

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. APR-78/19-20

Date of hearing: 23rd December, 2021

Time of hearing: 14.30 hours

Quorum:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

Shri Pulak Kumar Tewari, Member

In the matter of

Petition filed by West Bengal Power Development Corporation Limited in pursuance to order dated 15.07.2019 issued by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 348 of 2017 (Appeal) along with I.A. No. 1101 of 2019 against the APR order dated 24.08.2017 issued by the Commission in case no. FPPCA-73/14-15 and APR-45/14-15 for the year 2013 – 2014.

And

In the matter of

**West Bengal Power Development Corporation Limited
Vidyut Unnayan Bhavan
3/C, LA Block, Sector – III
Salt Lake
Kolkata 700 106**

..... Petitioner

Representatives attended:

West Bengal Power Development Corporation Limited (WBPDCCL) [Petitioner]

- 1. Sri Sakya Singha Chaudhuri, Advocate**
- 2. Smt. Astha Sharma**
- 3. Sri Deb Kumar Gupta, Director (F&A) and CS**

CASE IN BRIEF

1. The West Bengal Power Development Corporation Limited (hereinafter to be referred as 'Petitioner' or 'WBPDCCL') submitted a petition in terms of the order dated 15.07.2019 of the Hon'ble Appellate Tribunal for Electricity (in short 'Tribunal') in Appeal No. 348 of 2017 (Appeal) along with I.A. No. 1101 of 2019, against the order issued by the West Bengal Electricity Regulatory Commission (in short 'Commission') on 24.08.2017 in Case No. FPPCA-73/14-15 and APR-45/14-15 determining the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the year 2013 – 2014 (collectively referred as 'APR').
2. In their petition, WBPDCCL has stated that being aggrieved with the findings of the Commission in the APR order for 2013 – 2014, which, in their opinion, are inconsistent and contrary to the various provisions of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (hereinafter referred to as 'Tariff Regulations') and prevailing laws against its own practice and orders, they filed an appeal before the Hon'ble Tribunal being Appeal No. 348 of 2017 (Appeal) along with I.A. No. 1101 of 2019 challenging the said order of the Commission.
3. The Hon'ble Tribunal, after hearing both the petitioner and the Commission (respondent) passed an order dated 15.07.2019 and the relevant extract of the said order is appended below:

"5. we are of the opinion that the respondent Commission must relook into the matter once again afresh and decide the same on merits after hearing the parties.

6. Accordingly, the instant application and the appeal are allowed. The impugned order dated 24.08.2017 is set aside. The matter is remitted back to respondent – West Bengal Electricity Regulatory Commission for fresh consideration on merits only in so far as issues raised in the appeal."

4. In view of the above, WBPDCCL has filed the petition praying for reconsideration of the following issues:
- (a) Reconsider afresh the issues raised in the present application to the extent the same has been challenged in the Tribunal in terms of the facts and grounds indicated in the application;
 - (b) Re-determine the Fuel Cost Adjustment and Annual Performance Review for the year 2013 – 2014 after considering the claims as raised in the present application; and
 - (c) Pass such further or other order(s) as the Commission may deem fit in the facts and circumstances of the case.
5. Upon receipt of the petitioner and in terms of the direction given by the Hon'ble Tribunal, the Commission held an online hearing on 23rd December, 2021 at 14.30 hours. The Commission heard WBPDCCL wherein the Ld. counsels Sri Sakya Singha Chaudhuri and Smt. Astha Sharma and Sri Debkumar Gupta, Director (Finance & Accounts) and Company Secretary, WBPDCCL were present. on behalf of WBPDCCL.

SUBMISSION DURING HEARING

6. During the hearing Sri Sakya Singha Chaudhuri, Ld. Counsel made his submission. At the outset he stated that regarding points flagged in point number 1 to 7 the commission assured to Hon'ble APTEL to reconsider the issues upon submission of sufficient documents and it was also assured that the matter relating to imported coal would be reconsidered. He further stated that the petitioner and the petitioner's officers will submit further documents and are also ready to discuss with the officers of the commission with records and documents as may be directed by the commission. He preferred to focus less on the above seven issues. However, he put forward his submission on the following 13 (thirteen) issues:

A. **Heat Value of Coal:**

- (i) The APR Order has failed to take into consideration the relevant provisions for the purposes of determining the FCA, which mandates consideration of actual data available to determine Useful Heat Value ("UHV") of coal. The

