

No. N/109/2025

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 17.02.2026

Present

Shri P. Ravi Kumar	... Chairman
Shri H.K. Jagadeesh	... Member (Legal)
Shri Jawaid Akhtar	... Member

OP No.29/2025

BETWEEN:

Bangalore Electricity Supply Company (BESCOM)
K.R.Circle, Bangalore-560001
(on behalf of all ESCOMs – Party in Person)

...Petitioner

AND:

NIL

...Respondent

IN THE MATTER OF: The proposal of ESCOMs for levying Additional Surcharge on Open Access consumers for FY26

Background

1. The Petitioner, BESCOM, on behalf of all the ESCOMs has filed a petition before the Commission for determination of Additional Surcharge applicable to the Open Access consumers for the year 2025-26 (*hence, in this petition ESCOMs/BESCOM is used interchangeably*). In the petition, BESCOM has stated that, ESCOMs have tied up considerable quantum of power by considering the overall growth, with the approval of the Commission. However, due to the Open Access (OA) consumers buying considerable quantum of power from sources other than ESCOMs, the generation capacity tied up by ESCOMs is getting stranded. In this situation, ESCOMs needs to back down the generation under long-term PPAs and also have to pay considerable amount of Fixed Charges (or Capacity Charges) to the Generators, as per the terms and conditions of the PPAs, even if the energy is not drawn. The burden of these fixed cost is resulting in additional burden on the consumers who are buying power from the ESCOMs. In order to mitigate this, as per Section 42 of the EA, 2003, Section 8.5.4 of the

Tariff Policy, 2016, and as per Clause 5.8.3 of the National Electricity Policy, appropriate Additional Surcharge has to be imposed on the OA consumers who buy power from outside the ESCOMs even after contracting for power supply from the ESCOMs.

2. In the petition, BESCO has proposed additional surcharge as Rs.1.65 per unit. The Commission admitted the petition vide OP29/2025 and issued public notice on 09-10-2025 for inviting the comments/objections from all stakeholders and open access consumers under the jurisdiction of all ESCOMs, by giving 30 days' time. The petition was also hosted on the website of the Commission and all ESCOMs for the information of the public.
3. Subsequently, on 29-10-2025, BESCO filed an amendment to the petition, which was admitted by the Commission on 30-10-2025. The Commission issued another public notice on 31-10-2025 and also placed the amendment petition on the website of the petitioner ESCOMs as well as on the Commission's website, giving time for filing objections till 12-11-2025. In the amendment petition, BESCO has proposed Rs.0.58 per unit as additional surcharge, thereby substantially revising the original proposal of Rs.1.65 per unit. The revision, according to BESCO, was due to the adjustment of the demand charges paid by the Open access consumers, which was not considered in the original petition. Based on the request of the consumers/stakeholders, the Commission extended time limit for filing the objections till 01-12-2025, and the public hearing was scheduled on 02-12-2025, which was postponed to 09-11-2025. Accordingly, the public hearing was held on 09.11.2025.

Gist of the petition

4. In the petition, BESCO has proposed the additional surcharge based on the provision of Section 42(4) of the Electricity Act, which is as follows:

*"42(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, 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**".*

5. Further, the Section 8.5.4 of the Tariff Policy 2016 also provides for recovery of such costs through Additional Surcharge:

*"The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, **or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract**".*

6. The ESCOMs have tied up considerable quantum of power with due approval from the Commission, for meeting the demand of the consumers, based on the overall growth rate. However, the Open Access (OA) consumers, who are now buying considerable quantum of power under OA, are not availing power supply from BESCO/ESCOMs. As a result, the generation capacity tied up by ESCOMs is getting stranded. In this situation, ESCOMs needs to back down the generation and also have to pay Fixed Charges (or Capacity Charges) to the Generators as per the terms and conditions of the PPAs, irrespective of utilization of generation. The burden of fixed cost is affecting the consumers who are buying power from ESCOMs/BESCO. Hence, according to BESCO, the petitioner, to prevent undue burden on the other direct consumers, there is a need for determining the Additional Surcharge to ensure recovery of stranded cost, which would become unavoidable obligation and incidence to bear fixed costs consequent to consumers migrating to Open access. Hence, to mitigate this, it is submitted that it would be appropriate to determine an Additional Surcharge for OA consumers, as per Section 42 of the EA, 2003, Section 8.5.4 of the Tariff Policy, 2016, and Clause 5.8.3 of the National Electricity Policy.
7. The additional surcharge proposed by BESCO is as per the methodology given in KERC (Terms and Conditions for Open Access) Regulations, 2025 dated 26.03.2025 (*Open Access Regulations or Regulations for short*) and as directed at para 6.13.6 of Commission's Tariff Order-2025, dated 27.03.2025. The methodology given in the petition for calculation of Additional Surcharge is as given below:

- The 15 minutes interval available capacity and scheduled capacity of all sources was obtained from SLDC.
- The month-wise average available capacity and schedule capacity was computed with the details provided by SLDC.
- Source-wise difference of the average available capacity and schedule capacity was calculated to arrive at the stranded capacity for each source.
- This stranded capacity was compared with the Open access schedule capacity. The lower of these was considered as the stranded capacity. The stranded capacity was worked out to be at **1033.46MW**.
- These computations were done as per the KERC stipulated formats in Form -1 and Form-2 of the Open Access Regulations.
- For calculating the cost of the stranded power, the per MW capacity charges was determined by considering the approved Capacity charges per MW and the Capacity for FY25, approved in Tariff Order 2024. The details are shown below:

FY25	Capacity (in MW)	Capacity Charges (in Crs.)
RTPS	1470	1326.07
	250	221.98
BTPS	500	305.66
	500	420.03
	700	860.96
YTPS	1600	2223.04
CGS	4259.89	4008.83
UPCL	1200	1060.83
Total	10479.89	10427.4
Per unit FC of PP : (Rs Crore/MW)		0.99

- Cost of Stranded Power for the year(S) (Rs Crores) = 1033.46MW x 0.99 = 1028.29 Crores.
- The formula for Additional surcharge = Cost of Stranded Power for the year(S) (Rs Crores) / OA Energy in MU.
- The OA energy in MU for FY25 obtained from all ESCOMs = 6247.82 MU.
- Hence, the additional surcharge was worked out as 1028.29/6247.82 MU = Rs.1.65/unit. The same details were filed by BESCOM in OP29/2025.

- Initially, the additional surcharge was calculated without deducting the demand charges/ fixed charges paid by OA consumers to DISCOMs.
- In the Statement of Reasons on Regulations 12(d) at page12, it was stipulated that the fixed cost of power purchase paid through demand charges by the open access consumers shall be adjusted while computing Additional surcharge.
- Hence, the additional surcharge was calculated after deducting the demand charges in the amended petition, as shown in the below table:

Ref	Description	Unit	FY-25 actual data
{A}	Long term available capacity	MW	10479.89
{B}	Capacity stranded due to OA	MW	1033.46
{C}	Fixed charges paid to Generators	Rs. in Crs.	10427.40
{D}={C}÷{A}	Fixed charges per MW	Rs. in Crs./MW	0.99
{E}={D}x{B}	Fixed charges for stranded capacity	Rs. in Crs.	1028.29
(F)	Actual Transmission charges	Rs. in Crs.	8316.33
(G)	Actual energy scheduled	MU	75758.09
{H}={F}÷{G}	Transmission charges per unit	Rs./kWh	1.10
I	Distribution charges as per Tariff Order	Rs./kWh	0.36
{J}={H}+{I}	Total transmission and distribution charges per unit	Rs./kWh	1.46
{K}	Energy consumed by open access consumers from the DISCOMs	MU	5763.99
{L}={K}x{J}	Transmission and distribution charges payable by open access consumers	Rs. in Crs.	839.64
{M}	Demand charges recovered by the DISCOM from open access consumers	Rs. in Crs.	1506.91
{N}={M}-{L}	Demand charges to be adjusted	Rs. in Crs.	667.27
{O}={E}-{N}	Net stranded charges recoverable	Rs. in Crs.	361.01
{P}	Open access sales	MU	6247.82
{Q}={O}÷{P}	Additional Surcharge computed	Rs./kWh	0.58

8. The explanation on each of the items in the above table is as given below:
- The serial no. {A} Long term available capacity and {C} Fixed charges paid to Generators was obtained from Tariff Order 2024, as shown above
 - The serial no. {C} was computed based on KERC form-1.
 - Actual Transmission charges {F} is the total transmission charges paid by ESCOMs for FY-25 as per the accounts statement.
 - The Actual energy scheduled {G} is the total energy sales of ESCOMs for FY-25.
 - Distribution charges as per Tariff Order: 0.36/unit for HT consumers for all ESCOMs as per Tariff Order 2024.
 - {K} Energy consumed by open access consumers from the DISCOMs and {M} Demand charges recovered by the DISCOM from open access consumers are obtained from ESCOMs for FY25.
 - With the above details the cost of stranded power for the year has reduced from Rs.1028.29 Crores to Rs.361.01 Crores as shown in the above table.
9. Based on the above BESCOM requested the Commission to approve the Additional surcharge applicable to FY26 with effect from 01-04-2025 to all open access consumers at a rate of **Rs.0.58 paise unit** for the energy sourced through open access.

