



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: APR(R)-18/22-23

**IN REGARD TO PETITION SUBMITTED BY WEST BENGAL STATE
ELECTRICITY TRANSMISSION COMPANY LIMITED (WBSETCL) FOR
REVIEW OF ANNUAL PERFORMANCE REVIEW (APR) ORDER DATED 28TH
JUNE, 2021 OF THE COMMISSION FOR THE FINANCIAL YEAR 2014-15.**

PRESENT:

DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 27.12.2024



CASE IN BRIEF

- 1.0 This application was submitted by the West Bengal State Electricity Transmission Company Limited (WBSETCL) on 19.07.2022 for review of Annual Performance Review (APR) order dated 28.06.2021 in Case No. APR-51/15-16 dated 28.06.2021 passed by the West Bengal Electricity Regulatory Commission (herein after "the Commission", or "WBERC") for the financial year 2014-15 under Regulation 3.3.1 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013.
- 2.0 WBSETCL filed the above review petition on 19.07.2022 with a prayer for condonation of delay on the ground stated hereunder:
 - i) Due to impact of COVID related restriction imposed by the government in the year 2020 and 2021 on the office works of WBSETCL and
 - ii) Some issues of the appeal for APR review for 2010-11 & 2011-12 pending before Hon'ble Appellate Tribunal for Electricity (APTEL) were same as that of this present petition for review of APR order for 2014-15. Hon'ble APTEL passed judgement on the above petition on 26.05.2022 and accordingly, WBSETCL filed this review application on 19.07.2022 for the APR order dated 28.06.2021 for 2014-15 in line with the order of Hon'ble APTEL passed on 26.05.2022 in the in Appeals No. 20 of 2015 and 21 of 2015.
- 3.0 The Commission condoned the delay on the above grounds and admitted the application for review of APR order for 2014-15 on 23.08.2022.
- 4.0 WBSETCL in the instant petition prayed to review of the APR order for the year 2014-15 dated 28.06.2021 on the following six (06) issues:
 - a. Interest on Normative Loan,
 - b. Advance against Depreciation
 - c. Claim of Rs. 216.03 lakh for the scrapped asset written off
 - d. Treatment of Service & Entry Tax
 - e. Admissible equity base and
 - f. Interest on Normative Working Capital



5.0 WBSETCL prayed to review on the above issues for 2014-15 in line with the judgment order of Hon'ble APTEL dated 26.05.2022 in Appeal No 20 of 2015 and 21 of 2015 on the similar issues for the years 2010-11 and 2011-12.

OBSERVATION OF THE COMMISSION

6.0 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.

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.

7.0 The review order dated 09.12.2024 in Case No. APR(R)-44/24-25 has been passed in view of the APTEL order dated 26.05.2022 for the years 2011-10 and 2011-12 after re-visiting some of the issues stated above. Thus, this Commission has decided to revisit those issues to pass on the impact of above Order of this Commission to the APR orders of subsequent year. Accordingly, the observations and considerations of the Commission on the issues are discussed below:

7.1. INTEREST ON NORMATIVE LOAN:

Submission of WBSETCL

WBSETCL submitted that actual addition to fixed asset during the Year of 2007-2008 is Rs. 79477.82 lakhs whereas the commission estimated an amount of Rs. 0 (Zero) ignoring the actual addition to Fixed Asset for the year 2007-2008.

Therefore 70% of the actual addition to fixed asset upto 2014-15 should be greater than the actual addition to debt. Hence, WBSETCL is eligible for Normative Loan during 2014-15. WBSETCL has also referred to the judgement of Hon'ble APTEL dated 26.05.2022 in this respect.

Analysis and decision:

In view of the APTEL order dated 26.05.2022 and subsequent review order of this Commission of APR Orders 2010-11 & 2011-12 in Case No. APR(R)-44/24-25 on this



issue, this Commission has decided to revisit this issue to pass on the impact of above Order of this Commission to the APR orders of subsequent year.

