



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: APR(R)-26/23-24

IN REGARD TO PETITION SUBMITTED BY CESC LIMITED FOR REVIEW OF THE ORDER DATED 22.09.2023 PASSED BY THE COMMISSION IN CASE NO. FPPCA-95/19-20 AND APR-80/19-20 UNDER SECTION 94(1)(F) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 3.3 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2013 READ WITH ORDER 47 RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908.

PRESENT:

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

DATE: 02.07.2024



CASE IN BRIEF

- 1.0 This is in regard to the application submitted by CESC Limited (in short Review Petitioner) for review of the FPPCA and APR order dated 22.09.2023 (Impugned Order) issued by the Commission in Case No. FPPCA-95/19-20 and APR-80/19-20.
- 2.0 CESC Limited has submitted their review petition dated 30.10.2023 within timeline as specified in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013. The review petition has been admitted by the Commission on 28.11.2023 in Case No. APR (R)-26/23-24.
- 3.0 It is submitted that there are sufficient causes for reviewing, rectifying and modifying the Impugned Order to the extent and for the reasons set out in this Review Petition. It is also submitted that while passing the Impugned Order, this Commission has inadvertently omitted to consider certain documents on record and the submissions made by the Review Petitioner, which have resultantly led to consideration of extraneous items in the Impugned Order. The Review Petitioner by way of the instant review petition is beseeching this Commission to remove such extraneous item and pass appropriate order(s).
- 4.0 The issues associating the impugned order for the year 2018 – 2019, as highlighted by the Review Petitioner in their review petition, for review are as follows:
 - A) Consideration of Earning from Sale of Traded Goods as Other Income in the Impugned Order
 - B) Mistaken non-allowance of GST actually incurred on captive coal related statutory charges
- 5.0 This is stated by the Review Petitioner supported by affidavit that they have not filed any Appeal or any other proceedings as on the date of filing of the present petition before this Commission (30.10.2023) in regard to the Impugned Order.
- 6.0 The prayers of CESC Limited have been narrated above. Now, the Commission proceeds to find out whether any case for review has been made out by the



Review Petitioner in terms of Order 47 Rule 1 of CPC, according to which a person aggrieved by order of a Court can file review on the following grounds, if no appeal against the said order has been filed:

- (a) Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.
- (b) On account of some mistake or error apparent on the face of record; and
- (c) For any other sufficient reason.

6.1 In this connection, reference could be made to the following judgments:

- (a) In **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]** Judgment, the Hon'ble Supreme Court has held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

- (b) In **Union of India vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}**, the Hon'ble Supreme Court has held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 of CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."



(c) In **M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India 2018 SCC Online SC 930**, the Hon'ble Supreme Court has held as under:

"In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"

2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency"

7.0 Review sought on the issues A and B of paragraph 4.0 have been discussed below:

7.1 **Consideration of Earning from Sale of Traded Goods as Other Income in the Impugned Order:**

7.1.1 **Review Petitioner's submission:**

7.1.1.1 The Commission has inadvertently considered Rs. 22.94 crores as Other Income in the Impugned Order, which pertains to "Earnings from sale of Traded Goods".

7.1.1.2 The disclosure about the retail business of the Company is made in Note 48 forming part of the Financial Statements (Vol. 3, Page 124 of the APR Petition for 2018-19) as follows:

"The Company is primarily engaged in generation and distribution of electricity which is the only reportable business segment in line with the segment wise information which is being presented to the CODM. There are no reportable geographical segments, since all business is within India.

The Company is also running a single store in state of Gujarat which is not significant for the CODM and hence not considered as reportable segment."

7.1.1.3 Correspondingly, revenue from operations of CESC as disclosed in the Note 32 forming part of the Financial Statements includes Rs.22.94 crores towards "Earnings from sale of Traded Goods" (Page 110 of Volume 3 of the APR Petition



of 2018-19). There is also an expense of Rs. 19.94 crores towards "Purchase of stock-in-trade" in the Statement of Profit and Loss Account for the year ended 31st March, 2019 (Page 90 of Volume 3 of the APR Petition of 2018-19).

