ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: APR(R) – 37 /24 – 25

APPLICATION BY HALDIA ENERGY LIMITED (HEL) FOR REVIEW OF THE ANNUAL PERFORMANCE REVIEW (APR) ORDER DATED 19.06.2024 IN CASE NO. FPPCA – 96 / 19 – 20 AND APR – 99 / 22 – 23, PASSED BY THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (FOR THE FINANCIAL YEAR 2018 – 19 UNDER REGULATION 3.3.1 OF THE WBERC (CONDUCT OF BUSINESS) REGULATIONS, 2013

PRESENT:

DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 12.03.2025

Facts in brief:

1.0 Haldia Energy Limited (hereinafter referred to as "the Petitioner" or "HEL") submitted an application on August 9, 2024, under Regulation 3.3.1 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, seeking review of the Annual Performance Review (APR) Order dated June 19, 2024, in Case No. FPPCA – 96/ 19 – 20 and APR – 99 / 22 – 23, passed by the West Bengal Electricity Regulatory Commission (hereinafter referred to as "the Commission" or "WBERC") for the financial year 2018 – 19. The Commission admitted the aforesaid review application in Case No. APR (R) – 37/ 24 – 25.

2.0 Haldia Energy Limited (HEL), in the instant application, inter alia, stated that:

2.1 The Commission, through the impugned Order, has undertaken the true-up of the fuel cost and fixed cost of the Review Petitioner for FY 2018 – 19 and determined the adjustable amount for FY 2018 – 19 in respect of its 2x 300 MW power plant.

2.2 HEL submitted that the Commission, in determining the fuel cost for FY 2018 – 19, has considered the price of coal purchased at Rs. 3631.36 per ton. HEL submitted that adjustment cost for third party sampling of coal amounting to Rs. 13.07 per ton presented in the Notes of Form D3 of the FPPCA petition has not been considered by the Commission in the impugned order.

2.3 The Review Petitioner, by means of the instant petition, prayed before for the Commission to review its order dated 19.06.2024 and consider the cost of coal purchase as produced in Form D3 of the FPPCA petition.

Observations of the Commission:

3.0 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 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.

3.1 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.

4.0 The Commission has examined the submissions made by Haldia Energy Limited (HEL) in its review petition and noted that the cost for adjustment of third-party sampling of coal amounting to Rs. 13.07 per ton has been claimed by HEL in its FPPCA petition under Notes of Form D3 but the same has not been considered as part of purchase price of coal during

2018 – 19. Accordingly, the Commission deems it appropriate to review the purchase price of coal and proceeds to revise the Annual Performance Review (APR) for FY 2018 – 19 and the Fuel and Power Purchase Cost Adjustment (FPPCA) determined in the Order dated June 19, 2024 (in Case No. FPPCA – 96/19 – 20 and APR – 99 / 21 – 22), to the extent found necessary as given below:

Table 1: Computation of Revised (Purchase) Rate of Coal for FY 2018-19

SR NO	PARTICULARS	LEGEND	RATE (Rs. /Ton)
1	*Purchase	A	3631.36
2	Adjustment for Third-Party Sampling of Coal	B	13.07
3	Purchase Rate (A+B)	C	3644.43

Note: Purchase Rate is as per the original FPPCA-96/19-20 Order dated 19/06/2024.

Table 2: Revised Stock Price and Consumption Price for FY 2018-19

SR NO	PARTICULARS	LEGEND	WT IN TON	RATE IN Rs./TON
			A1	B1
1	Opening Stock	A	225198	3084.88
2	Purchase	B	3140095	3644.43
3	Consumption	$C = \frac{\{(AA1 \times AB1) + (BA1 \times BB1)\}}{(AA1+BA1)}$	3134452.86	3606.99
4	Closing Stock	D = C	230840.14	3606.99

***Note**: Closing Stock as specified in the Order in Case No. APR(R)-36/24-25 is considered as Opening Stock.*

4.1 The above change in price of coal will have a consequential impact on Fuel Cost of HEL, derivations of Gain related to improved Auxiliary Power Consumption and Station Heat Rate along with share to its beneficiary, Interest on Working Capital, Net Fixed Charge and Capacity Charge of HEL for 2018 – 19. The detailed computations is provided in Annexure 1 to 4. The net impact is summarized below:

Table 3: Net Adjustable Amount for 2018 – 19

Sl No.	Particulars	Amount in Rs. Lakh
A	Net ARR approved in FPPCA & APR Order 2018 – 19 dated 19.06.2024 (Table 4-1)	216275.33
B	Add: Additional Fuel Cost related to change in landed coal price (Annexure 1)	609.76
C	Less: Additional Share of Gain with CESC related to better AEC & SHR (Annexure 2)	18.71
D	Add: Additional Interest in Working Capital (Annexure 3)	7.19
E	Add: Additional Impact in Capacity Charge due to increased PAF (Annexure 4B)	0.54
F	Revised Net ARR for FY 2018 – 19 (D = A + B – C + D + E)	216874.11
G	Amount recovered during FY 2018 – 19 (Para 4.3 of the Order dated 19.06.2024)	216532.00
H	Net Adjustable Amount (H = F – G)	342.11

