



**ORDER**

**OF THE**

**WEST BENGAL ELECTRICITY REGULATORY  
COMMISSION**

**IN THE MATTER OF**

**CASE NO: TP(R)-28/18-19**

IN REGARD TO PETITION FILED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED IN PURSUANCE TO ORDER DATED 18.02.2019 ISSUED BY THE APPELLATE TRIBUNAL FOR ELECTRICITY IN APPEAL NO. 215 OF 2015 AGAINST THE TARIFF ORDER ISSUED BY THE COMMISSION VIDE DATED 04.03.2015 IN CASE NO. TP-61/13-14 FOR THE YEARS 2014 – 2015, 2015 – 2016 AND 2016 – 2017 (MYT TARIFF) AND THE TARIFF FOR THE YEAR 2014 – 2015 UNDER THE FOURTH CONTROL PERIOD.

**PRESENT:**

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON  
SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 21.02.2023**



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### CASE IN BRIEF

1. The West Bengal State Electricity Distribution Company Limited (hereinafter to be referred as 'WBSEDCL' or 'Licensee') has submitted a petition in terms of the judgement and order dated 18.2.2019 of the Hon'ble Appellate Tribunal for Electricity (in short 'Tribunal') in Appeal No.215 of 2015, against the order issued by the West Bengal Electricity Regulatory Commission (in short 'Commission') on 04.03.2015 in Case No.TP-61/13-14 determining the Aggregate Revenue Requirement (ARR) for all the years under the fourth control period i.e. for the year 2014-15, 2015-16 and 2016-17 and the tariff for the year 2014-15.
2. In their petition WBSEDCL has stated that being aggrieved by and dissatisfied with the findings of the Commission in the MYT order for fourth control period, they filed an appeal before the Hon'ble Tribunal being Appeal No.215 of 2015 challenging the said order of the Commission.
3. The Hon'ble Tribunal passed an order dated 18.2.2019 and the relevant extract of the said order is appended below:

*"6. In the light of the submissions of the Learned Counsel for the Appellant and the Learned Senior Counsel for the first Respondent, as stated supra, the instant appeal, being No.215 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file necessary petition, in so far it relates to the issues raised in this Appeal only, before the first Respondent within a period of six weeks from the date of the receipt of this order.*

*7. In the event, such petition is filed by the Appellant, the first Respondent is directed to consider the same and pass an appropriate order, as expeditiously as possible, in accordance with law."*

4. In terms of the above order, WBSEDCL has filed the petition before the Commission and the Commission heard WBSEDCL through e-hearing on 6<sup>th</sup> July, 2021 and directed that WBSEDCL should submit a written argument giving details of the difficulties arising out of the



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Tariff Order under the fourth control period, upon receipt of which further direction would be given in the next hearing.

5. Accordingly, the petitioner submitted the written argument on the issues pleaded during the hearing held on 6<sup>th</sup> July, 2021 and upon receipt of the same, the Commission fixed the hearing on 22<sup>nd</sup> December, 2021 at 14.30 hours. The hearing was held as scheduled and the representatives of the petitioner were present.
6. During the hearing Sri Aniket Prasoon, Ld. Counsel made his submission, inter-alia to the following:

**(a) Disallowance of Rates and Taxes:**

The Commission in its review order dated 21.05.2021 for the year 2012 – 2013 and APR order dated 14.07.2021 for the year 2013 – 2014, has revised the methodology of determining the rates and taxes in sync with the cost allowed in the earlier APR orders. The sensitivity parameters like DLL has not been considered in these cases.

It was submitted that in the case, in question, if the Commission would have undertaken the determination on the basis of the methodology applied in case of the orders dated 21.05.2021 and 14.07.2021 without looking into the sensitivity parameter viz. DLL, the petitioner would have been able to recover the appropriate amount from the consumers, thereby not leading to unnecessary under recovery which in turn impact the operational capability of the petitioner.

As submitted, since the rates and taxes are uncontrollable in nature, the Commission should allow the cost of rates and taxes on actual basis.

