

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

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West Bengal Electricity Regulatory Commission (Modalities of Tariff Determination) Regulations, 2023

STATEMENT OF REASONS

Dated: 4th September, 2023

1. In Para 128 of the verdict dated 23.11.2022 on Civil Appeal No. 1933 of 2022 in the matter of TPCL Transmission vs. MERC & Others, the Hon'ble Supreme Court concluded that non-obstante clause in Section 63 of the Electricity Act 2003 cannot be interpreted to mean that Section 63 would take precedence over Section 62 at the stage of choosing the modality to determine tariff. The criteria or guidelines for the determination of the modality of tariff determination ought to be notified by the Appropriate State Commission either through regulations under Section 181 of the Act or guidelines under Section 61 of the Act;
2. In Para 131 of the verdict dated 23.11.2022 on Civil Appeal No. 1933 of 2022 in the matter of TPCL Transmission vs. MERC & Others, the Hon'ble Supreme Court directed all State Regulatory Commissions to frame Regulations under Section 181 of the Act on the terms and conditions for determination of tariff within three months from the date of this judgment. While framing these guidelines on determination of tariff, the Appropriate Commission shall be guided by the principles prescribed in Section 61, which also includes the NEP and NTP. Where the Appropriate Commission(s) has already framed regulations, they shall be amended to include provisions on the criteria for choosing the modalities to determine the tariff, in case they have not been already included. The Commissions while being guided by the principles contained in Section 61 shall effectuate a balance that would create a sustainable model of electricity regulation in the States. The Regulatory Commission shall curate to the specific needs of the State while framing these regulations. Further, the regulations framed must be in consonance with the objective of the Electricity Act 2003, which is to enhance the investment of private stakeholders in the electricity regulatory sector so as to create a

sustainable and effective system of tariff determination that is cost efficient so that such benefits percolate to the end consumers.

3. In compliance with the above direction of the Hon'ble Supreme Court, the West Bengal Electricity Regulatory Commission notified draft WBERC (Modalities of Tariff Determination) Regulations 2023 on 15.06.2023 considering the mentioned provisions of the Electricity Act asking the stakeholders/interested persons to submit suggestions/objections/comments on the draft within 12.07.2023.
4. The following stakeholders/interested persons have submitted suggestions/objections/comments on the draft WBERC (Modalities of Tariff Determination) Regulations 2023 within the stipulated time:
 - (i) WBSEDCL
 - (ii) WBPDCCL
 - (iii) Hiranmaye Energy Limited
 - (iv) Reliance Jio Infocom Limited
 - (v) Summit Digital Infrastructure Limited
5. The Commission, complying with the provisions of the Act and the Electricity (Procedure for Previous Publication) Rules, 2005 proceeded to finalize the WBERC (Modalities of Tariff Determination) Regulations, 2023. The Regulations have been finalized after due consideration of various comments of the stakeholders on the Draft Regulations. The analysis of the issues and findings of the Commission thereon are discussed in the subsequent paragraphs.
6. Comments on draft regulation 2.1(3):

Draft regulation 2.1(3): Definition: 'Existing Project' means a project which has achieved commercial operation prior to notification of these regulations.

Comment of Hiranmaye Energy Limited: The definition may be amended as under:

"Existing Project" means a project in which one or more units of the generation project have achieved commercial operation prior to the notification of these regulations.

Hiranmaye Energy Limited explained that there could be projects which have achieved partial COD i.e. some of the units have achieved COD while other units are in project phase while the investment approval is for the entire project. So, in order to include partially commissioned projects, the definition may be amended as proposed.

Analysis of the Commission: The Commission noted the concern expressed by Hiranmaye Energy Limited and accordingly specific provision for ongoing projects has been incorporated in the regulations 9.

7. Comments on draft regulation 3.3:

Draft regulation 3.3: In case of expansion of generating capacity by private developers, the tariffs for the incremental generating capacity would be determined in accordance with RTM framework under section 62, limited to one-time addition of capacity not more than 100% of capacity approved under their existing PPA with the distribution licensee(s) in the State:

Provided further that in case of expansion of such generating projects, the benefit of sharing of infrastructure of existing project and efficiency of new technology shall be passed on to the consumers through tariff.

Comment of Hiranmaye Energy Limited: The regulation may be amended as under:

In case of expansion of generating capacity for the existing project by private developers, the tariff for the incremental generating capacity would be determined in accordance with RTM framework under section 62, limited to one-time addition of capacity not more than 100% of capacity approved under their existing PPA with the distribution licensee(s) in the state:

Analysis of the Commission: The concern has already been addressed through insertion of new regulation 9 as discussed under Para 6 above.