7.1.1.4 This is made clear through affidavit that this business is totally unrelated to the electricity business. Thus, in the context of the store, neither the revenue was offered through Form 1.26, nor were the expenses claimed by the Company as the same has no connection with the regulated electricity business. Notably, the expenditure has featured in the Cost Audit Report (Supplementary APR Petition for 2018-19, Volume 4, page 174) as well as "Purchase of stock-in-trade for Retail Business & Inventories".

7.1.2 **Commission's view:**

7.1.2.1 This is noted that in Sl. No. 8 of Table 3.22-1 of the APR Order 'Earnings from sale of traded goods not claimed' for Rs 2294.00 lakh is treated as Non-Tariff Income. It is further noted that CESC at note 32 of it's annual Accounts for 2018-19 has reported a sum of Rs 2294.00 lakhs as Earnings from sale of traded goods. Besides, above it is noted that CESC has reported a sum of Rs 1994 lakh as purchase of stock-in-trade under expenses in the Profit and Loss Account forming part of Annual Accounts for 2018-19 submitted at volume 3 of APR petition without mentioning the business to which it relates. It is further noted that CESC has at note 48 of it's Annual Accounts for 2018-19 submitted in volume 3 of it's APR petition that, 'The company is also running a single retail store in state of Gujarat'.

7.1.2.2 It is evident from the para 7.1.2.1 above that the facts of (i) Earnings from sale of traded goods for Rs 22.94 lakh, (ii) purchase of stock-in-trade for Rs 19.94 lakhs and, (iii) running a single retail store in state of Gujarat were reported in isolated manner in the Annual Accounts as per prescribed formats therein. Such isolated facts were not reconciled/co-related with a separate note/table in the APR petition for 2018-19 as required under regulatory compliance.

7.1.2.3 However, CESC has now at para 6.c. of their instant Review petition specifically related the expenditure of Rs 19.94 Crore for purchase of stock in trade reported in the profit and loss account for 2018-19 with the earnings from traded goods for



Rs 22.94 Crore reported at Note 32 of Annual Accounts for 2018-19 through affidavit. CESC has also mentioned at para 6.b. of their instant review petition that the Company is also running a single store in state of Gujarat as reported in note 48 of Annual Accounts 2018-19. Thus they have co-related and reconciled the specific earnings from traded goods and corresponding expense of purchase of stock in trade attributable to such single store operated in the state of Gujarat. However, regarding the expenses of attributable employee cost or overheads CESC has not made any reference in the APR 2018-19 petition or in the instant review petition. CESC has neither made any separate and specific disclosure regarding the attributable cost of such asset, if any, in the Annual Accounts 2018-19. Commission has admitted full servicing of all assets claimed in the APR petition in form 1.18 through tariff in APR order 2018-19 and thus admitted related Depreciation, ROE and Interest on loan.

7.1.2.4 Such specific co-relation of the earnings from sale of traded goods for Rs 22.94 Crore and expense of purchase of stock in trade for Rs 19.94 Crore related to the single store operated in the state of Gujarat as mentioned above is an important matter of evidence which was not produced by CESC at the time of submitting APR petition for 2018-19 or at any stage prior to passing of APR order 2018-19. However, there is no alteration in figures of claim made by CESC on this matter in the instant review petition with that submitted at APR petition. CESC has reconciled the related figures and notes reported in the Annual Accounts co-relating those in the instant petition through narrative text. Therefore, in view of the reconciliatory text now submitted, inclusion of earnings of Rs 22.94 Crore for sale of traded goods in 'other income' appears to be an error on the face of the APR order to the extent of Rs 19.94 Crore which is specifically identifiable against expense of purchase of stock in trade for single store operated in state of Gujarat when read with Note 32, Note 48 of annual accounts for 2018-19 and Profit and Loss Account for 2018-19. Accordingly, under Order 47 Rule 1 of CPC, the review of such errors come under jurisdiction of this Commission in view of the decision of the Hon'ble Apex Court in Lily Thomas(supra).