**(b) Methodology for projection of expenditure:**

This issue has already been argued in earlier submission of the petition. The actual expenditure on account of outsourcing and rates and taxes are much higher than the cost projected in the order, in question, based on the formula introduced by the Commission. The only submission in this respect is that certain sensitivity parameters that have been adopted by



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the Commission in determination of the order has caused under recovery to the petitioner, which in turn impact the operational capacity of the petitioner.

**(c) Directive regarding the delay in filing of APR and FPPCA petition:**

The delay in filing of any application need to be dealt with by the Commission on a case to case basis after evaluation of the merits in such delay. There may be genuine impediments in filing of a petition on time. Delay in filing APR and FPPCA petition is also caused at times due to delay in issuance of ARR/Tarif order by the Commission. In absence of tariff order for the years 2010 – 2011, 2011 – 2012, 2018 – 2019 and 2019 – 2020 in time, it was not possible for the petitioner to submit its APR petitions in due time. In any event, stipulation of penal provision even on the ground that time extension was sought by the Petitioner, cannot be justified as there is a specific provision i.e., Regulation 2.6. 7 of the WBERC (Terms and Conditions of Tariff) Regulations, 2011, as amended (to be referred as 'MYT Regulations 2011') which limits the power of this Commission to penalize the licensee in case of non-filing of the APR Petition and provides that the Commission may suo-moto undertake the APR exercise of the concerned year.

**(d) Limiting the amount of FPPCA contrary to the provision of regulation 5.8.11 of MYT Regulations, 2011:**

The Commission has limited the claim in FPPCA to the summated value of factors as mentioned in paragraph 8.3 of the MYT order. While providing such limitation, the Commission has failed to consider regulation 5.8.11 of MYT Regulations, 2011. If the direction of the Commission is allowed to continue then any additional amount which is raised by way of supplementary bill would not be allowed in FPPCA, thereby rendering regulation 5.8.11 a nullity. For the fourth control period the petitioner shall face under recoveries to the tune of Rs. 311.38 crores on account of the said directive of the Commission.

**(e) Limiting the true up of uncontrollable factors contrary to the Tariff Regulations:**

The Commission has directed that true up of any uncontrollable factor will be considered in the same manner and principle as determined in the Tariff Order in accordance with the sensitivity parameters such as distribution line length/DLL, consumer strength and inflation



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rate, the applicable ratio and expense increase in percentage on any item and that the sensitivity parameters increase will remain the same as that of the tariff order.

The Commission has limited allowance of uncontrollable expenses to the petitioner contrary to the MYT Regulations, 2011 which categorically provides under regulation 2.5. 5(i) that the expenditure of uncontrollable factors will be passed on through tariff. In fact, the petitioner has suffered under recovery to the tune of Rs. 149.49 lakhs on this uncontrollable expense.

**(f) Inclusion of compensation as controllable factor:**

The Commission has directed that all compensation (viz. loss of obsolete materials, compensation paid to staff / outsiders on injury/death/damage and compensation paid to power traders) will form part of the 'Administrative and General Expenses' except the compensation to consumers and also the Petitioner would not be allowed to seek any such compensation separately.

The amounts of Rs. 593.00 lakh which have been disallowed by the Commission is clear loss with respect to FY 2012-13. Since APR order is not issued, under recovery is not quantified at this point of time. However, it is clear that the under-recovery under this head would be the same amount as that of claim amount if the Commission does not allow the same.

The Commission in the order dated 02.08.2021 has observed that the issues raised under Item C to I of the original submission of WBSEDCL is related to directives and has no impact on ARR or tariff. In this regard, it is respectfully submitted that the aforesaid issues not merely envisages issuance of directive but in fact also entails impact on ARR or tariff as disallowed amounts in the form of under-recovery has a direct bearing on ARR or tariff.

**(g) Treatment of complaint management mechanism, collective expenses and lease rental expenses:**

The Commission has directed that the expenses relating to complaint management mechanism, collective expenses and lease rental expenses will be treated as controllable expenses. The constituents of the 'complaint management mechanism' included i) toll free telephone for registering grievances at SCC, ii) SMS charges for forwarding grievance to



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mobile van, iii) rental charges for VRS system, iv) separate telephone facility at each customer care centre and v) anti-theft toll-free telephone charges. The expenses claimed under the head of 'complaint management mechanism' posits that none of such expenses can be considered controllable in the hands of the licensee as the same depends upon the various charges levied by the telecommunication service providers, which are not under the control of the petitioner.

