



ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
CASE NO: APR(R)-48/25-26

REVIEW OF THE ORDER DATED 29.03.2025 PASSED IN CASE NO. APR-123/24-25 RELATED TO ANNUAL PERFORMANCE REVIEW OF DAMODAR VALLEY CORPORATION FOR THE YEAR 2020-21 FOR DISTRIBUTION AND RETAIL SALE OF ELECTRICITY IN THE PART OF DAMODAR VALLEY AREA FALLING WITHIN THE TERRITORY OF THE STATE OF WEST BENGAL.

DATE: 01.12.2025



Review of the order dated 29.03.2025 passed by the Commission in Case No. APR -123/24-25 related to Annual Performance Review for the year 2020-21 of Distribution and Retail Sale of Electricity in the part of Damodar Valley Area falling within the territory of the State of West Bengal

Facts in brief:

- 1.0 Damodar Valley Corporation (DVC) has submitted a petition on 27.05.2025 under section 94(1)(f) of the Electricity Act, 2003 read with regulation 1.7.5 and 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 seeking review and rectification of the order dated 29.03.2025 (Impugned Order) for the year 2020-21 passed by the West Bengal Electricity Regulatory Commission (Commission) in Case No. APR - 123/24-25. This application has been admitted by the Commission on 18.06.2025.
- 2.0 DVC submitted this application for review and rectification of the impugned order on the following seven (7) issues:
 - A) Computation of Transmission and Distribution expenses;
 - B) Computation of Transmission and Distribution losses;
 - C) Computation of Unscheduled Interchange ("UI") Charge;
 - D) Disallowance of Interest on temporary financial accommodation;
 - E) Computation of the fees paid to Central Electricity Regulatory Commission (CERC) and related publication expenses;
 - F) Disallowance of legal charges and consultancy fees; and
 - G) Computation of Generation Cost.

Observations of the Commission

- 3.0 Now, the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of Section 114 and 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 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.

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

- (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 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"

- 4.0 The review sought by DVC on the issues mentioned in paragraph 2.0 above have been discussed below:

A. COMPUTATION OF TRANSMISSION AND DISTRIBUTION EXPENSES.:

Submission of DVC:

DVC submits that,

- (i) Tariff Order dated 02.03.2022 and 10.06.2022 of CERC forms the basis for allocation of the AFC to the firm consumers of DVC. Therefore, except for 4 existing and new 400 kV inter-State transmission lines which were certified by ERPC as non-ISTS lines carrying ISTS power (i.e. deemed ISTS lines) with



effect from 1.4.2017, CERC has consistently maintained that charges of all the other assets forming part of T&D System (old and new) of DVC as an input cost in the ARR and to be recovered from the distribution consumers on approval by WBERC and JSERC and shall not be included in the PoC pool.

- (ii) DVC, as a Generating Company, sells electricity at the ex-bus point from their Generating Stations to various licensees spread across the country. DVC does not claim AFC of its T&D network from the beneficiaries located outside the Command Area. The evacuation of this power is undertaken through the Central Transmission Utility (CTU) network excepting only a bare minimum part of DVC network [i.e MTPS Unit 5 & 6 bus connected to CTU at Kalyaneswari Substation of DVC through MTPS Kalyaneswari lines (134.2 km.) and CTPS Unit 7 & 8 bus connected to CTU at Dhanbad Substation of DVC through CTPS-Dhanbad lines (45.6 km.)]. As compared to the total line and length of existing T&D network (4783 km) of DVC, the above stated lines used for CTU connectivity of CTPS is 0.95% and that for MTPS is 2.81% only of the total T&D network.
- (iii) DVC also stated that the T&D tariff of DVC's existing network is determined in a consolidated manner by the CERC, unlike that done for Power Grid Corporation of India Ltd. ("PGCIL") (i.e. line specific tariff).
- (iv) Due to consideration of extra of energy flow (3722.21 MU) (sold to license) through the T&D system while determining the allowable T&D cost attributable for firm sale in the command area of West Bengal, there is a reduction of sale for the share attributable to West Bengal to the tune of around 10% (due to change in sales ratio from the claimed data of 53.43% to the derived data of 43.12%) which leads disallowance of Rs. 5047.11 lakhs.
- (v) DVC proposes that, at best this cost disallowance (on account of some portion of DVC's T&D system being utilized for supplying power to beneficiaries from MTPS #5&6 and CTPS #7&8 units should be Rs 920.32 Lakh considering 50% of 3.76% of DVC's overall T&D network.

