



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY
COMMISSION**

**IN THE MATTER OF
CASE NO: RP-10/25-26**

REVISITING THE ORDERS DATED 08.01.2020 IN CASE NO. OA-267/17-18 PASSED BY THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION IN VIEW OF THE JUDGEMENT OF THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY IN APPEAL NO 95 OF 2020 DATED 30.04.2025.

DATE: 18.07.2025



CASE IN BRIEF

- 1.0 The Hon'ble Appellate Tribunal for Electricity at New Delhi (in short 'APTEL') in its Judgement dated 30.04.2025 in Appeal No. 95 of 2020, involving Haldia Energy Limited (in short 'HEL') and West Bengal Electricity Regulatory Commission (In short 'the Commission'), has set aside certain findings from the Commission's order dated 08.01.2020 in Case No. OA-267/17-18. Consequently, APTEL has directed the Commission to issue a consequential order within three months to implement it's findings. In response, the Commission has undertaken a review of order OA-267, specifically addressing the directives issued by APTEL, and re-registered these findings under Case No. RP-10/25-26.
- 2.0 On January 8,2020, the Commission had issued order OA-267/17-18 approving the final project cost of Rs 540.36 crores for the 400KV double circuit evacuation line from the Haldia generating station to Power Grid Corporation of India Ltd (in short 'PGCIL') 400KV Subhasgram substation. This approval was made under regulation 2.8.5.1 of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations,2011(in short Tariff Regulation. The Commission, however, disallowed certain costs and expenditures claimed by HEL related to the project's construction.
- 3.0 Aggrieved by the Commission's order in Case No. OA-267/17-18, HEL filed an appeal (Appeal No.95 of 2020) before the Honorable APTEL, challenging the disallowance of costs under the following heads:
 - a) Rs. 4.00 crores in respect of the retention of the jack-up barge (JUB);
 - b) Rs. 5.65 crores of additional work on river crossing tower foundation;
 - c) Rs. 0.75 crore in respect of tax variation;
 - d) Rs. 27.63 crores in respect of right of way (RoW) issues;
 - e) Rs. 0.70 crore in respect of head-loading expenses;
 - f) Rs. 0.34 crore in respect of the construction of the approach road; and
 - g) Rs.6.61 crores in interest during construction (IDC) proportionate to the aforesaid disallowed claims.



Revisiting order dated 08.01.2020 in Case no. OA-267 /17-18 passed by the West Bengal Electricity Regulatory Commission in view of the Judgement passed by Hon'ble Appellate Tribunal for Electricity (APTEL) at New Delhi in Appeal no. 95 of 2020 dated 30.04.2025

4.0 APTEL issued its judgement on April 30,2025 regarding appeal no 95 of 2020. APTEL's decision on these issues are summarized below.

- a) APTEL found merit in the HEL's claims for the allowance of costs related to the retention of the jack-up barge, additional work on the river crossing tower foundation, head-loading expenses, and the construction of the approach road. It recognized these were impacted by changes in law or force majeure events and therefore allowed these claims.
- b) The APTEL remanded the issue of tax variation and right of way (RoW) expenses to the State Commission for re-examination. It provided specific directions to consider additional evidence and the context of the project's timely completion. Consequently, APTEL also allowed the HEL's claim for interest during construction (IDC) proportionate to the costs that were allowed by the APTEL.

5.0 The Table 1 below details the issues on which APTEL issued a favorable judgment to HEL, along with the corresponding amount allowed:

Table 1

Issues Allowed by APTEL	Amount in Rs. Cr.
Retention of the jack-up barge (JUB)	4.00
Additional work on river crossing tower foundation	5.65
Head-loading expenses	0.70
Construction of the approach road	0.34

In light of APTEL's directions, the Commission considered all the above issues and decides to accommodate them in revised order.



6.0 The following Table 2 lists the Issues remanded to the Commission for further re-examination and re-consideration as per APTEL Judgement:

Table 2

Issues Remanded by APTEL to Commission	Amount in Rs. Cr.
Tax Variation	0.75
Right of Way (ROW)	27.63

6.1 Analysis and observation of the Commission-On Tax Variation:

- a) The Commission in its order OA-267/17-18 had rejected the claim of Tax variation by HEL observing that, the claim was not supported with required documents.
- b) APTEL in its judgement after examining the documents referred by HEL observed the following:

"On examination of documents, it is seen that Annexure-15 (BoQ) of the Project Completion Report, indicates the tax variation component and is included in the final cost of Rs. 153,32,59,031/- as claimed by SIMPLEX and paid by the Appellant, however, further details as the earlier service tax considered and the revise service tax as notified by the Government have not been placed for examination."

APTEL subsequently observed that, any variation in tax is carried out only through government notifications, therefore the matter needs to be re-examined by the State Commission only after obtaining the relevant documents from the Appellant.



- c) Additional documentation received from HEL vide document no HEL-F/2025/421 dated 19/06/2025 against WBERC memo no WBERC/RP-10/25-26/237 dated 12.06.2025 regarding the change in service tax rate from 10.3% to 12.36% effective April 1, 2012, also supports this tax revision. Therefore, the Commission decides to accommodate the Tax Variation of Rs 0.75 Cr.

6.2 Analysis and observation of the Commission -On Right of way (ROW)

- a) The Commission in its order OA-267/17-18 had disallowed the claim of ROW compensation by HEL on the ground that, 'arranging right of way/ way leaves (ROW)' are within the scope of contractor.
- b) APTEL in its judgement has observed that in terms of clause 56.2 of the General Conditions of Contract (GCC), the contractor is entitled to be excused from its performance on account of Force Majeure events.

