of 2022.

Byrnihat Industries Association (BIA)

13th Mile, Tamulikuchi, Byrnihat,
RiBhoi District, Nampoh,
Meghalaya 793101

...Review Petitioner

Versus

Meghalaya Power Distribution Corporation Limited

LumJingshal, Short Round Road
Shillong, Meghalaya – 793001

...Respondent

Coram:

Shri. P.W.Ingty, IAS (Retd.), Chairman

Shri. R.K. Soni, District Judge (Retd.), Member

Counsel for the Petitioner	Ms.Mandakini Ghosh, Advocate
Counsel for the Respondent	Ms.Anukriti Jain, Advocate
Date of hearing	16/08/2023 & 21/08/2023
Date of Order	29.08.2023

(Hearing conducted through video conferencing)

1. Byrnihat Industries Association (BIA) has filed petition for Review of Tariff Order as per Regulation 22 of MSERC MYT Regulation 2014 and Clause 21 of MSERC (Conduct of

Business) Regulations 2007 and Sections 94 (1) (F) of Electricity Act 2003, against determination of ARR & Distribution Tariff for FY 2023-24 dated 11th April 2023.

2. Earlier, Commission had issued the Order for determination of ARR and Distribution Tariff for FY 2023-24 on 11.04.2023.
3. Commission taking into consideration of all the facts and records, passed the order on the Review petition filed by Byrnihat Industries Association in the chapters annexed to this Order.

Sd/-
R.K. Soni, District Judge (Retd.)
(Member)

Sd/-
P.W. Ingty, IAS (Retd)
(Chairman)

Petitioner's Submission

1. The present Review Petition has been filed by the Review Petitioner, Byrnihat Industries Association ("BIA" or "Petitioner") before this Commission under Section 94(1)(f) of the Electricity Act, 2003 ("Act 2003"), Regulation 21(1) of the MSERC (Conduct of Business) Regulations, 2007 read with Regulation 22 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 ("MYT Regulations, 2014"). The Review Petitioner, Byrnihat Industries Association, an association of consumers is seeking review of this Commission's order dated 11.04.2023 in Petition No. 25 of 2022 filed by the Respondent, Meghalaya Power Distribution Corporation Ltd. ("MePDCL" or "Respondent"). The Respondent had filed the aforementioned petition seeking Determination of Aggregate Revenue Requirement (ARR) and Retail Tariff for FY 2023-24 in the State of Meghalaya ("ARR Petition"). The Review Petitioner submits that the Order dated 11.04.2023 passed in Petition No. 25 of 2022 ("Impugned Order") is erroneous to the extent that the Commission has miscalculated the Cross Subsidy Surcharge (CSS) for HT Ferro and EHT Ferro consumers in the state of Meghalaya. Hence, it is prayed that this Commission may review the computation of CSS for HT Ferro and EHT Ferro consumers.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

2. The Petitioner is a society registered under the Meghalaya Societies Registration Act, 1983 having its registered Office at Byrnihat, Ri-Bhoi District, Meghalaya. The Byrnihat Industries Association was formed by the different industrial units for the welfare, smooth and effective functioning of its units. The Petitioner regularly participates in the proceedings related to ARR and Tariff determination by the Commission and takes up the other issues concerning its Members.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

3. The Respondent, Meghalaya Power Distribution Corporation Limited is a deemed licensee in terms of Section 14 of the Electricity Act 2003, engaged in the business of Distribution of Electricity in the state of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

4. Commission in exercise of powers conferred under Section 181 read with Section 61, Section 62, Section 63, Section 64, Section 65 and Section 86 of the Electricity Act 2003 issued the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 on 15.09.2014 ("MYT Regulations 2014"). The Commission vide Notification dated 15.06.2021 issued Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2021 ("MYT Regulations 2021").