Observation of the Commission:

The Commission observes from the submission of DVC that MTPS- Kalyaneswari lines (134.2 km.) used to connect the Generation bus of MTPS Unit 5 & 6 with CTU at



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Kalyaneswari Substation of DVC and CTPS-Dhanbad lines (45.6 km.) used to connect the Generation bus of CTPS Unit 7 & 8 with CTU at Dhanbad Substation of DVC. These two lines are 3.76% of Composite T&D network and sufficient capacity is available in those two lines for evacuating the generated power from MTPS #5&6 and CTPS #7&8 units. It is also submitted that Line specific transmission & distribution expense (i.e Average Revenue Requirement (ARR)) is not determined for DVC by CERC.

Since asset-wise segregation of expense of Composite transmission & distribution network (T&D) of DVC is not presently available where such expense will depend on various factors, such as voltage grade, type of asset and age, capital investment and its financing cost etc., hence T&D expense of APR Order admitted based on the existing methodology (i.e proportionate energy usage through composite T&D network by the beneficiaries located outside DVC command area and the consumers of DVC in Jharkhand and West Bengal) is kept unchanged till the availability of segregation of the expense of Composite transmission & distribution network (T&D) of DVC in the manner as per outcome of legal proceedings.

B. COMPUTATION OF TRANSMISSION AND DISTRIBUTION LOSSES:

Submission of DVC:

DVC submits that, Commission has not considered any loss on account of the additional energy flow of 3722.21 MU as "Unit sold to other licensees using composite T&D System before connected with CTU system" while computing the T&D loss applicable to the consumers of Jharkhand and West Bengal.

As this energy quantum sold to beneficiaries outside DVC command area reaches the respective substations i.e. Kalyaneshwari and Dhanbad from MTPS 5&6 and CTPS 7&8 respectively (via point-to-point wire connection) before entering into CTU system, DVC would have incurred line loss. While transmitting 3722.21 MU through DVC's wired system before entry into the CTU network, 81.41 MU ought to be treated as additional unutilised energy. DVC prays to consider the above clarifications and revisit the computation of T&D loss.



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DVC also submits that they are entitled to retain gain for the lower loss level of 2.18% as compared to its normative value of 2.75%. In terms of para 31 under paragraph 'C' of Schedule 9B of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended ('Tariff Regulations'), any gain due to better performance of distribution loss shall be shared between the distribution licensee and the consumers at the ratio of 75:25. The incentive for improvement in loss level is derived as Rs. 24.55 Crores. Thus DVC has made submission to allow the claim of Rs. 18.41 Crores as a benefit for saving in distribution.

Observation of the Commission:

Considering the submission of DVC, the Commission has reviewed and decided to re-compute T&D loss for the supply of power to the consumers of West Bengal under this review order wherein Line loss is also considered corresponding to energy usage (3722.21 MU) by the bilateral consumers located outside DVC command area. and thus, T&D loss becomes as follows:

Table- 1.

Particulars	Unit	Derivative	Value
Net Energy input in Composite T&D system as per G of Table 5 of APR Order	MU	A	20557.82
Unit Sold to other Licensees outside DVC command area at intersection point CTU system after Line loss of composite T&D system	MU	$B=3722.21 \times (1 - \text{Loss}\%)$	3640.88
Line loss corresponding to the energy usage by other licensees outside DVC command area	MU	$C=3722.21-B$	81.33
Net energy injected into Composite T&D system for usage by the consumers of Jharkhand & West Bengal	MU	$D = A - B - C$	16835.61
Units sold to consumers	MU	E	15565.53
Units wheeled Out	MU	F	783.58
Units utilised in own premises including construction power	MU	G	118.68
Overall Utilisation	MU	$H=\text{Sum}(E:G)$	16467.79
Unutilised Units	MU	$I = D - H$	367.82
System Loss	MU	$J = I / D \times 100$	2.185%

Regarding claim of incentive by DVC in this review petition for improved T&D loss, the observation of the Commission is that an order has already been passed on 22.01.2024 in this regards determining composite T&D loss for DVC as actuals subject to the ceiling of 2.75% for the years 2019-20 to 2022-23 in accordance to the Note of Paragraph K of



Schedule 9A of Tariff Regulations, subsequent to the order dated 23.07.2018 of Hon'ble Supreme Court on conclusion of different legal proceeding regarding the status of transmission system of DVC. Hence as per above order, there is no incentive admissible for 2020-21.

