

**BEFORE THE MAHARASHTRA REGULATORY COMMISSION,
MUMBAI**

Filing No: _____

Case No. 79 of 2017

Date: 19th December 2017

IN THE MATTER OF

Petition of The Tata Power Company Limited for Approval of Additional Surcharge for Tata Power-D
- Case No. 79 of 2017

Tata Power- Distribution (TPC-D)
Prayas (Energy Group), Pune

**Petitioner
Consumer Representative / Applicant**

**SUBMISSION FROM PRAYAS (ENERGY GROUP) REGARDING THE MATTER MENTIONED
ABOVE**

This submission by Prayas (Energy Group) is in response to the petitions under case no. 79 of 2017. We participated in the public hearing dated 14th December 2017 conducted in this regard where we had made a brief presentation that captures our main comments and suggestions. This submission elaborates on some of those issues in more detail. We request the Commission to accept this submission on record and to allow us to make further submissions in these matters, if any.

1. The petition: Tata Power (Distribution) has filed a petition with the MERC for approval of additional surcharge. The prayers of the petitioner are:

- a) Approve an Additional Surcharge for H2 of FY 2016-17 as computed based on the 6 months data of FY 2016-17 in the Petition
- b) Allow Tata Power-D to levy the approved Additional Surcharge starting from 1st April 2017 on all Open Access consumers
- c) Condone any inadvertent omissions/errors/shortcomings and permit Tata Power to add/change/modify/alter this filing and make further submissions as may be required at a future date
- d) Pass such orders and further orders, as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case

2. Maintainability of the petition: TPC-D had sought Additional Surcharge in its MYT petition and the same was rejected by the MERC in its order in case no. 47 of 2016. TPC-D chose not appeal against this decision of the MERC at the APTEL. Although it has claimed 'changed circumstances', which is one of the grounds for review, TPC-D has also not sought a review of the order in case no. 47 of 2016. Instead TPC-D has simply filed a fresh petition to agitate the same issue that has already been dealt with by the MERC. Therefore, the present petition filed by TPC-D is not maintainable and should be dismissed.

Furthermore, this petition has been filed under Regulation 102 (Power to remove difficulties) of the MERC (Multi Year Tariff) Regulations 2015. This regulation enables the MERC to remove any

difficulties in the implementation of the provisions of the concerned regulation. However, in the present case TPC-D has failed to demonstrate what difficulty it is facing in giving effect to which provision of the said regulations. It would seem that under the pretext of 'removal of difficulty', TPC-D is questioning the merits of the MERC's decision in case no. 47 of 2016, which disallowed the Additional Surcharge in the first place. Hence, filing a petition of this nature is not appropriate and legally not tenable.

We urge the MERC to dismiss this petition as it is not maintainable.

3. Stranded capacity and avoidable power purchase: Without prejudice to our submission that TPC-D's present petition is not maintainable, we would like to submit that even if the petition were maintainable, the Additional Surcharge can still not be allowed. In this regard we would like to make two points:

3.1 **No retrospective applicability:** The MERC (Distribution Open Access) Regulations 2016 do not envisage any retrospective application of Additional Surcharge. In addition, the application of Additional Surcharge will alter the economics of OA transactions as well as influence the choice of consumers to opt for OA. Such charges should only be made applicable prospectively, if at all, so as to provide clear signals to consumers regarding costs. Hence, there is no case for any Additional Surcharge for FY 2016-17 and FY 2017-18.

3.2 **No stranded capacity from FY 2018-19:** the Additional Surcharge is supposed to compensate utilities for the fixed cost of their long-term contracted capacity, which is stranded as a result of consumers moving to Open Access (OA). All of TPC-D's existing PPAs are expiring in March 2018. TPC-D's pending power procurement cases for FY 2018-19 onwards provide an opportunity to plan the power purchase in such a manner that accounts for the sales migration due to open access and hence, would lead to minimal stranded capacity, if any. Failure to ensure this would create perverse incentives for the utility to contract avoidable capacity and present it as a *fait accompli* stranded capacity. It will also have the result of declaring stranded capacity as inevitable even where no long term tie-up exists and even when the possibility of planning for new power purchase contracts is available. This would be fundamentally against the letter and spirit of the Electricity Act, 2003 and the policies notified thereunder, as it would be tantamount to creating deliberate hurdles for open access and thus obstructing competition and consumer choice. Mechanisms such as the Additional Surcharge should be used only in circumstances where consumer migration on account of open access leads to creation of or adds to existing stranded capacity. Since none of these factors is applicable in case of TPC-D, there is no question of allowing any Additional Surcharge.

We urge the MERC to take up TPC-D's power procurement cases on an urgent basis and plan the power procurement accounting for potential consumer migration such that no stranded capacity is created and there is no need for any Additional Surcharge.

4. Infirmities in the petition: Without prejudice to our above submission, we would like to state that even if the petition were maintainable and there were a case for Additional Surcharge, there is no case for Additional Surcharge for the period from FY 2018-19 onwards. In addition, for the period ending in March 2018 (with the expiry of TPC's PPA) TPC-D has failed to demonstrate that it has stranded capacity as a result of its consumers moving to Open Access. In this regard there are various infirmities in the petition which have been highlighted in the presentation made by Prayas at

the public hearing. For the sake of brevity the comments and observations made in the presentation are not repeated here. The presentation is attached with this submission.

5. Making information accessible: We cannot stress enough the need for text-searchable PDF. The petition was not text-searchable and was also extremely difficult to read. Such manner of sharing information defeats the purpose it is meant for. Hence, we request MERC to direct all licensees to ensure that all the future petitions and all relevant annexures are available in text searchable PDF formats.

We once again request the commission to accept this submission on record and to allow us to make further submissions in these matters, if any.

Thanking you

Sincerely

Ashwini Chitnis and Saumya Vaishnava

Prayas (Energy Group), Pune