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

5. On 25.03.2021, Commission had passed orders in Case No. 04 of 2021 filed by the Respondent and determined the Multi Year Aggregate Revenue Requirement (ARR) for 3rd MYT Control Period from FY 2021-22 to FY 2023-24 and Retail Supply Tariff for FY 2021-22 for distribution and retail supply of power in the State of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

6. Petitioner Submitted that in accordance with the Regulation 6 of the MYT Regulations 2014, the Respondent has filed the Petition on 30.11.2022 for determination of the ARR and Retail Tariff for FY 2023-24 in Case No. 25 of 2022. In exercise of the powers vested under Section 62 (1) read with Section 62 (3) and section 64 (3) of the Electricity Act 2003 and MYT Regulations 2014 and other enabling provisions, Commission has issued the Impugned Order for approval of the ARR and determination of Retail Tariff for FY 2023-24 in the State of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

7. Commission in the Impugned Order has miscalculated the Cross Subsidy Surcharge (CSS) for HT Ferro and EHT Ferro consumers in contravention to the National Tariff Policy, 2016 ("Tariff Policy 2016").

Aggrieved by the erroneous Cross Subsidy Surcharge for HT Ferro and EHT Ferro consumers, the Review Petitioner under Regulation 22 of the MYT Regulations 2014 and Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007 has preferred Review of the Tariff Order dated 11.04.2023 in Case No. 25 of 2022.

Commission's Analysis

Commission considers that there has been a typographical omission in the Cross Subsidy surcharge table for Ferro Alloys Industries which does not impact change in Tariff Structure.

Para 8.5.1 of National Tariff Policy provides that;

*“A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. **While the interest of distribution licensee needs to be protected** it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.”*

Commission admitted the Petition on 8th June 2023 and registered as MSERC Case No. 8/2023, for undergoing the Review process.

Erroneous computation of Cross Subsidy Surcharge for HT Ferro and EHT Ferro consumers

Petitioner’s Submission

8. Commission by way of the Impugned Order has approved CSS and Wheeling Charges for the consumers availing Open Access in the state of Meghalaya. It is submitted that the Commission has determined the Cross Subsidy Surcharge for various category of consumers connected at HT level and EHT level respectively. Pertinently, Commission has approved CSS for HT and EHT connected Ferro Alloy consumers separately for FY 2023-24. The relevant extract of the Impugned Order is reproduced below:

“7.2 Cross Subsidy Surcharge...

Commission’s Analysis

The Tariff determined for Ferro Alloys industries was as a measure of industrial promotion in the state of Meghalaya and as mandated in terms of section 62 (3) of EA 2003.

The licensee shall file the status report as required vide para 5.26 of this order for further review and take appropriate decision.

The Cross subsidy surcharge shall be computed as per the Regulations and National Tariff policy notified by Ministry of Power Resolution dated 28th January 2016 as analysed below.

Surcharge formula:

$$S = T - [C / (1 - L/100) + D + R]$$

Where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Table 7.5: Weighted Average Power Purchase Cost for FY2023-24

Sl.No	Particulars	(Rs. In Crores)
1	Power Purchase Cost	1156.92
2	PGCIL Cost	71.80
3	Total(1+2)	1228.72
4	Power Purchase(MU)	2547.91(MU)
5	Weighted Avg. Power Purchase cost(3/4)	Rs.4.82/Kwh

Table 7. 6 : Computation of Cross Subsidy Surcharge for FY 2023-24

Voltage Level	T= Tariff (Rs./Kvah)	C= Average Cost of Power Incl. PGCIL Cost	L= Losses(%)	D= Wheeling Charges	R= Regulatory Assets	S= Surcharge	Limited to 20% of Tariff (Rs./KVah)
	1	2	3	4	5	6	7
HT Level	11.90	4.82	6%	1.30	0	5.47	2.38
EHT Level	7.83	4.82	4%	1.30	0	1.51	1.57

Commission considers Cross subsidy surcharge for HT consumers at Rs.2.38/Kvah and EHT consumers at Rs.1.51/Kvah for FY 2023-24.

Separate CSS for Ferro Alloys Industries:

Computation of Cross Subsidy Surcharge for Ferro Alloy Industries for FY 2023-24

Voltage Level	T= Tariff (Rs./Kvah)	C= Average Cost of Power Incl.PGCIL Cost	L= Losses (%)	D= Wheeling Charges	R= Regulatory Assets	S= Surcharge	Limited to 20% of Tariff (Rs./KVah)
	1	2	3	4	5	6	7
HT Level	5.81	4.82	6%	1.30	0	0.62	1.16
EHT Level	5.45	4.82	4%	1.30	0	0.87	1.09

Commission considers Cross subsidy surcharge for HT Ferro Alloys consumers at Rs.0.62 ps /Kvah and EHT Ferro Alloys consumers at Rs.0.87 ps/Kvah for FY 2023-24.”