C. COMPUTATION OF UNSCHEDULED INTERCHANGE CHARGES:

Submission of DVC:

DVC submits that, the methodology adopted by this Commission is not in line with the prescribed regulation. However, in terms of 5.17.2 of the Tariff Regulations, the treatment of UI is mandated as under:

Net UI of impugned APR Order is 105.09 MU amounting to Rs. 8063.53 Lakhs (Average rate being Rs. 7.67/ Unit). As per the impugned Order, 'Additional Drawal through UI for Wheeling' is 43.67 MU. Therefore, Net UI utilized for meeting Firm consumers' demand in West Bengal and Jharkhand becomes 61.42 MU (105.09 MU- 43.67 MU). After apportioning based on Sales ratio, UI energy utilized to cater to the demand of West Bengal consumers becomes 32.82 MU (61.42 MU x 53.43%) worth Rs. 25.17 Cr. (32.82 MU x Rs. 7.67/kwh).

DVC inter-alia submits that,

- i) on real time basis grid operations necessitated by unforeseen load-generation imbalances, DVC had to draw UI power in order to maintain un-interrupted power supply of consumers which actually helped the consumers to maintain their production target and business commitment.
- ii) Denial of UI charges, despite being borne to manage system exigencies and maintain grid discipline, amounts to penalizing the licensee for fulfilling its statutory supply obligations.
- iii) The UI expenditure incurred by DVC on account of consumers from West Bengal is only 7.02% (Rs. 25.17 Crore / Rs. 359.06 Crore) of the total power purchase cost for West Bengal consumers.

In the circumstances mentioned above, quoting various judgements regarding power to exempt and relax, DVC has made submission to invoke the power to relax under Regulation 5.17.2 of the Tariff Regulations under Regulation 8.11 of the Tariff Regulations and allow the full UI charges as claimed by DVC.

Observation of the Commission:



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The Commission observes that the requirement of power for sale to the consumers and sale to licensee (radially connected) for West Bengal part of DVC has been computed in details in paragraph 3.4.5.1 of the APR Order wherein UI import requirement comes to 29.41 MU only and 5% of power purchase cost mandated by Regulation 5.17.2 of the Tariff Regulations is admitted as UI import.

However consequential impact of issue raised at issue B (revised T&D loss) on energy balance is recomputed for arriving at admissible UI import under this review Order hereunder:

Table- 2.

Particulars	Derivative	Unit	Value
Proportionate utilization for the consumers of DVC in West Bengal as per SL No F of Table 7 of APR Order	A	MU	8379.29
T & D Loss (%) for West Bengal [as per Table - 1 of this review order]	B	%	2.185%
T & D Loss (MU) for West Bengal	$C = A / (1-B) - A$	MU	187.16
Energy Requirement for the consumers of DVC for distribution business in West Bengal	$D = A + C$	MU	8566.45
Proportionate Generation available for sale within West Bengal [From para 3.4.2.2 of APR Order]	E	MU	7788.84
Additional Requirement beyond generation	$F = D - E$	MU	777.61
Proportionate Purchase for sale in West Bengal [from para 3.4.3 of APR Order]	G	MU	713.76
Admissible energy drawal through UI	$H = F - G$	MU	63.85
UI Import	I	MU	132.99
UI Import cost	J	Rs Lakh	8820.57
Cost of UI Import for the West Bengal part of DVC	$K = H \times J / I \times 10$	Rs Lakh	4234.86
Power Purchase admitted in APR Order (Refer Annexure 3 A)	L	Rs Lakh	35906.95
Admissible UI charge payable for West Bengal part of DVC as per Regulation 5.17.2	$M = \text{Min}(5\% \text{ of } L \text{ \& } K)$	Rs Lakh	1795.34
Already admitted in APR Order	N	Rs Lakh	1795.34
Amount to adjust in this Review order	$O = M - N$	Rs Lakh	0.00

D. DISALLOWANCE OF INTEREST ON TEMPORARY FINANCIAL ACCOMMODATION:

Submission of DVC:

DVC has stated that interest on temporary accommodation has been claimed, as per provision of regulation 5.6.5.4 of Tariff Regulations, for the financing cost of the bill amount which could not be recovered from the consumers within due time. There are clear outstanding and delayed payments with regard to the dues on the part of the



West Bengal consumers for which DVC had to resort to short-term line of credit to bridge the gap. DVC has claimed the entire interest portion on the short-term line credit loan, as the Non-Tariff Income was also claimed for the entire sale portion of Jharkhand and West Bengal region. Temporary Financial Accommodation as claimed by DVC, is directly linked to Delayed Payment Surcharge (DPS) due to non-payment of bills timely by the consumers of DVC. However, though Commission has allowed the Non-Tariff Income for the West Bengal Portion, the commensurate portion of interest on Temporary Financial Accommodation has not been allowed by the Commission.