**(h) Directive to upload drawal schedule and injection schedule in WBSEDCL website:**

The Commission has directed the petitioner to upload the initial drawl schedule and initial injection schedule for the next day by 11 :30 am every day on their website. It is submitted that the petitioner is already providing all the scheduling related data to the West Bengal State Load Dispatch Centre (" WBSLDC") as per the terms of the relevant regulations which is available on SLDC website. Thus, it should not be required to upload such data on the website of WBSEDCL and disclosure of such data will drastically reduce their ability to commercially negotiate with power traders and other distribution companies in case of availability of additional capacity and/or unavailability of requisite capacity. Such disclosure will lead to higher price being charged for short-term procurement of power and lower prices being offered to the Petitioner for additional power thereby increasing the burden on the consumer of the Petitioner.

**(i) Imposition of penalty for non-compliance of renewable purchase obligations:**

The Commission has imposed penalty of 5% from the RoE of Petitioner for non-compliance with its renewable purchase obligation (RPO). RoE of the Petitioner is guaranteed under the MYT Regulations, 2011 and is not subject to compliance of the RPO Regulations. RE Regulations itself provides consequences for non-compliance of the RPO in terms of Regulation 4 of the said Regulations. The consequences of any non-compliance under the said regulations is limited to the initiation of proceeding under Section 142 of the Electricity Act. Thus, directive issued by the Commission imposing penalty @ 5% from RoE is contrary to the RE Regulations as well as the Electricity Act.

With the above submissions, the petitioner has prayed that the impugned order needs to be reconsidered and consequential order be issued to remove the above difficulties.

7. Upon submissions by WBSEDCL, the Commission's observations are as follows:



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- a) As far as the mobile service is concerned, it appears that the petitioner, on a query, could not confirm whether for such engagement they follow any policy. During the preparation of the tariff order, the issue regarding the policy as to the mobile service was raised before the officers of the petitioner who attended the discussions, but the same could not be clarified satisfactorily by them. The Commission opined that there should be laid down principles based on which the mobile service be provided as this component constitutes a handsome amount for determination of tariff and helps the Commission to understand the issue.
- b) The amount admitted by the Commission on account of Rates and Taxes is based on the documents submitted by the petitioner. However, if proper documents / papers are submitted by the petitioner, the expenses incurred on account of rates and taxes can be considered by the Commission during determination of APR.
- c) Regarding supplementary bills, it is observed that the same is payable if it is established that the supplementary bills could not be produced in due time for the reasons beyond the control of the petitioner.
- d) The issue of compensation may be considered on presentation of sufficient documents or proof in other form to convince the commission that the loss/damages as is claimed is actual.
- e) The issue of non-compliance with RPO, as raised by the petitioner, is required to be looked into. (I would suggest to consider the issue in favour of the utility. Their submission has got merit)
- f) In fact, the submissions made by the petitioner, may be defined in three categories, i.e., a) introduction of sensitivity parameters, b) directives not in synchronization with the extant Regulations and c) the areas where the sensitivity parameters have impacts.
- g) The petitioner may be given an opportunity to submit their written argument on key issues under the above three categories for consideration and decision of the Commission.



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8. With the above observation, the Commission directed WBSEDCL to submit a written argument considering the observation of the Commission under paragraph 7(a) to 7(g) above within 7 days from the date of this order.
9. In accordance with the direction vide order dated 19.1.2022 of the Commission, WBSEDCL submitted the written submissions on 04.03.2022 which are in addition to the submissions made in their captioned petition and the written notes of argument filed on 21.9.2021.
10. In their written notes, WBSEDCL has raised 9 (nine) issues which are categorized by them as follows :