Commission’s Analysis

Commission had notified Wheeling Charges vide page no.121 and Cross Subsidy Surcharge vide page no.124 of Tariff Order as per MSERC MYT Regulations 2014 and National Tariff Policy 2016.

The Computation of wheeling charges notified for the consumers availing open access in the state of Meghalaya as per the Regulation 97 of MSERC MYT Regulations 2014 and Cross Subsidy Surcharge has been computed as per the National Tariff Policy 2016.

The computation of CSS for HT level industries has been worked out at Rs.5.47 ps/KVah as per the formula notified in the National Tariff Policy 2016 and the same has been limited

to Rs.2.38 Ps/KVah being the 20% of the Tariff payable by that category of the consumers seeking open access. The CSS for EHT level industries has been worked out at Rs.1.51 ps/KVah as per the formula which is lower than the 20% of the Tariff payable by that category of consumers seeking open access as shown in the table below.

Table 7. 6 : Computation of Cross Subsidy Surcharge for FY 2023-24 (Review)

Voltage Level	T= Tariff (Rs./Kvah)	C= Average Cost of Power Incl. PGCIL Cost	L= Losses (%)	D= Wheeling Charges	R= Regulatory Assets	S= Surcharge	Limited to 20% of Tariff (Rs./KVah)
	1	2	3	4	5	6	7
HT Level	11.90	4.82	6%	1.30	0	5.47	2.38
EHT Level	7.83	4.82	4%	1.30	0	1.51	1.57

Commission considers Cross Subsidy Surcharge at Rs.2.38 Ps/KVAh for HT Industries and Rs.1.51 Ps/KVah for EHT Industries for FY 2023-24.

Separate CSS for HT/EHT Ferro Alloys

Computation of Cross Subsidy Surcharge for Ferro Alloys Industries as per the formula resulted in negative surcharge, which is an aberration. Commission considers that in keeping with the Provision of the National Tariff Policy, the Ferro Alloys industries seeking open access shall have to pay Cross Subsidy Surcharge in order to compensate the Distribution licensee, and in keeping with the Tariff Policy this surcharge shall not exceed 20% of the Tariff payable by that category seeking open access notified in the Column no. 07 of Cross Subsidy Table vide page no.124 of Tariff Order for FY 2023-24.

Computation of Cross Subsidy Surcharge for Ferro Alloy Industries for FY 2023-24

Voltage Level	T= Tariff (Rs./Kvah)	C= Average Cost of Power Incl.PGCIL Cost	L= Losses (%)	D= Wheeling Charges	R= Regulatory Assets	S= Surcharge	Limited to 20% of Tariff (Rs./KVah)
	1	2	3	4	5	6	7
HTLevel	5.81	4.82	6%	1.30	0	(-0.62)	1.16
EHTLevel	5.45	4.82	4%	1.30	0	(-0.87)	1.09

(pg.no. 124 of T.O 23-24)

Para 8.5.1 of National Tariff Policy 2016 provides that -

“The formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.”

The cross subsidy surcharge for open access Ferro Alloys consumers for the year 2023-24 is calculated in accordance with the provision of the National Tariff Policy and MSERC Regulations.

Therefore, the Commission, while keeping the overall objectives of the Electricity Act in consideration, now reviews the matter and taking into consideration the circumstances prevailing in the area of the Distribution Licensee as provided in the National Tariff Policy, 2016 Para 8.5.1, and keeping within 20% of the tariff payable by that category of consumers, the Cross Subsidy Surcharge in respect of HT/EHT Ferro Alloys Industries for FY 2023-24 is notified as under.

Cross subsidy Surcharge for Ferro Alloys for FY 2023-24 (Review)

Particulars	Amount
HT Level Ferro Alloys Industries	Rs.0.62/Kvah
EHT Level Ferro Alloys Industries	Rs.0.87/Kvah

Commission considers Cross subsidy surcharge for HT Ferro Alloys consumers at Rs.0.62 /Kvah and EHT Ferro Alloys consumers at Rs.0.87/Kvah for FY 2023-24.

