ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
In Case No. WBERC/B-11/22

IN REGARD TO THE PRAYER OF DIFFERENT CONSUMERS OF WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) BEFORE THE COMMISSION TO PASS AN APPROPRIATE ORDER IN THE MATTER OF (I) STATUS OF RAILWAYS AS DEEMED LICENSEE IN THE STATE (II) FINANCIAL BURDEN OF SURPLUS CONTRACTED POWER, LOSS OF REVENUE SHARING AND (III) APR BURDEN OF UNSETTLED ORDERS DUE TO OPEN ACCESS OF RAILWAYS AND SUBMISSIONS AND PRAYERS OF WBSEDCL

PRESENT:
SRI DURGADAS GOSWAMI, MEMBER
SRI MANOJIT MANDAL, MEMBER

DATE: 01.02.2019
Fact in brief:

1.0 A number of consumers of West Bengal State Electricity Distribution Company Limited (in short ‘WBSEDCL’) as per list enclosed submitted their prayers in the months of November and December, 2018 before the Commission to pass an appropriate order in the matter of (i) Status of Railways as deemed licensee in the state, (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways.

2.0 In their prayers, the consumers of WBSEDCL have stated that Railways, a big consumer of WBSEDCL is trying to get power from other sources outside the state through Open Access and in future, Railways may not take power from WBSEDCL. It is also apprehended by them that in that case the state consumers will get no sharing of cross subsidy which will in turn directly affect the tariff of the consumers. It is further submitted by them that power contracted by WBSEDCL with generating companies for supply to Railways would become surplus and WBSEDCL will be forced to pay all charges against those contract. Moreover, Railways may seek support from WBSEDCL from time to time for its emergency/stand by requirements for continuance of its service in the events of failure of supply from outside the state. They also submitted that APR order of WBSEDCL has not been finalized from 2013-14 onwards and APR order of 2011-12 and 2012-13 are sub-judice and pending at present, when Railways is trying to take power from outside the state. In view of the above they prayed before the Commission to pass an appropriate order on the matter:

a) To direct WBSEDCL not to allow open access to Railways as deemed licensee till the matter is settled; and

b) Consequent to granting open access to Railways, not to pass any financial burden arising out of surplus contacted power, loss of revenue sharing and ARR burden of unsettled orders as stated in their prayer on to consumer’s tariff in order to save the consumers from future tariff shock.

3.0 As such, they have expressed their concern in their prayers about the impact on their tariff due to Open Access, if allowed to Railways.
Order of the West Bengal Electricity Regulatory Commission on the prayer of different consumers of West Bengal State Electricity Distribution Company Limited in the matter of (i) Status of Railways as deemed licensee in the state (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways and submissions and prayers of WBSEDCL

4.0 Commission sought the views of WBSEDCL on the prayers received from those consumers. WBSEDCL has submitted their views vide Memo nos. REG/Legal/Railways/306 dated 2.1.2019 and REG/Legal/Railways/337 dated 18.1.2019 wherein WBSEDCL has also expressed their concern on those issues.

4.1 In their submission WBSEDCL has stated that Railways is presently the biggest consumer under WBSEDCL and is taking power at its 26 Traction points from WBSEDCL since long in consumer mode. The summated contracted demand and annual sale at those Traction points in 2017-18 is around 320 MVA & 1100 MU respectively and annual revenue is around Rs. 900 crore.

4.2 It is further stated by them that Railways submitted an application before West Bengal State Electricity Transmission Company Limited (in short 'WBSETCL') on 15.09.2016 as 'Deemed Licensee' for long term open access for wheeling of 95 MW power from Bhartiya Rail Bijlee Company Limited (BRBCL) to meet their energy requirement in West Bengal. Subsequently, Railways submitted a revised application on 01.11.2017 for long term open access for wheeling of 170 MW power from BRBCL to meet their energy requirement of its 26 nos TSSs in West Bengal though Railways has connectivity with CTU for 95 MW power to TSSs in West Bengal (whereas the summated contracted demand is 320 MVA which is approximately 304 MW). Railways are yet to finalize the quantum of open access power they want for their TSSs in West Bengal.

4.3 WBSEDCL has also expressed their concern that they were not aware whether Railways have preferred any application before the Commission for grant of Distribution License for its operation in West Bengal.