Introduction of sensitivity parameters	Directives not in synchronisation with the extant Regulations	Issues wherein the sensitivity parameters have impact	Deemed Waiver Category (As per observations of the Commission during the hearing on 22.12.2021)
(Category A)	(Category B)	(Category C)	
<b>Issue No 2:</b> Methodology for projection of expenditure	<b>Issue No 3:</b> Directive regarding the delay in filing of APR & FPPCA petition	<b>Issue No 1:</b> Disallowances of rates and taxes and outsourcing cost	<b>Issue No 8:</b> Directive to upload drawl schedule and injection schedule on WBSEDCL's website.
	<b>Issue No 4:</b> Limiting the amount of FPPCA contrary to the provision of Regulation 5.8.11 of the MYT Tariff Regulations, 2011		<b>Issue No 9:</b> Imposition of penalty for non-compliance of renewable purchase obligations.
	<b>Issue No 5:</b> Limiting the true-up of uncontrollable factors contrary to the tariff regulation.		
	<b>Issue No 6:</b> Inclusion of compensation as controllable factor.		
	<b>Issue No 7:</b> Treatment of		





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	complaint management mechanism, collective expenses and lease rental expenses.		
	<b>Issue No 9:</b> Imposition of penalty for non-compliance of renewable purchase obligations.		

However, WBSEDCL has mentioned the Issue no 9 both in Category 'B' meant for directives not in synchronization with the extant Regulations and in Category D meant for Deemed waiver category. WBSEDCL has also mentioned the Issue no 8 in Category D instead of Category B.

11. In addition, WBSEDCL has submitted their clarifications on the queries raised by the Commission during the hearing on 21.12.2021.

12. The issue wise submissions of WBSEDCL are as follows:

ISSUE NO.1 : DISALLOWANCE OF RATES AND TAXES :

WBSEDCL has submitted that this issue pertains to category 'C' as per interim order i.e. issues wherein sensitivity parameters have impact on the petitioner. The Commission in the MYT order for the 4<sup>th</sup> control period has linked expenditure related to rates and taxes with the sensitivity parameters such as 'Distribution Line Length (DLL)'. In this context WBSEDCL submits that it cannot be linked with the DLL. There could be advent of new tax rate of existing taxes to be charged. However, the Commission in the APR order for the period 2014-15, 2015-16 and 2016-17 has taken a view to consider rates and taxes on actual basis and WBSEDCL has prayed for correction of the approach adopted in the MYT order regarding rates and taxes in line with the direction made in the APR orders in this aspect.

ISSUE NO.2 : METHODOLOGY FOR PROJECTION OF EXPENDITURE :

WBSEDCL has submitted that this issue pertains to category 'A' of the interim order dated 19.1.2021 i.e. issues in relation to which certain sensitivity parameters have been



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introduced by the Commission. In the MYT order, the Commission has adopted certain sensitivity parameters for the purpose of computation of expenditure in cases where actual escalation rate or compounded annual growth rate (CAGR) of past period crosses the concerned inflation rate of the said period. This formula has been introduced for the very first time in the MYT order and does not find mentioned in the Tariff Regulation 2011. WBSEDCL has explained in their petition the details of specific difficulties faced by them due to the same. WBSEDCL further submitted that the adoption of new methodology is contrary to the Tariff Regulation, 2011 and has been issued without putting the petitioner to notice or providing it any opportunity to furnish objection. This has resulted in the erroneous projection and regulatory uncertainty which in turn causes bad financial health of the licensee. In view of the above, WBSEDCL has submitted to allow projection on more consistent and reasonable manner as projected by them in their Tariff petitions.

#### ISSUE NO.3 : DIRECTIVE REGARDING DELAY IN FILING OF APR & FPPCA PETITION :

WBSEDCL has submitted that this issue pertains to category 'B' of the interim order dated 19.1.2021 i.e. issues wherein directive by the Commission are not in synchronization of the extant regulation. The Commission in the MYT order had directed that delay in submission of Tariff petition/application by any distribution licensee in future will result in non-allowance of any increase in Tariff for equal number of days as the delay in filing the application. The Commission has also directed that the delay in submission of APR/FPPCA application may result in non-inclusion of impact of APR/FPPCA order in the concerned Tariff Order of the year (Y) and any impact will only be considered in the future year beyond Y+2 year without any allowance of carrying cost. In this regard WBSEDCL has submitted that the above direction of the Commission is contrary to the extant regulatory framework which allows pass through of the legitimate expenses along with guaranteed return or equity to the distribution licensee. WBSEDCL has further submitted that the delay in filing of any application ought to be dealt with by the Commission on case to case basis after evaluating the merit in such delay as there could be genuine impediment in filing of a petition in time which would need the Commission's due consideration and adjudication. For instance, delay in preparation of audited accounts by the joint venture companies or any force majeure event effecting the operational capability of the distribution licensee. Since the