8. Comments on draft regulation 3.4:

Draft regulation 3.4: Power produced from all renewable energy sources willing to sell their power to the distribution licensees in the State and whose installed capacity is below the minimum capacity permitted for competitive bidding under section 63 of the Act, the Commission may, if required, specify ceiling tariff/cap rate for different renewable energy sources.

Comments of Hiranmaye Energy Limited: In case of replacement of Thermal power with RE power in order to fulfil RPO obligations, separate modalities may be defined apart from the proposed ceiling tariff/cap rate for different renewable energy sources.

Comments of WBPDC: The tariff determination for all renewable energy sources of the State Generating Company which is being funded partly or fully through grant may be determined under section 62 of the Act by the Hon'ble Commission.

Analysis of the Commission: To arrive at better clarity of expression the Commission has modified the language of Regulation 3.4 of the draft and re-numbered the same. Further, giving due weightage to the suggestions of both

entities, the Commission provided specific provision for grant-funded projects in Regulation 3.6.

9. Comments on draft regulation 3.5(i):

Draft regulation 3.5(i): Developers of Hydro Electric Projects, including Pumped Storage Plant (PSP) have option of getting their tariff determined in advance with RTM frame work under section 62 for the power to be sold to any distribution licensee in the State through *long term PPA if long term PPA is firmed upto for 60% or more of the total salable design energy with the distribution licensees in the State.*

Comments of WBSEDCL: Contracted capacity is mentioned in the PPA in MW or percentage of installed capacity of the power plant along with salable design energy. Therefore, following modification is proposed:

Developers of Hydro Electric Projects, including Pumped Storage Plant (PSP) have option of getting their tariff determined in advance with RTM frame work under section 62 for the power to be sold to any distribution licensee in the State through *long term PPA if Long Term PPA is firmed upto for 60% or more of the total installed capacity or salable design energy with the distribution licensees in the State.*

Analysis of the Commission: The Commission found the proposal logical and therefore the draft regulation is changed accordingly.

10. Suggestion to add a new regulation:

Comments of WBSEDCL: Refereeing Para 5.2 of Tariff Policy dated 28.01.2016 of the Central Government, a new regulation 3.6 is proposed as under:

Tariff of all new thermal generating plant developed by the State-owned generating company where power to be procured by the distribution company of the State shall be determined in accordance with the RTM framework under section 62 of the Act.

Analysis of the Commission: The suggestion of WBSEDCL is accepted and accordingly regulation 3.2 is modified.

11. Comments on draft regulation 5.2:

12. Draft regulation 5.2: All intra-State transmission projects shall be consistent with the approved State Transmission Plan. No intra-State transmission project shall be considered for implementation, unless the project is a part of the approved State Transmission Plan, except any urgent work requiring network strengthening / augmentation for safe, secure and reliable operation of the grid as certified by the SLDC.

Comments of WBSEDCL: Modification required in transmission system due to connectivity to 132 kV and above voltage level consumer should be incorporated. Therefore, following modification is proposed:

All intra-State transmission projects shall be consistent with the approved State Transmission Plan. No intra-State transmission project shall be considered for implementation, unless the project is a part of the approved State Transmission Plan, except any urgent work requiring connectivity to 132 kV & above voltage level consumer, network strengthening / augmentation for safe, secure and reliable operation of the grid as certified by the SLDC.

Analysis of the Commission: The suggestion has been accepted.

13. Comments on draft regulation 6.1:

Draft regulation 6.1: All new intra-State transmission projects above Rs. 250/- Crore, being part of STU Transmission Plan, shall be implemented through Tariff Based Competitive Bidding (TBCB) in accordance with the guidelines issued under section 63 of the Act and any deviation from the guidelines should have prior approval of the Commission. The tariff of such intra-State transmission projects discovered under section 63 of the Act shall be adopted by the Commission.

Comments of WBSEDCL: In accordance with Tariff Policy – 2016, SERCs need to determine the threshold limits for the projects above which will be executed under TBCB. Giving example of threshold limits of BERC, RERC, HERC of Rs. 100 Crore and of PSERC of Rs. 50 Crore WBSEDCL has suggested to modify the threshold limit to Rs. 100 Crore instead of proposed Rs. 250 Crore.

Analysis of the Commission: The Commission has observed that States like Maharashtra and Rajasthan have introduced threshold limits of Rs, 500 Crore and Rs, 250 Crore respectively for the development of intra-State transmission projects under TBCB. The Commission found it reasonable to start with a threshold limit of Rs. 250 Crore.

14. In case any suggestion is not specifically elaborated, it does not mean that the same has not been considered.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 04.09.2023