Petitioner’s Submission

9. Regulation 24 of the Meghalaya State Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2012 provides for Cross Subsidy Surcharge:

“24. Cross subsidy surcharge

(1) Cross-Subsidy Surcharge

In addition to transmission charges and wheeling charges, a consumer availing open access to the transmission system/distribution system shall pay a Cross- Subsidy Surcharge on per unit basis for actual energy drawn through open access. The Open access users, except those availing open access facility to transfer power from their captive generating plants to the destination of their own use, shall pay the (cross subsidy) surcharge to the distribution licensee of their area, as determined by the Commission from time to time. The amount of surcharge shall be so calculated as to meet the current level of cross subsidy from that category of consumers and shall be paid to the distribution licensee of area of supply where the consumer is located.”

Commission’s Analysis

The Distribution licensee MePDCL in their petition for FY 2023-24 have not projected any claim for approval of the Cross subsidy Surcharge for those availing open access facility to transfer power from their Captive generating plants to the destination of their own use.

Commission does not notify the CSS for instant claim of the petitioner.

Commission considers no review is required in this aspect for FY 2023-24.

Petitioner’s Submission

10. At the outset, reference be drawn to the provisions contained in the National Tariff Policy 2016 as notified by Ministry of Power, Government of India vide Resolution dated 28.01.2016 which prescribes the formulae for the computation of CSS to be levied onto the consumers who are permitted Open Access. The relevant provision of the National Tariff Policy 2016 is reproduced below:

“8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access

should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

...

SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.

Surcharge formula:

$$S = T - [C / (1 - L/100) + D + R]$$

Where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Provided further that the Appropriate Commission, in consultation with the Appropriate Government, shall exempt levy of cross subsidy charge on the Railways, as defined in Indian Railways Act, 1989 being a deemed licensee, on electricity purchased for its own consumption.”

Commission’s Analysis

There are no users for Railway traction in the state of Meghalaya.

The Distribution licensee MePDCL in their petition for FY 2023-24 have not projected any claim for exemption of levy of Cross subsidy surcharge.

Commission considers no review is required in this aspect for FY 2023-24.

Petitioner’s Submission

- 11. It is submitted that upon perusal of the CSS computation made by the Commission for HT Ferro and EHT Ferro consumers, it is clear that there has been an error in the application of the abovementioned formula for the computation of CSS. Based on the formula prescribed under the Tariff Policy 2016, the Cross Subsidy Surcharge for HT Ferro and EHT Ferro consumers works out to be (-) 0.62 and (-) 0.87 respectively, however, the Commission has erroneously approved the same to be +0.62 Rs./ unit and +0.87 Rs./ unit for HT Ferro and EHT Ferro consumers. The relevant computation is depicted below:

Voltage Level	T= Tariff (Rs./Kvah)	C= Average Cost of Power Incl.PGCIL Cost	L= Losses (%)	D= Wheeling Charges	R= Regulatory Assets	S= Surcharge	Approved by MSERC
	1	2	3	4	5	6	
HT Ferro	5.81	4.82	6%	1.30	-	(-)0.62	0.62
EHT Ferro	5.45	4.82	4%	1.30	-	(-)0.87	0.87

Commission’s Analysis

Commission considers that there has been a typographical omission in the Ferro Alloys Industries Cross Subsidy surcharge table which does not impact change in Tariff Structure.

Paragraph 8.5.1 of National Tariff Policy 2016 provides that;

*“A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. **While the interest of distribution licensee needs to be protected**, it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.”*

Commission considers that on account of a separate Tariff for Ferro Alloys, the industries shall use power from Meghalaya Power Grid and shall not move to open access while the Revenues of Distribution licensee would considerably increase which in order to contribute to cross subsidy for small time and low end consumers Tariffs.

The overall average cost of supply for FY 2023-24 worked out to be Rs.7.61 Ps/Kwh.

The tariff for consumers of Ferro Alloys has been determined far less than the overall average cost of supply, the Ferro Alloy Consumer seeking open access would be paying still less than the average cost of supply including the Cross Subsidy surcharge now determined for FY 2023-24.

Computation of Cross Subsidy Surcharge for Ferro Alloys Industries as per the formula resulted in negative surcharge, which is an aberration. Commission considers that in keeping with the Provision of the National Tariff Policy, the Ferro Alloys industries seeking open access shall have to pay Cross Subsidy Surcharge in order to compensate the Distribution licensee, and in keeping with the Tariff Policy this surcharge shall not exceed 20% of the Tariff payable by that category seeking open access notified in the Column no. 07 of Cross Subsidy Table vide page no.124 of Tariff Order for FY 2023-24.