DVC has stated that this Commission does not consider the justification given for interest on Temporary Financial Accommodation at page 249 and 476 of the APR Petition enclosing the Annual Statement of Account of DVC for the year 2020-21 which shows Short term bank borrowings (Line of Credit) of Rs.3,750 Crore taken by DVC for financing over-dues of Power Consumers of DVC.

DVC also stated that Interest on Temporary Financial Accommodation is a settled principle of law referring various judgement of the Hon'ble Appellant Tribunal for Electricity ("Hon'ble Tribunal") wherein it is established that temporary financial costs incurred due to delayed payments by consumers should be compensated.

DVC prays to allow the Temporary Financial Accommodation on notional basis commensurate with the Delayed payment surcharge (DPS) income of the West Bengal part only.

Observation of the Commission:

The Commission observes that the disallowance of the claim of DVC for temporary accommodation has been explained in paragraph 9.3 of the impugned order. The Annual Accounts of DVC for 2020-21 has no mention of any amount taken from Rs.3,750 Crore as Short term bank borrowings (Line of Credit) for the consumers of West Bengal. DVC also did not submit any documentary evidence with audited statement showing break-up of Short term bank borrowings (Line of Credit) for the consumers of West Bengal.

From the submission made in the review petition, it is observed that DVC has not submitted any additional fact in regards to the above issue.



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Hence, there is no scope of reviewing the considered decision of the Commission under section 94 (1) (f) read with Order 47 of Rule 1 of CPC.

E. COMPUTATION OF THE FEES PAID TO CENTRAL COMMISSION AND THIS COMMISSION AND RELATED PUBLICATION EXPENSES:

Submission of DVC:

DVC submits that this Commission has not considered the tariff filing fees, publication expenses, license fees etc. paid to the Central Commission, as claimed by DVC.

The determination of tariff for different generating stations and T&D system of DVC is under the jurisdiction of the Central Commission. DVC sources the required quantum of energy for its distribution activity from these generating stations. DVC accordingly claimed tariff filing fees, publication expenses etc. in respect of different generating stations and T&D activity of DVC network paid to CERC, proportionate with the use of electricity from the respective generators for distribution purpose only.

In this context, DVC submits that this Commission's approach of apportioning the total claimed amount, originally submitted solely for firm sale under the distribution business between firm and license sales has resulted in an undue dilution of cost recovery. The subsequent application of the West Bengal sales ratio to the already reduced firm sale component has led to a second round of dilution, further lowering the allowable revenue within the State of West Bengal.

Hence, DVC submits not to disallow the expenses associated with the Central Commission tariff filing fees for FY 2020-21 being essential regulatory costs incurred in compliance with statutory obligations under the tariff determination framework.

Observation of the Commission:

The Commission has decided to review the Fees paid to CERC and publication expense considering the above submission of DVC. Hence, entire fees and publication expense paid to CERC is considered for apportionment for the



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consumers of West Bengal after deduction of such proportionate cost for bilateral consumers and the sale to Bangladesh and power exchange which is as follows:

Table- 3.

Particulars	Derivative	Unit	Value
Tariff filing fees paid to CERC and publication charge	1	Rs Lakh	458.56
Ex Bus Own generation as per Table 18 of the APR Order ¹	2	MU	35803.60
Ex Bus Own generation for consumers of DVC as per Table 18 of APR Order	3	MU	14578.99
Proportionate Tariff filing fees and publication charge to CERC for consumers of DVC	$4 = 1 \times 3/2$	Rs Lakh	186.72
Share of sale in West Bengal against the total consumer sale of DVC in their command area (%)	5	%	53.425
Share of fees paid to CERC for the consumers in West Bengal Area in this Review Order	$6 = 4 \times 5$	Rs Lakh	99.76
Total fees paid to CERC and publication fees admitted in Table 16 (Sl. No. 11) of APR Order	7	Rs Lakh	68.54
Amount to adjust in this Review order	$8 = 6 - 7$	Rs Lakh	31.22

F. DISALLOWANCE OF LEGAL CHARGES AND CONSULTANCY FEES:

Submission of DVC:

DVC submits that even though legal expenses are construed as controllable expenses in terms of the Tariff Regulations, 2011, the actual expenses incurred for engaging professionals for providing legal and consultancy services for smooth running of the company, is ascertained only after the financial year is over.

