IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 275 OF 2015 & IA NO.724 OF 2025
APPEAL NO. 408 OF 2022 & IA NOS. 466 OF 2025, 727 OF 2025 & IA NO. 803 OF 2025
AND
APPEAL NO. 22 OF 2022 & IA NOS. 725 OF 2025 & 798 OF 2025

Dated: 15.09.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

APPEAL NO. 275 OF 2015 & IA No.724 of 2025

IN THE MATTER OF:

1. **Damodar Valley Power Consumers Association (DVPCA)**
   9AJC Bose Road,
   Kolkata – 700 017.

2. **Shree Ambey Ispat Pvt. Ltd.**
   Room No.90, 5th Floor,
   Stephan House,
   4, B. B. D. Bagh E,
   Kolkatta – 700 001. **- Appellant(s)**

Versus

1. **West Bengal State Electricity Regulatory Commission,**
   Poura Bhawan, (3rd Floor) Block -FD,
   415-A, Bidhannagar,
   Kolkata- 700106.

2. **Damodar Valley Corporation**
   DVC Towers, VIP Road,
   Kolkata-700054.

- Respondent(s)

Counsel for the Appellant(s) : Mr. Rajiv Yadav
Mr. Rahul Chauhan

For Appl. 1 & 2

Counsel for the Respondent(s) : Mr. C. K. Rai for R-1

Mr. Shri Venkatesh
Mr. Shryeshth Ramesh Sharma
Mr. Ashutosh Kumar Srivastava
Mr. Bharath Gangadharan
Mr. Abhishek Nangia
Mr. Siddharth Nigotia
Mr. Nihal Bhardwaj
Mr. Shivam Kumar
Mr. Kartikay Trivedi
Mr. Mohit Gupta
Mr. Manu Tiwari
Mr. Aashwyn Singh
Mr. Punyam Bhutani
Mr. Harsh Vardhan
Mr. Suhael Buttan
Mr. Himangi Kapoor
Mr. Priya Dhankar
Mr. Anant Singh
Mr. Kunal Veer Chopra
Mr. Vineet Kumar
Mr. Aditya Tiwari
Mr. Nehal Jain
Mr. Nikunj Bhatnagar
Mr. Vedant Choudhary for R-2

Appeal No. 408 OF 2022 & IA Nos. 466 OF 2025, 727 OF 2025 & 803 OF 2025

IN THE MATTER OF:

1. **Damodar Valley Power Consumers Association (DVPCA)**
   9 AJC Bose Road,
   Kolkata – 700017.

- Appellant(s)

Versus

1. **West Bengal State Electricity Regulatory Commission,**
   Through the Secretary,

Plot No. : AH/5 (2nd & 4th Floor),
Premises No. : MAR 16-1111,
Action Area 1A, Newtown,
Rajarhat, 700163.
Kolkata.

2. Damodar Valley Corporation
Through the Member Secretary,
DVC Towers, VIP Road,
Kolkata-700054.

- Respondent(s)

Counsel for the Appellant(s)	:	Mr. Rajiv Yadav Mr. Rahul Chauhan
Counsel for the Respondent(s)	:	Mr. C.K. Rai for R-1 Mr. Shri Venkatesh Mr. Shryeshth Ramesh Sharma Mr. Ashutosh Kumar Srivastava Mr. Bharath Gangadharan Mr. Abhishek Nangia Mr. Siddharth Nigotia Mr. Nihal Bhardwaj Mr. Shivam Kumar Mr. Kartikay Trivedi Mr. Mohit Gupta Mr. Manu Tiwari Mr. Aashwyn Singh Mr. Punyam Bhutani Mr. Harsh Vardhan Mr. Suhael Buttan Mr. Himangi Kapoor Mr. Priya Dhankar Mr. Anant Singh Mr. Kunal Veer Chopra Mr. Vineet Kumar Mr. Aditya Tiwari Mr. Nehal Jain Mr. Nikunj Bhatnagar Mr. Vedant Choudhary for R-2

APL No. 22 OF 2022 & IA Nos. 725 OF 2025 & 798 OF 2025

IN THE MATTER OF:

1. Damodar Valley Power Consumers Association (DVPCA)
A-69, Lower Ground Floor,
Nizamuddin (East), New Delhi, 110 013

- Appellant(s)

Versus

1. West Bengal State Electricity Regulatory Commission,
Pura Bhawan, (3rd Floor) Block -FD,
415-A, Bidhannagar
Kolkata- 700106

2. Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054

- Respondent(s)

Counsel for the Appellant(s)	:	Mr. Rajiv Yadav Mr. Rahul Chauhan
Counsel for the Respondent(s)	:	Mr. C.K. Rai for R-1 Mr. Shri Venkatesh Mr. Shryeshth Ramesh Sharma Mr. Ashutosh Kumar Srivastava Mr. Bharath Gangadharan Mr. Abhishek Nangia Mr. Siddharth Nigotia Mr. Nihal Bhardwaj Mr. Shivam Kumar Mr. Kartikay Trivedi Mr. Mohit Gupta Mr. Manu Tiwari Mr. Aashwyn Singh Mr. Punyam Bhutani Mr. Harsh Vardhan Mr. Suhael Buttan

Mr. Himangi Kapoor
Mr. Priya Dhankar
Mr. Anant Singh
Mr. Kunal Veer Chopra
Mr. Vineet Kumar
Mr. Aditya Tiwari
Mr. Nehal Jain
Mr. Nikunj Bhatnagar
Mr. Vedant Choudhary for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. Damodar Valley Power Consumers Association and Shree Ambey Ispat Pvt. Ltd. (in short "Appellants" or "DVPCA" & "AIPL") have filed the present batch of appeals challenging the following Impugned Orders passed by the West Bengal Electricity Regulatory Commission (in short "State Commission" or "WBERC"):

Sl.	Appeal No.	Impugned Order in Case No.	Dated
1.	275 of 2015	TP-62/14-15	24.08.2015
2.	408 of 2022	APR-53/15-16	31.05.2021
3.	22 of 2022	TP-83/19-20	19.03.2020

Description of the Parties

2. The Appellant No. 1 is a company incorporated under Section 8 of the Companies Act, 1956, with the object *"to promote, protect and safeguard the rights, interests of electricity consumers in Eastern India by every legitimate*

means". Appellant No. 1 is a collective body representing the interests of its members who are HT consumers of DVC.

3. The Appellant No. 2 is a company incorporated under the provisions of the Companies Act, 1956, and is principally engaged in the manufacture of ferro-alloys. Appellant No. 2 is an HT consumer of DVC and is also a member of Appellant No. 1.

4. Respondent No. 1, West Bengal Electricity Regulatory Commission, is a statutory body under Section 82 of the Electricity Act, 2003. The State Commission is entrusted with the function of determination of tariff for retail supply of tariff within the State of West Bengal.

5. Respondent No. 2, Damodar Valley Corporation, is a statutory corporation owned and controlled by the Government of India, Government of Jharkhand and Government of West Bengal. DVC was constituted pursuant to the Damodar Valley Corporation Act, 1948, and qualifies as a "State" within Article 12 of the Constitution of India with all its attendant obligations of reasonableness and propriety in the conduct of its affairs. DVC is engaged in the generation, transmission, bulk supply, and distribution of electricity and performs diverse functions relating to irrigation, flood control, afforestation, soil conservation, etc., in accordance with the provisions of the DVC Act.

6. The issues involved in the batch of appeals are identical in nature. Therefore, we decided to adjudicate the complete batch with Appeal No. 275 of 2015 as the lead appeal.

Facts of the Case(s) (Appeal No.275 of 2015) (as submitted)

7. DVC owns and operates the following generation assets:

Name of the Station	**Installed Capacity (MW)**	**COD of the Station/system**
Bokaro TPS	630	August 1993
Chandrapur TPS	390	March 1979
Durgapur TPS	350	September 1982
Mejia TPS Unit 1 to 3	630	September 1999
Mejia TPS Unit 4	210	13.02.2005
Maithon Hydel	60	December 1958
Panchet Hydel	40	March 1991
Tilaiya Hydel	4	August 1953
Mejia TPS Unit 5 & 6	500	U#1 on 29.02.2008 U#2 on 24.09.2008
Mejia TPS Phase II Unit 7 & 8	1,000	U#1 on 02.08.2011 U#2 on 16.08.2012
Chandrapura TPS Unit 7 & 8	500	U#1 on 02.11.2011 U#2 on 15.07.2011

Durgapur Steel TPS Unit 1	500	15.05.2012
Durgapur Steel TPS Unit 2	500	05.03.2013
Koderma TPS Unit 1	500	18.07.2013
Koderma TPS Unit 2	500	14.06.2014

8. Prior to the enactment of the Electricity Act, 2003, DVC was authorised to determine its own tariff pursuant to Section 20 of the DVC Act, 1948.