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consequence of non-compliance with respect to delay in filing petition is already provided under Regulation 2.6.7 of the Tariff Regulation 2011 any penalty, proposed to be imposed by the Commission needs to be in consonance with the aforesaid provision. WBSEDCL has submitted that the details of specific difficulties faced by them due to the same have also been explained in their written note of arguments. In view of the above, WBSEDCL has prayed to reconsider the above said direction which is not at par with the Electricity Act, 2003 as well as the Tariff Regulation, 2011.

**ISSUE NO.4 : LIMITING THE AMOUNT OF FPPCA CONTRARY TO THE PROVISION OF REGULATION 5.8.11 OF MYT REGULATION 2011 :**

WBSEDCL has submitted that this issue pertains to category 'B' of interim order dated 19.1.2021 i.e. issues wherein directive by the Commission are not in synchronization of the extant regulation. The Commission in the MYT order has limited the claim in FPPCA to the summated value of factors as enlisted in paragraph of the said MYT order. WBSEDCL has submitted that if the direction of the Commission is allowed to continue then any additional amount which is raised by way of supplementary bill would not be allowed in the FPPCA thereby rendering Regulation 5.8.11 a nullity. The details of specific difficulties faced by them due to the same have been elaborated in their written note of arguments and has been referred to. Further, WBSEDCL has mentioned that in the APR & FPPCA order for the year 2014-15 dated 3.11.2021 and also in the APR & FPPCA order for 2015-16 & 2016-17 the Commission have not disallowed the additional amount raised by them by way of supplementary bill amount claimed by Central Generating Station and have allowed such amount claimed by them in the respective FPPCA application. In view of the above, WBSEDCL has submitted that since the Commission has not applied/imposed of the limitation prescribed in the MYT order while issuing the APR & FPPCA order 2014-15, 2015-16 and 2016-17, it would be appropriate for the Commission to modify its limitation prescribed in relation to the consideration of the amount pertaining to the FPPCA in the MYT order in line with the actual treatment made/adopted in the APR and FPPCA order on this aspect. This in any event will provide the much needed regulatory certainty and also help in doing away with any possible confusion that may be caused on account of untenable principle as stated in the MYT order.



सत्यमेव जयते

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**ISSUE NO.5 : LIMITING THE TRUE UP OF UNCONTROLLABLE FACTORS CONTRARY TO THE TARIFF REGULATION :**

WBSEDCL has submitted that this issue pertains to category 'B' of interim order dated 19.1.2021 i.e. issues wherein directives by the Commission are not in synchronization with the extant Regulation. WBSEDCL has submitted that in the MYT order the Commission has directed that truing up of uncontrollable factor will be considered in the same manner and principle as determined in the MYT order in accordance with the sensitivity parameters such as DLL, consumer strength and inflation rate, the applicable ratio and expenses increase in percentage on any item and that the sensitivity parameters increase will remain the same as that of the Tariff order. This has limited allowance of uncontrollable expenses to the petitioner contrary to the Tariff Regulation, 2011 which categorically provides under Regulation 2.5.5(i) that the expenses on uncontrollable factors shall be passed on through Tariff by the Commission. Thus, the aforesaid direction issued by the Commission is not tenable. Further, prudence check exercise undertaken by the Commission during APR in accordance with the statutory provision cannot be limited to the mechanical application of empirical formula. The details of specific difficulties faced by them due to the same have been elaborated and explained in their written note of arguments and the same is referred to. In view of the above, WBSEDCL submits to consider the APR application on the merits in accordance with the extant Regulatory framework and not on the basis of any empirical formula.

