



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE PROCEEDING
IN CASE NO. A-6/14/GO**

IN REGARD TO IMPLEMENTATION OF THE DIRECTIONS OF THE GOVERNMENT OF WEST BENGAL DATED 31.03.2020 UNDER SECTION 108 OF THE ELECTRICITY ACT, 2003 TO WEST BENGAL ELECTRICITY REGULATORY COMMISSION REGARDING REDUCTION OF LATE PAYMENT SURCHARGE

PRESENT:
SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 15.04.2020



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ORDER

1. Department of Power, Government of West Bengal vide its letter No 65-POW-13012(12)/2/2018-Section Power dated 31.03.2020 has issued the following directions under Section 108 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to the West Bengal Electricity Regulatory Commission (hereinafter referred as "Commission") with regard to the Late Payment Surcharge to be charged by the generating companies and transmission licensees on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishment etc.:

"

It has been informed that, owing to force majeure situation due to severe restrictions placed on movement of public and opening of offices and establishments etc. by the State government vide its orders dated 22 .03.2020 and 24.03.2020 and vide order dated 24.03.2020 of Ministry of Home Affairs, Government of India, the consumers of Distribution Companies (Discoms) are unable to pay their dues. It is apprehended that this situation is likely to continue for some time. This will affect the liquidity position of Discoms thereby reducing their ability to make timely payments to State generating companies and State Transmission Utility (STU).

This matter has been examined and the Department acknowledges the gravity and unprecedented nature of the situation.

Payments that were to be received in the month of March, 2020 account for a large share of the annual revenues of Discoms, Cash now in the system of Discoms may be impeded due to extremely low receipts owing to non-payment or delayed payment by the consumers. To mitigate the problem, some relief requires to be granted to the Discoms to make payments to state generating companies and STU.





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In this regard, Ministry of Power, Govt. of India has already issued directions under section 107 of Electricity Act, 2003 to CERC regarding reduction of LPS vide their communication no. 23/22/2019-R&R Part-4 dated 28.03.2020 (Copy enclosed).

In view of the above, I am to inform you that in exercise of the power conferred under Section 108 of Electricity Act 2003, the following directions are issued by the State Government to the West Bengal Electricity Regulatory Commission:

I. The Commission may specify a reduced rate of Late Payment Surcharge (LPS) for payments which become delayed beyond the period of 45 days (from the date of presentation of the bill) during the period from 24.03.2020 to 30.06.2020 to state generating companies and STU treating the restrictions placed by the Govt. of West Bengal vide its order dated 22.03.2020 and 24.03.2020 as well as by the Central Govt vide its order dated 24.03.2020 to contain COVID-19 as an event of force majeure. The LPS will be applicable for such delayed payments beyond 30.06.2020. LPS should not be more than the cost the generating companies and STUs would have to bear because of the delayed payment.

II. For generating companies/STUs whose tariff was determined under section 63 of the Electricity Act, 2003 by WBERC, Discoms may claim relief from its obligations regarding the rate of LPS to be paid, as per force majeure provisions given in the respective Power Purchase Agreement/LTOAs/STOAs as applicable.

III. State generating companies/ STU are to be advised not to use coercive means for recovering dues and continue supply/ transmission of electricity since it is an essential service, as recognised by Govt. of West Bengal vide its order dated 22.03.2020 and 24.03.2020 as well as by the Central Govt vide its order dated 24.03.2020.

The Commission may issue appropriate order as per above directive of the State Government."

2. The Commission has considered the above directions of the Government of West Bengal issued under Section 108 of the Act. This Commission determines the





tariff of the generating companies and intra-State transmission licensees covered under section 86(1)(a) and (b) of the Act in accordance with the tariff regulations framed under section 61 read with section 181 of the Act. Further, this Commission also requires to adopt the tariff of the generating companies and inter-State transmission licensees under Section 63 of the Act, if any, where the tariff has been discovered through competitive bidding in accordance with the Guidelines issued by Government of India under Section 63 of the Act.

3. As regards the generating companies and transmission licensees whose tariff is determined by this Commission under Section 62 of the Act, the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (hereinafter referred as "2011 Tariff Regulations") provides for rebates and late payment surcharge asunder:

"6.17.3 Rebate

(i) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation, a rebate of 2% shall be allowed. (ii) Where payments are made other than through letter of credit within a period of one month of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed.

6.17.4 Late payment surcharge

In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary beyond a period of 60 days from the date of billing a late payment surcharge at the rate of 1.25% per month on the billed amount or prorated for part thereof shall be levied by the generating company or the transmission licensee for the defaulted period reckoning from the due date."

4. The beneficiaries of the generating stations and long-term customers of the





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intra- State transmission systems avail rebates under Regulation 6.17.3 of the 2011 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the timeline specified in the said regulations. On the other hand, as per Regulation 6.17.4 of the 2011 Tariff Regulations, a late payment surcharge (LPS) of 1.25% per month on the billed amount or prorated for part thereof is payable by the beneficiaries and long-term customers to the generating companies and transmission licensees, as the case may be, if the payment is delayed beyond 60 days from the date of billing. However, the LPS shall be levied for the defaulted period reckoning from the due date.