APR Order whilst determining FCA, considered normative value but it is prescribed for the limited purpose of projecting the revenue requirement at ARR stage, when the actual data for coal is not available. However, since at the time of FCA the actual data regarding the coal was available, the normative parameters for coal (being an uncontrollable expense) could not have been considered. By applying Regulation 5.8.15, fuel cost has been erroneously treated as a normative cost and not as an "uncontrollable" cost as prescribed under regulation 2.5.5 (iii) of the Tariff Regulations. The regulation 5.8.1 (iii) of the Tariff Regulations provides that for FPPCA actual UHV as per audited report will be considered but it shall not be less than a value, as defined in the regulation and therefore, instead of regulation 5.8.15 regulation 5.8.1 is applicable here. He also stated that the matter relating to ash contents of washed coal is also required to be reviewed in keeping with the provisions of regulation 20 of the TR brought out in 2012.

B. Excess Oil Consumption:

- (i) The claim of the Applicant has been disallowed on assumption that norms consider the de-synchronization and re-synchronization due to low system demand and hence, the petitioner is not entitled to claim excess oil consumption. The APR order failed to consider that the Tariff Regulations recognize fuel as an "uncontrollable" factor. Therefore, notwithstanding the norms that have been fixed, the actual consumption necessarily ought to be allowed unless the petitioner has been imprudent in its usage. Moreover, the norms can never consider the actual number of de-synchronization and re-synchronization due to low system demand and therefore, the oil consumption ought to be allowed on actuals. The claim of the petitioner herein towards excess oil consumption has been erroneously disallowed as the reasons for forced desynchronizations were due to instructions received from the State Load Despatch Centre ("SLDC")/ Area Load Despatch Centre ("ALDC") of West Bengal State Electricity Distribution Company Limited (WBSEDCL) which led to excess oil consumption and not on account of the Applicant.

C. Coal and Ash Handling Charges:

- (i) The APR order has erroneously restricted the expenditure incurred by the petitioner herein towards coal and ash handling charges to the amount proportionate to the actual generation irrespective of actual expenses for all the generating stations except Kolaghat. The Commission must take sight of the vital fact that the quantity of coal utilized is inextricably linked to the ash content found therein and the increase in actual expenditure with respect to coal and ash handling charges was due to deterioration of coal quality arising out of high ash content. Further, it is reiterated that the Tariff Regulations recognize fuel as an uncontrollable expense. Coal and ash handling being activities incidental to coal, will therefore, as a natural corollary, be uncontrollable in nature.

D. Disallowance of Banking Charges:

- (i) The Tariff Regulations consider banking charges as an uncontrollable expense. However, contrary to the Tariff Regulations, banking charges have been erroneously regarded as other finance charges. A plain reading of regulation 5.6.4.2 (iv) of the Tariff Regulations posits that bank charges ought to be allowed to the generating company on actuals. Hence, the petitioner is entitled to banking charges on actuals as per the Tariff Regulations.

E. Reduction in Water Charges:

- (i) It is pertinent to state that water charges are in the nature of statutory levy and as per regulation 2.5.5 (iii) of the Tariff Regulations, all such duties, levies and cess etc. are uncontrollable factor in the hands of the generating company. The APR order has adopted different methods of computation for water charges qua different generating stations however, being an uncontrollable factor, the Commission must compute the same on actuals.

F. Interest incurred in financing of unrealized arrears from beneficiary:

- (i) Regulation 5.6.5.4 of the Tariff Regulations provides for the allowance of expenses incurred on financing of unrealized arrears in the form of interest

on temporary financial accommodation taken by the generating company. Hence, the Commission may kindly consider the interest incurred in financing of unrealized arrears from beneficiary and allow the same.

G. 10% depreciation of Bakreswar transmission assets:

- (i) Under the APR order, a deduction of 10% of the chargeable amount of depreciation of the Bakreswar transmission assets has been carried out. However, the Applicant herein has already submitted the asset register of Bakreswar transmission system along with the application for review of the APR order dated 21.07.2014. Therefore, as the requisite information as sought by the Commission has already been submitted by the petitioner, the Commission may kindly consider the same and allow the petitioner's claim on actuals.

H. Computation error in equity base of Kolaghat generating station for the year 2006 – 2007:

- (i) Under the APR order, the methodology of summation of opening of equity base for the year and addition to the equity during the year has been followed for the purposes of computing closing equity base for the year ending. However, whilst computing the equity base of Kolaghat generating station from FY 2006-07 onwards, for determining the return on equity of the petitioner herein, the APR order has not considered the addition to equity during the FY 2006-07. Hence, this Commission may kindly rectify the said error.