9. The relevant extract from Section 20 of the DVC Act is as follows:

> *"**20. Charges for supply of electrical energy** - The Corporation shall fix the schedule of charges for the supply of electrical energy, including the rates forbulk supply and redistribution, and specify themanner of recovery of such charges"*

10. Upon enactment of the Electricity Act, 2003, the above-noted dispensation under the DVC Act underwent a significant change.The 2003 Act, being a consolidating Act, prevailed over such provisions of the DVC Act as were inconsistent with its own provisions.

11. In light of the statutory scheme under the Electricity Act, 2003, the CERC, initiated *suo motu* proceedings (Petition No. 168 of 2004) with respect to DVC's tariff determination. Vide its order dated 29.03.2005, the CERC directed DVC to file an application for the determination of its tariff.

12. In response to CERC's direction, DVC filed Petition No. 66 of 2005 on 08.06.2005 before the CERC, seeking tariff determination for the MYT period 01.04.2004 to 31.03.2009.

13. After a detailed exercise, the CERC, vide tariff order dated 03.10.2006, determined DVC's generation and transmission tariff and made the same applicable from 2006-09. In other words, DVC was granted a two-year moratorium from 01.04.2004 to 31.03.2006 during which it could continue to levy and recover its own tariff. In other words, the tariff fixed by CERC became applicable from 01.04.2006.

14. In its tariff order dated 03.10.2006, the CERC specifically pointed out that it has confined itself to the determination of the generation and transmission tariff of DVC, and that the distribution tariff has to be determined by the concerned State Commission.

15. The tariff order dated 03.10.2006, was challenged by DVC and certain HT consumers in separate appeals filed before this Tribunal (Appeal Nos. 271, 272, 273, 275 of 2007 and 8 of 2007). This Tribunal, vide Judgment 23.11.2007, partly allowed Appeal No. 273 of 2006 filed by DVC, and remanded the matter to the Central Commission *"for de novo consideration of the Tariff Order dated 3rd October, 2006 in terms of our findings and observations made hereinabove and according to the law."* Specifically, the matter was remanded for consideration on the following specific issues:

a. Additional Capitalisation for the period 2004-05 and 2005-06.
b. Pension and Gratuity Contribution.
c. Revenue to be allowed to DVC under the DVC Act
d. Operation and Maintenance expenses.
e. Debt- Equity Ratio.

16. This Tribunal's Judgment dated 23.11.2007 was challenged by M/s Bhaskar Shrachi Alloys Limited in Civil Appeal Nos. 971-973 of 2008 before the Hon'ble Supreme Court.

17. Following remand by this Tribunal, tariff determination proceedings were revived before CERC in Petition No. 66/2005. A revised tariff order dated 06.08.2009 was passed by CERC.

18. The revised tariff order dated 06.08.2009 was unsuccessfully challenged by DVC before this Tribunal in Appeal No. 146 of 2009.

19. DVC preferred an appeal from this Tribunal's Judgment dated 10.05.2010 before the Hon'ble Supreme Court (Civil Appeal No. 4881/ 2010). The Hon'ble Supreme Court, vide order dated 09.07.2010, stayed the refund of the excess amount collected by DVC. However, the Hon'ble Supreme Court did not stay the operation of the Judgment dated 10.05.2010.

20. For the MYT period 01.04.2009 to 31.03.2014, DVC filed a petition on 03.02.2014 before WBERC for the determination of the retail tariff for supply to its consumers in the State of West Bengal. The said tariff petition was filed pursuant to the WBERC (Terms and Conditions of Tariff) Regulations, 2011. Subsequently, additional information/ documents were filed by DVC on 28.04.2014. For the MYT period 01.04.2009 to 31.03.2014, the CERC has issued final tariff orders in respect of the following generation and transmission assets of DVC:

Sl. No.	**Particulars**	**Date of issue**
1.	Mejia TPS Unit 1 to 3	9.7.2013

2.	Mejia TPS Unit 4	9.7.2013
3.	Bokaro TPS Unit 1 to 3	29.7.2013
4.	Chadrapur TPS Unit 1 to 3	7.8.2013
5.	Durgapur TPS Unit 3 & 4	7.8.2013
6.	Maithan HPS	7.8.2013
7.	Panchet HPS	7.8.2013
8.	Tilaiya HPS	7.8.2013
9.	Transmission & Distribution	27.9.2013
10.	Mejia TPS Unit 5 & 6	23.1.2015
11.	Chandrapura TPS Unit 7 & 8	12.3.2015
12.	Mejia TPS Unit 7 & 8	20.3.2015
13.	Durgapur Steel TPS Unit 1 & 2	20.4.2015
14.	Koderma TPS Unit 1	6.7.2015