5. As per the directions issued by Government of West Bengal under Section 108 of the Act, the Commission is required to specify a reduced rate of LPS where payment to generating companies and intra-State transmission licensees/STU is delayed beyond a period of 60 days from the date of bill during the period from 24th March 2020 to 30th June 2020 by treating the restrictions placed by the Ministry of Home Affairs, Government of India vide order dated 24.03.2020 to contain COVID-19 as an event of force majeure.

6. Ministry of Power, Government of India vide letter dated 06.04.2020 has further given a clarification to letters dated 27.03.2020 and 28.03.2020, relevant portion of which is reproduced below:

"2. In case of nonpayment of dues within the stipulated period, late payment surcharge is applicable which in most cases goes up to 18% per year. Keeping
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in mind the present situation, the Government of India have vide letter dated 28.03.2020 advised the CERC to reduce the rates of late payment surcharge applicable for the period 24.03.2020 to 30.06.2020. From 01.07.2020, the delayed payment surcharge shall apply at the rate given in the PPA. It is clear, therefore, that the reduced rate of late payment surcharge on electricity dues will be available only up to 30.06.2020. From the 01.07.2020, onwards the normal/penal rates of late payment surcharge, as per PPA/regulations, shall apply.

3. Therefore, in brief –

(a) The obligation to pay for power within 45 days of the presentation of the bill or as provided in the PPA remains unchanged.

(b) Late payment surcharge shall apply at reduced rate only for the period between 24.03.2020 to 30.06.2020 (on those payments that become overdue during the period 24.03.2020 to 30.06.2020 and not on those payments which were already overdue before 24.03.2020) and after 30.06.2020 the delayed payment surcharge shall be payable at rates given in the PPA/regulations.

(c) Obligation to pay for capacity charges as per the PPA shall continue, as does the obligation to pay for transmission charges.”

7. CERC has issued an order dated 03.04.2020 in compliance with the direction issued by the Central Government regarding reduction of Late Payment Surcharge (LPS) vide Communication No. 23/22/2019-R&R Part-4 dated 28.03.2020. In the said order, CERC has reduced the LPS at the rate of 1% per month from 1.5% per month in their regulation.

8. It would be pertinent to mention in this context that the direction under section 108 stipulates requirements for reduced rate of LPS in the line with the direction issued by the Central Government vide their communication dated 28.03.2020.

9. The Commission has inherent power to make such order as may be necessary





in terms of Regulation 8.4 of the 2011 Tariff Regulations. Regulation 8.4 of the 2011 Tariff Regulations is extracted as under:

"8.4 Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

Notwithstanding anything contrary contained anywhere in these regulations or any other regulations of the Commission, the Commission may deviate from these regulations with reasoned order in order to meet the ends of justice or to prevent the abuse of the process of the Commission."

10. Keeping in view the directions issued by the Government of West Bengal under section 108 of the Act and to address the difficulties faced by the distribution companies (beneficiaries of the generating stations and long term customers of intra-State transmission systems) on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishments etc., the Commission in exercise of its powers under Regulation 8.4 of the 2011 Tariff Regulations relaxes the provisions of Regulation 6.17.4 of the 2011 Tariff Regulations to provide that if any delayed payment by the distribution companies to the generating companies and intra-State Transmission licensees/STU beyond 60 days from the date of bill falls between 24.03.2020 and 30.06.2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 1% per month on the billed amount or pro-rated for the part thereof for the defaulted period reckoning from the due date.





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11. It is clarified that if the period of 60 days beyond the date of the bill by the generating companies or intra-State transmission licensees/STU, as the case may be, falls before 24.03.2020 or after 30.06.2020, the concerned distribution company shall be liable to pay the LPS as per Regulation 6.17.4 of the 2011 Tariff Regulations.

12. It is further clarified that the beneficiaries of the generating stations and long-term customers of the intra-State transmission systems will continue to avail rebates under Regulation 6.17.3 of the 2011 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the time line specified in the said regulations.

13. As per the directions issued under Section 108 of the Act, the generating companies whose tariff has been adopted under Section 63 of the Act by this Commission, relief on the Late Payment Surcharge for payment which become delayed beyond 60 days (from the date of bill) during the period from 24.03.2020 to 30.06.2020 may be claimed in terms of the force majeure provisions of the respective power purchase agreements (PPAs).

14. Similarly, in cases of intra-State transmission licensees/STU whose tariff has been adopted under Section 63 of the Act by the Commission, Late Payment Surcharge shall be governed in accordance with the provisions of Transmission Service Agreements (TSAs).





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15. State generating companies/ STU shall not use coercive means for recovering dues and continue supply/ transmission of electricity since it is an essential service, as recognised by Govt. of West Bengal vide its order dated 22.03.2020 and 24.03.2020 as well as by the Central Govt vide its order dated 24.03.2020.

16. Every generating company and licensee as defined in terms of regulations 1.2.1 (lvii) and 1.2.1 (lxv) of the 2011 Tariff Regulations shall take a note of the above order.

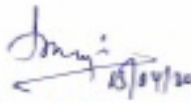
17. Let a copy of this order be served upon the State Government in the Department of Power.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATED: 15.04.2020


(T. K. MUKHERJEE)
SECRETARY