Order:

5.0 Based on the foregoing analysis, the Commission admits the revisions proposed in the review petition for the financial year 2018 – 19, particularly with regard to additional cost components in the fuel computation, sharing of gains from improved performance, and the consequential impact on working capital and fixed charges. Accordingly, the Commission notes the following revised figures:

Fuel Cost: Revised from Rs. 142695.13 Lakh to Rs. 143304.89 Lakh, with a net admissible fuel cost of Rs. 138681.40 Lakh after accounting for sharing of gains.

Net Fixed Cost: Revised from Rs. 72775.70 Lakh to Rs. 72782.89 Lakh, reflecting the updated interest on working capital.

Capacity Charges: Revised to Rs. 78192.71 Lakh, inclusive of the applicable incentive, following recalculation of the Plant Availability Factor (PAF).

Net ARR: Revised to Rs. 216874.11 Lakh (= 138681.40 Lakh + 78192.71 Lakh), after adjusting for gain sharing.

6.0 The Commission observes that HEL has recovered Rs. 216532.00 Lakh against the revised Net ARR of Rs. 216874.11 Lakh for FY 2018 – 19, resulting in a recoverable amount of Rs. 342.11 Lakh. In terms of the Tariff Regulations, this net recoverable amount of Rs. 342.11 lakh or part thereof shall be adjusted with the amount of Aggregate Revenue requirement (ARR) for the subsequent period or that of any other ensuing year(s) or through a separate order as many be decided by the Commission. The Commission in the said order shall also consider penal interest for not complying with the direction of the MYT Order as mentioned in paragraph 4.6 of the FPPCA and APR Order for 2018 – 19 dated 19.06.2024. The FPPCA and APR of HEL for FY 2018 – 19 stand revised accordingly.

7.0 The review petition is hereby disposed of.

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

9.0 HEL 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: 12.03.2025

Sd/-

DEPUTY DIRECTOR, WBERC

ANNEXURE – 1

Revised Fuel Cost Computation for FY 2018 – 19

Particulars	Legend	Unit	Amount
Sent-Out Energy (Scheduled Injection at Ex-Bus)	A	MU	4250.708
Normative APC	B	%	9.00%
Auxiliary Consumption	C	MU	420.400
Gross Admissible Generation	D	MU	4671.108
Heat Rate	E	kcal/kWh	2345
Permitted Oil Consumption	F	ml/kWh	1.00
Heat Value of Oil	G	kcal/l	9265.43
Heat Value of Coal	H	kcal/kg	2812.02
Overall Permitted Heat	I = D × E	Gcal	10953748.26
Permitted Heat from Oil	J = D × F × G /1000	Gcal	43279.84
Permitted Heat from Coal	K = I - J	Gcal	10910468.42
Permitted Oil Consumption	L = (J/G)×1000	KL	4671.11
Permitted Coal Consumption (w/o Transit Loss)		Ton	3879944.15
Transit Loss		Ton	31039.55
Permitted Coal Consumption (M = K/H/0.992 × 1000)	M	Ton	3911234.03
Cost of Oil per KL	N	Rs./KL	47680.98
Cost of Coal per Ton	O	Rs./Ton	3606.99
Cost of Oil (P = L × N / 100000)	P	Rs. Lakh	2227.23
Cost of Coal (Q = M × O / 100000)	Q	Rs. Lakh	141077.66
Total Cost of Fuel (R = P + Q)	R	Rs. Lakh	143304.89
Admitted Cost of Fuel allowed in FPPCA and APR Order dated 19.06.2024	S	Rs. Lakh	142695.13
Additional Fuel Cost	**T = R – S**	**Rs. Lakh**	**609.76**

ANNEXURE – 2

Gain due to Improved Auxiliary Consumption for FY 2018 – 19

Particulars	Unit	Value
Normative Auxiliary Consumption	%	9.00%
Actual Auxiliary Consumption	%	7.57%
Category		Category B
Sharing Ratio as per Sl. No. 3 of Category B		80 : 20
Normative Auxiliary Consumption	MU	420.400
Actual Auxiliary Consumption	MU	349.374
Savings in Auxiliary Consumption	MU	71.026
Cost of Generation	Rs./kWh	3.07
Gain	Rs. Lakh	2180.5
Share % of beneficiary i.e. CESC Limited	%	20%
Share of CESC Limited	Rs. Lakh	436.10

