



ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
CASE NO: APR(R) – 45 /24 – 25

APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) UNDER REGULATION 3.3 READ WITH REGULATIONS 3.10, 3.11 AND 3.13 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2013, AS AMENDED FROM TIME TO TIME FOR REVIEW OF FUEL AND POWER PURCHASE COST ADJUSTMENT (FPPCA) AND ANNUAL PERFORMANCE REVIEW (APR) ORDER DATED 09.12.2024 IN CASE NO. FPPCA – 120 / 23 – 24 AND APR – 117 / 23 – 24 PASSED BY THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION FOR THE FINANCIAL YEAR 2022 – 23

DATE: 11.07.2025



Application submitted by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) under regulation 3.3 read with regulations 3.10, 3.11 and 3.12 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended from time to time, for review of Fuel and Power Purchase Cost Adjustment (FPPCA) and Annual Performance Review (APR) Order dated 09.12.2024 in Case No. FPPCA – 120 / 23 – 24 and APR – 117 / 23 – 24 passed by the West Bengal Electricity Regulatory Commission for the financial year 2022 – 23

Facts in brief:

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) (hereinafter referred to as "the Petitioner" or "WBSEDCL") submitted an application on 20.01.2025, under regulation 3.3 read with regulations 3.10, 3.11 and 3.12 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, as amended from time to time, seeking review of the order for Fuel and Power Purchase Cost Adjustment (FPPCA) and Annual Performance Review (APR) dated 09.12.2024, in Case No. FPPCA – 120/ 23 – 24 and APR – 117 / 23 – 24 (hereinafter referred to as "the impugned order"), passed by the West Bengal Electricity Regulatory Commission (hereinafter referred to as "the Commission") for the financial year 2022 – 23. The Commission admitted the aforesaid review application in Case No. APR (R) – 45/ 24 – 25.
- 2.0 In the instant application, WBSEDCL has inter alia sought review on the following issues:
 - A) The petitioner submitted that the Commission, in the impugned order, has withheld the expenditure of the terminal benefit fund without acknowledging the annual accounts of the trust funds submitted in the APR petition and therefore prayed to release the withheld amount.
 - B) The petitioner also submitted that the Commission, in the impugned order, has passed the total gain on account of sale of power to person other than consumer and licensee to the consumers and therefore prayed to release 50% of the shareable gain in favour of WBSEDCL.

Observations of the Commission:

- 3.0 The Commission now proceeds to determine whether any case for review has been established by the Review Petitioner under Section 114 and Order 47 Rule 1 of the Code of Civil Procedure (CPC). According to these provisions, a person aggrieved by an order of a court may file a review on the following grounds, provided no appeal against the said order has been lodged:
 - (a) **Discovery of New Evidence:** The petitioner discovers new and important matter of evidence which, after exercising due diligence, was not within their knowledge or could not be produced at the time the decree was passed or the order was made.
 - (b) **Apparent Mistake or Error:** There exists a mistake or error apparent on the face of the record.
 - (c) **Sufficient Other Reasons:** Any other sufficient reason that warrants a review.



3.1 In this connection, reference is made to the following judgments:

- (a) **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]**: The Hon'ble Supreme Court held that the power of review is limited to the correction of mistakes and does not extend to substituting views or re-hearing cases. The review cannot be treated as an appeal in disguise, and the mere possibility of differing views does not constitute a ground for review.
- (b) **Union of India vs. Sandur Manganese and Iron Ores Limited & Others {(2013) 8 SCC 337}**: The Hon'ble Supreme Court reiterated that the power of review jurisdiction is intended solely for the correction of mistakes, not for substituting views. In **Parsion Devi & Others vs. Sumitri Devi & Others**, it was held that an error must be apparent on the face of the record to justify the exercise of review power under Order 47 Rule 1 of CPC. An error requiring reasoning to detect does not qualify as an apparent error. Additionally, a review petition cannot be used as an appeal in disguise.
- (c) **M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India [2018 SCC Online SC 930]**: The Hon'ble Supreme Court emphasized that the power of review is to be used sparingly and is not akin to appellate power. It should be exercised only when there is an error apparent on the face of the record. Judicial discipline mandates that a review application must be heard by the same Bench, preventing it from becoming an intra-court appeal to another Bench, which would undermine judicial consistency.