Computation of Cross Subsidy Surcharge for Ferro Alloy Industries for FY 2023-24

Voltage Level	T = Tariff (Rs./Kvah)	C = Average Cost of Power Incl. PGCIL Cost	L = Losses (%)	D = Wheeling Charges	R = Regulatory Assets	S = Surcharge	Limited to 20% of Tariff (Rs./KVah)
	1	2	3	4	5	6	7
HT Level	5.81	4.82	6%	1.30	0	(-) 0.62	1.16
EHT Level	5.45	4.82	4%	1.30	0	(-) 0.87	1.09

The cross subsidy surcharge for open access Ferro Alloys consumers for the year 2023-24 is calculated in accordance with the provision of the National Tariff Policy and MSERC Regulations.

Therefore, the Commission, while keeping the overall objectives of the Electricity Act in consideration, now reviews the matter and taking into consideration the circumstances prevailing in the area of the Distribution Licensee as provided in the National Tariff Policy, 2016 Para 8.5.1, and keeping within 20% of the tariff payable by that category of consumers, the Cross Subsidy Surcharge in respect of HT/EHT Ferro Alloys Industries for FY 2023-24 is notified as under.

Cross subsidy Surcharge for Ferro Alloys for FY 2023-24 (Review)

Particulars	Amount
HT Level Ferro Alloys Industries	Rs.0.62/Kvah
EHT Level Ferro Alloys Industries	Rs.0.87/Kvah

Commission considers Cross subsidy surcharge for HT Ferro Alloys consumers at Rs.0.62 /Kvah and EHT Ferro Alloys consumers at Rs.0.87/Kvah for FY 2023-24.

Petitioner’s Submission

- The Review Petitioner is seeking a review of the Impugned Order as this Commission has prima facie erroneously calculated the rate of CSS to be levied on HT/EHT Ferro consumers. It is submitted that CSS as applicable on the HT/EHT Ferro consumers in the

Impugned order is in violation of the Tariff Policy, 2016. It is further submitted that due to failure to determine CSS in accordance with the Tariff Policy, 2016, open access is completely unviable for HT/EHT Ferro consumers in the State and the industries have lost access to power available at competitive rates. This is in contravention to the spirit of Electricity Act 2003 and the provisions of Tariff Policy, 2016, the latter which mandates that CSS should not make open access transactions onerous. It is submitted that the determination of CSS needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access.

Commission's Analysis

Commission has discussed this issue in the paragraph no.11 above.

The average cost of supply for FY 2023-24 worked out to be Rs.7.61 Ps/Kwh.

The tariff for consumers of Ferro Alloys has been determined far less than the average cost of supply, the Ferro Alloy Consumer seeking open access would be paying still less than the average cost of supply including the Cross Subsidy surcharge now determined for FY 2023-24.

The calculation of Cross Subsidy Surcharge is as per the formula notified in the National Tariff Policy 2016 resulted in negative charge. Thus the Ferro Alloy consumers availing open access power shall compensate the Distribution Licensee to the extent Cross subsidy surcharge determined in above paragraph as per the National Tariff Policy 2016.

Petitioner's Submission

13. The Honorable Supreme Court in *"Energy Watchdog v. CERC &Ors."* [(2017) 14 SCC 80] held that the Tariff Policy 2016 is a 'statutory policy' and has the 'effect of law'. Relevant extract is reproduced below:

"53...Both the letter dated 31st July, 2013 and the revised tariff policy are statutory documents being issued Under Section 3 of the Act and have the force of law."

It is submitted that the Tariff Policy, 2016 having been formulated and notified under section 3 of the Electricity Act, 2003 is a statutory policy and as such there cannot be an occasion to deviate from the said policy. As a necessary corollary thereof, any deviation there from would be fallible in law and constitutes an error apparent on the face of record, thus necessitating the exercise of the review jurisdiction.

Commission's Analysis

Commission had not deviated from the policy notified under section 03 of EA 2003.

It was only a typographical omission, without altering the contents of the formula. The computation of Cross Subsidy Surcharge table is reproduced through this Review Order.