Gain due to Improved Station Heat Rate for FY 2018 – 19

Particulars	Legend	Unit	Revised
Sent-Out Energy (Scheduled Injection at Ex-Bus)	A	MU	4250.708
Normative Aux Consumption	B	%	9.00
Auxiliary Consumption	C	MU	420.401
Gross Admissible Generation	D = A + C	MU	4671.107
Actual Station Heat Rate	E	kcal/kWh	1911.00
Permitted Oil Consumption	F	ml/kWh	1.00
Heat Value of Oil	G	kcal/l	9265.43
Heat Value of Coal	H	kcal/kg	2812.02
Overall Permitted Heat (I = D × E)	I	Gcal	8926487.39
Permitted Heat from Oil (J = D × F × G / 1000)	J	Gcal	43279.84
Permitted Heat from Coal (K = I - J)	K	Gcal	8883207.55
Permitted Coal Consumption		Ton	3159012.93
Transit Loss		Ton	25475.91
Permitted Coal Consumption with transit loss(M)	M	Ton	3184488.84
Cost of Coal per Ton (O)	O	Rs. /Ton	3606.99
Coal Cost at Actual SHR (Q = M × O / 100000)	Q	Rs. Lakh	114864.19
Coal Cost at Normative SHR (From Annex 1)	R	Rs. Lakh	141077.66
Savings in Cost for achieving better SHR	S = R-Q	Rs. Lakh	26213.47
Share to the Purchaser in accordance with para A3 of Schedule - 9B of the Tariff Regulations	T	%	14.00
Amount proposed to be passed on to the Purchaser in accordance with Para A3 of Schedule - 9B of the Tariff Regulations	U	Rs. Lakh	3669.89

Share of Gain to CESC

Sl No	Particulars	APR order	Revised
1	Share of CESC for Better AEC	433.26	436.10
2	Share of CESC for Better SHR	3654.02	3669.89
3	Share of CESC for better oil consumption	517.5	517.5
4	Total Share of CESC	4604.78	4623.49
5	**Additional Gain Share to CESC**		**18.71**

ANNEXURE – 3

Revised Interest on Working Capital for FY 2018 – 19

Sl. No.	Particulars	Admitted
A	Gross Sales	216087.78
B1	Less: Depreciation including Advance Depreciation	13466.38
B2	Less: Deferred Revenue Expenditure	0.00
B3	Less: Return on Equity	15845.90
B4	Less: Reserve for unforeseen exigencies	0.00
B5	Less: Incentive	253.81
B	Total Deductions (sum B1:B5)	29566.09
C	Allowable Gross Sales for Working Capital (A-B)	186521.69
D	Allowable Working Capital @ 10% on C	18652.17
E	Interest Rate	11.65%
F	Interest on Working Capital (E % on D)	2172.98
G	Actual interest paid	2736.10
H	Interest on working capital (Lower of F & G)	2172.98
I	Admitted Interest on Working Capital in Order dated 19.06.2024	2165.79
J	**Additional Interest on Working Capital**	**7.19**

ANNEXURE – 4A

Revised Fixed Cost for FY 2018 – 19

Figures in Rs Lakh

Sl. No.	Particulars	Admitted
1	O&M Expenses	5124.00
2	Rates and Taxes	58.50
3	Insurance Charges	616.33
4	Employee Cost	6324.49
5	Coal and Ash Handling	750.03
6	Water Cess	0.00
7	Statutory Charges	44.10
8	Depreciation	13466.38
9	Return on Equity	15845.90
10	Interest on Capital Expenditure, Loans and Public Deposits	22353.94
11	Interest on Working Capital	2172.98
12	Interest on Temporary Accommodation	0.00
13	Other Finance Charges	0.00
14	Income Tax	7881.00
15	Incentives	253.81
16	Special Allocation	0.00
17	Sub - Total Fixed Cost	74891.46
18	Less: Income other than sale of Energy (NTI)	831.00
19	Less: Interest Credit on Depreciation	1277.57
20	Total Fixed Cost	72782.89

ANNEXURE – 4B

Revised Capacity Charge for FY 2018 – 19

Figures in Rs Lakh

Particular	Value
Admitted Fixed Charge (AFC)	72782.89
Less: Incentive	253.81
Admitted Fixed Charge (AFC) excluding incentive and coal handling expense	72529.08
Normative PAF (PAF_N)	85%
Actual PAF (PAF_A)	97.68%
Admissible Capacity Charge (AFC x (0.5 + 0.5 x PAF_A / PAF_N) (In Rs. Lakh)	77938.90
Add: Incentive	253.81
Total admissible Capacity Charge	78192.71
Capacity Charge admitted in Order dated 19.06.2024	78184.98
Additional Capacity Charge Allowable	7.73
Increase in Interest on Working Capital	7.19
Additional impact on Capacity Charge due to higher PAF	**0.54**