A) Release of withheld amount of expenditure of terminal benefit fund

Submission of WBSEDCL:

- 4.1 WBSEDCL stated that the Commission has withheld an amount of Rs. 57562 Lakh relying on Note 35 and Note 35.1 of the Annual Accounts of WBSEDCL. WBSEDCL also stated that it follows accounting standard IND-AS 19 specified by the Ministry of Corporate Affairs as per provisions of the Companies Act, 2013 for accounting of its terminal benefit fund. As per the relevant accounting standard, the employee expenses recognized in books of accounts of WBSEDCL is on the basis of actuarial valuation on the date of accounts. Based on such accounting policy, WBSEDCL, during 2022 – 23, has made provisions in their audited annual accounts for Rs. 52890 Lakh as contribution to provident and other funds and Rs. 4672 Lakh as Other Terminal benefits. WBSEDCL prayed to release of the withhold



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amount in view of the Auditor's Certificate submitted by them in the application indicating payment of Rs. 133251 Lakh to Trust Funds during 2022 – 23.

Analysis:

- 4.2 The Commission in paragraph 4.4.2 of the impugned order had observed that Auditor's Certificate submitted by WBSEDCL does not clearly disclose the amount transferred to the terminal benefit funds 'pertaining to the year 2022 – 23'. Hence, the Commission had withheld a net amount of Rs. 51435 Lakh duly considering the fact that only Rs. 6127 Lakh has been actually contributed to the Terminal Benefit fund for the year 2022 – 23 and the remaining amount appears to be provision but not yet transferred to the Terminal Benefit fund. The same can be corroborated from the submission of the petitioner acknowledging in paragraph 10 (iv) of the instant review application that, WBSEDCL has made provisions of Rs. 52890 Lakh and Rs. 4672 Lakh in their Audited Financial Statements based on the accounting policy and provisions of IND-AS 19. In the impugned order, the Commission had also directed WBSEDCL to provide adequate substantiation along with the auditor's certificate providing full disclosure regarding **actual contribution to the terminal benefit funds pertaining to FY 2022 – 23** for admission of their claim of the withheld amount.

Now, it is observed that the petitioner has referred to the same documents already submitted during the APR stage and no new or additional documents or substantiation has been provided to disclose the actual contribution made to the terminal benefit funds pertaining to FY 2022 – 23. Thus, the Commission decides that there is no scope for review and continues to withhold the amount in respect of non-contribution to the terminal benefit funds.

B) Release of 50% shareable gain in favor of WBSEDCL

Submission of WBSEDCL:

- 5.1 WBSEDCL stated that the Commission had determined the total gain on account of sale of power to person other than consumer and licensee as Rs. 119661 Lakh and passed on the total gain i.e., 100% to the consumers in the impugned order instead of 50% as stipulated in the regulation. The petitioner prayed to pass only 50% gain to the consumers and allow WBSEDCL to retain 50% of its gain on account of sale of power to person other than consumer and licensee.



Analysis:

- 5.2 The Commission in paragraph 4.21 of the impugned order had determined the total gain or loss admissible to WBSEDCL in terms of the Tariff Regulations on account of (i) better distribution loss, (ii) sale to person other than consumer and licensee and (iii) sale of power to consumers in competitive licensed area. However, while determining such gain or loss, the Commission in Table 30 of the impugned order had inadvertently considered the shareable gain attributable to WBSEDCL for (i) better distribution loss and (ii) sale to person other than consumer and licensee which had resulted in passing of entire share of gain to the consumers in Table 32 of the impugned order.
- 5.3 In view of the above, the Commission re-determines the net gain or loss of WBSEDCL for FY 2022 – 23 as Rs. 89,331.76 Lakh as below:

Table 1

Sl No	Particulars	Unit	Amount
1	Gain/ (Loss) on account of better distribution loss (As per Table 27 of impugned order)	Rs. Lakh	6,821.00
2	Gain/ (Loss) on account of sale of power to persons other than consumers and licensees (As per Table 28 of impugned order)	Rs. Lakh	1,19,661.00
3	Gain/ (Loss) on account of sale of power to consumers in competitive license area (As per Table 29 of impugned order)	Rs. Lakh	(-) 37,150.24
Net Gain or (Loss) of WBSEDCL for FY 2022 – 23 (Sum 1 to 3)		Rs. Lakh	89,331.76

- 5.4 In terms of paragraph C of Schedule – 9B to the Tariff Regulations, gain due to better performance of distribution loss shall be shared between the distribution licensee and the consumers at the ratio of 75:25. Further, in terms of regulation 5.15 (iv) of the Tariff Regulations, 50% of gain on account of sale of power to person other than consumer and licensee needs to be shared with the consumers. Thus, the net shareable gains to the consumers comes to Rs. 61,535.50 as determined below:

Table 2

Sl No	Particulars	Unit	Net Gain of WBSEDCL (Table 1)	Share %	Amount
1	Shareable Gain on account of better distribution loss to consumers	Rs. Lakh	6,821.00	25%	1,705.00
2	Shareable Gain on account of sale of power to person other than consumer and licensee	Rs. Lakh	1,19,661.00	50%	59,830.50
Net Shareable Gain to Consumers for FY 2022 – 23 (1 + 2)		Rs. Lakh			61,535.50



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5.5 Considering the above, the net gain to be retained by WBSEDCL for FY 2022 – 23 comes to Rs. 27,796.26 Lakh (89331.76 – 61535.50).