4.4 It is further submitted by WBSEDCL that the Central Electricity Regulatory Commission (CERC) on the petition filed by Railways (petition No 197/MP/2015) passed an order on 05.11.2015 granting Railways 'deemed licensee' status for drawal of power through open access. WBSEDCL and several other State DISCOMs such as GRIDCO, TANGEDCO, MPPPMCL etc. have already challenged the order of CERC dated 05.11.2015 before the Hon'ble Appellate Tribunal for Electricity (APTEL). Their appeal before APTEL wherein Deemed Licensee status of Railways has been challenged is still pending before APTEL.
4.5 It is further submitted by WBSEDCL that they are considering to issue NOC for
drawal of power by Railways through open access under the following terms and
conditions apart from execution of agreements:

i) NOC will be issued subject to the outcome of the proceeding pending before
APTEL in Appeal No. 276 of 2015 or the judgment by the Hon'ble Supreme
Court if the judgment of the Tribunal is challenged there.

ii) Railways will have to pay their share of Regulatory Receivables accumulated
for the period they have remained consumer of WBSEDCL. Railways proposed
to submit an under taking/execute an Agreement for the purpose of paying
their share of Regulatory Receivables instead of submission of Bank
Guarantee (BG) for the Regulatory Receivables as desired by WBSEDCL.
WBSEDCL agreed to accept the proposal of Railways subject to Legal Vetting
of their draft Undertaking.

iii) Order on APRs for WBSEDCL are pending from 2013-14 and APR orders of
2011-12 and 2012-13 are also under review as per Orders dated 28.11.2018 of
APTEL and in the view of above Railways are requested to provide an
Undertaking in the form of Bank Guarantee/ RBI Assurance Letter on
proportionate share of Regulatory receivables from Railways up to the date of
drawal of power in consumer mode. The Railways' share of Regulatory Assets
as proposed by WBSEDCL would be determined in proportion to the quantum
of sale of power at the TSS points of Railways and the total quantum of sale of
power of WBSEDCL in the corresponding period and such charge shall be
claimed along with the monthly bills of WBSEDCL as and when such
Regulatory asset is admitted by the Commission. It is also stated that Railways
submitted an Undertaking vide their letter dated 09.02.2018 regarding payment
of their share of Regulatory receivables as would be determined by WBERC
subject to available legal recourse and reiterated their commitment to pay their
share of Regulatory receivables in the same line during the meeting on

4.6 It is further submitted by WBSEDCL that discussion was also held with Railways on
Standby power supply arrangement in case of partial/complete interruption of power
Order of the West Bengal Electricity Regulatory Commission on the prayer of different consumers of West Bengal State Electricity Distribution Company Limited in the matter of (i) Status of Railways as deemed licensee in the state (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways and submissions and prayers of WBSEDCL from open access sources. Railways was requested to take Standby power supply from WBSEDCL, the connected licensee, for whole quantum of power under open access to avoid any law and order problem for the state, traction being an emergency transport service for public. However, Railways has intimated on 05.12.2018 that draft standby agreement provided by WBSEDCL is not acceptable mainly on disagreement on rate and quantum of standby power.

4.7 WBSEDCL have also submitted that Railways being one of the biggest consumers of WBSEDCL, contributes significantly towards meeting the cross-subsidy burden of Subsidizing consumers of the state in order to supply electricity at affordable rates to low-end consumers, mainly domestic and agricultural consumers of the state and if Railways chooses to get electricity for their own consumption from outside state through open access, WBSEDCL nevertheless legitimately expects to be compensated for migration of such big consumers by way of cross subsidy surcharge payment otherwise it will have severe impact of WBSEDCL’s ability to provide electricity to low-end consumers of the state at affordable rates. This would result in a tariff hike for all consumers including low end consumers. Furthermore, such a significant increase in the agricultural tariff will have spiraling effect on the cost of agricultural products and deleterious effect on the rural economy which can result in wide-spread discontentment in the state.

Accordingly WBSEDCL has prayed to pass an order on the following issues to devise:

a) Formula applicable for realization of cross subsidy from Railways, in consultation with the State Government so that such cross subsidy burden does not pass on to other consumers in future.

b) Formula applicable for payment of share of Regulatory Assets to WBSEDCL by Railways so that it does not pass on to other consumers in future when such orders will be passed by WBERC.

c) Determine quantum & rate of Standby power, if supplied by WBSEDCL, as well as on the issue of drawing Standby power from a source other than that connecting Licensee keeping in mind that connected licensee WBSEDCL will be forced to supply standby power to Railways suddenly in future to keep railway
Order of the West Bengal Electricity Regulatory Commission on the prayer of different consumers of West Bengal State Electricity Distribution Company Limited in the matter of (i) Status of Railways as deemed licensee in the state (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways and submissions and prayers of WBSEDCL

transport undisturbed in case of failure of open access source to avoid law & order problem for the state.