7.1.2.5 In view of the above, the Commission re-determines the income from Non Tariff Sources for the year 2018 – 19 as shown in subsequent paragraphs.



7.1.2.6 'Earnings from sale of traded goods' is Rs 2294.00 lakh and reported related expense for the single store in state of Gujarat is Rs 1994.00 lakh (booked in Profit and Loss Account as 'Purchase of stock-in-trade'). There was no separate mention of any other costs related to the single store operated in state of Gujarat through specific disclosure in Annual Accounts 2018-19. Commission has admitted total employee cost as reported in the Annual Accounts 2018-19 at actuals and O&M expenses as reported in the Annual Accounts 2018-19 within regulatory ceiling which has been passed on to the consumers. CESC has also not made any specific disclosure about the cost of such asset alongwith associated depreciation, ROE, Interest on Loan in the Annual accounts 2018-19. Commission has considered full servicing of assets claimed in APR petition 2018-19 and thereby admitting corresponding depreciation, ROE and interest on loan. Therefore, the apparent net income pertaining to Gujarat retail store is considered at Rs 300 lakh (Rs 2294.00 lakh – Rs 1994.00 lakh).

7.1.2.7 Consequently, income from Non-tariff sources for the year 2018 – 2019 [Table 3.22-1 of the impugned order] is redetermined at Rs 12,399 lakh as below:

Table 7.1.2.7: Non-Tariff Income break-up

Sl. No.	Particulars	Amount (Rs. Lakh)
1	Rental of meters and other apparatus hired out	5,123.00
2	Sale and repair of lamps etc.	198.00
3	Transfer service connection fees	-
4	Income from investments and bank balance	-
5	Surcharge for late payments	3,403.00
6	Other General receipts arising from and ancillary or incidental to the business of electricity	3,375.00
7	Consumer contribution	-
8	Earnings from sale of traded goods not claimed	300.00
9	Net income from non-tariff sources	12,399.00

7.1.2.8 Accordingly, business function-wise allocation of non-tariff income [Table 3.22-2 of the impugned order] stands as table below:



Table 7.1.2.8: Allocation of non-tariff income

Particulars	As admitted in APR 2018-19 (Rs. Lakh)
(A) Generation function	
Budge Budge	1,027.04
Southern	81.44
Titagarh	0.00
Total(A)	1,108.48
(B) Distribution function	11,290.52
Total (A+B)	12,399.00

7.1.2.9 Consequently, the revised admissible interest on temporary accommodation [Table 3.10-7 of the impugned order] works out to Rs. 7,179.22 lakh as below:

Table 7.1.13: Calculation of normative interest on Temporary Accommodation for FY 2018-19

Sl. No.	Particulars	Amount (Rs. Lakh)
A	Opening balance Admissible Temporary Accommodation Requirement on 01.04.2018	39,718.82
B	Addition during the year	
	Recoverable as per APR Order 2018-19	67,376.61
	Total Addition during the year	67,376.61
C	Closing Balance of Admissible Temporary Accommodation Requirement as on 31.3.2019 (A + B)	1,07,095.43
D	Average Balance in 2018-19 requiring temporary accommodation (A+C) / 2	73,407.13
E	Rate of interest	9.78%
F	Interest on Temporary Accommodation (D x E)	7,179.22

7.1.2.10 However, interest on admissible Working Capital [Table 3.10-6 of the impugned order] remains zero as determined in below table:

Table 7.1.2.20: Calculation of Normative Interest on Working Capital

Sl. No.	Particulars	Amount (Rs. Lakh)
A1	Net Fixed Cost	3,33,589.82
A2	Fuel and Power Purchase Cost	4,39,027.81