Written objections/comments on the petition and reply of BESCOM:

10. In response to the public notice issued by the Commission, several generating stations and companies have furnished written objections/comments on the petition. The list of persons who furnished the written comments are placed in **Annexure – List 1**. M/s. Kare Power Resources Pvt Ltd, M/s. Brindavan Hydro Power Limited and Renewable Energy Development Association, Karnataka have furnished the same written arguments. The written arguments of M/s. Sahuvala Grains Pvt Ltd, M/s. Lalpur Wind energy Pvt Ltd, and M/s. Renesis Solar Pvt Ltd are also the same. Copy of the objections/comments received from the stakeholders till the previous day of the public hearing day were forwarded to BESCOM and BESCOM furnished its reply to the comments on 09-12-2025. The issue-wise comments raised in the written objections are analyzed below:
11. Many objectors including M/s Doddanavar Global Energy, M/s Kumaraswamy

Mineral Exports, M/s.SLR Metals, M/s.Greenenergy Wind Corporation, M/s. Renesys Solar PVT Ltd, M/s. Sahuwala Grains Pvt Ltd, M/s. Lalpur Wind energy Pvt Ltd and some other objectors in their written objections stated that various charges including Additional Surcharge will result in the third party open access sales becoming unviable. This would affect the private companies and power generators adversely. Further, DISCOMs have continuing DERS scheme and Special incentive scheme, which will further reduce the viability. The wind generators are suffering losses due to various charges imposed by ESCCOMs such as CSS, W&B charges, additional surcharge etc., and accordingly the rate to be offered by wind generators would be Rs.2.79 per unit for non-GEOA projects and Rs.1.72 per unit for GEOA projects. Considering the unviability of third party OA transactions, the generators requested not to impose additional surcharge and concessions on the charges to be allowed, till the completion of loan repayment period. Some of them argued that imposition of additional surcharge would discourage investment in RE projects and would be a disincentive to Green Energy producers and consumers. Further, it is contrary to Section 86(1)(e) which provides for promotion of RE.

12. Another major argument raised by the objectors is with regard to the rationale for Additional Surcharge as per the Supreme Court Judgment and demonstration of stranded capacity as mentioned in APTEL Orders citing such judgments.
13. M/s Kumaraswamy Mineral Exports, M/s. Kare Power Resources, M/s.Renewable Energy Developers Association of Karnataka, M/s.Gokak Textiles Ltd, M/s.Moryana Renewable Kochi Pvt Ltd, M/s.Clean Max Enviro Energy Solutions Pvt Ltd, M/s. Renew Power, M/s. Avaada Energy Pvt Ltd and FKCCI stated that Additional Surcharge is compensatory as per SC / APTEL Orders. Hence determination of Additional Surcharge is to be based on correct data and stranded power is to be established. Conclusive demonstration of stranded capacity due to OA is required as per APTEL Order dated 28-8-2025. They emphasized that imposition of additional surcharge shall be strictly confined to the actual stranded fixed cost arising solely due to migration of consumers to OA.
14. It is also pointed out that ESCOMS failed to show under recovery of Fixed cost

and also argued that back down of power is not purely on account of OA consumers, and factors such as seasonal load variation, RE infirm generation, merit order dispatch, system constraints, optimization of costly plants as compared to IEX etc., have also contributed to the stranding of power.

15. M/s. Renew Private Ltd stated that KPCL hydel stations have not been included, which will reduce the per MW cost of capacity. Transmission charges considered at actual whereas distribution charges are as per tariff order. The reliance on different sources for determination of surcharge is hence completely flawed. Uniform and consistent approach is necessary for determination of additional surcharge.
16. M/s. Avaada Energy private limited stated that the present petition is devoid of merits, contrary to governing legal and regulatory framework and is to be dismissed. By quoting the provisions in the Act, Tariff Policy and Tariff Order, they have stated that till BESCO files the petition, ASC shall not be levied. The provisions of the Regulations also ensure that the levy is for the future period. They have pointed out that BESCO has made the very same 'grave error' as pointed out by Hon APTEL in the order dated 28-08-2025, by not establishing the link between stranded cost solely due to open access consumers.
17. M/s Kumaraswamy Mineral Exports and M/s Gokak Textiles Ltd stated that as per NEP, additional surcharge shall not be onerous to eliminate competition. Hence the proposed additional surcharge is against NEP.
18. M/s. Kare Power resources Pvt Ltd, M/s.Moryana Renewable Kochi Ltd M/s. Clean Max Enviro Ltd and others stated that the ESCOMs's fixed cost recovery is about 75 to 76% and it is recovered through tariff. Hence, it is not relevant on open access consumption and not leading to under recovery of fixed costs. According to them, 50% of under recovery in fixed charges is attributable to ESCOMs and it cannot be attributed to OA consumers. The net stranded cost would be only Rs. 153.27 crore (Rs.1082.29/2 – Rs.667.27 crore).
19. Another argument put forwarded by M/s. Clean Max Enviro and M/s. Matrix Wind is that, the demand for power is increasing every years and ESCOMs are having five year plans. Hence the stranded power if any would be eliminated in 4 years and after 4 years, additional surcharge shall not be not applicable. M/s Gokak

Textiles Ltd stated that additional surcharge has to be linearly reduced and eliminated within 4 years from the grant of GNA as per Electricity Rules 2024.

20. Many objectors including M/s. Kare Power Resources, M/s Renewable Energy Developers Association of Karnataka have strongly objected to the amendment petition filed by BESCO and pointed out that there is total ad-hocism and lack of application of mind in the petitions. M/s Kare Power Resources, M/s. Bhoruka Power Corporation and some other objectors have stated that Tariff is already determined in MYT and cannot be changed every year. As per MYT Regulations additional surcharge is to be determined along with tariff petition and not separately.
21. Majority of the objectors have strongly objected to the proposal of BESCO for levying the Additional Surcharge from 1st April 2025. Citing various judgments, they have objected to the retrospective levy. M/s. Avaada Energy Private Limited quoting various Supreme Court judgments cited in APTEL judgment dated 5-4-2022, stated that retrospective applicability is arbitrary and expressly forbidden. M/s. SLR Metaliks, M/s. Renew Power and M/s. Soham Infrastructure Pvt Ltd also objected to the retrospective levy, which undermine regulatory certainty and distort established commercial principles. It is argued that retrospective determination without prior consultation violates principles of natural justice. Hence Additional Surcharge shall be made effective prospective only. M/s. Renew Power argued that it is against judgment in Tamil Nadu spinning mills Association Vs TNEB (2011 SCC online APTEL 4).
22. M/s. Kare Power Resources Pvt Ltd, and M/s. Renewable Energy Developers Association of Karnataka pointed out that, petition is defective, without impleading necessary parties and conducting hearing without notice to all parties violated natural justice (Star Metaliks and power limited Vs State of Kerala and others AIR 2017 KAR 178). They further contented that amended petition is not maintainable due to change in cause of action and nonpayment of mandatory court fee.
23. M/s. Renew Power and M/s. Bhoruka Power corporation stated that the amended petition shows that there is no consistent method adopted and ESCOMs are proposing different Additional Surcharge figures in Tariff petitions

and the proposed charges are different in each petition. The existing Additional Surcharge as per the Hon. High Court judgment is allowed to be continued. The present tariff Order dated 27-3-2025 is challenged by the objectors before the Hon. High Court and hence the present petition shall not be entertained. They further contended that it is against section 61 (c), section 86(1)(e) of the Act, Tariff policy and MYT Regulations.

