



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
CASE NO: APR(R)-7/18-19**

IN REGARD TO PETITION SUBMITTED BY THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED FOR REVIEW OF ANNUAL PERFORMANCE REVIEW ORDER DATED 09.09.2013 FOR THE YEAR 2011 – 2012 IN CASE NO. APR – 35 / 12 – 13 IN TERMS OF 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.

PRESENT:

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 05.10.2021



Application for review under regulation 3.3 read with regulation 3.10, 3.11 and 3.12 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 against the Order in Case No. APR – 35/12 – 13 dated 09.09.2013 regarding the Annual Performance Review of West Bengal State Electricity Distribution Company Limited for FY 2011-12 in pursuant to Order dated 28.11.2018 in Appeal 267 of 2015 passed by Hon'ble Appellate Tribunal for Electricity



Facts in brief:

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) has submitted an application on 20.03.2019 for review under regulation 3.3 read with regulation 3.10, 3.11 and 3.12 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 against the Order in Case No. APR – 35/12 – 13 dated 09.09.2013 regarding the Annual Performance Review of West Bengal State Electricity Distribution Company Limited for FY 2011-12 in pursuant to Order dated 28.11.2018 in Appeal 267 of 2015 passed by Hon'ble Appellate Tribunal for Electricity. The application has been admitted by the Commission on 19.09.2020 in Case No. APR (R) – 7/18-19.
- 2.0 The application of WBSEDCL inter-alia stated the following:
 - 2.1 WBSEDCL had filed an appeal before the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL) challenging the order of the Commission dated 12.06.2014 in Case No. APR – 38/13 – 14 as Appeal No. 267 of 2015 and filled another appeal challenging the order of the Commission dated 09.09.2013 in Case No. APR – 35/12 – 13. Subsequently, WBSEDCL requested the Hon'ble APTEL to allow the Appeals to be sent back to the Commission for re-evaluation and reconsideration. Accordingly, the Hon'ble APTEL vide Order dated 28.11.2018, after taking consideration of the submission of WBSEDCL, allowed to withdraw the appeal in order to approach the Commission for holistic reconsideration of all the issues raised in the present set of Appeals.
 - 2.2 In view of the above, WBSEDCL in the present petition submitted that the Commission, in the APR Order dated 09.09.2013, has not considered the submissions made by WBSEDCL in their submitted APR Petition dated 15.03.2013 for redetermination of APR for FY 2011-12 on the following issues:
 - (i) to allow the claim of Rs. 1651 Lakhs relating to prior period depreciation from 2008 – 09 to 2010 – 11 for addition of distribution assets which was commercially operated but not considered in respective years;
 - (ii) to allow the claim of Rs. 7264 Lakhs on the regulatory asset of Rs. 80003.86 Lakhs relating to employees' terminal benefit fund, arising due to implementation of 6th Pay Commission;
 - (iii) to allow carrying cost of Rs. 29744 Lakhs for the period from April, 2011 to December, 2012 on the arrear amount of Rs. 180418 Lakhs recoverable in 48 monthly installments from consumers; and



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- (iv) to allow carrying cost of Rs. 9625 Lakhs and Rs. 2722 Lakhs for the year 2010 – 11 with respect to the regulatory asset of Rs. 122801 Lakhs and Rs. 29978 Lakhs respectively created as per APR Order 2009 – 10 and 2010 – 11.

3.0 The Commission directed WBSEDCL to publish the gist of their application as approved by the Commission. WBSEDCL vide letter dated 29.09.2020 stated that they had published the gist of the application in (i) "The Telegraph", (ii) the "Anandabazar Patrika", (iii) the "Bartaman" and (iv) the "millenniumpost.in" on 29.09.2020 inviting suggestions and objections on their application to be submitted within 21 (twenty-one) days of publication of the gist. All Bengal Electricity Consumers' Association and Forum of Scientists, Engineers & Technologists (FOSET) submitted their comments within the stipulated time period. The Commission based on the submission of WBSEDCL and the comments received from the stakeholders proceed to analyze the application of WBSEDCL in the subsequent paragraphs.