Sl. No.	Particulars	Amount (Rs. Lakh)
A	Annual fixed Cost, fuel cost and power purchase (A1 + A2)	7,72,617.63
B1	Less: Depreciation including Advance Against Depreciation	47,712.07
B2	Less: Deferred Revenue Expenditure	
B3	Less: Return on Equity	61,889.01
B4	Less: Bad Debt	2,453.00
B5	Less: Reserve for unforeseen exigencies	
B	Total Deductions: (sum B1:B5)	1,12,054.08
C.	Allowable Gross Sales for Working Capital (A – B)	6,60,563.55
D.	Allowable Working Capital @ 10% on C	66,056.36
E.	Cash Security Deposit	1,48,432.00
F.	Requirement of Working Capital Loan	0.00
G.	Interest on Working Capital	0.00

7.1.2.11 Based on the analyses and findings recorded in the foregoing paras, the Commission now redetermines Aggregate Revenue Requirements (ARR) of Budge Budge, Titagarh, Southern and overall CESC for the year 2018 – 2019. Annexure 3A to 3E of the impugned order are redetermined as Annexure 3A to 3E enclosed with this order.

7.1.2.12 Thus, the fixed cost for generating stations, distribution business and overall [Table 3.24-1 of the impugned order] are reworked out as under:

Table 7.1.2.12: Allocation of Fixed Costs

Sl. No.	Particulars	Admissible Fixed cost on APR in 2018-2019 (Annexure 3A to 3E) (Rs. Lakh)
1	Generation function	
	Budge Budge	56,034.00
	Titagarh**	4,908.00
	Southern	9,988.02
	Generation	70,930.02
2	Distribution Function	2,62,659.80
	Total	3,33,589.82

** For Titagarh, only employee cost is allowed.



Annexure 3A

**Generation
Budge Budge Generating Station**

Rs. Lakh

Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
1	Water Charges/Cess	6.66	5.00	5.00
2	Coal & Ash Handling Charges	843.07	1,007.00	907.12
3	Operation & Maintenance Expenses	10,620.00	10,620.00	7,716.00
4 (a)	Employee Cost	6,402.00	8,005.00	8,005.00
4 (b)	Contractual manpower in regular establishment	3,587.00	3,193.00	3,193.00
5	Rent for generation		0.00	
6	Rates & Taxes (other than Income Tax)	389.00	385.00	385.00
7	Insurance	497.00	781.00	781.00
8	Corporate Social Responsibility		525.00	
9	Interest on Capital Borrowings (incl. interest on normative debt)	2,048.00	2,118.00	2,065.04
10	Interest on Working Capital		0.00	0.00
11	Other Finance Charges	601.60	358.00	282.28
12	Bad Debt		0.00	0.00
13	Depreciation	8,940.00	8,080.00	7,857.04
14	Advance against Depreciation	2,049.00	1,998.00	1,447.38
15	Written off Intangible Assets		0.00	0.00
16	Return on Equity	16,645.00	16,699.00	16,375.28
17	Reserve for Unforeseen Exigencies		0.00	0.00
18	Income Tax	3,587.03	5,184.00	5,184.10
19	Performance Incentive	-	1,969.00	2,857.79
20	Gross Fixed Charges (1 to 19)	56,215.36	60,927.00	57,061.04
21	Less: Income from Non-Tariff Sources	3,004.26	908.00	1,027.04
22	Less: Benefits passed on to consumers for sale to persons other than consumers or licensee	-	1,170.00	0.00
23	Less: Benefits to pass on to consumers for Auxiliary Services	-	0.00	0.00
24	Total Net amount deductible (21 to 23)	3,004.26	2,078.00	1,027.04
25	Net Fixed Charge for the year 2018 - 19 (20-24)	53,211.10	58,849.00	56,034.00