Thus, total addition of fixed assets are recomputed based on following consideration:

- (i) Fixed asset addition for the year 2007-08 is considered as Rs. 31022.44 lakh as per the order dated 09.12.2024 in Case No. APR(R)-44/24-25.
- (ii) Fixed asset additions for 2008-09 to 2011-12 are considered as per the respective APR orders.
- (iii) The Commission noted that in the Annual Accounts of 2012-13 an amount of Rs. 1215.81 lakh has been shown as opening balance from consumer contribution, whereas there is no mention of this amount of consumer contribution till 2011-12. Thus, the Fixed asset addition for 2012-13 amounting to Rs. 44802.21 lakh has been adjusted to Rs. 1215.81 Cr on account of consumer contribution.
- (iv) Fixed asset addition for 2013-14 and 2014-15 are also considered as per the respective APR orders.

Table No - 1

Year	Addition of Fixed assets (Rs in Lakh)	Addition to Debt as Admitted (Rs in Lakh)
2007 – 2008	31022.44	29249.00
2008 – 2009	32637.1	23427.00
2009 – 2010	70342.68	54041.00
2010 – 2011	24742.55	11443.00
2011 – 2012	23698.70	38652.00
2012 – 2013	43586.84	6309.37
2013 – 2014	40136.90	18113.73
2014 – 2015	49709.04	38655.02
Total	315876.25	219890.12

Due to the consequential effect of change of asset addition in 2007-08 and adjustment of consumer contribution in 2012-13, admissible Normative loan for the period from 2012-13 to 2014-15 is recomputed as below:



- (i) As WBSETCL is not able to submit the loans and equity addition specific to the projects put into use during the years, the Commission in the APR order had considered to compare the cumulative addition of loan vs cumulative addition of asset to arrive at admissible addition to normative debt in a year. The same methodology is followed.
- (ii) Further, normative loan once admitted for any year on fulfilment of above condition, interest on such normative loan will continue for subsequent years till expiry of such normative loan.

Table No – 2 (A)

Sl. No	Particulars	Derivation	2012-13	2013-14	2014-15
			Rs in Lakh		
A	Asset Addition during the year	A	43586.84	40136.90	49709.04
B	Cumulative Asset addition upto the year (considering asset addition admitted in APR(R)-44/24-25)	B=Sum A of respective year from Table 1	226030.31	266167.21	315876.25
C	Actual addition of loan during the year	C	6309.37	18113.73	38655.02
D	Cumulative loan addition upto the year considering asset addition admitted in APR(R)-44/24-25)	D= Sum C of respective year from Table 1	163121.37	181235.10	219890.12
E	70% of cumulative asset addition upto the year	E=70% of B	158221.22	186317.05	221113.38
F	Whether cumulative debt addition is less than 70% of cumulative asset addition upto the year	Yes / No	No	Yes	No

Table No – 2 (B)

Sl. No	Particulars	Derivation	2012-13	2013-14	2014-15
			Rs in Lakh		
A	Computation of the admissible Normative loan:				
1	Opening Gross Normative Debt	A1	0.00	0.00	9982.10
2	Less: Cumulative repayment of normative debt	A2	0.00	0.00	0.00
3	Net Opening Normative Debt	A=A1-A2	0.00	0.00	9982.10
4	Actual Addition to debt for the year	B	6309.37	18113.73	38655.02
5	Addition to Fixed Assets during the year	C	43586.84	40136.90	49709.04
6	Normative addition to debt@70% of the addition to fixed asset during the year	D=C x 0.7	30510.79	28095.83	34796.33
7	Excess of normative debt (70%) addition over the actual debt addition	E=Max(D - B,0)	0.00	9982.10	0.00
8	Actual Equity addition during the year	F	33302.32	36875.97	24664.56