21. From the above-noted table, it is clear that the generation tariff in respect of DVC's generating stations had been determined by CERC well before the passing of the Impugned Order by the StateCommission on 24.08.2015. It may be relevant to mention that the generation tariff for the period 01.04.2009 to 31.03.2014 has been determined by the Central Commission in accordance with the extant CERC (Terms and Conditions of Tariff) Regulations, 2009 (in short "Tariff Regulations, 2009").

22. In the proceedings before the State Commission, the Appellant No. 2, as well as certain entities that subsequently became members of Appellant No. 1 after the latter's incorporation, filed objections in response to DVC's tariff petition. The last date for filing objections/comments in response to the subject tariff petition was 10.06.2014. Further, Appellant No.1 was

incorporated on 04.07.2014, and, therefore, it was not possible for it to file objections/comments before the State Commission.

23. No opportunity of being heard was given by the State Commission to Appellant No. 2 or any other stakeholder/ objector.

24. The State Commission, vide impugned tariff order dated 24.08.2015, determined the retail tariff of DVC for the supply of power in the Damodar valley area within the State of West Bengal for the MYT period 01.04.2009 to 31.03.2014.

25. Thus, being aggrieved by the Impugned Order dated 24.08.2015 passed by the WBERC in Case No. TP-62/14-15, the Appellant has preferred the present Appeal.

Our Observations and Analysis

26. The Appellant has prayed for the following relief before us (in Appeal No. 275 of 2015):

> *"a) set aside the tariff order dated 24.8.2015, passed by the West Bengal Electricity Regulatory Commission in Case No. TP-62/14-15;*
>
> *b) pass such other or further orders as this Hon'ble Tribunal may deem appropriate."*

27. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and

relevant material on record. The written submissions of the appellants and the respondents have been taken on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issues arise for determination in this Appeal:

Issue No. 1: Whether short recovery from the other distribution licensees (WBSEDCL and IPCL) can be recovered from the command area consumers?

Issue No. 2: Whether the State Commission erred by treating only the Delayed Payment Surcharge (DPS) as Non-Tariff Income (NTI), despite the regulatory requirement to include all income from the distribution business (except those specifically excluded by the Tariff Regulations)?

Issue No. 3: Whether the State Commission and DVC wrongly loaded the entire Transmission & Distribution (T&D) cost exclusively on command area consumers, without proper apportionment for sales or wheeling to external beneficiaries (including power sold outside the command area or wheeled for third parties), and whether costs for units utilized by DVC in its own premises (including construction power) were improperly recovered through consumer tariffs rather than being capitalized or otherwise excluded?

Issue No. 4: Whether the State Commission was required to award carrying cost at an appropriate interest rate (such as SBI MCLR + 250 basis points) on revenue gaps/ surpluses determined at the true-up or APR stage?

28. The Appellant has pressed only the above four issues before us, and therefore, the four issues are dealt with in the succeeding paragraphs on an issue-wise basis.

29. The other issues which were not deliberated, and the Appellant was granted liberty to raise these issues at an appropriate stage, when required. These are:

i. Load Factor & Power Factor Rebate/Surcharge
ii. Legal Charges
iii. Contribution to Sinking Fund

Issue No. 1: *Whether short recovery from the other distribution licensees (WBSEDCL and IPCL) can be recovered from the command area consumers?*

30. The Appellants submitted that the State Commission's approach in permitting DVC to recover the short payments or arrears, which were attributable to the other distribution licensees WBSEDCL and IPCL, from the remaining consumers in the command area was manifestly illegal and contrary to the principles enshrined in the Electricity Act, 2003, the regulatory framework, and judicial precedents.

31. It was submitted that the impugned Annual Performance Review (APR) order dated 31.05.2021 effectively loaded the under-recoveries attributable to WBSEDCL and IPCL onto the command area consumers, thereby wrongfully saddling consumers who were not responsible for such short payments with additional financial burden.

32. The Appellants highlighted the factual matrix wherein DVC, being a multi-state generating and distribution licensee, supplied power to WBSEDCL and IPCL through radial connections and billed these entities based on the retail tariffs determined by the State Commission.

