ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: APR(R)-50/25-26

REVIEW OF FUEL AND POWER PURCHASE COST ADJUSTMENT AND ANNUAL PERFORMANCE REVIEW (APR) ORDER DATED 23.12.2025 OF CESC LIMITED FOR THE FY 2020-21 IN CASE NO. FPPCA-107/22-23 AND APR- 111/22-23

DATE: 30.07.2026

Facts in brief:

1. CESC Limited (CESC) has submitted a Petition 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. The Petitioner seeks a review of the Order dated 23.12.2025 in Case No. FPPCA -107/22-23 and APR – 111/22-23 (hereinafter referred to as the 'APR Order') passed by the West Bengal Electricity Regulatory Commission for the Annual Performance Review for the financial year 2020-21 in accordance with the provisions of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 and subsequent amendments(hereinafter to be referred "Tariff Regulations").

2. The Commission has admitted the above Review Petition on 23.02.2026 in Case No. APR(R) - 50/25-26.

3. CESC, via Letter No. 1681/2025-26/348 dated 11.02.2026, has submitted this review Petition on the following issues:

   Issue 1: Non-allowance of actual transaction cost pertaining to swap-out energy;

   Issue 2: Consequential impact on Interest on Temporary Accommodation;

4. The Commission observed that prior to filing the Review Petition, CESC has preferred an appeal before the Hon'ble Appellate Tribunal for Electricity (APTEL) in DFR No. 58 of 2026 and Appeal No. 94 of 2026. Under Section 114 and Rule 1(2) of Order 47 of the Code of Civil Procedure, the Commission cannot entertain review application on the self-same issues by the same person in respect of which an appeal has been filed before the higher Court.

Observations of the Commission:

5. The Commission now proceeds to determine whether any case for review has been established by the Review Petitioner under Section 114 and Order 47 Rule 1 of the Code of Civil Procedure (CPC). According to these provisions, a person aggrieved by an Order

of a court may file a review on the following grounds, provided no Appeal against the said Order on the issues raised here has been lodged:

a) **Discovery of New Evidence:** The Petitioner discovers new and important matter of evidence which, after exercising due diligence, was not within their knowledge or could not be produced at the time the decree was passed or the Order was made.

b) **Apparent Mistake or Error:** There exists a mistake or error apparent on the face of the record.

c) **Sufficient Other Reasons:** Any other sufficient reason that warrants a review.

6. In this connection, reference is made to the following judgments:

a) **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]:** The Hon'ble Supreme Court held that the power of review is limited to the correction of mistakes and does not extend to substituting views or re-hearing cases. The review cannot be treated as an appeal in disguise, and the mere possibility of differing views does not constitute a ground for review.

b) **Union of India vs. Sandur Manganese and Iron Ores Limited & Others [(2013) 8 SCC 337]:** The Hon'ble Supreme Court reiterated that the power of review jurisdiction is intended solely for the correction of mistakes, not for substituting views. In **Parsion Devi & Others vs. Sumitri Devi & Others**, it was held that an error must be apparent on the face of the record to justify the exercise of review power under Order 47 Rule 1 of CPC. An error requiring reasoning to detect does not qualify as an apparent error. Additionally, a Review Petition cannot be used as an Appeal in disguise.

c) **M/s Goel Ganga Developers India Pvt. Ltd. vs. Union of India [2018 SCC Online SC 930]:** The Hon'ble Supreme Court emphasized that the power of review is to be used sparingly and is not akin to Appellate power. It should be exercised only when there is an error apparent on the face of the record. Judicial discipline mandates that a Review Application must be heard by the same Bench, preventing it from becoming an intra-Court Appeal to another Bench, which would undermine Judicial consistency.