24. The Federation of Karnataka Chambers of Commerce and Industry stated that there is pendency of litigation by HT consumers on the manner of computations. Hence it is *sub judice* and any parallel determination would prejudice the rights of consumers. Further, the Commission cannot entertain a mutable or fluctuating claim in the amended petition. It is against the High Court Judgment dated December 2024 in WPC No. 4344 of 2024.
25. M/s. Kare Power Resources Pvt Ltd M/s. Renewable Energy Developers Association of Karnataka and M/s. Renew Power stated that as per the Electricity Act, additional surcharge is applicable only if wheeling charges are applicable. Some consumers are not paying wheeling charges and hence Additional Surcharge shall not be applicable. M/s. Soham infrastructure stated that wheeling charges and transmission charges are to be deducted and demand charge being paid is to be deducted.
26. M/s Amplus Energy Solutions mentioned that deduction of T&D chares is factually incorrect and those not paying such charges, shall not be indirectly recovered through the computation of stranded cost. According to them, Additional Surcharge shall be lower of fixed cost backed down power (Rs.1028.29 crore) and under recovered fixed cost through demand charges (Rs.225.24 crore). The additional surcharge according to their calculation is only be Rs.0.36 paise. M/s Matrix Wind stated that stranded cost is only Rs.0.0027, and the fixed cost embedded in energy charges to be recovered is not true.
27. M/s. Kare Power Resources Pvt Ltd and Renewable Energy Developers Association of Karnataka pointed out that the present petition for determination of Additional Surcharge is inadmissible as the matter is pending before APTEL and hence *sub judice*. M/s. Gokak Textiles Limited stated that the Commission has to frame regulations for reduction in surcharge and cross subsidies as per the

judgment of Hon. High Court of Karnataka in WP4322 of 2024 in Renew Wind Pvt Ltd Union of India (WP4322 of 2024).

28. M/s. Renew Power suggested that minimum concessions of 60% is to be allowed on additional surcharge. M/s.IEX in their comments mentioned that as per the SOR issued by the Commission on the Regulations, stranded capacity is to be calculated on 15 minutes intervals. Hence open access data shall also to have 15 minute intervals. Further the actual transmission charges considered by BESCO is 35% higher than the approved transmission charges vide FY25 Tariff order dated 28-02-2024. Accordingly, the approved per unit transmission charges would be Rs.0.86 per unit whereas the actual transmission charges taken is Rs.1.10 per unit. They have also requested the Commission to have through scrutiny of the fixed charges and other data furnished in the petition.
29. Similarly, M/s. Avaada Energy also stated that in the absence of proper time block-wise analysis the stranded capacity arrived at by the petitioner ie., 1033.46MW is arbitrary, unreliable and cannot be considered a 'conclusively demonstrated' fact. M/s. Avaada Energy further stated that among other things, the imposition of additional surcharge violates the principles of legitimate expectation and promissory estoppels for projects commissioned under 2014 Solar Policy. According to them, the Order of the Commission dated 18-08-2014 specifically exempts solar projects commissioned till 31st March 2018 from wheeling/banking charges and CSS, and there is a legitimate expectation that other charges including Additional Surcharge will not be levied for the 10 year period. M/s. Soham infrastructure stated that they have filed a writ petition no. 27662 of 2023 and 32525 of 2025 challenging methodology adopted for determination of Additional Surcharge which is pending.
30. In its reply, BESCO has stated that petition is maintainable legally. Since the petition is addressed to the public at large, individual names of the respondents were not mentioned. In such a situation, public notice is issued and opportunity is given to all the affected parties for hearing. The amendment petition is strictly as per the provisions of the law and required fee is also paid for the petition as per the KERC (Fee) Regulations 2004.
31. Regarding the viability of third party OA transactions, BESCO rejected the

arguments of generating companies and stated that open access RE power is still profitable even after paying various charges. RE generators selectively targets high paying HT consumers, purely on commercial considerations, whereas ESCOMs have to shoulder the burden of serving entire consumer base. The open access charges are as per the provisions of the Electricity Act and National Tariff Policy and it is a settled law based on SC judgments that distribution licensees are permitted to levy additional surcharge. The present petition is as per the provisions of Electricity Act, National Electricity Policy, KERC OA Regulations and judgments of Hon. APTEL in M/s. Lord Cholero Alkali Ltd Vs RERC and others and M/s. Faridabad industries Association Vs HERC, duly complying with the principles laid down in these judgments viz demand charges paid by OA consumers to be deducted, actual fixed cost commitments attributable to OA consumers and computation preventing double recovery. The Additional Surcharge is determined as compensatory levy. The stranded capacity attributed to OA consumers is only 36% of the stranded capacity thus ensures that Additional Surcharge is levied only to OA consumption.

32. The HT industrial consumers are paying variable charges(VC) of Rs.7.26 per unit (energy charges Rs.6.6, P&G surcharge Rs.0.36, average FPPCA Rs.0.30, excluding ToD penalty of Rs.1), which is higher compared to last year VC (Rs.6.90/unit), whereas the proposed additional surcharge is lower (Rs.0.58/unit), compared to previous year (Rs.0.82 per unit). The Commission has reduced the cross subsidy levels for industrial tariffs in the Tariff Order 2025, thereby moving towards cost reflective tariffs.
33. RE generators have distinct advantage of must run status, as the backing down of such plants are only on system contingencies. During the period 2016-17, there was shortfall in Solar generation and Commission allowed various concessions such as exemption of wheeling charges, banking charges, and cross subsidy surcharge for 10 years. These measures increased the investor confidence and several projects were taken up ensuring sustained growth in RE infrastructure.
34. Regarding DERS, BESCO has stated that while availing DERS, HT consumers continued to pay demand charges and the realization rate of HT industries is more than the Average cost of supply of Rs.9.20/unit. The excess energy

available during July to November during off peak period is sold through IEX at an average rate of Rs.5/unit and hence DERS is not having any adverse impact, but it will help to improve financials. DERS sales is only 1394MU whereas OA sales in 6283MU in FY25. This itself shows that OA sales is beneficial to consumers and DERS has not eliminated competition.

35. BESCO is also facing difficulties in securing short term and long term finance due to elevated credit risk, owing to delayed subsidy payments, rising debtors, decreasing high paying consumers etc. With reduction in cross subsidy and simultaneous migration of industrial consumers to open access, BESCO is facing financial stress, which must be duly considered while determining tariffs and assessing financial requirements for distribution licensee. The Additional Surcharge calculated by BESCO is as per the provisions of the KERC Regulations and formats and it is justified.
36. Regarding retrospective levy, BESCO stated that the net stranded charges is Rs.361crore calculated for FY25 at the rate of 58 paise from April 2025 onwards, which is to be prospectively approved.
37. The methodology of deducting the demand charges ensures that only net stranded capacity cost after factoring the fixed cost contribution paid by OA consumer is considered for determination of additional surcharge, which ensures that distribution licensee does not recover the same component of fixed cost twice and the surcharge reflects only unrecovered portion of the stranded cost attributable to consumers who have migrated to open access. Wheeling charges recover the network costs, where as additional surcharge compensates the stranded fixed/capacity charges arising from OA consumers. Though the ESCOMS have independent accounting, additional surcharge is determined as per the provisions of the Regulations on a State level as the procurement of power is not undertaken individually by ESCOMS. The methodology given in the regulations clearly demonstrate the stranded cost of power due to open access alone and represents actual net fixed cost recovery causing undue burden on other consumers. There is no ad-hocism or lack of application of mind, as the Additional Surcharge is being determined as per the provisions of the Regulations.

38. According to BESCO, the reliance placed by certain objectors on the earlier proposal of BESCO is misplaced and untenable. BESCO has the universal supply obligation and consequently, the OA consumer invariably fall back on the ESCOMs for supply whenever their schedule or wheeled energy is not available due to various reasons. Accordingly, BESCO has to maintain sufficient contracted capacity and system readiness, and account for power requirements of OA consumers and it cannot be treated as unavoidable. BESCO has to contract for sufficient power including OA consumers who may revert to the grid at any point of time.
39. The argument that Additional Surcharge determination is before APTEL is also not valid as the Additional Surcharge determined in the subsequent years have not been challenged and any observation before APTEL pertains to the specific year only.
40. Regarding hydel generating stations not being used for calculation of stranded fixed cost, it is primarily due to the regulatory and technical/operational characteristics of hydro power. Due to seasonal nature, hydro stations are treated as must run and not backed down on economic grounds. Hence, hydel capacity stranded due to OA does not arise. Hydel plants are dispatched for peak and grid balancing; these functions are essential irrespective of OA consumption. The fixed cost components are also very low compared to thermal plants, hence to avoid inflating surcharge beyond what is justified, Hydro Fixed Cost is not considered. In the case of transmission and distribution charges, BESCO has stated that it is approved by the Commission and there is no scope for under collection or over collection and the methodology adopted is consistent. On approving concessional Additional Surcharge of 60%, BESCO stated that it is not consistent with regulatory framework as the present methodology is more refined and rational. Granting concessions would undermine the very purpose of surcharge lead to under recovery of legitimate fixed costs, and unfairly burden non-OA consumers for fixed costs arising solely due to OA migration. Based on the above reply BESCO requested to approve the additional surcharge of Rs.0.58 per unit to be imposed from 1st April.

