

THE ELECTRICITY (REMOVAL OF DIFFICULTIES) SECOND ORDER, 2005¹

Whereas the Electricity Act, 2003 (36 of 2003) (hereinafter referred to as the Act) came into force on the 10th June, 2003;

And whereas sub-section (2) of section 42 of the Act provides that the State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints;

And whereas the first proviso to sub-section (2) of section 42 of the Act provides that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission;

And whereas the second proviso to sub-section (2) of section 42 of the Act provides that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee;

And whereas generating companies were allowed to enter into a contract for sale of electricity with any other person with the consent of the competent governments under the provisions of clause (c) of sub-section (1) of section 43A of the Electricity (Supply) Act, 1948 (repealed by the Act), and sale of electricity by such companies was not subject to payment of any surcharge under that repealed law;

And whereas distribution licensees were authorized by the State Governments to supply energy to any person outside the area of supply under section 27 of the Indian Electricity Act, 1910 (repealed by the Act), and supply of energy (electricity) by such distribution licensee was not subject to payment of any surcharge under the said repealed law;

And whereas in case of electricity being sold or supplied under permissions from competent government or authorisations of the State Government, as the case may be, under the said repealed laws, there was no element of cross subsidy and, therefore, there was no requirement of any surcharge for the same;

And whereas difficulties have arisen regarding the applicability of the provisions of section 42 of the Act with regard to the levy of surcharge on the sale of electricity by a generating company under clause (c) of sub-section (1) of section 43A of the Electricity (Supply) Act, 1948 (repealed law) and also on the electricity being supplied by licensees to any person outside the area of their supply under section 27 of the Indian Electricity Act, 1910 (repealed law);

Now, therefore, the Central Government in exercise of its power conferred by section 183 of the Act, hereby makes this order to make provisions in respect of such electricity being sold or supplied under the repealed laws, being not inconsistent with the provisions of the Act, to remove the difficulties, namely:—

1. Short title and commencement.—(1) This order may be called the Electricity (Removal of Difficulties) Second Order, 2005.

(2) It shall come into force on the date² of publication in the Official Gazette.

2. Exemption from payment of surcharge on the sale or supply of electricity.—No surcharge would be required to be paid, in terms of sub-section (2) of section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under clause (c) of sub-section (1) of section 43 A of the Electricity Act, 1948 (now repealed by the Act), and on the electricity being supplied by the distribution licensee on the authorization by the State Government under section 27 of the Indian Electricity Act, 1910 (now repealed by the Act), till the current validity of such consent or authorisations.

1. Vide S.O. 789(E), dated 8th June, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 8th June, 2005.

2. Came into force on 8-6-2005.