9	Equity already considered in the APR order (upto 30%)	Min(Cx30%, F)	13076.05	12041.07	14912.71
10	Excess equity beyond normative equity (30%) during the year	G=F- (Cx30%)	20226.27	24834.90	9751.85
11	Admissible normative debt addition during the year (where cumulative debt addition upto the year is less than 70% of cumulative asset addition as in Table 2A)	H=Min(E,G)	0.00	9982.10	0.00
12	Repayment of Normative loan during the year (1/10 th of Opening Net Normative debt)	I =1/10x A	0.00	0.00	998.21
13	Closing balance of additional Normative debt	J=A + H - I	0.00	9982.10	8983.89
14	Average admissible Normative Debt during the year (where cumulative debt addition upto the year is less than 70% of cumulative asset addition)	K=(A+J)/2	0.00	4991.05	9483.00
15	Weighted Average rate of interest paid on term loan during the year	L in %	9.75%	9.67%	10.44%
16	Admissible Interest on normative debt	M =K x L	0.00	482.63	990.02
B	Interest on normative debt admitted in the APR order		0	0	0
C	Allowable adjustment (A - B)		0.00	482.63	990.02

7.2. ADVANCE AGAINST DEPRECIATION:

Submission of WBSETCL

WBSETCL submitted that, the Commission in the impugned order has erred by not considering Rs. 1830.00 lakh repaid by WBSETCL as principal amount of the Bond in the computation of Advance Against Depreciation (AAD). WBSETCL mentioned that 9.75% Bond of Rs. 183 Crore was issued for swapping of high interest-bearing long-term loans taken to finance various capital projects of WBSETCL, thus repayment of the Bond should be considered as a component of loan repayment during the year.

WBSETCL also prayed to consider repayment of normative loan amounting to Rs. 5206.50 lakh while computing the AAD for the year and claimed Rs. 4958.71 lakh as AAD considering repayment of Loans Rs. 21604.35 lakhs (14567.85 + 1830.00 + 5206.50).

Analysis and decision:

In view of the APTEL order dated 26.05.2022, the Commission in its order dated 09.12.2024 in Case No. APR(R) -44/24-25, has reviewed the position and admitted Rs. 1830 lakh as repayment while computing the Advance Against Depreciation.



Now the Commission finds it logical to allow the impact of repayment of installment of bond amounting to Rs 1830 Lakh as per 'C' form regarding loan statement for the period from 2012-13 to 2014-15. Consequential impact on computation the Advance Against Depreciation and Interest Credit becomes as follows:

Table No. – 3 (A): Computation of AAD

Particulars	2012-13	2013-14	2014-15
	Rs in Lakhs		
1. Repayment as per APR Order	11635.36	14307.60	14567.85
2. Repayment of 9.7% Bond admitted in Review order	1830.00	1830.00	1830.00
3. Total Repayment (1+2)	13465.36	16137.60	16397.85
4. Depreciation admitted as per APR Order	13749.37	14695.98	16643.77
A. Advance Against Depreciation (AAD) in Review (3-4)	0.00	1441.62	0.00
B. AAD already allowed in APR order	0.00	0.00	0.00
C. Allowable adjustment under this instant Order (A - B)	0.00	1441.62	0.00

Table No. – 3(B): Computation on Interest Credit

Particulars	2012-13	2013-14	2014-15
	Rs in Lakhs		
1. Total Repayment as per Table 3(A)	13465.36	16137.60	16397.85
2. Depreciation admitted in the APR Order	13749.37	14695.98	16643.77
3. Excess Depreciation Over Repayment (2-1)	284.01	0.00	245.92
4. Weighted Avg rate of Interest as per APR Order	9.75%	9.67%	10.44%
A. Interest Credit Admissible in Review Order	27.69	0	25.67
B. Interest Credit already allowed in APR order	206.12	37.56	216.73
C. Allowable adjustment under this instant Order (A - B)	-178.43	-37.56	-191.06

7.3. CLAIM FOR THE SCRAPPED ASSET WRITTEN OFF OF RS. 216.03 LAKH :

Submission of WBSETCL

WBSETCL claimed Rs. 216.03 lakh for the scrapped asset written off as the same has been recognized as an expense in its audited annual account as the asset was damaged before its scheduled retirement period.

Analysis and decision:



The Commission already explained in paragraph 3.5.7 of APR order for 2014-15 in details for disallowing the cost of asset written off. There is no scope of revisit this issue since Tariff regulation has no provision specified for cost of written off asset. Hence there is no scope of reviewing the considered decision of the Commission under section 94 (1) (f) read with Order 47 of Rule 1 of CPC.