Annexure 3B

**Generation
Titagarh Generating Station**

Rs. Lakh

Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
1	Water Charges/Cess	0.00	0.30	0.00
2	Coal & Ash Handling Charges	0.00	0.00	0.00
3	Operation & Maintenance Expenses	0.00	1,090.00	0.00
4(a)	Employee Cost	5,567.00	4,908.00	4,908.00
4(b)	Contractual manpower in regular establishment	0.00	0.00	0.00
5	Rent for generation		0.00	0.00
6	Rates & Taxes (other than Income Tax)	0.00	85.00	0.00
7	Insurance	0.00	6.00	0.00
8	Corporate Social Responsibility		46.00	0.00
9	Interest on Capital Borrowings (incl. interest on normative debt)	0.00	0.00	0.00
10	Interest on Working Capital		0.00	
11	Other Finance Charges	0.00	13.00	0.00
12	Bad Debt		0.00	
13	Depreciation	550.00	586.00	0.00
14	Advance against Depreciation	126.00	145.00	0.00
15	Written off Intangible Assets		0.00	
16	Return on Equity	1,458.00	1,464.00	0.00
17	Reserve for Unforeseen Exigencies		0.00	
18	Income Tax	314.21	455.00	0.00
19	Performance Incentive		0.00	
20	Gross Fixed Charges (1 to 19)	8,015.21	8,798.30	4,908.00
21	Less: Income from Non-Tariff Sources	132.00	80.00	0.00
22	Less: Benefits passed on to consumers for sale to persons other than consumers or licensee		0.00	0.00
23	Less: Benefits to pass on to consumers for Auxiliary Services		0.00	0.00
24	Total Net amount deductible (21 to 23)	132.00	80.00	0.00



Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
25	Net Fixed Charge for the year 2018 - 19 (20-24)	7,883.21	8,718.30	4,908.00

Annexure 3C

**Generation
Southern Generating Station**

Rs. Lakh

Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
1	Water Charges/Cess	64.76	18.00	18.00
2	Coal & Ash Handling Charges	238.88	99.00	71.36
3	Operation & Maintenance Expenses	2,262.60	2,263.00	1,673.00
4(a)	Employee Cost	4,857.00	5,498.00	5,498.00
4(b)	Contractual manpower in regular establishment	728.00	369.00	369.00
5	Rent for generation	40.00	62.00	40.00
6	Rates & Taxes (other than Income Tax)	11.00	2.00	2.00
7	Insurance	102.00	78.00	78.00
8	Corporate Social Responsibility		41.00	0.00
9	Interest on Capital Borrowings (incl. interest on normative debt)	193.00	205.00	199.87
10	Interest on Working Capital		0.00	0.00
11	Other Finance Charges	54.53	35.00	27.60
12	Bad Debt		0.00	0.00
13	Depreciation	341.00	343.00	333.54
14	Advance against Depreciation	78.00	85.00	61.58
15	Written off Intangible Assets		0.00	0.00
16	Return on Equity	1,308.00	1,315.00	1,289.51
17	Reserve for Unforeseen Exigencies		0.00	0.00
18	Income Tax	281.83	408.00	408.01
19	Performance Incentive		0.00	0.00
20	Gross Fixed Charges (1 to 19)	10,560.60	10,821.00	10,069.46
21	Less: Income from Non-Tariff Sources	119.00	72.00	81.44
22	Less: Benefits passed on to consumers		0.00	0.00



Order of the petition submitted by CESC Limited for review of the Order dated 22.09.2023 passed by the Commission in Case No. FPPCA-95/19-20 and APR-80/19-20



Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
	for sale to persons other than consumers or licensee			
23	Less: Benefits to pass on to consumers for Auxiliary Services		0.00	0.00
24	Total Net amount deductible (21 to 23)	119.00	72.00	81.44
25	Net Fixed Charge for the year 2018 - 19 (20-24)	10,441.60	10,749.00	9,988.02