**ISSUE NO.6 : INCLUSION COMPENSATION AS UNCONTROLLABLE FACTORS :**

WBSEDCL has submitted that this issue pertains to category 'B' of the interim order dated 19.1.2021 i.e. issues wherein directive by the Commission are not in synchronization with the extant Regulation. WBSEDCL has submitted that in the MYT order the Commission has directed that all compensation will form part of the "Administrative and General Expenses" except the compensation to consumers and the petitioner would not be allowed to seek any such compensation separately. WBSEDCL has also submitted that the aforesaid expenses are uncontrollable in nature as no licensee can provide any projection for compensation to staff or outsiders on injury, death or damage. This is also pertinent to note that the administrative costs are required to be determined as per cost accounting



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standards 11, issued by the Institute of Cost Accountant of India (ICAI) which under Clause 5.6 categorically prohibits inclusion of abnormal costs under the head of administrative expenses. Thus, the petitioner could not include abnormal cost such as compensation paid due to death or accident or compensation to power traders or loss due to obsolete materials in administrative expenses. WBSEDCL has also elaborated and explained the specific difficulties faced by them in this regard in their written note of arguments which has been referred to. WBSEDCL has prayed before the Commission to consider the submission and issue of reasoned order.

ISSUE NO.7 : TREATMENT OF COMPLAINT MANAGEMENT MECHANISM, COLLECTIVE EXPENSES & LEASE RENTAL EXPENSES :

WBSEDCL has submitted that this issue pertains to category 'B' of interim order dated 19.1.2021 i.e. issue wherein directive by the Commission are not in synchronization with the extant Regulation. WBSEDCL has submitted that in the MYT order the Commission has directed that the expenses relating to Complaint Management Mechanism, Collective Expenses and Lease Rental Expenses will be treated as controllable items. The Complaint Management Mechanism include –

- (i) Toll free telephone for registering grievance at ZCC;
- (ii) SMS charges for forwarding grievance of Mobile Van;
- (iii) Rental charges for IVRS system;
- (iv) Separate telephone facility at each Customer Care Centre;
- (v) Anti-theft toll free telephone charges.

WBSEDCL has submitted that a mere glance of the expenses claimed under the head of 'Complaint Management Mechanism' posits that none of such expenses can be considered controllable in the hands of the licensee as the same depends upon various charges levied by telecommunication service providers which are not under the control of WBSEDCL. In addition, with respect to Lease Rental Expenses WBSEDCL has submitted that the Lease Rental lines are provided by BSNL and the petitioner has no control over such telecom body and such expense cannot be considered as controllable expenses. Further, as regards the terminology 'collective expenses' used by the Commission is unclear as to what it comprises of. The commission while classifying any expenses / costs as



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controllable or uncontrollable would be required to consider the real nature of such expenses and costs. The details of specific difficulties faced by them have been elaborately explained in their written note of argument which has been referred to. With above submission WBSEDCL has prayed before the Commission not to classify those items as expenses.

ISSUE NO.8 : DIRECTIVE TO UPLOAD DRAWAL SCHEDULE AND INJECTION SCHEDULE IN WBSEDCL WEBSITE :

WBSEDCL has submitted that this issue pertains to category 'B' i.e. issues wherein directive by the Commission are not in synchronization with the extant regulation. WBSEDCL has submitted that in the MYT order the Commission has directed them to upload the initial drawal schedule and initial injection schedule for the next date by 11-30 a.m. every day on their Website. WBSEDCL has submitted that the extant regulatory framework involved in Tariff determination process does not envisage passing of such directive to the petitioner. Furthermore, during the course of hearing in the captioned matter on 6.7.2021 the Commission itself observed that it is aware of the constraints regarding such directive and will issue appropriate order in this regard. In view of the above, WBSEDCL has payed that since the Commission is aware of the difficulties and is of the view that the same will create problem in the petitioners' day to day functioning the Commission may pass an appropriate order in this regard and expunge such directive from the impugned order.

ISSUE NO.9 : IMPOSITION OF PENALTY FOR NON-COMPLIANCE OF RENEWABLE PURCHASE OBLIGATION :

WBSEDCL has submitted that this issue pertains to category 'B' of interim order dated 19.1.2021 i.e. issues wherein directive by the Commission are not in synchronization with the extant Regulation. It also belongs to the category of issues where there is deemed waiver as was observed by the Commission during the hearing on 22.12.2021. In view of the fact that the Commission in the APR order for the financial year 2014-15 to 2016-17 have not imposed any penalty on the petitioners on account of any such non-compliance. In the MYT order, the Commission has imposed penalty of 5% from the RoE of the petitioner for non-compliance with its renewable purchase obligation (RPO) in renewable