6.0 The Commission observes that the review sought for on the issue related to release of the withheld amount of terminal benefit fund in paragraph 4.1 above is devoid of any merit for review. However, the Commission found merit on the review sought for on the issue related to passing 50% of the shareable gain on account of sale of power to persons other than consumer and licensee in favour of WBSEDCL in paragraph 5.1 and is thus allowed.

Determination of Net Adjustable Amount:

7.0 Based on the above analysis, the net aggregated revenue requirement by WBSEDCL for the FY 2022 – 23 considering the net gain retained by WBSEDCL for FY 2022 – 23 is given below:

Table 3

Sl No	Particulars	Amount
		(In Rs. Lakh)
1	Variable cost allowed (vide paragraph 5.2 of impugned order)	21,30,734.56
2	Allowable net fixed cost (vide paragraph 5.1 of impugned order)	6,28,279.95
3	Net Gain of WBSEDCL for FY 2022 – 23 (Table 2 above)	27,796.26
4	Balance adjustment of APR for 2017 – 18 allowed in Tariff Order for 2022 – 23 dated 28.07.2022	6,183.22
5	Adjustment of APR for 2018 – 19 allowed in Tariff Order for 2022 – 23 dated 28.07.2022	1,25,618.48
6	Part adjustment of APR for 2019 – 20 allowed in Tariff Order for 2022 – 23 dated 28.07.2022	1,79,376.00
7	Net Aggregated Revenue Requirement for FY 2022 – 23 [Sum 1 to 6]	30,97,988.47

8.0 The Net Aggregated Revenue Requirement for FY 2022 – 23 becomes **Rs. 30,97,988.47** as against Rs. 30,38,157.97 Lakh determined in the impugned order. Now, considering the sales revenue earned by WBSEDCL during the year 2022-23 for sale to own consumers and licensees as **Rs. 26,61,102.00 Lakh** and the amount withdrawn as decided by the Commission in para 5.6 of the impugned order, the balance amount recoverable comes to Rs. **4,34,776.47 Lakh** as below:

Table 4

Sl No	Particulars	Amount
		(In Rs. Lakh)
1	Net Aggregate Revenue Recoverable	30,97,988.47
2	Less: Revenue realized during the year (vide para. 5.5 of impugned order)	26,61,102.00
3	Less: Amount withdrawn as per Para 5.6 of impugned order	2,110.00
4	Net Amount Adjustable [(4) = (1) - (2) - (3)]	4,34,776.47



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9.0 Now considering the sale to railways as 446.01 MU up to 31.06.2022 and total sale to consumers as 35,697.263 MU as decided in paragraph 5.8.3 of the impugned order, the proportionate share of railways on net adjustable amount comes to Rs. 5,432.20 Lakh ($434776.47 \times 446.01 \div 35697.263$). Thus, the balance adjustable amount comes to **Rs. 4,29,344.27 Lakh** ($434776.47 \text{ Lakh} - 5432.20$) for consumers and licensees.

Order:

10.0 Considering the facts and observation stated above, the Commission now re-determined the net adjustable amount as **Rs. 4,34,776.47 Lakh** in terms of regulation 2.6.5 of the Tariff Regulations for the year 2022 – 23. Rs. 5432.20 Lakh is the proportionate share of railways and Rs. 4,29,344.27 Lakh is the balance share for consumers and licensees.

11.0 The Commission also gives the following directions:

- (i) Considering the amount of Rs. Rs. 73,387.74 Lakh already adjusted in the Tariff Order dated 20.03.2025 for 2025 – 26 in Case No. TP – 98/ 22 – 23, the balance adjustable amount stands as **Rs. 3,55,956.53 Lakh** in favor of WBSEDCL and to be adjusted in the 9th MYT Order of WBSEDCL.
- (ii) The recoverable amount from railways for 2022 – 23 i.e., the amount adjustable determined in the instant order less the amount already recovered in terms of the impugned order shall be recovered by WBSEDCL from the remaining monthly installments.

12.0 The review petition is hereby disposed of.

13.0 A copy of this Order shall be posted on the official website of the Commission.



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14.0 WBSEDCL is directed to download the copy of this Order from the Commission's website and act accordingly. Certified copies of this Order, upon application and fulfilment of the requisite formalities as per the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended, and upon submission of necessary fees, shall be provided to the parties.

Sd/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 11.07.2025

Sd/-
DEPUTY DIRECTOR, WBERC