33. Once the DVC's radial supply tariff has been determined by the State Commission, such a tariff, if under-recovered, cannot be imposed on the other consumers. Further, a short recovery due to the erroneous determination of ARR reflects an imprudent and unjust decision by the State Commission.

34. The Appellants pointed out that such short payments resulted in a revenue gap for DVC, which the State Commission, instead of isolating against the defaulting entities, passed on to the rest of the consumers by including the under-recoveries in the revenue gap considered for tariff fixation.

35. It was submitted that the State Commission's orders dated 01.03.2019 in Case Nos. OA-273/18-19 and OA-272/18-19 categorically held that the retail tariff determined by the Commission was not for WBSEDCL and IPCL and could not be charged upon them. The sale of power to these licensees on radial mode could not be treated as a sale to a consumer. Both parties were directed to resolve the matter as per the provisions of law.

36. The Appellants argued that in light of these orders, the State Commission lacked jurisdiction to include the short payments of WBSEDCL and IPCL in the revenue gap applicable to other consumers. Such inclusion constituted an impermissible retroactive alteration of the tariff methodology at the true-up or APR stage, in contravention of the principle elucidated by the Hon'ble Supreme Court in ***BSES Rajdhani Power Ltd. v. DERC (2023) 4***

SCC 788, which prohibits reopening settled tariff parameters under the guise of truing up.

37. The Appellants also underscored the calculation of the quantum of under-recovery, demonstrating a difference of approximately Rs. 275.27 crore between revised and old billed revenues recoverable from WBSEDCL and IPCL in respect of FY 2009-10 to FY 2013-14, evidence that the State Commission in determining the revenue gap considered only old billed revenues and thereby imposed the burden of shortfall on other consumers. The Appellants urged that such an approach was violative of Section 61 of the Electricity Act and relevant Tariff Regulations, which preclude shifting losses arising from tariff non-determination or sale outside the regulatory framework, and that the consumers could not be made to bear losses attributable to defaulting licensees.

Particulars		**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**	**Grand Total [Revised/ Old]**
Revised Revenue Billed to WBSEDCL as per the order dated. 19.03.2020.	A	202.86	219.07	235.72	253.68	278.09	

Revised Revenue Billed to IPCL as per order dated. 19.03.2020.	B	211.83	237.03	295.46	343.69	368.88	
Total Revised Revenue Billed to WBSEDCL & IPCL	**C= A-B**	**414.69**	**456.10**	**531.18**	**597.37**	**646.97**	**2646.31**
Old Revenue Billed to WBSEDCL prior to the implementation of the order dated. 19.03.2020 for FY 2009-10 to 2012-13 and the order dated.	D	209.61	173.07	184.39	202.28	223.14	

24.08.2015 for FY 2013-14.							
Old Revenue Billed to IPCL prior to implementation of order dtd. 19.03.2020 for FY 2009-10 to 2012-13 and order dtd. 24.08.2015 for FY 2013-14.	E	246.72	210.68	263.52	314.87	342.76	
Total Old Revenue Billed to WBSEDCL & IPCL	**F= D-E**	**456.33**	**383.75**	**447.91**	**517.15**	**565.90**	**2371.04**
Difference between *"Revised Revenue Billed"* and *"Old Revenue Billed"*							**275.27**

38. The Appellants further contended that the principle of revenue neutrality demanded that DVC recover legitimate dues only from the entitled entities, and that it was improper and inequitable to pass on such short recoveries onto other consumers who had fully paid as per sanctioned tariffs.

39. The Respondent No.1, West Bengal Electricity Regulatory Commission (WBERC), submitted that the issue of loading alleged under-recoveries of WBSEDCL and IPCL on other consumers had been fully considered by the Commission, and the actions taken were consistent with the regulatory framework and statutory provisions. It was submitted that the retail tariff for DVC was determined based on the Aggregate Revenue Requirement (ARR) submitted by DVC, which included consumer mode sales to all consumers, including WBSEDCL and IPCL. The Commission relied on the filings made by DVC, wherein the supply to these licensees was treated as consumer-mode sales, included in consumption data for tariff determination.

40. The Respondent further submitted that WBSEDCL and IPCL challenged the applicability of the revised retail tariffs to themselves before the Commission in appropriate proceedings, seeking relief from tariff application. The Commission, on consideration, held in its orders dated 01.03.2019 in the respective cases that retail tariffs determined for consumers could not be charged upon these licensees for supply in radial mode. The Commission clarified that the Appellants were at liberty to settle issues as per law, and the Commission's order did not absolve the licensees of the liability to pay for the power consumed, but recognized the necessity of appropriate tariff determination in accordance with applicable provisions.