Observations of the Commission:

4.0 Regarding Prior Period Depreciation:

4.1 WBSEDCL submitted that they have charged depreciation from the date the assets were put to operation in accordance with Regulation 5.6.2 (vi). Further, in terms of Accounting Standard – 5 relating to Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies, are part of standards of the Company (Accounting Standards) Rules, 2006 notified by the Ministry of Corporate Affairs. Therefore, the depreciation pertaining to the period prior to FY 2011 – 12 has been correctly disclosed as prior period items in compliance with the Accounting Standard 5. WBSEDCL also mentioned that, due to inadvertent human error failure to update operationalization of a particular asset occurs which leads to delay in capitalization, and the capitalization in such cases is done along with accumulated depreciation in the year when such omission is discovered. WBSEDCL also submitted that incase prior period depreciation is not allowed, then the rate of depreciation will have to be re-aligned with the remaining life of the asset.

4.2 The Commission has noted that the Forum of Scientists, Engineers & Technologists (FOSET) in their submission mentioned that, WBSEDCL while claiming prior period depreciation of Rs 1651 Lakhs pertaining to the year 2008-09, 2009-10 and 2010-11 had selectively relied on paragraph (vi) of regulation 5.6.2 of the Tariff Regulations but they had failed to take into account the fact as revealed from Table 2.5.5-1 of Tariff Regulations that the closing balance of deprecation of assets as on last



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date of the year preceding the base year of the concerned control period is a controllable item. As the base year for the third control period (2011-12 to 2013-14) is 2010-11, thus the depreciation amount as on 31st March of 2010 is a controllable item. Thus, no increase on this head can be allowed under the cover of prior-period adjustment in subsequent year. Moreover, WBSEDCL has not submitted any document that the concerned assets for prior period adjustment have been put to use in those years. FOSET thus submitted that prior period depreciation for 2008-09 and 2009-10 can not be allowed under any circumstances.

- 4.3 The Commission observes that regulation 5.6.2 (i) read with regulation 5.6.2 (v) of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (in short 'Tariff Regulations') inter-alia specifies that the value base of the purpose of depreciation shall be the historical cost of the asset which includes additional capitalization. Further for the purpose of tariff determination under MYT framework, the depreciation of assets according to closing balance of last date of the year preceding the base year of the concerned control period is a 'controllable' ARR item as per Table 2.5.5 – 1 of the Tariff Regulations. Moreover, regulation 2.6.10 (i) of the Tariff Regulations also specifies that no additional cost shall be allowed in APR on any item of controllable factor over the amount permitted in the tariff order except for allowable specific condition-based variation as specified in the regulation or specifically mentioned in tariff order.
- 4.4 The year 2011-12 comes under the 3rd control period of the MYT framework and 2010-11 is base year i.r.o 3rd control period. Thus, in terms of table 2.5.5-1 of the Tariff Regulations 2011, prior period depreciation pertaining to 2010-11 may be allowed. But, depreciation prior to 2010 – 11 are controllable items and hence claim of depreciation for 2008 – 09 to 2009 – 10 cannot be allowed in terms of Tariff Regulations. In this respect the Commission also observes that regulation 5.6.2 (vii) of the Tariff Regulations specifies that prudent accounting principle shall apply to the extent not inconsistent with these regulations. Thus, AS – 5 will not be mutatis mutandis applicable in tariff.
- 4.5 As WBSEDCL has not provided any breakup of prior period depreciation pertaining to FY 2010 -11, the Commission cannot ascertain the allowable prior period adjustment as decided in paragraph 4.4 above. WBSEDCL is accordingly directed to submit a fresh petition specifying the prior period depreciation pertaining to FY 2010-11 duly certified by statutory auditor.
- 5.0 Regarding other three issues (i) carrying cost on balance regulatory asset of employees' terminal benefit fund, (ii) carrying cost on delayed recovery for the period from April, 2011 to December, 2012



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and (iii) carrying cost on regulatory asset created in the APR Order for the year 2009 – 10 and 2010 – 11 – the Commission had already made its observations as well as provided explanation in the APR order in details. The Commission does not find any rationale to revisit the earlier decisions made by the Commission. Hence, the decisions taken by the Commission in these issues in the APR order are maintained.

Order:

- 6.0 In view of the above observations, the Commission disposes off the application of WBSEDCL and directs WBSEDCL to submit proper documents and year wise break up of prior period depreciation claim pertaining to the claim for FY 2010 – 11 as mentioned in paragraph 4.5 above, separately through a petition.
- 7.0 Let a copy of the order be served upon WBSEDCL.

sd/-
(PULAK KUMAR TEWARI)
MEMBER

sd/-
(DURGADAS GOSWAMI)
MEMBER

sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

Dated: 05.10.2021

sd/-
Secretary