7. The Commission has decided to review both the issues No. 1 and 2, as mentioned in paragraph 3, of the Review Petition submitted by CESC in terms of Section 114 and Order 47 Rule1(2) of the Code of Civil Procedure, since none of the issue of this Review Petition is raised in the above-mentioned appeal before the Hon'ble APTEL:

8. **Issue 1: Non-allowance of actual transaction cost pertaining to swap-out energy**

8.1. Submission of CESC:

8.1.1. CESC submitted that the Commission has not considered transaction cost of swap-out energy of Rs. 92.03 Lakh in item 2 under Table 6-1 in the APR Order and considered only Rs. 5,526.16 lakh as "Earning attributable to sale of energy to persons other than own consumers & WBSEDCL including swap-out power". CESC submitted that they have considered Rs. 5,618.19 lakh as the aforesaid earning [Rs. 5526.16 lakh + Rs. 92.03 lakh] in Form 1.25 of the APR Petition (page 109 of Supplementary Petition dated 27.01.2025). CESC also submitted that the relevant Auditor's Certificate is furnished in page 203 of Volume 3 of the APR Petition, which illustrates the gross earnings from sale to persons other than own consumers and WBSEDCL of Rs. 5618.19 lakh, transaction cost for swap-out energy of Rs. 92.03 lakh and net earnings from sale to persons other than own consumers and WBSEDCL of Rs. 5,526.16 lakh.

8.1.2. CESC submitted that the Commission has allowed such transaction cost in the APR Order for 2019-20 and earlier years, by negating item 2 [which includes transaction cost of swap-out energy] under Table 5.2-1 to arrive at "Net earnings from sale to consumers and WBSEDCL" in the APR Order for 2019-20 dated 05.10.2024 at Page 90. Similar approach was also followed by the Commission in the earlier years.

8.1.3. Accordingly, CESC has prayed for additional allowance of Rs. 92.03 lakh on this account.

8.2. Observation of the Commission:

8.2.1. The Commission reviewed the submissions of CESC and observed that the transaction cost for swap-out power upto the delivery point is to be borne by CESC in terms of the power banking agreements. As per the Auditor's Certificate furnished by CESC in page 203 of Volume 3 of the APR Petition of 2020-21, such transaction cost for swap-out power for 2020-21 was Rs. 92.03 lakh.

8.2.2. Accordingly, the Commission has concluded to consider the "Gross earnings from sale to persons other than own consumers and WBSEDCL" of Rs. 5618.19 lakh without deducting the "transaction cost for swap-out power" of Rs. 92.03 lakh in the Table below:

Table 1: Revenue from sale of electricity earned by CESC

Rs. Lakh

Sl. No.	Particulars	Admitted in APR Order	Claimed by CESC in Review Petition	Admitted in Review Order
1	Earnings from sale of electricity as per Note 32(a) of audited financial statement of CESC Ltd (From Table 6-1 of the APR Order)	673,391.00	673,391.00	673,391.00
2	Less: Earnings attributable to sale of energy to persons other than own consumers & WBSEDCL including swap-out power (As per the Auditor's Certificate furnished by CESC in the APR Petition)	5,526.16	5,618.19	5,618.19
3	Add: Contribution to festivals (From Table 6-1 of the APR Order)	208.00	208.00	208.00
4	**Net earnings from sale to consumers and WBSEDCL [(1) - (2) + (3)]**	**668,072.84**	**667,980.81**	**667,980.81**

9. Issue 2: Consequential impact on Interest on temporary accommodation

9.1. Submission of CESC:

9.1.1. CESC has submitted that due to the allowance of transaction cost pertaining to swap-out energy there is a consequential impact on interest on temporary accommodation of Rs. 4.35 lakh.

9.2. Observation of the Commission:

9.2.1. The Commission reviewed and concluded to admit the consequential impact on interest on temporary accommodation due to admittance of adjustment of transaction cost of swap-out power.

9.2.2. Further, the Commission observed that while computing the Interest on Temporary Accommodation for 2020-21 in Table 5-22 of APR Order, the Commission has considered only Rs. 12,720.98 Lakh instead of the total recoverable admitted amount of Rs. 13,144.72 Lakh for 2020-21 in Table 6-2 of the APR Order including Rs. 423.74 Lakh admitted additional recoverable for 2019-20 to be recovered in APR for 2020-21. Therefore, the consequential impact considering above mentioned admitted amount on the Interest on Temporary Accommodation for 2020-21 has been recomputed in the table below.