Annexure 3D

Distribution

Rs. Lakh

Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
1	Employee Cost	69,119.00	77,819.00	77,819.00
2	Repair & Maintenance	19,125.00	15,023.00	15,023.00
3	Administrative & General	19,339.00	22,543.00	19,339.00
4	Rates & Taxes (other than Income Tax)	328.00	333.00	333.00
5	Insurance	173.00	332.00	332.00
6	Lease Rental	1,023.00	1,026.00	1,026.00
7	Cost of Outsourcing	1,026.00	1,494.00	1,026.04
8	Corporate Social Responsibility		1,426.00	0.00
9	Interest on Capital Borrowings (incl. interest on normative debt)	22,765.00	21,852.00	21,305.63
10	Interest on Temporary Accommodation		39,025.38	7,179.22
11	Interest on Consumer's Security Deposit	11,655.00	10,728.00	10,728.00
12	Interest on Working Capital	0.00	6,948.02	0.00
13	Other Finance Charges	1,585.72	933.00	712.12
14	Bad Debt	0.00	2,453.00	2,453.00
15	Depreciation	32,720.00	33,010.00	32,099.12
16	Advance against Depreciation	7,431.00	8,163.00	5,913.41
17	Written off Intangible Assets		0.00	0.00
18	Return on Equity	44,831.00	45,317.00	44,224.22
19	Reserve for Unforeseen Exigencies		0.00	0.00
20	Income Tax	9,661.08	14,069.00	14,069.26
21	Performance Incentive	-	0.00	0.00
22	Net DSM Payable		1,276.00	1,276.00
23	Gross Fixed Charges (1 to 22)	2,40,791.80	3,03,770.39	2,54,858.02
24	Revenue Gap / Surplus for FY 2016-17 on account of Adjustment in the			10,994.42



Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
	Consumer Contribution			
25	Revenue Gap / Surplus for FY 2017-18 on account of Adjustment in the Consumer Contribution			9,843.31
26	Total Revenue Gap/ Surplus for FY 2016-17 and FY 2017-18 (24+25)			20,837.73
27	Gross Fixed Charges (23+26)	2,40,791.80	3,03,770.39	2,75,695.75
28	Less: Income from Non-Tariff Sources	11,681.00	22,185.00	11,290.52
29	Less: Benefits passed on to consumers for sale to persons other than consumers or licensee			1,125.03
30	Less: Benefits to pass on to consumers for Auxiliary Services	36.00	88.00	88.00
31	Less: Expenses attributable to Auxiliary Services		0.00	0.00
32	Less: Benefits to pass on to consumers from other business	532.00	532.40	532.40
33	Total Net amount deductible (28 to 32)	12,249.00	22,805.40	13,035.95
34	Net Fixed Charge for the year 2018 - 19 (27 - 33)	2,28,542.80	2,80,964.99	2,62,659.80

Overall ARR of CESC

Annexure 3E

Rs. Lakh

Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
1	Water Charges/Cess	71.42	23.00	23.00
2	Coal & Ash Handling Charges	1,081.95	1,106.00	978.48
3	Operation & Maintenance – Generation	12,882.60	13,973.00	9,389.00
4	Repair & Maintenance – Distribution	19,125.00	15,023.00	15,023.00
5	Administrative & General – Distribution	19,339.00	22,543.00	19,339.00
6	Employee Cost - own employees			
	(b) Cost of contractual manpower in regular generation establishment	90,260.00	99,792.00	99,792.00
7	Rent	40.00	62.00	40.00
8	Rates & Taxes (other than Income Tax)	728.00	805.00	720.00
9	Insurance	772.00	1,197.00	1,191.00
10	Lease Rental	1,023.00	1,026.00	1,026.00
	Cost of Outsourcing	1,026.00	1,494.00	1,026.04
11	Corporate Social Responsibility		2,039.00	0.00
12	Interest on Capital Borrowings (incl.	25,006.00	24,171.00	23,570.55