Public hearing on the petition

41. Hearing on the petition was held at the Office of the Commission on 09-12-2025 which was enabled on virtual mode also. List of persons attended the public hearing on direct and virtual mode is given in Annexure List-2.
42. The Petitioner BESCO, on behalf of all ESCOMs made a presentation on the proposed additional surcharge. It was informed that according to the original petition the additional surcharge was computed as 165 paise/unit. However, an amendment petition was filed, since in the Original Petition, the demand charges collected in tariff were not deducted as per Regulations. The revised additional surcharge computed as per the Regulations is 58 paise/unit only. They informed that transactions under IEX are also included under OA transaction. Regarding query on FC of hydro stations, it was informed that fixed cost of hydro plants are very low compared to the thermal plants and is not considered in the calculations. According to BESCO, if included, it might increase the Additional surcharge. The data of 15 minutes interval is considered for generation and availability to arrive at stranded generation capacity. However, 15-minutes data of OA consumers are not available and therefore OA energy is considered to arrive at the stranded cost applicable to OA transactions.
43. M/s. Ashu Gupta of Clean Max Energy mainly reiterating the written comments, appreciated the approach taken by BESCO to deduct the demand charges already collected in the tariff, for calculation of ASC. As per Section 42(4) and APTEL orders, Additional Surcharge can be imposed only if it is conclusively established that cost stranded is due to OA.
44. It is to be established that the entire stranded amount of Rs.1083 crore is due to open access so as to justify the levy of additional surcharge on open access consumers. If there are other contributing factors (such as power is drawn from exchange to that extent stranded capacity not attributable to OA) which is to be accounted for. Such factors that may affect the stranded capacity is not coming forthwith in the petition.
45. The fixed cost as per tariff order is 53% and balance is variable cost. As per the tariff order 2024, the fixed cost recovery is 71%. So 38% (0.53×0.71) of the fixed

cost is recovered from consumers. As per BESCO submission only 19% is the recovery of fixed cost through demand charges and balance is through variable charges. This implies that 50% of the fixed cost not recovered is attributable to ESCOMs and cannot be recovered from open access consumers. In other words, stranded fixed cost attributable to OA transactions is 50% of 1028.29 crore i.e. Rs.514 crores only. If the demand charges of Rs.667.27 crore collected by ESCOMs are adjusted, there is no ASC is payable.

46. The energy demand in the State is increasing every year and ESCOMs have five year plans for meeting the energy demand. So the stranded capacity can last only for 5 years and after that the Additional Surcharge cannot be recovered. The Electricity Rules also provides that Additional Surcharge has to be eliminated in 4 years. Accordingly, Additional Surcharge shall only be imposed for new plants and plants which are old or more than 5 years old are to be exempted.
47. At present sale of RE through open access (third party sales) is a loss making proposition and through 3rd party sales loss is about 1 paise to 80 paise for the generators. With Current OA charges, the Tariff to be levied by generators for third party sales, would be higher than HT-2a tariff. Thus such transactions are unviable. The NEP mandates that OA charges should not be onerous.
48. On the query of the Commission that the Additional Surcharge in other States, respondent replied that it is in the range of 70 to 80 paise per unit. The Commission directed the Stakeholder to file the ASC levied in other States.
49. Shri. Kiran Kumar, M/s.Green Wind Energy stated that Additional Surcharge will affect the private generators adversely, as the investments have already been made based on earlier OA charges. The Generators are operating with thin profit margin and levy of additional surcharge would result in losses to the tune of 38 to 64 paise per unit. Old plants aging more than 10 years are to be exempted from the levy of additional surcharge, otherwise, companies will face closure.
50. Adv.Aishwarya representing Kumaraswamy Minerals stated that as per Section 42(3) surcharge is to be reduced over the years. The Commission has to promote green energy and hence levy of Additional Surcharge will go against the provision of Section 86(1)(e).

51. Shri.Abishek Kumar representing M/s.Shubham and M/s.Avaada Energy (appeared through virtual mode), stated that no evidence is placed to show that stranded cost is due to Open access. In the Tariff Order, the Commission mentioned that Additional Surcharge shall not be allowed till the same is filed as per Regulations.
52. Shri.Abishek Kumar invited attention of the Commission on the Page 13 of SOR which stipulates that 15minutes interval data for OA also, which is not furnished. In this regard the Commission enquired as to whether the respondent could furnish 15 minutes' interval schedule data of Generators at the Injection point and the corresponding drawl at consumer end, the stakeholder informed that the generators' data would be available with SLDC. However, the Commission noted that SLDC is not generating any data, but is repository of available data. The generators have to furnish the details of power scheduled to each of its consumers under open access for each 15-minute block, so that the same can be used for calculations. Unless the data is forthcoming from the generators, it is not possible for using the same for estimations. As such stakeholder was directed to furnish the same. In the absence of stipulated details on 15 minutes schedules and drawal furnished by generators or consumers to SLDC, the same cannot be insisted.
53. Shri.Abishek Kumar further contented that retrospectivity of charges shall not be permitted, as collection of additional surcharge has to be done on monthly basis as per Regulations. Also, as per the APTEL Orders, stranding of cost is to be established for imposing additional surcharge. It is to be demonstrated that power is continuously stranded because of open access. Further, Entire stranded capacity is allocated to open access and other factors like IEX purchase, backing down due to high RE etc., is not considered. It was also requested that the concession extended earlier may be continued while imposing additional surcharge since the levy creates undue burden on OA consumers.
54. M/s Aneesh Chakravarthy, representing Renew Power Private Limited, while supporting the earlier remarks of other stakeholders, emphasized on the retrospective effect and the concessions. He requested that 60% concession hitherto given for additional surcharge shall be continued. He also stated that

KPCL hydro stations is not considered in the Additional Surcharge calculations.

55. Regarding retrospective effect, the Commission noted that at least 3-months' time is required to obtain data after the completion of the financial year. Hence there will be a genuine delay of 3 to 4 months for obtaining data and determination of surcharge. This may limit the recovery of stranded cost for full one year. This can be addressed only if the levy is increased so as to collect the entire stranded cost in the available months or to continue to levy the surcharge till the next determination or 12 months whichever is early. In this regard one of the stakeholders suggested that existing ASC could be continued, till it is determined afresh and which can be trued up later.
56. Shri. Nithesh Tyagi representing Gentari India & Amplus Solar Energy stated that the main issue is how to determine the stranded cost. The concept of additional surcharge arises due to under recovery of FC. If ESCOMs recover the fixed costs fully in the tariff, there is no necessity for recovery of AS. As 75% of fixed cost is recovered through demand charges in Tariff and 48% of remaining 25% of fixed charges is recovered through variable charges. Hence, only 13% of fixed cost needs to be considered for levy of additional surcharge levy. Thus, as per the calculations of the respondent the stranded cost is Rs. 225 crores which is translated to about 36 paise only. He also mentioned that why demand charges are to be deducted from fixed cost. According to him, detailed calculation are to be provided justifying deductions of demand charges.

Analysis and decision of the Commission

57. BESCO filed the petition for imposing Additional Surcharge as per the provisions of Section 42(4) and para 8.5.4 of the National Electricity Policy, adopting the methodology as per Regulation 12.d of the Open Access Regulations. The proposed additional surcharge was calculated as per the stipulations provided in Form 1 and 2 of the Open Access Regulations.
58. The Commission has examined the petition in detail and the arguments put forward by various stakeholders. The following are the statutory and regulatory provisions with regard to levy of Additional Surcharge on Open Access users:

Section 42(4) of the Electricity Act, 2003:

“Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, 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.”