41. Respondent No. 2 (DVC) contends that the West Bengal Electricity Regulatory Commission has unlawfully shifted under-recoveries attributable

to WBSEDCL and IPCL onto other consumers through its APR Order dated 31.05.2021, despite earlier tariff orders (24.08.2015 and 19.03.2020) having determined ARR and retail tariffs inclusive of sales to these licensees. DVC argues that by retrospectively altering the methodology at the APR stage, WBERC has acted contrary to law and the settled principle laid down in ***BSES Rajdhani v. DERC (2023) 4 SCC 788*** that true-up proceedings cannot reopen settled tariff orders.

42. It is submitted that DVC supplies power to WBSEDCL and IPCL through radial connections from its own T&D system and has consistently disclosed such sales in its tariff petitions. WBERC, in its earlier tariff orders, treated this quantum of sales as consumer-mode sales forming part of ARR. However, through orders dated 01.03.2019 in OA-72/18-19 and OA-73/18-19, WBERC wrongly held that the retail tariff orders did not apply to WBSEDCL and IPCL as licensees, thereby abdicating its statutory duty under Section 86(1)(b) of the Act and relegating the parties to private settlement. This approach violates settled law, as reaffirmed by the Hon'ble Supreme Court in ***KKK Hydro Power v. HPSEBL,*** judgment dated 29.08.2025 in Civil Appeal No. 3005 of 2015, that intra-State PPAs and tariffs must mandatorily be approved by the State Commission.

43. DVC submits that the WBERC's findings are based on incorrect recording of facts, since it had earlier acknowledged that DVC supplied bulk power to WBSEDCL. Appeals against the orders dated 01.03.2019 (Appeal Nos. 190/2019 and 216/2019) are pending and have a direct bearing on the present proceedings, which therefore ought to await their outcome.

44. On prejudice, DVC submits that it operates on a revenue-neutral basis and cannot bear the loss arising from short payment by WBSEDCL and IPCL.

Under the 2011 Tariff Regulations, power purchase cost and sales volumes are classified as uncontrollable, and any shortfall in recovery must be adjusted at true-up. Consumer/licensee default is beyond the control of DVC and cannot be treated as its inefficiency. Accordingly, DVC is entitled to recover its full approved costs so as to protect regulatory certainty, maintain revenue-neutrality, and safeguard its legitimate interests while avoiding unjust burden on consumers.

45. It was contended that the issue regarding recovery from WBSEDCL and IPCL is sub judice before this Tribunal in separate appeals filed by DVC against the Commission's orders dated 01.03.2019 (Appeal No. 190 of 2019 and Appeal No. 216 of 2019). Therefore, in the present APR proceedings, the Commission prudently considered and admitted the revenue actually billed and realized, including short payments by these licensees, and determined the revenue gap accordingly. The Commission denied having loaded the short payments of WBSEDCL and IPCL onto other consumers improperly, submitting that such an approach was necessary to ensure the financial viability of DVC, a revenue-neutral entity.

46. **We hold the role of the State Commission as highly irrational, unjustified, and arbitrary; the State Commission has passed the impugned order contrary to the legal principles in imposing cost of such a shortfall on the command area consumers of DVC.**

47. We note that in the course of tariff determination and true-up process, revenue shortfalls arising out of non-payment or under-payment of tariffs by any consumer category must be scrutinized in the context of applicable statutory provisions, regulatory framework, and the principle of revenue neutrality. While the recovery of costs and revenue gap adjustments is a

recognized regulatory mechanism, it must be exercised in consonance with the principles of fairness, equity, and specificity in identifying the entities responsible for such shortfalls.

48. The State Commission, as reflected in the impugned APR order and its prior orders, included the revenues from WBSEDCL and IPCL as part of consumer mode sales for tariff determination. However, the said licensees disputed the applicability of the revised retail tariffs and paid amounts based on earlier rates, leading to substantial arrears.

49. In fact, in para 28 to 30 of the subject APR Petition, DVC has acknowledged short-payments by WBSEDCL and IPCL, further, prayed for consideration of actual ***"receipt amount from IPCL and WBSEDCL instead of billed amount to the said licensees for the purpose of determination of revenue gap/ surplus if any, in order to avoid any financial injury to DVC"*.**

50. Therefore, the loading of under-recoveries from WBSEDCL and IPCL on firm consumers has not been disputed by DVC. Such loading has resulted from consideration of *"Old Billed Revenue"* to WBSEDCL and IPCL in the impugned APR order. The WBERC, considering the plea of DVC for adjusting "Old Revenue Billed to WBSEDCL and IPCL (before order dated 24.08.2015)", had arrived at the revenue gap of Rs. 53.65 crore in the impugned APR order.

