

# **WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

## **WEST BENGAL**

**Petition No. WBERC/B-11/23**

**Date of hearing: 5<sup>th</sup> May, 2022**

**Time of hearing: 14.30 hours**

**Quorum:**

**Shri Sutirtha Bhattacharya, Chairperson**

**Shri Pulak Kumar Tewari, Member**

**In the matter of**

**Show Cause Notice dated 11<sup>th</sup> February, 2021 issued by the Commission on India Power Corporation Limited (IPCL) seeking reasons as to why appropriate proceedings will not be taken against IPCL under the Electricity Act, 2003 for charging higher off-peak tariff than those determined by the Commission.**

**Representatives attended:**

**India Power Corporation Limited (IPICL)**

- 1. Sri Arijit Maitra, Advocate,**
- 2. Sri Karn Pallav, General Manager (Regulatory),**

### **CASE IN BRIEF**

- 1.0 The Commission, during the month of November, 2020, noticed that India Power Corporation Limited (IPCL), a distribution licensee operating in the area of Asansol-Ranigunj belt in the district of Paschim Barddhaman, has been charging different tariff from different consumers falling under the same category (viz., Industries (50 KVA & above), Industries (below 50 KVA), Industries (33 KV), Industries (132 KVA & above), as specified in the tariff schedule determined by the Commission in MYT



order dated 21<sup>st</sup> July, 2016 read with the review order dated 17<sup>th</sup> February, 2017 in respect of IPCL. Different tariff for different consumers (within same category) have been framed by way of allowing different discount / rebate on the respective tariff schedule, against which no information was received by the Commission from IPCL.

- 2.0 The Commission observed that the practice, as aforesaid, adopted by IPCL is in contravention to section 45 (4) of the Electricity Act, 2003. Accordingly, the Commission vide letter dated 1<sup>st</sup> December 2020, asked IPCL to furnish electricity tariff charged by them from the consumers in their licensed area, indicating deviations, if any, from the relevant Tariff Order / Regulations, with explanations.
- 3.0 IPCL, vide their letter dated 5<sup>th</sup> December 2020 submitted, inter alia, that the tariff being charged by IPCL from its consumers do not exceed the tariff determined under the Retail Supply Tariff ("RST") Orders issued by Hon'ble Commission. However, it has also been mentioned in the said letter that they have been charging tariff for the off-peak period for HT Industrial consumers having contract demand above 500 kVA, at a rate higher than those specified in the Tariff Order for IPCL for 2016 – 17.
- 4.0 In view of above, a Show Cause Notice, dated 11<sup>th</sup> February 2021 was issued on IPCL, as to why appropriate proceedings will not be taken against the licensee under the Electricity Act, 2003, for charging higher off-peak tariff than those determined by the Commission in the Tariff Order.
- 5.0 In reply to Show Cause Notice, IPCL, vide letter dated 2<sup>nd</sup> March 2021, stated that they have not charged any tariff from its consumers exceeding the consolidated retail supply tariff for respective consumer categories as determined in the respective Tariff Order. IPCL has also submitted that lesser tariff was charged considering the tariff schedule of the Tariff Order for 2016 – 17, as ceiling tariff.
- 6.0 An opportunity of personal hearing was given to IPCL in order to comply with the principle of natural justice before proceeding further with the Show Cause Notice.
- 7.0 IPCL was heard on 26<sup>th</sup> July, 2021 at 14:30 hour, following which the Commission directed IPCL to submit a written argument along the all relevant data / documents vide Order dated 17.08.2021



8.0 Accordingly, IPCL submitted their written note of arguments on 31<sup>st</sup> August 2021, summary of which is as follows:

- a) No consumer, till date, has neither complained of levy of tariff by IPCL in excess of that determined by WBERC, nor has claimed excess recovery. In view thereof, there was no need to issue the present Show Cause Notice which may be discharged solely on this ground alone.
- b) Following the law laid down in the judgement of the Hon'ble Supreme Court in the case of *MERC vs Reliance Energy Ltd.* (2007) 8 SCC 381 (*excerpts reproduced at para 6 of the written argument*), WBERC cannot adjudicate upon issues relating to individual consumers. In case WBERC feels, IPCL is ready to issue a general public notice stating that whoever feels aggrieved by the tariff charged by IPCL, can approach them for redressal of their grievances.
- c) From a reading of the Section 62(1)(a) proviso, it appears that the Commission does not have any residuary jurisdiction on the matters of tariff once ceiling tariff is determined. This is not to mean that as a sector regulator, the Commission will not have an oversight over the activities of distribution licensees.
- d) The WBERC Tariff Regulations allow the distribution licensees to give rebate on the tariff determined under Section 62(1)(d), i.e., tariff for retail sale of electricity.
- e) IPCL has granted rebates to its various consumers in its area on the tariffs determined by the WBERC.
- f) IPCL has showed in ANNEXURE 1 (to this written argument) that their under recovery (for normal & peak) is higher than over recovery (for off peak) in FY 2016 – 17, thereby, making negative net recovery in FY 2016 – 17.
- g) The negative entries as indicated in ANNEXURE 1 has been entirely absorbed by IPCL & has not been passed on to any licensee or any consumer.
- h) IPCL has levied differential tariff on industrial consumers whose contract demand is above 500 kVA, Therefore, IPCL is within the legal remit of Section 45(4) read with Section 62(3) of the Electricity Act 2003.



- i) The legislature, while not defining the word tariff, has been careful in using the word tariff & distinguishing the same from price / charges that a consumer has to pay. In Section 45(1) itself, it is stated that the licensee subject to the provisions of the section shall charge 'price' for supply of electricity in accordance with 'tariff' fixed from time to time.
- j) In IPCL's understanding, the discounting policy, in fact, promotes competition.
- k) There are no guidelines or regulations or Standard Operating Procedure (SOP) issued by the WBERC or the CERC on how to conduct competition amongst the distribution licensees in the area of supply in question in West Bengal.

9.0 Upon receipt of the written note of argument, a letter dated 22<sup>nd</sup> September 2021 was sent from this Commission to IPCL for substantiating as to why proceedings under Section 142 of the Electricity Act 2003 shall not be drawn up against them.

10.0 IPCL, vide a letter dated 19<sup>th</sup> October 2021, has denied any contravention, willful, deliberate or contumacious or otherwise, on their part so as to attract the provisions of Section 142 of the Act. It has been stated that the competitive pricing has been offered by IPCL to the consumers following the spirit of Section 62 (3) of the Act read with regulation 2.1.1 (v) & 3<sup>rd</sup> proviso to regulation 2.2.2 of Tariff Regulations 2011. In their letter, IPCL has requested that the Commission may condone any such contravention.

11.0 As part of the proceedings under Section 142 of the Electricity Act 2003, an e-hearing was fixed at 15:15 hour on 5<sup>th</sup> May 2022. The hearing was held, as scheduled, in which the representatives of IPCL were present.

#### **SUBMISSION DURING HEARING**

12.0 During the hearing the Ld. Advocate of IPCL reiterated the points of arguments as have been elaborately submitted during the last hearing held on 26<sup>th</sup> July, 2021, excepting a few points as enumerated below:

- a) The billing issue is covered by the remedy under section 62(6) of the Electricity Act, 2003 which specifies that – "if any licensee recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest



equivalent to the bank rate without prejudice to any other liability incurred by the licensee." In fact, no consumer, till date, has complained of levy of tariff by IPCL in excess of that determined by the Commission nor has any consumer claimed excess recovery from the IPCL. Simply because the Off-peak rate charged by IPCL is higher than the regulated tariff, that by itself does not constitutes a cause of action justifying the show cause notice.