Para 5.8.3 of the National Electricity Policy (NEP) dated 12.02.2005

“5.8.3 An additional surcharge may also be levied under subsection (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access. The amount of surcharge and additional surcharge levied from consumers who are permitted open access should not become so onerous that it eliminates competition that is intended to be fostered in generation and supply of power directly to consumers through the provision of Open Access under Section 42(2) of the Act. ”

Para 8.5.4 of Tariff Policy, 2016 notified by MoP on 28.01.2016

8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.

Sub-Regulation 59.2 of KERC (Multi Year Transmission, Distribution and Retail Supply Tariff), 2024 :

59.2 In terms of Section 42(2) of the Act, when there is unavoidable obligation and incidence to bear fixed costs consequent to

allowing a consumer to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge to meet the fixed cost of such distribution licensee arising out of his obligation to supply. The Commission shall determine the Additional Surcharge based on the approved ARR for the relevant year, in the tariff orders to be issued from time to time.

Thus, the law has provided a remedy for recovery of stranded cost of the Distribution Licensee out of its obligation to supply to an open access consumer.

59. As shown above, the Electricity Act, Electricity Policy and Tariff Policy have conclusively provided for the imposition of additional surcharge. However, the Tariff policy stipulates that it is to be demonstrated that the obligation of a licensee has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The legality and rationale of surcharge has been held in various judgment of the Hon. Supreme Court and APTEL. In *Sesa Sterlite Limited v. Orissa Electricity Regulatory Commission and Ors.* (2014) 8 SCC 444 Hon Supreme Court has explained the rationale for additional surcharges as follows:

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

demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.

60. Further, in *MSEDCL v. JSW Steel Limited and Others* (2022) 2 SCC 742 dated 10.12.2021, the Order passed by the Hon'ble Supreme Court is shown 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"

61. Hon. Supreme court has held that additional surcharge is a *bonafide* levy by distribution licensees for compensating the stranded fixed cost. In Appeal Nos.260/2018 & 43/2021 titled *Renew Power Limited & Ors. v Bangalore Electricity Supply Company Limited & Ors.* Hon APTEL has directed as follows: -

"6. We agree that the basic rationale for imposition of additional surcharge is that the distribution licensees having entered into

Power Purchase Agreements (PPAs) based on the demand in the State, under which there is an obligation to pay fixed charges, are entitled to the compensatory relief in the nature of additional surcharge. But, for this it is necessary for the distribution licensee demonstrates that they are unable to schedule power under the PPAs on account of open access customer taking power from other sources, the power procured by the licensees consequently getting stranded, this resulting in obligation on their part to pay fixed charges, the relief in the nature of additional surcharge being compensatory [SESA Sterlite v. OERC reported in (2014) 8 SCC 444 and Maharashtra State Electricity Distribution Company Limited v JSW Steel Limited & Ors. (2022) 2 SCC 742]"

13. We would impress upon the Commission the need to bear in mind the guidance on the subject provided not only by the National Tariff Policy but also the Regulations framed by the Commission itself wherein the muster prescribed is conclusive demonstration of existence of the factors justifying such levy."

62. Additional surcharge as a compensatory levy is fully justified if the guidance of Tariff policy is followed. Further in Judgment dated 28-08-2025, APPEAL No.282 of 2016 and others in M/s. Lord Chloro Alkali Limited Vs RERC, the stipulation that PPA commitments have been stranded due to open access as shown below:

"23.In our considered opinion, in order to be entitled to levy additional surcharge from the open access consumers under Section 42(4) of the licensee to demonstrate that they are unable to schedule power under the Power Purchase Agreements for the reason that the open access consumers have been procuring power from other sources due to which the power procured by the distribution licensee gets stranded."

63. As shown above, it is clear that the levy of additional surcharge is statutory for the open access consumers for recovering the fixed cost stranded due to open access. The stipulation here is conclusive demonstration of stranded fixed cost

due to open access transactions. Based on the above, and as per the provisions of Section 42(4), Commission has specified provisions in the KERC (Terms and conditions of Open Access) Regulations 2025 for levy of additional surcharge as shown below:

11. Following open access charges payable by open access customer for reserving and /or using the network

....

...

(e) Additional Surcharge wherever applicable.

(2) The OA charges listed in clause 11(1) shall be payable by the OA customers as follows:

(a) charges payable by the generator: Transmission charges, Banking Charges (in kind), transmission losses (in kind as applicable), load dispatch center fees/charges, scheduling and system operating charges, applicable parallel operation/grid support charges, reactive power charges, deviation settlement charges, monthly transaction charges and meter reading charges:

(b) charges payable by the OA consumer: wheeling charges inclusive of applicable losses as determined by the Commission, cross subsidy surcharge, additional surcharge, standby charges and meter reading charges;

12. Computation of open access charges:

12.d. Additional Surcharge:- (1) The Additional Surcharge shall be computed as follows:

Additional Surcharge (Rs./kWh)

$$= \frac{\text{Cost of Stranded Power due to OA (Rs. Cr)}}{\text{Open Access Energy in MU}} \times 10$$

Where

The Cost of Stranded power due to OA = Quantum of power backed down/surrendered in MW or Quantum of open access power in MW, in the previous year, whichever is lower * Per Unit Fixed Cost of Power Purchase (Rs.Crore/MW).

(2) Additional surcharge shall be on a per unit basis payable monthly by open access customers based on the actual energy drawn under open access

(3) Additional surcharge shall not be applicable for a person who has established captive generating plant for carrying electricity to the destination of his own use.

(4) BESCO on behalf of all ESCOMs, shall collect the data from SLDC & ESCOMs for the previous year as per the Forms-1 & 2 and file petition before the Commission for determination of additional surcharge for ensuing year. The additional surcharge so determined shall be applicable to all open access customers of respective ESCOMs as well as the open access customers of the other Distribution Licensee(s) if they procure power from ESCOMs. The amount of Additional Surcharge so collected by such Distribution Licensees from their OA customers, shall promptly transfer the same to the respective ESCOMs in the subsequent months.

(5) Cross subsidy surcharge and additional surcharge shall not be applicable in case power produced from a non-fossil fuel-based Waste-to-Energy plant is supplied to the Open Access Consumers."

64. Thus, as per Regulation 11, Open access consumers are subjected to levy of Additional surcharge and it is to be determined as per the provisions in Regulations 12 (d). The provisions in the Regulations, which is notified after due prior consultation process, ensures that there is stranded power on account of existing power purchase commitments and to conclusively demonstrate that stranded power is due to open access is alone is considered. The instant petition for determination of the Additional Surcharge filed by the petitioner BESCO is in terms of the provisions of the above Regulations. Further, SOR published on the KERC (terms and conditions for open access) Regulations 2025 has also

addressed many issues raised by the stakeholders on the levy of additional surcharge, which is reiterated. In view of the above, the issues raised on the legality of the Petition, are hereby rejected.

65. During the hearing as well as in the written objections, some pertinent issues were raised by the stakeholders, which are examined below:

a. Demand charges deducted not correct:

66. Shri. Nithesh Tyagi representing Amplus Solar Energy furnished a detailed calculation of their version of stranded cost of power, vide letter dated 12-12-2025. In the letter, it was alleged that there are anomalies in the ESCOM's methodology on the computation of Additional Surcharge. The petitioner deducted the T&D charges payable by OA consumers from the total demand charges while arriving at the stranded charges, on the premise that T&D charges remain unpaid or unrecovered because the consumers have opted for open access. Shri. Tyagi states that the assumption is fundamentally flawed and factually incorrect. The T&D charges are fully payable by OA consumers, deducting T&D charges artificially deflates the revenue side and T&D charges are waived on policy considerations, cannot be indirectly recovered through mechanism of stranded capacity charges. Alternatively, he furnished detailed calculations on his version of additional surcharge calculation. According to him, additional surcharge is applicable if two conditions are met simultaneously; i.e., when the approved tariff is such that revenue from demand charges is insufficient to cover the fixed costs of the distribution licensee and there is actual backing down of generating stations due to open access resulting in stranded capacity charges payable by distribution licensee. Hence the addition surcharge is to be the lower of under recovered fixed attributable to OA consumers through demand charges or the fixed cost under the PPA of the back down generating stations. Based on figures of Tariff Order FY25, the under recovered fixed cost from demand charges is Rs.225.24 crore. If ESCOMs recover FC fully in the tariff, there is no necessity for recovery of Additional Surcharge. As 75% of FC is recovered through Demand charges in Tariff and 48% of remaining 25% of FC is recovered in VC, only 13% of FC needs to be considered for Additional Surcharge. Thus, as per their calculations of the respondent the

stranded cost is Rs. 225.24 crores and under recovery of fixed cost is Rs.484.88 crore. Hence, according to him, the additional surcharge is the lower of the two or Rs.225.24 crore which is translated to additional surcharge is Rs.0.36 per unit.