7.4. TREATMENT OF SERVICE & ENTRY TAX:

Submission of WBSETCL

WBSETCL submitted that, the Commission has erred by considering Service & Entry Tax as part of A&G expenses and treated as controllable item. It is further submitted that, since this expense falls under statutory obligation of WBSETCL, there is no scope to exercise control over that and prayed to allow the expenses of service & Entry tax as a part of Gross Fixed Cost.

Analysis and decision:

The Administrative & General Expenses includes all expenses necessary and arising from and ancillary or incidental to the business of electricity except penalty, etc. in terms of regulation 5.7.2(v) of the Tariff Regulations, 2011. Accordingly, the service and entry tax component has been considered as a part of A&G expenses as elaborated in paragraph 3.4.3.2 of APR order for 2014-15. Hence there is no scope of reviewing the considered decision of the Commission under section 94 (1) (f) read with Order 47 of Rule 1 of CPC.

7.5. ADMISSIBLE EQUITY BASE:

Submission of WBSETCL

WBSETCL submitted that Hon'ble WBERC, while computing the admissible equity base of 2014-15, adjusted cumulative Consumer Contribution from addition of Equity Base of 2014-15. Consumer Contribution received in the year 2014-15 is Zero. Hence there should not be any adjustment from Equity Base of the year.

Analysis and decision:



The Commission observes that, the amount of consumer's contribution of Rs. 597.48 lakh and Rs. 2021.69 lakh were adjusted with the addition of fixed asset in the APR orders for 2012-13 and 2013-14 respectively. Thus, further adjusting Rs. 3834.98 lakh in 2014-15 from equity is an error apparent in the impugned order.

Further, as discussed above, the amount of consumer contribution of Rs. 1215.81 lakh reflected in the opening value of 2012-13 needs to be adjusted to arrive at the admissible asset addition for the year 2012-13 for computation of return on equity. Thus, admissible net asset addition for 2012-13 should be Rs 43586.84 lakh [Rs 44802.65 Lakh– Rs 1215.81 Lakh = Rs 43586.84 Lakh] in this instant review order.

In view of above, the admissible return on equity for the years 2012-13 to 2014-15 are recomputed as below, keeping other parameters unchanged as per respective APR order.

Table No. 4: Computation of Return on Equity

Sl No	Particulars	2012-13	2013-14	2014-15
		Rs. In lakh		
A	Allowable Return on Equity			
1	Actual Equity base at the beginning of the year			
	Share Capital	110552.00	110552.00	110552.00
	Free Reserve	63006.42	96308.74	121419.72
	Total	173558.42	206860.74	231971.72
2	Admissible equity base at the beginning of the year	141763.08	154839.13	166880.20
3	Addition to Equity base during the year	33302.32	36875.97	24664.56
4	Net Addition to the original cost of Fixed Assets during the year	43586.84	40136.90	49709.04
5	Normative addition to Equity [30% of sl. No. (4) above]	13076.05	12041.07	14912.71
6	Amount to be considered as addition during the year being lower of (3) & (5)	13076.05	12041.07	14912.71
7	Admissible Equity Base at the end of year [(7)= (2)+(6)]	154839.13	166880.20	181792.91
8	Average admissible Equity Base [((2)+(8))/2]	148301.11	160859.67	174336.56
A	Allowable return @ 15.5% on sl. No. (8) above	22986.67	24933.25	27022.17



B	Return on Equity already allowed in APR order	23014.93	24989.76	27078.68
C	Allowable adjustment under this instant Order (A - B)	-28.26	-56.51	-56.51

7.6. INTEREST ON NORMATIVE WORKING CAPITAL

Submission of WBSETCL

WBSETCL submitted that the weighted average working capital interest rate for 2014-15 was 11.57% as per Form C of the APR petition and such interest rate of working capital based on SBI for short term loan availed for the year was 10%. The lowest of the actual working capital interest rate and SBI short-term PLR rate has been considered in the petition as per regulation 5.6.5.2 of Tariff Regulation and accordingly WBSETCL has claimed Rs 1036.44 Lakh as interest on working capital based on the calculation considering approved Annual Fixed Charges and Depreciation since actual interest paid during 2014-15 as per Form C was Rs 1736.15 Lakh.