- b) In this context, IPCL has referred a case between MERC and Reliance Energy Ltd. (2007) 8 SCC 381 of Hon'ble Supreme Court wherein the Court, inter-alia, held that "a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers". Therefore, the Commission cannot adjudicate upon issues relating to individual consumers. The adjudicatory function of the Commission is limited to the matters prescribed in section 86(1)(f) of the Electricity Act, 2003, as has been held by the Hon'ble Supreme Court in their judgment in the above referred case. However, if the Commission desires, IPCL is ready to issue a general public notice stating that "whoever feels aggrieved by the tariff charged by IIPCL can approach the IPCL for redressal of their grievances and/or approach the Consumer Redressal Forum, Electricity Ombudsman."
- c) In terms of section 62(1)(a) proviso, the Commission does not have any residuary jurisdiction on matters of tariff once ceiling tariff is determined. The jurisdiction is now available with the Commission is either under section 60 to present abuse of dominant position or section 142 when there is a case of violation of any provision of the Act, Regulation or directions issued by the Commissions.
- d) The WBERC Tariff Regulations allow the distribution licensees to give rebate on the tariff determined by the Commission under section 62(1)(d) of the Act, i.e., tariff for retail sale of electricity.
- e) IPCL has submitted a sheet showing that during the normal and peak period, their under recovery is higher than the over recovery during the period of off-peak thereby making a net under recovery during the year 2016 – 2017.



- f) The under recovery has been entirely absorbed by IPCL and has not been passed on to any licensee or any consumer.
- g) IPCL has levied differential tariff on industrial consumers whose contract demand is above 500 KVA. Therefore, IPCL was within the legal remit of section 45(4) read with section 62(3) of the Act.
- h) The legislature, while not defining the word tariff, has been careful in using the word tariff and distinguishing the same from price / charges that a consumer has to pay. In section 45(1) itself, it is stated that the licensee, subject to the provisions of the section, shall charge price for supply of electricity in accordance with tariff fixed from time to time.
- i) IPCL believes that the discounting policy, in fact, promotes competition. There are no guidelines or regulations on standard operating procedure issued by the Commission or CERC on how to conduct competition amongst the distribution licensees in the area of supply, in question, in the State of West Bengal.
- j) It was the submission of IPCL that in terms of section 62 (6) of the Act, the price or the charge is the tariff and therefore the bill raised by IPCL is the weighted average charge which is less than the tariff fixed by the Commission. IPCL has never charged any consumer in excess of the tariff.
- k) The section 45(4) which specifies "... in fixing charges under this section, a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons" does not attract the show cause notice since IPCL has not made any discrimination to consumer nor IPCL shown any undue preference to any consumers.
- l) As per the judgement of the Hon'ble Supreme Court, the dispute, in question, is a billing dispute and the matter should be dealt with by CGRF and not the Commission. Secondly, as per the interpretation of the word 'tariff' by the Hon'ble Supreme Court, there has been no violation on the part of IPCL, since they have recovered charge lesser than the tariff fixed by the Commission and that the said under recovery has not been passed on to any consumer and licensee.



- m) IPCL has denied any contravention, willful, deliberate or contumacious or otherwise on their part so as to attract the provisions of section 142 of the Act. The competitive pricing has been offered by IPCL to the consumers following the spirit of section 62(3) of the Act read with regulation 2.1.1(v) and 3<sup>rd</sup> proviso to regulation 2.2.2 of the Tariff Regulations, 2011.

13.0 On being heard, the Commission enquired as to why the section 45(4) of the Electricity Act, 2003 will not apply to the case in dispute. In reply, the Ld. Advocate submitted that the section 45(4) and the section 62(6) are entirely different in nature. The section 45(4) speaks for undue preference or discrimination amongst the consumers whereas section 62(6) says recovery of charge in excess of tariff. IPCL has neither recovered charge in excess of tariff nor showed any discrimination or undue preference to any consumer or licensee. Moreover, in the show cause notice nor any other place, the section 45(4) has been referred by the Commission and in fact the said section 45(4) is not applicable in this case.

#### **OBSERVATIONS OF THE COMMISSION**

14.0 The Commission observes that before passing an order, IPCL should submit a written note of arguments on the case.

#### **ORDER**

15.0 In view of above, the Commission directs that IPCL shall submit a written note of arguments along the all relevant data / documents within 10 days from the date of receipt of this order upon receipt of which the Commission shall pass the necessary order.

**Sd/-**  
**(PULAK KUMAR TEWARI)**  
**MEMBER**

**Sd/-**  
**(SUTIRTHA BHATTACHARYA)**  
**CHAIRPERSON**

**DATE: 30.05.2022**

**Sd/-**  
**SECRETARY**