I. Non-consideration of equity infused through internal accruals for the purposes of computing closing equity base:

- (i) Whilst determining equity base at the end of each year, only the amount of equity infused through government sanction or through free reserve of each generating station has been considered under the APR order. The equity infusion by way of internal accruals of the generating company has not been accounted for, which is contrary to the Tariff Regulations. Such non-consideration of equity infusion by way of internal accruals of the

generating company has resulted in artificially reducing the equity base of the petitioner herein and hence, must kindly be accounted for by the Commission. He also referred to an order dated 05.01.2012 of Hon'ble APTEL in case No. 01/2011 in respect of DPSC.

J. Non-consideration of notional declared capacity while computing capacity charges:

- (i) In terms of Regulation 6.4.3 of the Tariff Regulations, capacity charges of a generating company must be computed after considering the notional declared capacity if there is a difference in declared capacity due to shortage in coal supply. However, APR order has failed to consider the notional declared capacity of the generating stations whilst computing the capacity charges. Accordingly, the Commission in terms of the Tariff Regulations may kindly allow recovery of capacity charges on the basis of notional declared capacity.

K. Non-determination of capacity charges for Bakreswar Stage-II, Santaldih and Sagardighi as per Regulation 6.11.4(ii) of the Tariff Regulations.

- (i) Under the APR order, the capacity charges for all the generating stations have been determined in accordance with Regulation 6.11.4 (ii). Whereas, as per the provisions of the Tariff Regulations, the capacity charges for generating stations in commercial operation for less than 10 years are to be determined as per Regulation 6.11.4(ii). Regulation 6.11.4(ii) is only applicable for generating stations in commercial operation for 10 years or more. Hence, this Hon'ble Commission may kindly compute capacity charges for Bakreswar Stage-II, Santaldih and Sagardighi as per Regulation 6.11.4(ii) as the said stations have been in commercial operation for less than 10 years.

L. Double charging of transmission charges for Sagardighi Plant:

- (i) The APR order has inadvertently considered computation of Aggregate Revenue Requirement ("ARR") for Sagardighi, wherein the transmission charges i.e. an amount of Rs. 547.70 lakh, payable to Power Grid Corporation of India Limited ("PGCIL") have been added twice at serial no.4

and 11 of the Annexure- 4E of the APR order. Hence, the Commission may kindly rectify the erroneous computation.

M. Reduction of PAF for Bandel Plant:

- (i) The petitioner herein vide APR Petition in Form 1.1 had provided the Plant Availability Factor ("PAF") for Bandel at 40.13%. However, the PAF for Bandel has been computed at 34.59% under the APR order, which is not based on any document. Therefore, the Commission may kindly consider the PAF value of 40.13% as provided by the Applicant as otherwise it shall have a direct impact on the capacity charges recoverable for such plant.

The petition in details for fresh consideration of FCA and APR petitions for the year 2013 – 2014 have been submitted.

- 7. However, the Ld. Counsel expressed his desire for submission of written arguments in this case.
- 8. On being enquired by the Commission, as to whether all the thirteen issues as have been submitted before the Commission during the hearing, were raised before the Hon'ble Tribunal, the Ld. Advocate of the petitioner affirmed the same.
- 9. The Commission enquired that since the APR order dated 24.08.2017 has been set aside by the Hon'ble Tribunal, whether a fresh order considering the expenses under all the heads of the APR dated 24.08.2017 has to be issued or an order to be issued considering only the thirteen issues raised by the Ld. Advocate during the hearing as well as before the Hon'ble Tribunal. The Ld. Advocate of the petitioner submitted that as per the law, the order of the Hon'ble Tribunal speaks for fresh order considering the issues raised by the petitioner before the Hon'ble Tribunal.
- 10. The Commission also enquired as to whether the methodology, being followed by the Commission in regard to computation of Coal and Ash Handling Charges, is a misplaced consideration the Ld. Advocate of the petitioner confirmed the same.

ORDER

11. In view of the above the Commission directs that WBPDCCL shall submit written argument giving details of the issues required to be considered by the Commission in terms of the order of Hon'ble APTEL annexed with necessary supporting documents within 10 days from the date of this order and upon receipt of the same the Commission shall pass further appropriate order.

Sd/-
(PULAK KUMAR TEWARI)
MEMBGER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 21.01.2022

Sd/-
SECRETARY