Legal Expenses are actual expenses incurred by DVC to protect its interest on various accounts including:

- I. Defending cases initiated against them by the Consumers/Consumer Associations etc under the Act and otherwise,
- II. Initiating cases against consumers, including but not limited to, for recovery of the cost of supply, theft or unauthorised use of electricity (under Section 126, 127, 135 and 153-155 of the Act) and also against other Generating or Transmission Companies (Under Section 79 and 86 of the Act) for disputes under the agreements.



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- III. Legal proceedings initiated by DVC against the order(s) passed or regulation(s) framed by Central Commission/ Jharkhand State Electricity Regulatory Commission (JSERC).
- IV. Legal proceedings initiated by DVC to recover its outstanding over-dues against the bulk/HT consumers.

In this regards, DVC has referred the order passed by the Hon'ble Tribunal in Appeal No. 265 of 2006, wherein the Hon'ble Tribunal stated that legal expenses incurred by a Distribution licensee can not be arbitrarily cut down or disallowed by the State Commissions.

In light of the aforesaid submissions, DVC has submitted to allow the claims as raised by DVC in the Subject Petition.

Observation of the Commission:

The Commission observes that the legal expense is admitted in accordance with Regulation 5.7.2 (ii) of the Tariff Regulations which is explained in paragraph 9.3 of the APR order. As per above regulation, legal expense is controllable. Thus, legal expense in the APR Order is restricted upto the legal expense admitted in Tariff Order for the consumers of West Bengal.

G. COMPUTATION OF GENERATION COST:

Submission of DVC:

DVC submits that this Commission, in the Impugned Order has disallowed the share of net generation in MU available for supply to the consumers in command area in West Bengal as claimed by DVC for generation from Tilaiya HEP as only to meet Renewable Purchase Obligation ("RPO") target against for state of Jharkhand and not West Bengal. In this respect, DVC has made submission that the disallowance of the AFC for Tilaiya is not done in light of the following submissions:

- (1) The Commission has deviated from its previous orders and a consistent practice wherein the admitted share of net generation from hydel stations has been considered by this Commission in proportionate to the total share for sale to consumers in the West Bengal Area.



- (2) The Commission has created an artificial distinction between hydel power from Maithon and Panchet HEP to that of Tilaiya HEP.
- (3) The Commission has taken an approach contrary to the approach considered by JSERC.

The disallowance of AFC on this basis is to be legally untenable. In light of the above submissions, this Commission ought to exercise its review jurisdiction and allow the above claim to DVC.

Without prejudice to the above submissions, DVC also submits that in the event the JSERC does not consider or allow the entire generation cost component pertaining to the Tilaiya HEP, then DVC may be granted liberty to approach this Commission at an appropriate stage, with necessary pleadings and supporting documents, for consideration of the balance cost.

Observation of the Commission:

The Commission observes that the explanation for not sharing the generation cost of Tilaiya HEP by the consumers of West Bengal is given in details in paragraph 3.4.2.2 of the APR Order. DVC in the APR application has made submission that the cost of renewable power is segregated between two states i.e., West Bengal and Jharkhand based on the respective Renewable Power Purchase Obligation (RPO) and utilization of the hydro power of Tilaiya is not shown against West Bengal for meeting its RPO target. Thus AFC cost of above hydro power station is not considered while computing generation cost for the consumers of West Bengal.

- 5.0 Based on the analysis and observations given in paragraph A to G above, the Commission decides to admit additional amount Rs 31.22 lakh, the summary of which furnished below:

Table- 4

Issue	Additional amount admitted in Rs Lakh
Tariff filing fees paid to CERC and publication charge (Table 3)	31.22
Other issues	0
Total	31.22



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- 6.0 The Commission observes that there is no additional requirement of interest on working capital due to adjustment of above amount under this Review Order since the Average Security Deposit held with DVC is Rs 7318.84 Lakh against revised working capital requirement of Rs 3843.872 Lakh.

Order:

- 7.0 In terms of Tariff Regulations, the additional recoverable amount of Rs 31.22 Lakh or a part thereof may be adjusted with the amount of Aggregate Revenue Requirement for a subsequent period or that for any other ensuing year or through a separate order, as may be decided by the Commission.
- 8.0 The review petition is thus disposed of.
- 9.0 A copy of the order shall be posted in the website of the Commission.
- 10.0 DVC shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-

(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 01.12.2025

Sd/-

DEPUTY DIRECTOR, WBERC