67. The Commission has examined the arguments of Shri. Tyagi in detail. At the outset, the arguments are beyond the provisions of the Regulations and the respondent has used the details furnished in Tariff Order 25 i.e., for FY26, though the Regulations stipulates that details of previous year is to be used. The methodology on which additional surcharge was proposed is based on the provisions and methodology specified in the Open Access Regulations 2025. Hence, a methodology in variation of the Regulations cannot be adopted at this point. Even this being the case, the Commission has carefully examined the contentions raised by Shri. Tyagi. The Commission is of the view that the arguments of Shri. Tyagi is on the wrong premise that adjustment of demand charges doubly recovers the T&D charges payable for the open access energy. It has been argued that additional surcharge is applicable only when two conditions are satisfied i.e., if there is under recovery of fixed cost and stranded capacity, is not as per the methodology mentioned in the Regulations. As per the judgments of the Hon. APTEL and provisions of Tariff Policy, Additional Surcharge is the compensatory levy payable by the open access consumers for the *stranded fixed cost of power* due to open access only. The question here is who should bear the fixed cost being stranded due to open access. In the absence of levy of additional surcharge, the fixed cost of power stranded due to consumers opting for open access is being collected from general consumers, there by loading the cost which is not attributable to such non-open access consumers. If the additional surcharge is levied on open access consumers, it compensates for stranded fixed cost of power due to open access and reduce the burden on other consumers.
68. The contention that deduction of T&D charges remains unpaid or unrecovered because the consumers have opted for open access is on a wrong premise completely. As per the methodology, after arriving at the stranded cost, excess demand charges if any, over the fixed cost of power paid by open access consumers is adjusted from the total stranded cost to be recovered. In this way,

the open access consumers are liable to pay only the balance portion of the stranded fixed cost of power, adjusting the fixed cost of power already paid by such consumers through demand charges, which would avoid double recovery of the same charges. The T&D charges for the energy purchased from the distribution licensee is excluded (and not the T&D charges of the open access energy), as the demand charges consists of fixed components such as network charges (of the energy consumed from the licensee) and the fixed cost of power. The fixed cost of power already paid by OA consumers through demand charges are deducted from the stranded cost of power so as to arrive at the net stranded cost payable by OA consumers through Additional Surcharge. Interestingly, as against the argument of M/s Amplus energy, M/s Soham infrastructure specifically demanded that wheeling charges and transmission charges are to be deducted from the demand charges already collected. In this context, it is to be mentioned that the similar methodology is being adopted in Telangana, Tamil Nadu & Gujarat. Further Hon. APTEL has upheld the same methodology on determination of additional surcharge in the case of Tamil Nadu in judgment dated 15-11-2021 in Appeal No.177 of 2021). In the States of Maharashtra and Madhya Pradesh, entire per unit fixed cost of power, without any adjustments is levied as additional surcharge. Thus, the Commission is of the considered view that, the contention that the methodology proposed by the respondent is not in line with the Regulations and principles enunciated in the Tariff Policy, are not acceptable.

KPCL Hydro plants and its fixed charges

69. M/s. Renew Power pointed out that as per the Regulations, BESCO has not considered the hydro plants for calculation of additional surcharge, BESCO in the reply has justified the exclusion stating that there is no stranded capacity relating to hydro stations and also the fixed cost relating to hydro plants are comparatively low. According to BESCO, Hydel stations are seasonal in nature and are used for meeting the system peak and for grid balancing rather than meeting the base load. According to BESCO, hydro plants are not back down due to OA, hence by excluding hydel stations, genuine stranded fixed cost is arrived at.

70. The Commission has examined the contention that hydro stations are excluded in stranded cost calculations. The Commission takes note of the BESCO contention that fixed cost relating to hydro plants for FY25 is comparatively low and hydro plants are used for meeting the peak and load balancing etc., cannot be a reason for justifying the exclusion of the same in the petition. **Accordingly, the Commission hereby direct that in future BESCO shall ensure that the proposal for addition surcharge shall be strictly as per the stipulations of the Regulations.**

15 Minutes interval data on Open Access transactions

71. Some of the respondents have commented that though Regulations stipulates that 15 minutes interval data on open access consumers have to be used for arriving at the stranded power, the total open access energy is used for the calculations, which is not as per the Regulations. BESCO, in the reply has stated that 15 minutes interval data on open access consumers are unavailable and accordingly, they have used the energy consumption data for arriving at the open access capacity.
72. The Commission has taken note of the arguments raised by the stakeholders. In the petition, BESCO, in order to arrive at the third party open access wheeling capacity, month-wise wheeled energy converted to open access capacity assuming an average load factor of 25%, in the absence of data relating to 15 minutes schedule for open access. The Commission is of the view that the open access capacity for third party wheeling is to be provided by the respective generators to SLDC on a 15minutes interval basis for each of their consumers, which at present is not being provided. BESCO cannot generate data which is not available on behalf of the open access consumers. Hence, the contention of the objectors cannot be accepted as the objectors themselves have to furnish necessary data to SLDC. During the hearing, the Commission sought to clarify the matter with the objector, for which no reply was forth coming. Hence in the absence of the open access data in the required format, the methodology employed by the petitioner BESCO is the best approximation available and hence it is to be accepted. The Commission also notes that the assumption of 25% load factor is also a reasonable approximation as the major

wheeled capacity is from Renewable energy with a range of capacity factor from 19% to 30%. Thus, the Commission, in the absence of data to be furnished by responding generators, is compelled to accept the best approximation proposed by BESCO.

Unviability of open access transactions

73. A few of the consumers raised the issue that due to various charges such as CSS and Additional Surcharge the open access sales to third party has become unviable and it will affect the promotion of RE as provided in the Act. The Commission notes that the levy of CSS as well as additional surcharge is as per the provisions of the Act, and viability of the OA transactions depends on many factors and the argument that levy of additional surcharge accordingly affects the viability of the transactions cannot be accepted. Additional surcharge is a statutory levy on open access consumers to reduce the burden on the other consumers, hence the same is to be meticulously recovered from open access consumers.

Conclusive demonstration of stranded capacity

74. Some of the respondents emphasized that additional surcharge is justified in terms of the Tariff Policy and APTEL orders, only if it is conclusively demonstrated the link between stranded cost of power due to open access and conclusive demonstration of stranded power. The Commission has examined these arguments carefully. As per the provisions of Tariff policy additional surcharge is applicable if it is conclusively demonstrated that power is continuously stranded due to open access. The methodology adopted by the Commission in the regulations, effectively addresses these issues. The stranded power is established through 15 minutes interval data on available capacity and scheduled capacity which is used to arrive at the stranded power due to open Access. Hence the methodology conclusively demonstrates the occurrence of stranded power, if any, due to open access, thereby addresses the stipulations of APTEL order and Tariff policy. Hence, the Contention of the objectors in this matter is rejected
75. Regarding the objection that stranded power can be due to other factors and purchase of short term power etc., have been examined in the Statement of Reasons issued as part of the Regulations, the same is not again repeated here.

However, it is to be mentioned that major portion of the open Access is relating to third party sales of RE energy. The argument ESCOMs plan for 5 years and accordingly additional surcharge is to be imposed only for four years, only is not valid since as per section 42(4) additional surcharge is for the fixed cost of the obligation to supply of the distribution licensee. The nature of major share of open access transactions are of infirm nature and the consumers may fall back on the distribution licensee at any point of time due to the infirm nature of RE. Accordingly the ESCOMs have to continuously maintain the generation capacity for the obligation to supply to such consumers. The impact on the ESCOMs is continuous as they have to maintain the capacity for such consumers to supply whenever they revert back to original supply. The issues raised by objectors is therefore rejected.