51. Since the WBERC has only considered the *"Old Billed Revenue"* and not revenue as per the retail tariff for power supplied to WBSEDCL and IPCL, the shortfall in revenue, including the unpaid arrears billed by DVC to the said discoms, has been loaded and recovered from firm consumers of DVC.

52. The Commission's orders dated 01.03.2019 clearly held that the retail tariff determined for consumers could not be charged upon these licensees for supply on radial mode, and that tariff issues between the parties were to be settled under law. This indicates judicial recognition that the tariff for the supply under radial mode to licensees is a distinct legal and regulatory issue not covered by the retail tariff orders determined for other consumers.

53. Despite this, the Commission, in the APR order, factored the short payments by these licensees in computing the revenue gap and admitted the revenue as actually realized, which was lower than billed revenues. The resultant shortfall, accordingly, remained unrecovered and was effectively loaded onto the other consumers through adjustments in tariff or revenue computations.

54. We observe that such an approach violates the principle enshrined in Section 61 of the Electricity Act and the regulatory principles which mandate that losses arising out of sale for which a tariff is not determined under the regulations shall not be allowed to be compensated through the tariff of other consumers. The short payments of WBSEDCL and IPCL, which were not governed by the retail tariff applicable to other consumers, cannot be recovered from the latter by treating such shortfalls as a revenue gap.

55. **As per the express provision mandated by Section 61 of the Electricity Act, 2003, only reasonable costs can be allowed to be passed through in the tariff. Loading of unpaid arrears attributable to WBSEDCL and IPCL on DVC's firm consumers is manifestly unreasonable, as the arrears pertain to supply to the said Discoms and not to firm consumers.**

56. Undisputedly, the dispute between DVC on the one hand and WBSEDCL & IPCL on the other, pertains to the tariff that has to be paid to DVC for the supply of power by the said distribution companies. The consumers have nothing to do with such a bilateral dispute between DVC and the Discoms. Therefore, the financial consequence of such a dispute pending resolution cannot be recovered from the command area consumers. Such recovery is not only in violation of Section 61 but also completely arbitrary and untenable.

57. **Even if we agree that it is a revenue-neutral entity, it cannot recover the arrears attributable to WBSEDCL and IPCL from the firm consumers under the law. We have already held that loading of under-recoveries on account of the said discoms on firm consumers is arbitrary and contrary to the principles governing tariff determination under Section 61.**

58. **The present situation is such that the command area consumers are indirectly cross-subsidizing the other Discoms. Such a situation is not only illegal and contrary to the statutory objective of rationalization of electricity tariff and protection of interests of consumers (Section 61(d)), but also results in loading of under-recoveries on consumer tariff.**

59. **We find the statutory role played by the State Commission as totally erroneous and contrary to law. Such a situation is most unfortunate and should not have been allowed by WBERC.**

60. For the above reasons, we unhesitatingly set aside the loading of under-recoveries attributable to WBSEDCL and IPCL on firm consumers of DVC, which was erroneously permitted in the impugned order by considering "*Old Billed Revenue*" to WBSEDCL and IPCL. Since the sales to WBSEDCL and

IPCL have been made part of the tariff and APR petitions, it needs to be ensured that, notwithstanding any short-payment by the said Discoms, the deemed revenue as per the tariff fixed by the WBERC is required to be taken into consideration.

61. Further, we concur with the Appellants that the true-up or APR process cannot be employed to reopen settled tariff methodologies or to retrospectively modify the tariff determination framework to burden innocent consumers for the defaults or disputed payments by other licensees. The Hon'ble Supreme Court's ruling in ***BSES Rajdhani Power Ltd. v. DERC, (2023) 4 SCC 788*** provides clear guidance that the truing-up exercise is not an opportunity to revisit fundamental principles of tariff determination or alter basic premises laid down in earlier orders.