Sl. No.	Particulars	Amount admitted in Tariff Order 2018-19	Amount claimed in APR 2018-19	As admitted in APR 2018-19
	interest on normative debt of Rs. 124.25 lakhs)			
13	Interest on Temporary Accommodation		39,025.38	7,179.22
14	Interest on Consumer's Security Deposit	11,655.00	10,728.00	10,728.00
15	Interest on Working Capital		6,948.02	0.00
16	Other Finance Charges	2,241.85	1,339.00	1,022.00
17	Bad Debt	0.00	2,453.00	2,453.00
18	Depreciation	42,551.00	42,019.00	40,289.70
19	Advance against Depreciation	9,684.00	10,390.00	7,422.37
20	Written off Intangible Assets		0.00	
21	Return on Equity	64,242.00	64,796.00	61,889.01
22	Reserve for Unforeseen Exigencies		0.00	
23	Income Tax	13,844.15	20,116.00	19,661.37
24	Performance Incentive		1,969.00	2,857.79
25	Net UI Payable		1,276.00	1,276.00
26	Gross Fixed Charges (1 to 25)	3,15,582.97	3,84,313.39	3,26,896.52
27	Total Revenue Gap/ Surplus for FY 2016-17 and FY 2017-18 for adjustment of consumer contribution			20,837.73
28	Gross Fixed Charges (26+27)	3,15,582.97	3,84,313.39	3,47,734.25
29	Less: Income from Non-Tariff Sources	14,936.26	23,244.00	12,399.00
30	Less: Benefits passed on to consumers for sale to persons other than consumers or licensee		1,170.00	1,125.03
31	Less: Benefits to pass on to consumers for Auxiliary Services	36.00	88.00	88.00
32	Less: Benefits to pass on to consumers from other business	532.00	532.40	532.40
33	Total Net amount deductible (29 to 32)	15,504.26	25,034.40	14,144.43
34	Net Fixed Charge for the year 2018-2019 (28-33)	3,00,078.71	3,59,278.99	3,33,589.82

7.1.2.13 The fuel and power purchase cost allowable to CESC totalling to Rs. 4,39,027.81 lakh, after meeting out the shares of various gains attributable to its consumers and WBSEDCL as determined by the Commission in terms of the Tariff Regulations in chapter 2 of the impugned order remains same. Thus, revenue recovered by CESC as per Audited Accounts is now required to be adjusted against Rs. 7,72,617.63 lakh (i.e., Rs 3,33,589.82 lakh + Rs 4,39,027.81 lakh).

7.1.2.14 Accordingly, the amount adjustable on Annual Performance Review [Table 4.3-1 of the impugned order] is reworked out as under:



Table 7.1.2.14: Adjustment in Annual Performance Review

Sl. No.	Particulars	Amount (Rs. lakh)
1	Total Fuel and Power Purchase Cost admitted	4,39,027.81
2	Fixed charge admitted	3,33,589.82
3	Total recoverable [(1) + (2)]	7,72,617.63
4	Amount recovered from sale of power	7,05,241.02
5	Balance Recoverable / payable (-) [(3) – (4)]	67,376.61

7.1.2.15 The Commission in the impugned order dated 22.09.2023 had determined the recoverable amount as Rs. 65,280.09 lakh. The Commission in the instant order redetermines the recoverable amount as Rs. 67,376.61 lakh. Thus, the differential recoverable amount becomes Rs 2,096.52 lakh (Rs. 67,376.61 lakh – Rs 65,280.09 lakh).