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and co-generation plants under WBERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulation, 2013 (in short RPO Regulation). WBSEDCL has submitted that RoE is guaranteed under the Tariff Regulation 2011 and is not subject to compliance of the RPO Regulation. Moreover, RPO Regulation itself provides consequence for non-compliance of Renewable Purchase Obligation in terms of Regulation 4 of the said Regulation. Consequence of any non-compliance under the RPO Regulation is limited to the intimation of proceeding under Section 142 of the Electricity Act. Thus, any penal consequence can only be imposed in accordance with provision of Electricity Act and Electricity Act nowhere empowers this Commission to impose such consequence on the petitioner. The details of specific difficulties faced by them have been elaborated and explained in their written note of arguments and the same has been referred to. Moreover, the interim order dated 19.1.2021 the Commission has stated that the issue of non-compliance of RPO as raised by the petitioner is required to be looked into. In view of the above, the WBSEDCL has prayed that the directives issued by the Commission imposing penalty of 5% of RoE of the petitioner is contrary to the RPO Regulation as well as Electricity Act and this needs to be reconsidered and consequential order be issued in order to remove the said directions.

### OBSERVATIONS OF THE COMMISSION

13. It is observed that the 9 (nine) issues raised by WBSEDCL are categorized in three categories where category 'A' relates to the issue regarding introduction of certain sensitivity parameters by the Commission. Category 'B' relates to the issue wherein directives of the Commission are not in synchronization with the extant Regulation and Category 'C' relates to the issue wherein sensitivity parameter has impact on the petitioner. Out of nine issues only one issue is under Category 'A' and seven issues are in Category 'B' and one issue under Category 'C'.

14. ISSUE-WISE OBSERVATIONS OF THE COMMISSION ARE AS FOLLOWS :

ISSUE NO.1 : DISALLOWANCE OF RATES AND TAXES : This issue pertains to category 'C' wherein sensitivity parameter has impact on the petitioner. WBSEDCL has raised this issue regarding the rates and taxes. The Commission's observation that WBSEDCL has also admitted that in the APR orders 2014-15 to 2016-17 the Commission



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has already considered the rates and taxes on actual basis without considering the sensitivity parameters. WBSEDCL has prayed for correction of the approach adopted by the Commission. APR orders for the years 2014-15, 2015-16 & 2016-17 has already been issued by the Commission considering the actual rates and taxes. Thus, the Commission observes that the issue has already been resolved and there is no need to further amendment of tariff order.

#### ISSUE NO.2 : METHODOLOGY FOR PROJECTION OF EXPENDITURE :

This issue pertains to category 'A' wherein certain sensitivity parameter has been introduced by the Commission. WBSEDCL has raised their objections in this regard. The Commission's view that the Commission introduced the methodology in the MYT order for 2014-15, 2015-16 & 2016-17 with due diligence. The Commission has already finalized the APR orders for the years 2014-15, 2015-16 & 2016-17 considering the above methodology. In view of the above, the Commission finds that there is no need to review its decision already taken in the MYT order.

#### ISSUE NO.3 : DIRECTIVES REGARDING DELAY IN FILING OF APR & FPPCA PETITION :

This issue pertains to category 'B' i.e. the directives of the Commission are not in synchronization with the extant Regulation. The Commission has already finalized the APR order for the year 2014-15, 2015-16 & 2016-17. The Commission has not passed the orders for 2014-15, 2015-16 & 2016-17. In the APR orders the Commission has not allowed any carrying cost, not for the reason for direction given in the Tariff order but on the other grounds that there is no provision of carrying cost in the Tariff Regulations. However, the Commission in the respective APR orders have mentioned that there is a provision for temporary accommodation which may be allowed if the APR petition are filed as per the provision of the Tariff Regulation. The Commission finds not to review its decision already taken in the MYT orders in terms of Section 94 of the Electricity Act, 2003.