Table 2: Calculation of Normative Interest on Temporary Accommodation

Rs. Lakh

Sl. No.	Particulars	Admitted in APR Order	Claimed in Review Petition	Admitted in Review Order
A	Opening balance Admissible Temporary Accommodation Requirement on 01.04.2020	123,821.42	123,821.42	123,821.42
B	Addition during the year	0.00	0.00	0.00
	Recoverable as per APR Order 2020-21	12,720.98	12,817.36	13,261.13
	Total Addition during the year	12,720.98	12,817.36	13,261.13
C	Closing Balance of Admissible Temporary Accommodation Requirement as on 31.03.2021 (A + B)	136,542.40	136,638.78	137,082.55
D	Average Balance in 2020-21 requiring Temporary Accommodation (A+C) / 2	130,181.91	130,230.10	130,451.99
E	Rate of Interest on Temporary Accommodation	9.03%	9.03%	9.03%
F	**Interest on Temporary Accommodation (D x E)**	**11,755.43**	**11,759.78**	**11,779.81**

9.2.3. Accordingly, the interest on temporary accommodation has been recomputed and admitted as Rs. 11,779.81 lakh in this Review Order against Rs. 11,755.43 Lakh admitted in APR Order 2020-21.

10. The Commission observes that the cash security deposit held by CESC is much higher than the requirement of Working Capital. Hence there will be no impact on admitted amount of the interest on working capital for 2020-21.

11. Thus, issues raised in issue no. 1 and 2 under paragraph 3 above have been reviewed and are found to have merit as there were errors on the face of the Order. Accordingly, the said issues are reviewed and decided in the affirmative. The consequential impact of this review of APR Order for 2020-21 is given effect in the Table below:

Table 3: Adjustment in Annual Performance Review

Rs. Lakh

Sl. No.	Particulars	Admitted in APR Order	Admitted in Review Order
1	Total Fuel and Power Purchase Cost admitted (From Table 6-2 of APR Order)	379,462.79	379,462.79
2	Fixed charge admitted (2a + 2b)	306,626.51	306,650.89
2a	Fixed charged admitted excluding interest on temporary accommodation (From Table 6-2 of APR Order)	294,871.08	294,871.08
2b	Interest on temporary accommodation (From Table 2 of this Order)	11,755.43	11,779.81
3	Revenue arising out of APR Order in earlier order (APR of 2013-14) adjusted with the APR of 2020-21 in Tariff Order dated 01.08.2022 (From Table 6-2 of APR Order)	(5,295.48)	(5,295.48)
4	Less: Net earnings from Sale to Consumers and WBSEDCL (From Table 1 of this Order)	668,072.84	667,980.81
5	**Balance Recoverable / Payable (-) for FY 2020-21 [(1+2+3)-(4)]**	**12,720.98**	**12,837.39**
6	Additional Recoverable for FY 2019-20 (From Table 6-2 of APR Order)	**423.74**	**423.74**
7	**Total Recoverable (5+6)**	**13,144.72**	**13,261.13**

12. Based on the above, the Commission admits a total recoverable of Rs. 13,261.13 Lakh for 2020-21 in this Order, in revision of the total recoverable of Rs. 13,144.72 Lakh for 2020-21 admitted in the APR Order.

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13. In terms of Tariff Regulations, the receivable amount of Rs 13,261.13 Lakh or part shall 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.

14. The Review Petition is hereby disposed of.

15. A copy of this Order shall be posted on the official website of the Commission.

16. CESC is directed to download the copy of this Order from the Commission's website and act accordingly. Certified copies of this Order, upon application and fulfilment of the requisite formalities as per the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended, and upon submission of necessary fees, shall be provided to the parties.

Sd/-

(DR. MALLELA VENKATESWARA RAO)

CHAIRPERSON

Dated: 30.07.2026

Sd/-

DEPUTY DIRECTOR, WBERC