Inconsistency in the figures and adhocism

76. Some of the Respondents have mentioned that there is ad-hocism in the approach taken by BESCO and the amendment to the petition itself reveals that there is no consistency in the methodology adopted by ESCOMs. The Commission has noted such arguments. The initial petition filed by BESCO was not fully as per the provisions of the Regulations, However, through the amended petition, BESCO has rectified the *lacune* in the petition and has filed the amendment in tune with the Regulations, which is admitted by the Commission.
77. Renew Private Limited has pointed out that BESCO has not used the consistent figures and it is flawed as the data used by BESCO is neither the actuals nor as per Tariff Order. Some other consumers raised the issue that there is no consistent methodology used by BESCO while arriving at the additional surcharge. In some cases approved figures in the tariff order is used and in some cases actual figures are used. According to BESCO, the fixed charges payable for the generating stations are taken from the tariff Order. In the case of distribution charges, BESCO has used the approved distribution network charges in the Tariff Order and actual open access energy. Regarding inconsistency of figures, the Commission is of the view that as per the Regulations, as far as possible, verified actual data as per audited accounts are to be used, if such details are available. In the absence of actual data other reliable source such as figures in

the Tariff Order etc., can be relied upon. In the present proceedings, while filing the petition most of the actual data based on audited accounts was not available for BESCOM. However, the Commission has considered the actual figures as per the audited accounts filed as part of petitions filed for Annual Performance Review. In the absence of such figures, verified provisional figure or figures in the Tariff Order may be used. **Accordingly, the Commission directs that BESOCM may take note of these matter while furnishing petitions in future.**

Pendency of petitions on additional surcharge

78. Some consumers pointed out pendency of various petitions before Hon. APTEL and High Court and argued that the present proceeding shall be taken up only after the disposal of such matters. M/s. Kare Power Resources, M/s Bhoruka Power and others claimed that Additional surcharge is to be determined as per MYT Regulations. As per MYT Regulations additional surcharge is to be determined along with tariff petition and not separately. Accordingly, Tariff cannot be altered more than one in a financial year. M/s Bhoruka Power stated that the present tariff Order dated 27-3-2025 is also challenged by the objectors before the Hon. High Court. Hence they stated that the present petition shall not be entertained. In this regard, the Commission is of the view the pending petitions pertains to respective previous years and hence not relating to the present proceedings. Further, there is no stay or bar is granted on the present proceedings. Further, the present petition is as per the provisions of the KERC (Terms and Conditions of Open Access) Regulations 2025 and hence has to be considered as a separate proceeding. The judgments, if any, on the pending petitions shall be applicable only to the said earlier periods.

79. The Commission further notes that there are several petitions filed by various stakeholders before the Hon. High Court of Karnataka challenging certain provisions of the KERC (Terms and Conditions of Open Access) Regulations, 2025. The Commission also notes that the challenges pertain to specific issues such as retrospective applicability of the Regulations, determination of transmission charges, wheeling and banking agreements etc., and not relating to the levy of additional surcharge. Also the Hon'ble High Court has not stayed any of the provisions of the said Regulations. Hence, the Commission is of the considered

view that proceedings before the Hon. High Court of Karnataka relating to the Regulations are not on the levy of additional surcharge.

Retrospective levy of Additional Surcharge

80. BESCO, in its petition proposed to levy additional surcharge from April 2025 onwards. Regarding retrospectivity, as per the provisions of the Regulations, BESCO has to file petition for additional surcharge for the ensuing year in the month of April and after the proceedings, the Commission may issue the orders after the due process. The present petition was filed at the end of August and there were further delays also due to the filing of amendments. Accordingly, as has been pointed out by many consumers, the levy cannot be made applicable retrospectively. However, it is also to be noted that as per the calculations, the net stranded cost based on the details for the previous year is Rs.361.01 crore, if the same is not recovered from the Open access consumers, the burden has to be borne by other consumers. Hence it is the responsibility of BESCO to file the petitions on time so as to recover the Additional Surcharge levy on time in order to reduce the burden on other consumers. It is not possible to recover the entire stranded cost of Rs.361.01 crore during this year. **Hence, the Commission is of the view that the additional surcharge approved for the year 2025-26 shall be collected from March, 2026 for the energy consumed from February 2026 and shall be continued for FY27, till the next levy of additional surcharge is approved for FY27, which is subject to adjustment as per approved ASC for FY27.**

Determination of Additional Surcharge:

81. Based on the above discussion, the Commission proceeds to determine the additional surcharge applicable for the year FY26 as given below:
- a. Stranded capacity due to OA**
82. As per the petition, the stranded capacity is 1033.46MW which is arrived at as the difference between the available capacity and scheduled capacity based on average of monthly figures of 15 minutes interval data sourced from SLDC. The Open access capacity is arrived at using the OA energy and IEX scheduled data, total OA capacity is arrived at as 2892.51 MW. The Commission has examined the figures furnished by BESCO. As per the regulations, the available

capacity and scheduled capacity of the stations have to be arrived at for 15 minutes interval data on the various internal generating stations, for the FY24-25. The stranded capacity is arrived as the difference between the available capacity and scheduled capacity. Further, the scheduled OA capacity was arrived at using the IEX data and third party open access sales assuming 25% Load Factor. Hence the stranded capacity due to open access which is the lower of the stranded capacity and scheduled OA capacity, is 1033.46MW. Based on the details furnished by BESCO the stranded capacity due to OA is approved as given below:

	As per petition	As approved
	MW	MW
1.Average Available Capacity	5086.52	5086.52
2. Average Scheduled Capacity	4053.05	4053.05
3.Stranded capacity	1033.46	1033.46
4. Scheduled OA Capacity	2892.51	2892.51
5.Stranded capacity due to OA (Lower of 3 & 4)	1033.46	1033.46

b. Stranded fixed cost of power

83. In the petition, BESCO has proposed the stranded power is arrived at as per the fixed charges payable to the generators. The fixed charges during FY25 proposed in the petition is as shown below:

	Rs./MW	Rs. Crore
RTPS	1,720.00	1548.05
BTPS	1,700.00	1586.65
YTPS	1,600.00	2223.04
CGS	4,259.89	4008.83
UPCL	1,200.00	1060.83
Total	10479.89 (Capacity)	10427.40
Per MW Fixed cost (Rs./MW)		0.99

84. The Commission has examined the figures furnished by BESCO. In the petition, BESCO has used the approved fixed cost of power as per the Tariff Order for arriving at the per MW fixed cost of power. At present all ESCOMS have furnished the APR petitions based on the annual accounts. Since the actual figures are available, the Commission has considered the actual for arriving at

the fixed cost. As per details furnished in the APR petition based on the annual accounts, the fixed cost relating to power purchase is as shown below:

	As per the audited accounts filed for APR FY25 (Rs. Crore)*					
	BESCOM	CESC	MESCOM	HESCOM	GESCOM	Total
KPCL thermal Total	2,842.20	658.97	327.42	432.43	382.96	4,643.98
CGS	1,783.96	422.10	277.26	674.52	508.98	3,666.82
UPCL	523.20	95.47	105.02	137.21	93.84	954.74
Total	5,149.36	1,176.54	709.70	1,244.16	985.78	9,265.54

*fixed cost of hydro plants are not considered as explained in para 70

85. Based on the above, the Commission, adopts Rs. 9265.54 crores as the fixed cost relating to power purchase for the stations used in the proposal. Accordingly, the per MW cost of power is as shown below:

	As per petition	As approved
Long Term capacity (MW)	10,479.89	10,479.89
Fixed charged paid (Rs. Crore)	10,427.40	9,265.54
Per MW cost (Rs.crore /MW)	0.99	0.88

C. Transmission charges

86. In the petition, BESCOM has used the provisional transmission charges paid for the year FY25 as shown below:

ESCOMs	Transmission charges for FY-25		
	KPTCL	CTUIL	Total
BESCOM	3186.92	999.97	4186.89
HESCOM	1292.91	371.54	1664.45
GESCOM	685.886	256.385	942.271
MESCOM	441.04	184.2	625.24
CESC	631.49	265.99	897.48
Total	6238.246	2078.085	8316.331

87. The Commission based on the details as per the APR petition as per annual accounts has arrived at the transmission charges as follows:

	As per the audited accounts filed for APR FY25 (Rs. Crore)					
Transmission charges	BESCOM	CESC	MESCOM	HESCOM	GESCOM	Total
KPTCL	3,162.22	609.58	441.04	1,281.79	685.89	6,180.52
GNA charges	999.97	277.62	185.19	355.23	256.39	2,074.40
SLDC	22.63	3.93	2.82	4.78	4.40	38.56
Posoco charges	8.88	0.67	0.46	14.81		24.82
Total	4,193.70	891.80	629.51	1,656.61	946.68	8,318.30

D. Actual energy scheduled

88. In the petition, BESCO has stated that actual energy scheduled is the actual sales of ESCOMs which is 75758 MU. Based on the audited accounts furnished by the ESCOMs for APR, the total sales for all ESCOMs taken together is 75636.21MU which is considered for additional surcharge as shown below:

ESCOMs	Energy Sales (MU)
BESCO	37,122.46
CESC	8,447.42
MESCO	6,648.03
HESCO	14,431.48
GESCO	8,986.82
Total	75,636.21

**As per the Audited accounts in the APR filing form D2 including MSEZ/HRECS/AQUES sales*

E . Distribution charges

89. The BESCO has used per unit distribution charges approved for the year FY25 as per the Tariff order. In the absence of actual data, the Commission has accepted the same.