Petitioner's Submission

- 14.** Commission in the Review Application filed by Byrnihat Industries Association (BIA) against the Meghalaya State Power Distribution Corporation Ltd. in MSERC Case No. 11 of 2021 for review of calculation of Cross-Subsidy Surcharge in the tariff order dated 25.03.2021 has allowed the review application by holding that the calculation of T in the Surcharge formula at the generic rate for HT and EHT category is an error apparent on the face of record. It was the Petitioner's case that in the order dated 25.03.2021, the Commission has erroneously taken the generic tariff for the HT and EHT category as Tariff 'T' (as appearing in the surcharge formula under the Tariff Policy, 2016) instead of the Tariff rate fixed for the Ferro Alloy Category which has resulted in the miscalculation of Cross subsidy surcharge and has constituted an error apparent on the face of record. Whereas, the Meghalaya Power Distribution Corporation Limited contended that there has been no error apparent on the face of record warranting intervention by this Commission in the tariff order dated 25.03.2021 and as such prayed to dismiss the review application. The Order passed by the Commission in MSERC Case No. 11 of 2021 is reproduced below:

"14. On overall consideration of the various arguments made before us, we are of the considered view that since the National Tariff Policy has statutory force as a policy having being notified under section 3 of Electricity Act, 2003 the calculation formula as provided

under the policy would have to be strictly adhere to. It is a basic principle of interpretation that a particular provision has to be read in its entirety and cannot read in isolation. Such being the case when clause 8.5.1 of the National Tariff Policy is read in its totality, one cannot but agree that T as provided under the formula in clause 8.5.1 would have to be the tariff payable by the relevant category of consumers. It is not the case before us that there is no separate tariff fixed for the Ferro Alloy category and in view of the order dated 10.09.2018 passed in case no. 9A/2017 of 2018 by this Commission, which is not disputed, the fact remain that a separate tariff category to be known as HTSS Ferro Alloy Category has been provided for by this Commission vide the aforementioned order dated 10.09.2018.

16. Such being the facts and circumstances of the case, we are of the opinion that the petitioner/BIA has made out a case before us and the review application is filed within the stipulated period. Further, in the considered opinion of this Commission the calculation of T in the Surcharge formula at the generic rate for HT and EHT category is an error apparent on the face of record.

17. Therefore, this review application succeeds in terms of the discussion and findings arrived thereof and accordingly, it is hereby ordered that for the purpose of computation of Cross Subsidy Surcharge, T as appearing in the formula of calculation of Subsidy in the case of Ferro Alloy industries would have to be calculated as per the approved tariff of the Ferro Alloy Category. Formula $S=T - [C/(1-L/100) + D + R]$...”

Commission’s Analysis

The subject matter referred to has already been addressed and has been settled.

Petitioner’s Submission

15. In-view of the above, it is submitted that on correct application of the formulae prescribed under the Tariff Policy 2016, the Cross Subsidy Surcharge for HT Ferro and EHT Ferro consumers works out to be (-)0.62 and (-)0.87 respectively. However, there has been an error apparent in the computation of Cross Subsidy Surcharge as the Commission has erroneously approved the CSS to be +0.62 Rs./ unit and +0.87 Rs./ unit for HT Ferro

and EHT Ferro consumers in contravention to the Tariff Policy 2016. Therefore, such a miscalculation constitutes an error apparent on the face of the record necessitating the exercise of the review jurisdiction.

Commission's Analysis

This issue has already been notified in paragraph 11 above.

Petitioner's Submission

- 16.** It is further submitted that since Cross Subsidy Surcharge cannot be negative, the Cross Subsidy Surcharge under the current circumstances ought to be approved at NIL or ZERO for HT Ferro and EHT Ferro consumers respectively.

Commission's Analysis

The tariff of Ferro Alloys has been determined far less than the average cost of supply, the Ferro Alloy Consumer seeking open access would be paying still less than the average cost of supply including the Cross Subsidy surcharge now determined for FY 2023-24.

The calculation of Cross Subsidy Surcharge is as per the formula notified in the National Tariff Policy 2016 resulted in negative charge. Thus the Ferro Alloy consumers availing open access power shall compensate the Distribution Licensee to the extent Cross subsidy surcharge determined in above paragraph as per the National Tariff Policy 2016.