Analysis and decision:

The Commission observes that, in terms of regulation 5.6.5.2 of the Tariff Regulations, during APR, the interest on working capital will be allowed on the amount assessed on normative basis or the actual amount of interest paid whichever is less. In view of the admitted changes in above paragraphs the Commission decides to re-compute the admissible interest on working capital as below:

Table No. – 5.

Sl. No.	Particulars	Amount (Rs. in Lakh)
A	Computation of the admissible Interest on Working Capital	
(a)	Revised Allowable Fixed Charges for computation of Working capital (Refer Annexure-1)	57953.33
(b)	Allowable Working Capital 18% of (a) as per Regulation	10431.60



(c)	Interest on Working Capital at SBI PLR as on 01.04.2014	14.75%
(d)	Normative interest on working capital	1538.66
(e)	Actual interest paid	1756.15
(f)	Interest on working capital (minimum of normative and actual)	1538.66
B	Interest on working capital already allowed in APR order for 2014-15	855.56
C	Allowable adjustment under this instant Order (A - B)	683.10

8.0 From the above analysis, it is observed that, the issues raised in points no 7.3 & 7.4 have no merit for consideration in the affirmative as it is found from due consideration of the said issues and keeping in mind that the commission cannot sit in appeal on its own order or cannot substitute its view. The other issues such as 7.1,7.2,7.5 and 7.6 are found have merit as there were error on the face of the order. Accordingly said issues are reviewed and decided in the affirmative.

9.0 Based on the analysis and observations given in paragraph 7.1 to 7.6 above, the Commission decides to admit additional amount Rs **3863.14** lakh, the summary of which furnished below:

Table No. – 6

Issue	Additional amount admitted in Rs Lakh
Interest on Normative debt for the year 2013-14 & 2014-15 (Table 2(B))	1472.65
Advance Against Depreciation for the year 2013-14 (Table 3(A))	1441.62
Interest credit refund for the year 2012-13 to 2014-15 (Table -3(B))	407.05
Return on Equity from 2012-13 to 2014-15 (Table -4)	-141.28
Interest on working capital for the year 2014-15 (Table-5)	683.10
Total	3863.14



ORDER OF THE COMMISSION

- 10.0 In view of the above analysis the Commission admits an additional recoverable amount of **Rs 3863.14 lakh** on account of review of APR 2014-15 and some consequential impacts of the APR orders for 2012-13 and 2013-14. The entire adjustable amount or a part thereof may be adjusted with the amount of Aggregate Revenue Requirement for a subsequent period or that for any other ensuing year or through a separate order, as may be decided by the Commission.
- 11.0 WBSETCL is to take note of this order.
- 12.0 The Review petition of WBSETCL is, thus, disposed of.
- 13.0 A copy of the order shall be posted in the website of the Commission.
- 14.0 WBSETCL shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

DATE: 27.12.2024

Sd/-
(SECRETARY)



Annexure - I

REVISED ALLOWABLE FIXED CHARGES FOR COMPUTATION OF WORKING CAPITAL FOR THE YEAR 2014-15:

Sl No	Particulars	Amount in Rs Lakh
1	Allowable Fixed Charges for computation of working capital in APR Order for 2014-15 [Ref Table 3 K SI No 8 of APR Order]	57404.77
2	Less:	
	Interest on working capital admitted in APR Order for 2014-15	855.56
3	Adjustment due to this review order :	
(a)	Add: Interest credit refund	191.05
	[refer para 7.2 above]	
(b)	Add: Return on Equity refund	56.51
	[refer para 7.5 above]	
(c)	Add: Interest on working capital	1538.66
	[refer para 7.6 above]	
4	Revised Allowable Fixed Charges for computation of Working capital [1-2+3]	57953.33