APTEL observed that *"....it cannot be disputed that the public disorder/ blockages are events beyond the control of the executing party...The Force Majeure events have been given a wide definition and include any event or circumstance that is not within the reasonable control of the affected party and that could not have been prevented by the exercise of reasonable care and diligence"*. APTEL relied on the (i) detailed table reflecting the timelines of the project completion (ii) Audited Statement of Final Project Cost; and (iii) copy of communications between IVRCL, HEL, and Police Station along with relevant Court Orders on problems/challenges relating to the aforesaid RoW issues, submitted by HEL.

APTEL also found merit in the contention that HEL *"was constrained to pay the cost towards the aforesaid RoW expenditure to ensure that the 600 MW*



Generation Project, which was crucial for the supply of power to the consumers in the State of West Bengal, as also observed by the State Commission, is not stranded due to non-commissioning of its sole evacuation line". In fact, APTEL also acknowledged HEL's claim that "....total IDC of approximately Rs. 30 crores would have been incurred by HEL every month for both, its generation and evacuation Project, therefore, any delay in setting-up of the Project would have led to the much higher cost impact on the consumers of the buying distribution licensee in the State of West Bengal, who are the ultimate beneficiaries of the power being generated by the"

In view of above observations, APTEL remanded the matter to the State Commission to re-examine the issue in the light of severe resistance from the local public and compensation paid by the Appellant to resolve the issue amicably to ensure timely completion of the Project, after carrying out prudent check shall allow the same within the bench mark costs if notified by the State Commission or the Central Commission.

- c) As per Audited Statement of Final Project Cost, HEL incurred an expenditure of Rs 27.63 Cr towards RoW issue for HEL's 400KV double circuit evacuation line.
 - d) HEL also provided documents (I.e. photocopy of cheques, payment received on revenue stamp etc) containing payment made to various individual as a compensation.
 - e) As per available guidelines of GOI the expenditure incurred by HEL on ROW issue on 400 KV double circuit evacuation line is much less than the specified value.
 - f) After going through all the above points, the Commission decides to admit RoW cost of Rs 27.63 Cr as hard cost for HEL's 400KV Evacuation Line.
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7.0 IDC for the revised Project cost:

As per the Commission's Order OA-267/17-18 dated January 8,2020 hard cost of the HEL 400KV Evacuation Line admitted by Commission was Rs 462.17 Cr with IDC of Rs 78.19 Cr. The revised hard cost, based on above discussion is detailed in the Table 3 below.

Table 3

Sr No	Particulars	Cost in Rs. Cr.	Remarks
1)	Original Project Cost Admitted by the Commission	462.17	As per OA-267/17-18
Additional cost allowed under different heads in light of APTEL Judgement			
a)	Retention of Jack Up Barge	4.00	
b)	Additional work on River Crossing Tower foundation	5.65	
c)	Head Loading Expenses	0.70	
d)	Construction of Approach Road	0.34	
e)	Tax Variation	0.75	
f)	RoW Issue	27.63	
g)	TOTAL	501.24	Revised Project Hard Cost

For the original hard cost of Rs 462.17Cr, interest allowed by the Commission was Rs 78.19 Cr. For revised hard cost of Rs 501.24Cr interest admitted by the Commission is Rs 84.80 Cr.



Revisiting order dated 08.01.2020 in Case no. OA-267 /17-18 passed by the West Bengal Electricity Regulatory Commission in view of the Judgement passed by Hon'ble Appellate Tribunal for Electricity (APTEL) at New Delhi in Appeal no. 95 of 2020 dated 30.04.2025

8.0 Revised Project cost of 400KV of HEL double circuit evacuation line after accommodating the Judgement of APTEL in Table 4 below.

Table 4

Sr no	Particulars	Cost in Rs. Cr.
1	Hard cost	501.24
2	IDC	84.80
3	Total Project Cost	586.04

ORDER

9.0 Based on the foregoing analysis the Commission admits the revision proposed in Judgement of APTEL bearing no 95 of 2020 with regard to additional claims in 400 KV of HEL double circuit dedicated transmission line for its generation Project. Accordingly, the Commission revised the following cost heads.

- I. Revised Hard Cost of the Project Rs 501.24 Cr.
- II. Revised IDC of the Project Rs 84.80 Cr.
- III. Revised Project Cost Rs 586.04 Cr.

10.0 HEL is directed to submit a composite petition claiming the impact of revised Project Cost for the years of which APRs have already been issued by the Commission, within one month from date of publication of this Order.

11.0 In compliance of the Judgement of APTEL in appeal no 95 of 2020 the matter is disposed of by the Commission.

12.0 A copy of this Order shall be posted on the official website of the



Revisiting order dated 08.01.2020 in Case no. OA-267 /17-18 passed by the West Bengal Electricity Regulatory Commission in view of the Judgement passed by Hon'ble Appellate Tribunal for Electricity (APTEL) at New Delhi in Appeal no. 95 of 2020 dated 30.04.2025

Commission.

- 13.0 HEL is directed to download the copy of this Order from the Commission's website and act accordingly.
- 14.0 Certified copies of the Order, upon application and fulfilment of the requisite formalities as per WBERC (Conduct of Business) Regulation 2013, as amended, and upon submission of necessary fees shall be provided to the parties.

Sd/-

(DR. MALLELA VENKATESWARA RAO)

CHAIRPERSON

Dated:18.07.2025

Sd/-

DEPUTY DIRECTOR,WBERC