#### ISSUE NO.4 : LIMITING THE AMOUNT OF FPPCA CONTRARY TO THE PROVISION OF REGULATION 5.8.11 OF MYT REGULATION 2011 :





सत्यमेव जयते

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This issue pertains to category 'B' wherein it is alleged that directives by the Commission are not in synchronization with the extant Regulation. The Commission observed that APR & FPPCA orders for the year 2014-15, 2015-16 & 2016-17 have already been passed. The Commission did not disallow additional amount claimed by the petitioner in the FPPCA petition against the supplementary bills raised by the Central Generating Station. In view of the above, the Commission finds that there is no need to amend the Tariff Order at this point.

**Issue No.5 : LIMITING THE TRUE UP OF UNCONTROLLABLE FACTORS CONTRARY TO THE TARIFF REGULATION :**

This issue pertains to category 'B' wherein the directives by the Commission are not in synchronization with the extant Regulation as argued by WBSEDCL. The Commission finds that in the APR orders for the year 2014-15, 2015-16 & 2016-17. The Commission has applied prudence check in accordance with the statutory provision. The Commission finds that there is no need to review its decision in terms of Section 94 of the Electricity Act, 2003.

**Issue No.6 : INCLUSION OF COMPENSATION AS A CONTROLLABLE FACTORS :**

This issue pertains to Category 'B' wherein directives by the Commission are not in synchronization with the extant Regulation. APR orders for the year 2014-15, 2015-16 & 2016-17 has already been passed and the Commission finds that there is no merit in reviewing the decision already taken in the MYT order and in the APR orders as per provision of Section 94 of the Electricity Act, 2003.

**Issue No.7 : TREATMENT OF COMPLAINT MANAGEMENT MECHANISM, COLLECTIVE EXPENSES & LEASE RENTAL EXPENSES :**

This issue pertains to category 'B' wherein the directives by the Commission are not in synchronization with the extant Regulation. The APR orders for the year 2014-15, 2015-16 & 2016-17 has already been passed and the Commission finds that there is no merit in review the decision already taken in the MYT order and in the APR orders.



सत्यमेव जयते

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**Issue No.8 : DIRECTIVE TO UPLOAD DRAWAL SCHEDULE AND INJECTION SCHEDULE IN WBSEDCL WEBSITE :**

This issue pertains to category 'B'. wherein the directives by the Commission are not in synchronization with the extant Regulation. However, WBSEDCL has considered the issue under a separate category D which is not proper. The Commission during hearing on 6.7.2021 observed the constraint regarding such directive and decided to issue appropriate order in this regard. Commission also observes that this direction has no impact on the ARR or tariff of WBSEDCL for the fourth control period which is under challenge. The Commission further observes that the MYT order issued on 04.03.2015 need not required to be amended on this issue.

**Issue No.9: IMPOSITION OF PENALTY FOR NON-COMPLIANCE OF RENEWABLE PURCHASE OBLIGATION:**

The issue pertains to Category 'B' wherein the directives by the Commission are not in synchronization with the extant Regulation. However, WBSEDCL has considered the issue under Category B and also under a separate category D which is not proper. The Commission has already observed that the issue of non-compliance of RPO as raised by the petitioner is required to be looked into. Commission also observes that this direction has no impact on the ARR or tariff of WBSEDCL for the fourth control period which is under challenge. The Commission further observes that the MYT order issued on 04.03.2015 need not required to be amended on this issue as the same shall be taken care of on subsequent occasion.

**ORDER**

15. It appears that Issue No 3 to Issue No 9 (i.e. 7 issues) relates to the directive made by the Commission and has no impact on ARR or tariff of WBSEDCL for the fourth control period which is under challenge. On due consideration of the submission both oral and documentary of the utility in compliance to the order of the Hon'ble APTEL this Commission is of the view that the prayer as is made in the petition under consideration does not call for interference from this commission.



सत्यमेव जयते

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16. The issue no. 1 i.e. disallowance of Rates and Taxes has already taken care of in the APR order for 2013-14, 2014-15 and 2015-16. Commission has reason to believe that the dispute is mitigated.
17. Issue no. 2 i.e Methodology for projection of expenses has been introduced in the MYT order for 2014-15, 2015-16 and 2016-17 applying due diligence and thus the Commission is of the considered view that the issue does not deserve further review. Petition is thus disposed off. Let a copy of the order be served upon WBSEDCL.

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

**Sd/-**  
**(MALLELA VENKATESWARA RAO)**  
**CHAIRPERSON**

**DATE: 21.02.2023**

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