Petitioner's Submission

- 17.** In furtherance of the above argument, it is relevant to mention that ZERO Cross Subsidy Surcharge is applicable across the License area of Damodar Valley Corporation (DVC) in Jharkhand area. Relevant extracts of the Order dated 30.01.2023 passed by the Ld. Jharkhand State Electricity Regulatory Commission (Ld. JSERC) in Case (Tariff) No.: 01 of 2021 is reproduced hereunder:

"7.2 Cross Subsidy Surcharge

The Petitioner has not submitted the Voltage-wise distribution losses. Hence, the Commission has considered the T&D losses of 3.00% as approved for FY 2021-22. The

*Commission observes that the CSS calculated for FY 2021-22 is based on the formula **discussed above is “zero” for DVC.** Hence the Commission approves no cross subsidy surcharge for DVC consumers for FY 2021-22.”*

It is submitted that ZERO Cross Subsidy Surcharge has been prevalent across DVC for the past years. Therefore, ZERO Cross Subsidy Surcharge is possible for HT Ferro and EHT Ferro consumers in the instant case.

Commission’s Analysis

The citation of the Damodar Valley Corporation (DVC) for ZERO CSS is not relevant in the case of Ferro Alloys Industries availing power from Meghalaya Grid.

National Tariff Policy 2016 does not provide for Zero Cross subsidy surcharge.

The petitioner Industries are geographically located in the Meghalaya territory, MSERC shall determine the Cross Subsidy Surcharge payable, considering the conditions prevailing in the territory for sustainable operations by the Distribution licensee.

Jurisdiction of this Honorable Commission

Petitioner’s Submission

- 18. It is respectfully submitted that the present review petition is under Section 94(1)(f) of the Electricity Act, 2003 and as such well within the jurisdiction of the Commission. Section 94 (1) (f) of the Electricity Act 2003 allows the Appropriate Commission to review its own decisions, directions and orders. The relevant clause is reproduced below for reference:

“94. Powers of Appropriate Commission

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: --

.....

(f) reviewing its decisions, directions and orders;

Commission’s Analysis

The issue refers to provisions of Electricity Act 2003, MSERC has been guided to formulate Regulations to be implemented in the State of Meghalaya.

Petitioner's Submission

19. The Petitioner also has the power of review under Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007 which provides for as under:

"21. Review of the decisions and orders of the Commission

*(1) A person aggrieved by a decision or order of the Commission from which no appeal is preferred, or is not allowed to be preferred, can seek a review of the order if new and important facts which, after the exercise of due diligence, were not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or **error apparent on the face of record** or for **any other sufficient reason**, by making an application within 60 days of the date of the order.*

(2) The procedure for filing a review application shall be the same as in case of filing of a petition."

Commission's Analysis

The petition has been duly admitted by the commission and undertaken for Review as per the MSERC MYT Regulations 2014 and National Tariff Policy.

Petitioner's Submission

20. Reference may also be made to Regulation 22 of the MYT Regulations, 2014:

"22 Review of Tariff Order

All applications for the review of tariff shall be in the form of petition accompanied by the prescribed fee. A petition for review of tariff can be admitted by the Commission under the following conditions:

a) the review petition is filed within sixty days for the date of the tariff order, and / or b) there is an error apparent on the face of the record.

On being satisfied that there is a need to review the tariff of any generating company or the licensee, the Commission may on its own initiate process of review of the tariff of any

generating company or the licensee. The Commission may also, in its own motion review any tariff order to correct any clerical error or any error apparent of the face of the record.”

Commission’s Analysis

The petition has been duly admitted by the commission and undertaken for Review as per the MSERC MYT Regulations 2014.

Petitioner’s Submission

21. It is submitted that the present review petition is limited to the aforementioned error on the face of record, which is required to be corrected by this Commission. It is a settled principle of law, as held by the Honorable Supreme Court in *Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands [(2005) 13 SCC 289]*, that the power of review extends to correct all errors to prevent miscarriage of justice, and that the courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. In accordance with the above principle, it is stated that the aforementioned error is apparent on the face of record, and but for the said error, the order under review would not have been passed in its present form.

Commission’s Analysis

Commission considers that the petition has been filed within the stipulated time in the Regulations.

The petition has been duly admitted by the commission and undertaken for Review as per the MSERC MYT Regulations 2014 and National Tariff Policy.