Observation of the Commission:

5.0 The Commission observes that both WBSEDCL and their consumers have expressed their concern about the likelihood of huge impact on the future tariff of the consumers of WBSEDCL upon granting Open Access to Railways if the issues as raised in the prayer of the consumers and WBSEDCL are not settled by the Commission. Granting Open access to Railways without paying any cross subsidy surcharge due to its status of deemed licensee as stated in the submission of WBSEDCL and its consumers has huge impact on tariff of other consumers of WBSEDCL. The Commission also observes from the submission of WBSEDCL that the issue of status of deemed licensee of Railways is pending before the Hon'ble APTEL. Based on the decision on the issue of status of deemed licensee in the Court of Law the cross subsidy will be settled.

a) Now the question is whether or to what extent the apprehension/ alarms raised by the consumers-complainants and WBSEDCL are in conformity with the statute. The fulcrum of the Electricity Act 2003 (in short 'Act') is the protection of consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner.

b) In this particular case, if open access is granted to the Railways without (i) imposing any surcharge (ii) additional surcharge (iii) making provisions for appropriate quantum of back-up power (iv) settlement of regulatory assets to be created against the pending APR petitions of WBSEDCL for the past periods, the Railways would definitely be benefited, but at the expenses of interest of a huge number of consumers of WBSEDCL whereas law prescribes that these are to be ensured by the appropriate Commission, vide Section 61 and section 42 of the Act. If any departure is made from that provision, it will set a bad precedent for unforeseen consequences.

c) On the other hand, the distribution licensee which is required to supply power to millions of consumers spread over thousands of square KM of geographical area and when majority of such consumers living in rural areas have limited
Order of the West Bengal Electricity Regulatory Commission on the prayer of different consumers of West Bengal State Electricity Distribution Company Limited in the matter of (i) Status of Railways as deemed licensee in the state (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways and submissions and prayers of WBSEDCL

means to pay tariff at enhanced rate would be required to pay higher tariff once Railways is allowed to enjoy the benefits of Open Access without having met the obligations stated at para-b above.

d) Therefore, the point to be determined is whether the interest of a big consumer like Railways should be protected and simultaneously, WBSEDCL be allowed to sacrifice the interest of millions of its consumers.

6.0 In view of the above and in order to protect the interest of a large number of consumers because of any sudden decision of the WBSEDCL the Commission directs that:

i) The Railways shall furnish their views in the form of affidavit following the procedures laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 on the complaints of the consumer-complainants as per list at Annexure - A within 8 weeks; and

ii) WBSEDCL shall not grant any Open Access to the Railways till the matter is decided by the Commission.

7.0 Let a copy of this order be served upon State Government in the Dept. of Power, WBSEDCL, WBSETCL, Railways and the respective consumers of WBSEDCL as per the list at Annexure - A.

Sd/-
(Manojit Mandal)
Member

Sd/-
(Durgadas Goswami)
Member

Dated: 01.02.2019

T. K. Mukherjee
Secretary

Certified true Copy
Order of the West Bengal Electricity Regulatory Commission on the prayer of different consumers of West Bengal State Electricity Distribution Company Limited in the matter of (i) Status of Railways as deemed licensee in the state (ii) financial burden of surplus contracted power, loss of revenue sharing and (iii) APR burden of unsettled orders due to open access of Railways and submissions and prayers of WBSEDCL

Annexure -A

List of consumer-complainants

1. Mukti Firms Pvt. Ltd., Arambagh, Dist: Hooghly
2. Krishnendu Sarkar, Tajpur, Dist: East Midnapore
4. Malakshmi Rice Mill, Arambagh, Dist: Hooghly
5. Mayapur Rice Mill, Muthadanga, Mayapur, Dist: Hooghly
6. Mukti Kisan Seva Kendra, Goghat, Dist: Hooghly
7. Four Star Rice Mill (P) Ltd., Parul, P.O: Arambagh, Dist: Hooghly
10. Ashirbad Rice Mill, Kirtichandrapur, P.O: Naisarai, Dist: Hooghly
12. Hotel Anandamoye, P.O: Arambagh, Dist: Hooghly
14. Kadam Rasul, Kurumgram, Nalhati, Dist: Birbhum
15. Muktipada Kundu, Near FCI Godown, P.O: Arambagh, Dist: Hooghly
17. Sajal Kundu, Near Govt. Godown, P.O: Arambagh, Dist: Hooghly
18. Kalyan Kundu, Near FCI Godown, P.O: Arambagh, Dist: Hooghly
20. Champak Kundu, Near FCI Godown, P.O: Arambagh, Dist: Hooghly
22. Aminur Rahaman, Kurumgram, Nalhati, Dist: Birbhum