7.2 Mistaken non-allowance of GST actually incurred on captive coal related statutory charges

7.2.1 Review Petitioner’s submission in relation to Issue No. B:

7.2.1.1 In terms of regulations 5.14.1, 5.18.1 read with regulations 2.5.2.1 (vi), 2.5.3 (viii), 2.5.5 (Table 2.5.5-1), 2.7.7, 5.8.1 (vii), 5.8.8, 5.14.1, 5.18.1, Para 8.1 (iii) of Schedule etc. of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, all statutory taxes, levies, cess, duties etc. payable by generating company or the licensee is regarded as an expenditure recoverable through tariff on actuals, subject to prudence check by the Commission.

7.2.1.2 The Commission in paragraph 2.10.2.4 of the Impugned Order has considered that GST on Government Services are applicable under Reverse Charge Mechanism (“RCM”).

7.2.1.3 The Commission, following the same principle, has allowed GST on various statutory charges to the West Bengal Power Development Corporation Limited (“WBPDCL”) vide Order dated 19.09.2023 in Case No. APR-91/21-22/Part-A for Barjora captive coal mine (“Barjora Order”).



On similar basis, the same also requires to be allowed to the Review Petitioner as well. GST amounting to Rs. 43.84 / Tonne may kindly be further allowed in addition to Rs. 18/Tonne allowed in the Impugned Order in Table 2.10.2.5-a on Page 13.

- 7.2.1.4 Due to the above reason, admissible fuel cost for Budge Budge Generating Station will increase by Rs. 906.15 lakh and comes to Rs. 143958.25 Lakhs (Rs. 143052.10 lakhs approved in the Impugned Order).
- 7.2.1.5 This will also have a consequential change in Allowable fuel cost at distribution input for sale to consumer and licensee, shares of gains attributable to consumers and WBSEDCL as well as admissible amount on account of savings due to improved distribution loss. Thus, overall impact on Re-determined Fuel and Power Purchase Cost will be Rs. 900.87 lakh.
- 7.2.1.6 It is submitted that the Review Petitioner considers that GST disallowed on other heads are also allowable and might appropriately claim the same at a later date.
- 7.2.1.7 Due to the abovementioned impacts of Rs. 2294.00 lakhs on account of Earning from Sale of Traded Goods and Rs. 900.87 lakhs on account of GST on various statutory charges, consequential impact on interest on temporary accommodation would be Rs. 163.97 lakhs.

7.2.2 Commission's view:

It has been held by the Hon'ble Apex Court in the decision in Lily Thomas(supra) that error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence (para 58). In the above issue, there is no error in the face of the APR order. Principles taken by the Commission in para 2.10.2.4 of the impugned order dated 22.09.2023 is self explanatory which has been questioned by the petitioner. As per Order 47 Rule 1 of CPC, the review of such principle does not come under the review principles as laid down in section 114 of the CPC.

ORDER

- 8.1 The Review petition is partially allowed. Issue No. 1 is considered and partially allowed on finding that the error pointed out by the Review Petitioner was very



much apparent on the face of the record. And it was a mistake on the part of the Commission due to inadvertence. So far, the Issue No. B is concerned Commission can not substitute its view since it is not an error on the face of the record.

- 8.2 In terms of regulation 2.6.6 of the Tariff Regulations, the recoverable amount of Rs. 2,096.52 lakh, as determined in paragraph 7.1.2.15, or a part thereof shall be adjusted with the amount of Aggregate Revenue Requirement for the year 2025 – 26 or that for any other ensuing year or through a separate order, as may be decided by the Commission.
- 8.3 The impugned order dated 22.09.2023 is revised to the extent as mentioned in paragraphs 7.1.2.7 to 7.1.2.15 and 8.2 along with the Annexures 3A to 3E of this order. Other portion of the order will remain unaltered.
- 8.4 The Review petition of CESC Limited is, thus, disposed of.
- 8.5 Copy of the order shall be posted in the website of this Commission.
- 8.6 Copy of the order shall be served upon CESC Limited. CESC Limited shall upload the copy of the order in their website.
- 8.7 CESC Limited is to take note of this order.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

DATE: 02.07.2024

Sd/-
(SECRETARY)