Petitioner’s Submission

22. In a series of judgment, the Honorable Supreme Court while determining the scope of review jurisdiction has held as follows:

Green View Tea & Industries v. Collector, Golaghat, (2004) 4 SCC 122

“14. Turning to the merits of the matter, it appears to us that the High Court has declined the review application by taking the view that there was no error apparent on the face of the record and that the considerations enumerated in Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) were absent in the case. The learned Additional Solicitor General contends that, whatever the grievance of the appellant against the judgment of the High Court dated 24-6-1998, it could not have been brought before the High Court by way of review. He urges that the court's power of reviewing a judgment, under Order 47 Rule 1 CPC is extremely limited. He referred to the observations of this Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715], SCC at p. 719, paras 9 and 10 and has contended that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be an “error apparent on the face of the record” justifying the court's exercise of its power of review under Order 47 Rule 1 CPC. He urges that, in exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected” since a review petition has a limited purpose and cannot be allowed to become “an appeal in disguise”. After having perused the record, we are satisfied that there are mistakes apparent on the face of the record and it is a fit case for review for the reasons that follow.

15. Before we look at the facts of the case, we wish to emphasise the approach to be adopted by the court while administering justice. This Court in S. Nagaraj v. State of Karnataka [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320: (1994) 26 ATC 448] , at SCC p. 630, para 36 observed:

“It is the duty of the court to rectify, revise and recall its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of court should prejudice none.’Of all these things respecting which learned men dispute’, said Cicero, ‘there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature’. This very idea was echoed by James Madison (The Federalist, No. 51, p. 352). He said:

‘Justice is the end of government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit.’ ” ...

24. Unfortunately, the High Court while considering the question of initial compensation amount fixed by the State Government as Rs. 55,000 per bigha, has treated it as an issue of promissory estoppel and has held against the appellant. Irrespective of whether it is a situation of promissory estoppel or not, the fact that the State Government itself had accepted Rs. 55,000 per bigha of tea class land as appropriate compensation ought to have been a factor which would have influenced the fixing of compensation for the land. The letter written by the Deputy Commissioner referring to an earlier order dated 20-6-1990, fixing category wise valuation of different categories of land was just brushed aside on the ground that it did not amount to evidence under Section 3 of the Indian Evidence Act, 1872. Having lost sight of the material on record, the High Court concluded, "there is no material available on record to hold that the land in question falls within a rural area with paddy field and tea cultivation area", which is directly contrary to the jamabandi report, which classified the land as "tea class land".

25. The cumulative effect of all this evidence is that, we are satisfied that the High Court, in fairness and in the interest of justice, ought to have given a second look to its own judgment dated 24-6-1998."

Board of Control for Cricket in India v. Netaji Cricket Club, (2005) 4 SCC 741

"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

91. *It is true that in Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius [(1955) 1 SCR 520: AIR 1954 SC 526] this Court made observations as regards limitations in the application of review of its order stating: (SCR p. 529)*

“Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words ‘any other sufficient reason’ must mean ‘a reason sufficient on grounds, at least analogous to those specified in the rule.’”

but the said rule is not universal.

93.*It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”*

Commission's Analysis

Commission considers that the ARR and Tariff charges has been determined on the estimates projected by the Licensee MePDCL for FY 2023-24, subject to True up after completion of the Tariff year.

The citations of Honorable Supreme Court Judgments filed in the petitions may be considered during the True up exercise after the results of the Statutory Audit report are received.

Petitioner's Submission

- 23.** The present Petition is bonafide and Review Petitioner craves leave to add to the grounds mentioned above.

Commission's Analysis

Commission admitted the petition provisionally on 8th June 2023 and registered as Case No. 8 of 2023.

Petitioner's Submission

- 24.** In light of the submissions made above the Review Petitioner prays that the Commission may kindly be pleased to:
 - (i) Allow the present petition and review the Order dated 11.04.2023, passed by this Commission in Case No. 25 of 2022, to the extent set out in the present Petition, as summarized in paragraph 1 herein above;
 - (ii) Condone any inadvertent omissions, errors, short comings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date; and
 - (iii) Pass such Order as the Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.

Commission's Analysis

Commission considers that BIA has filed petition for Review of ARR and Tariff Order for FY 2023-24 issued on 11.04.2023 vide case no.25 of 2022 of MePDCL, and sought for review of Cross Subsidy Surcharge notified therein.

Thus the Review Petition Stands disposed off.

Sd/-

**R.K. Soni, District Judge (Retd.),
(Member)**

Sd/-

**P.W. Ingty, IAS (Retd)
(Chairman)**