F. Open Access Energy

90. BESCO, in its petition has used 6247.82MU as the actual energy bought by open access consumers for the year FY25. The same figures have been used for arriving at the open access capacity. The Commission approves the same for the purpose of determination of additional surcharge.

91. Accordingly, the approved additional surcharge is arrived at as follows:

Ref	Description	Unit	As per petition	Approved by the Commission
(A)	Long term available capacity	MW	10,479.89	10,479.89
(B)	Capacity stranded due to OA	MW	1,033.46	1,033.46
(C)	Fixed charges paid to Generators	Rs in Crs	10,427.40	9,265.54
(D)=(C)÷(A)	Fixed charges per MW	Rs in Crs/MW	0.99	0.88
(E)=(D)x(B)	Fixed charges for stranded capacity	Rs in Crs	1,028.29	913.71
(F)	Actual Transmission charges	Rs in Crs	8,316.33	8,318.30
(G)	Actual energy scheduled	MU	75,758.09	75,636.21

(H)=(F)÷(G)	Transmission charges per unit	Rs./kWh	1.10	1.10
I	Distribution charges as per Tariff Order	Rs./kWh	0.36	0.36
(J)=(H)+(I)	Total transmission and distribution charges per unit	Rs./kWh	1.46	1.46
(K)	Energy consumed by open access consumers from the DISCOMs	MU	5,763.99	5,763.99
(L)=(K)x(J)	Transmission and distribution charges to be payable by open access consumers	Rs in Crs	839.64	840.81
(M)	Demand charges recovered by the DISCOM from open access consumers	Rs in Crs	1,506.91	1,506.91
(N)=(M)-(L)	Demand charges to be adjusted	Rs in Crs	667.27	666.10
(O)=(E)-(N)	Net stranded charges recoverable	Rs in Crs	361.01	247.61
(P)	Open access sales	MU	6,247.82	6,247.82
(Q)=(O)÷(P)	Additional Surcharge computed	Rs./kWh	0.58	0.40

92. As shown above, the additional surcharge approved for the **year FY26 is 40 paise** per unit. The additional surcharge is applicable for the open access energy **billed from the month of March 2026 ie., for the energy consumed from the month of February, 2026.** Though the net fixed cost of power stranded is arrived at as Rs.247.61 crore for the year FY26 based on FY25 data, in order to recover the above said amount fully, either retrospective levy is required and or the additional surcharge is to be increased to the extent that the said amount can be recovered in the remaining months of the year. However, the retrospective levy was strongly objected to by the stakeholders. Hence the Commission is of the view that the additional surcharge of **40 paise** per unit shall be made applicable **prospectively from March 2026 onwards till the finalization of additional surcharge for the next financial year FY27, to be adjusted based on approved Additional Surcharge for FY27. BESCO shall file petition for additional surcharge as per the provisions of the Regulations for the next financial year so that revised ASC can be levied at least from 1st July of 2026 for FY27.**

Orders of the Commission

93. As detailed in the previous sections, the Commission has arrived at the additional surcharge for the year FY26, after considering the petition filed by BESCO, written and oral objections /comments of the various stakeholders thereof in detail and accordingly approve **40 paise per unit** for the open access energy drawn by the consumers from the sources other than distribution

licensee/ESCOs, excluding captive sources.

Other conditions:

- a) Additional surcharge of 40 paise approved for FY25 shall be applicable to all open access consumers of all ESCOMs as mentioned **in para 92 above**, prospectively collected on a monthly **basis from the month of March 2026** till the finalization of **additional surcharge for the next financial year FY27, which shall be adjusted based on approved ASC for FY27.**
- b) Additional surcharge is not applicable for the energy drawn for captive consumption.
- c) As provided in the Regulations 12(d)(iv), additional surcharge is applicable for all open access consumers of the distribution licensees (MSEZ,AEQUS SEZ and HRECS) other than ESCOMs, if such distribution licensees procure power from ESCOMs. The distribution licensees other than ESCOMs shall collect the additional surcharge as approved from the open access sales of their consumers and pass it on to the respective ESCOMs promptly, not later than one month.
- d) Additional surcharge shall not be applicable for the supply of energy through open access from non-fossil fuel based waste to energy plants.

The Petition is hereby disposed of and ordered accordingly.

This Order is subject to the proceedings and orders of the Hon. High Court of Karnataka relating to KERC (Terms and Conditions of Open Access) Regulations, 2025

Sd/-
(P. RAVI KUMAR)
Chairman

Sd/-
(H.K.JAGADEESH)
Member (Legal)

Sd/-
(JAWAID AKHTAR)
Member

Annexure

List -1 Persons who have filed written objections on the Petition OP No.29 of 2025 on the determination of Additional surcharge on Open access consumers

Sl. No.	Application No.	Name & Address of Objectors
1	E-01	M/s. Doddanavar Global Energy Pvt. Ltd., (DGEPL)
2	E-02	M/s. Sri. Kumarswamy Mineral Exports Pvt. Ltd.,
3	E-03	M/s. SLR Metaliks
4	E-04	M/s. Greenergy Wind Corporation Pvt. Ltd.,
5	E-05	M/s. Kare Power Resources Pvt. Ltd.,
6	E-06	M/s. Renewable Energy Developers Association of Karnataka
7	E-07	M/s. Gokak Textiles Ltd.,
8	E-08	M/s. Moryana Renewable Kochi Pvt. Ltd.,
9	E-09	M/s. Clean Max Enviro Energy Solutions Pvt. Ltd.,
10	E-10	M/s. Renesys Solar Pvt. Ltd.,
11	E-11	M/s. Sahuwala Grains Pvt. Ltd.,
12	E-12	M/s. Lalpur Wind Energy Pvt. Ltd., (Greenko)
13	E-13	M/s. Brindavan Hydropower Pvt. Ltd.,
14	E-14	M/s. ReNew Pvt. Ltd.,
15	E-15	M/s. Boruka Power Corporation Ltd.,
16	E-16	M/s. Federation of Karnataka Chambers of Commerce & Industry (FKCCI)
17	E-17	M/s. Matrix Wind Energy Pvt.Ltd.,
18	E-18	M/s. Somahm Infrastructure Pvt. Ltd.,
19	E-19	M/s. Amplus Energy Solutions Pvt. Ltd.,
20	E-20	M/s. Avaada Energy Pvt. Ltd.,
21	E-21	M/s. Indian Energy Exchange (IEX)

**List -2 : Persons attended the Public Hearing Held on 09.12.2025 at 03.00pm on the
Petition OP No. 29/2025 on the Determination of Additional Surcharge on Open
Access Consumers**

Sl. No.	Name Sriyuths / Smts	Company Name
1	Ashu Gupta	VP, Regulatory, Cleanmax
2	Upendra Singh	Asst. Manager, Cleanmax
3	Shwetha S Bhat	Sr. Manager, Land & Regulatory South-Legal, Cleanmax
4	Raghunandan	President, KREA
5	Shesha Prasanna	Espee Solar / KREA
6	Mahadev	Director (F), BESCOM
7	Ajay Yagati	OSD to DF, BESCOM
8	Ramesh	OSD TO DF, BESCOM
9	Jeros F Bhoge	Sales-Team, GWCP
10	Kiran Kumar	O & M Manager, GWCP
11	Harini	DGM, BESCOM
12	Kala	Assistant (RA), BESCOM
13	Nikhil	DGM, Renew
14	Muniraju HA	AC, Renew
15	Aishwarya B	Lawyer
16	Mithra K	Lawyer
17	B Muralikrishna	Chairman, FKCCI-Energy Committee & KASSIA
18	Naveen	SLV Solar
19	Shashsi Prakash	SKMF – B'lore
20	Prabhat	CEO Greengo
21	Bihu Singh	Customized Energy
22	Anuj Mishra	Cleanmax
23	Aditya	ECSA