



**ORDER  
OF THE  
WEST BENGAL ELECTRICITY REGULATORY COMMISSION  
IN CASE NO. OA - 451/ 23 – 24**

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL POWER DEVELOPMENT CORPORATION LIMITED (WBPDCL) FOR 'IN PRINCIPLE' APPROVAL OF COST ON ASH UTILIZATION AND TRANSPORTATION IN TERMS OF MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF INDIA NOTIFICATION DATED 31.12.2021

**PRESENT:**

**SHRI MALLELA VENKATESWARA RAO, CHAIRPERSON  
SHRI PULAK KUMAR TEWARI, MEMBER**

**DATED: 30.06.2023**





**Facts in brief:**

- 1.0 The West Bengal Power Development Corporation Limited (in short 'WBPDCCL) has submitted an application vide letter dated 24.03.2023 seeking 'in-principle' approval of cost on ash utilization and transportation in terms of Ministry of Environment, Forest and Climate Change, Government of India Notification dated 31.12.2021. The application has been admitted by the Commission in Case No. OA – 451/ 23 – 24.
- 2.0 In the said application WBPDCCL has submitted the following:
  - 2.1 In exercise of the power conferred under the Environment (Protection) Act, 1986 and Environment (Protection) Rules, 1986, Ministry of Environment, Forest and Climate Change (hereinafter referred as MoEF&CC), Government of India vide Notification No. S.O. 5481 (E) dated 31.12.2021 has issued notification on Ash Utilization from coal and lignite thermal power plants which inter-alia states the followings:
    - a) Thermal power plants have been directed to ensure 100% utilization of ash (fly ash and bottom ash) generated during that year. Utilization of legacy ash, if any, is required to be completed within 10 years.
    - b) All the agencies engaged in construction activities like roads, flyover, construction of dams, backfilling of mines, etc. located within 300 Kms from thermal power plants shall be mandatorily utilize ash for these purposes.
    - c) Thermal plant is required to pay environmental compensation @ Rs. 1000 per tonne, if it fails to utilize the ash.
  - 2.2 In view of the above notification of MoEF&CC, WBPDCCL submitted that they have already taken initiatives for ash utilization since April, 2022. Accordingly, they have incurred additional expenditure on account of ash utilization and transportation, which has exceeded the Operation & Maintenance expenses allowed in the Tariff Order dated 08.10.2021 in Case No. TP – 95/ 20 – 21.
  - 2.3 WBPDCCL submitted that such additional expenditure on 100% utilization of ash, which is being incurred by them, are on account of 'Change in Law' event and under





regulation 5.2 of the Tariff Regulations liabilities incurred on account of change in law are allowed as additional capitalization.

- 2.4 Accordingly, WBPDCCL prayed for grant of 'in-principle' approval to incur cost on ash utilization and transportation in terms of MoEF&CC notification dated 31.12.2021 and also grant liberty for recovery of the cost from its beneficiary through and appropriate methodology/ mechanism as may be determined by the Commission.

### **Observations of the Commission**

- 3.0 The notification issued by the MoEF&CC under Environment (Protection) Act, 1986 for 100% ash utilization is statutory requirement for the coal and lignite based thermal power plants. Clause (10) of paragraph (A) of the notification states that this statutory obligation of 100% utilization of ash shall be treated as 'Change in Law', wherever applicable.
- 4.0 Thus, the additional expenditure on this account is prima facie recoverable by generating companies from the beneficiaries, subject to prudent check. However, the Commission observed that the prayer of WBPDCCL to consider the same as additional capitalization in terms of regulation 5.2 of the Tariff Regulation is not appropriate, as cost of ash utilization is primarily on account of ash transportation, which is revenue expenditure in nature.
- 5.0 Moreover, the Government of India is promoting utilization of ash and has mandated use of fly ash in construction activities, mine filling, etc.. Thus, besides the transportation cost of ash, there are opportunities to realize revenue from sale of ash. However, in the instant application, WBPDCCL has neither submitted any figures of transportation cost nor mentioned any amount received by them from such sale of ash. Hence, no analysis can be made by the Commission at the present state.

### **Order**

- 6.0 In view of the above, the Commission directs WBPDCCL to comply with the statutory requirement of 100% ash utilization as given under the notification of MOEFF&CC. The cost of ash utilization will be considered during the truing up (APR) stage with due prudence and after adjusting the revenue realized from sale of ash. For this WBPDCCL is directed to maintain a separate account for ash utilization. Further, WBPDCCL is directed to submit the followings during their submission of APR petition:





- a) Documents of award of fly ash transportation contract through a transparent competitive bidding procedure or through schedule rate of State Government, as applicable for transportation of fly ash.
- b) Details of actual expenditure incurred on ash transportation duly certified by the auditors.
- c) Details of the revenue generated from sale of ash (fly ash and bottom ash) duly certified by auditors.

7.0 The application is thus disposed of.

8.0 A copy of the order shall be posted in the website of the Commission.

9.0 WBPDCCL 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/-

**(PULAK KUMAR TEWARI)**  
**MEMBER**

Sd/-

**(MALLELA VENKATESWARA RAO)**  
**CHAIRPERSON**

**Dated: 30.06.2023**

Sd/-

**SECRETARY**