> *"56. **….In our opinion, "truing-up" stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. "Truing-up" exercise cannot be done to retrospectively change the methodology /principles of tariff determination and reopening the original tariff determination order thereby setting the tariff determination process to a naught at "true-up stage."***

62. We have also noticed that in the order dated 01.03.2019, passed by the WBERC in Case No. OA-273/ 18-19, filed by WBSEDCL, disputing the applicability of the retail tariff for the supply of power by DVC, it has been observed as follows:

> *"20. The Commission has observed that-*

a) Neither DVC nor WBSEDCL approached this Commission any time for determination of tariff for supply of power by DVC to WBSEDCL in a radial mode.

b) DVC in their tariff petition submitted on 15.01.2014 at para 4 admitted sale of power to WBSEDCL as a distribution licensee under section 62(1)(a) but did not clearly mention that it sells power to WBSEDCL under section 62(1)(d) as well. Not only that, in the data formats submitted with that tariff petition, no separate break up of sale of power to WBSEDCL under different dispensation (i.e., as a licensee or as a consumer through radial mode) was mentioned. In their petition in annexures 2.1, 3.1 and 3.3 DVC furnished details of annual sales to consumers in West Bengal, sale revenue and proposed tariff structure, but they never mentioned the sale to "bulk consumers" like WBSEDCL and IPCL at high voltage. This Commission accordingly determined tariff for those categories and other consumers as per Tariff Regulations and not for any bulk supply as has been claimed to have been defined in the agreement between WBSEDCL and DVC……"

63. Further, the State Commission has held as follows:

"21.0 On the basis of the observations as elucidated above, the Commission orders that –

a) The retail tariff that this Commission determined on the basis of tariff petitions submitted by DVC for the years 2014 - 2015, 2015 - 2016 and 2016 – 2017 was not determined

for the licensees including WBSEDCL and that tariff cannot be charged upon them.

b) DVC's sale of power to WBSEDCL on radial mode cannot be treated as sale of power by a generating company to a consumer and both the parties are at liberty to settle the issues as per the provisions of law now in force;"

64. A similar order was made by the WBERC in IPCL's petition, also, being Case No. 272/ 18-19.

65. From the above orders dated 1.3.2019, we are of the view that once WBERC had specifically held in such orders that it had not determined any tariff for "*bulk supply*" to the said Discoms in the tariff order dated 24.8.2015, it defied logic to include the quantum of sales to such Discoms and revenue realised from them in the subject APR petition that was filed much later on 6.8.2020.

66. **The State Commission has miserably failed in examining and taking note of its own orders and the legal principles existing at that time.**

67. The prudent and legal practice provides that the State Commission should have excluded the sales quantum and revenue realised from WBSEDCL and IPCL from the APR order dated 31.5.2021, so as to follow an approach consistent with its conclusions in the aforesaid orders dated 01.03.2019, whereby the WBERC had specifically held that it had not determined a tariff for the supply of power by DVC to WBSEDCL and IPCL.

68. Therefore, we hold that the State Commission erred in allowing DVC to recover short payments or arrears owed by WBSEDCL and IPCL from the remaining command area consumers through its revenue gap or tariff fixation process. Recovery of such sums must be limited to the defaulting entities whose liability it is unless and until a lawful order stipulates otherwise. The inclusion of such shortfalls in the aggregate revenue requirement recoverable from other consumers is unlawful.

69. **Accordingly, Issue No. 1 is decided in favor of the Appellant. The Impugned Orders, to the extent they permit recovery of short payments of WBSEDCL and IPCL from other consumers in the command area, are quashed and set aside. The State Commission is directed to ensure in future proceedings that under-recoveries or arrears attributable to licensees other than the consumers whose tariff is determined are excluded from the tariff computations for other consumers unless expressly authorized by law or order.**

70. **Further, the State Commission is directed to ensure refund of the excess amount recovered from the members (consumers) of the Association, or through adjustment in six equal instalments- either by way of adjustment in future bills if such consumers are currently receiving supply from DVC or through a refund by revision of the electricity bill for supply of power, for the period under consideration, in case of consumers that are no longer receiving supply from DVC.**

Issue No. 2: *Whether the State Commission erred by treating only the Delayed Payment Surcharge (DPS) as Non-Tariff Income (NTI), despite the regulatory requirement to include all income from the*

distribution business (except those specifically excluded by the Tariff Regulations)?

71. The Appellants have contended that the West Bengal Electricity Regulatory Commission committed an error in its determination of Non-Tariff Income (NTI) by exclusively recognizing only the Delayed Payment Surcharge (DPS) component as NTI, while arbitrarily excluding all other streams of income that inherently arise from the core distribution business of Damodar Valley Corporation (DVC). The Appellants assert that such exclusion is in direct contravention of the applicable West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 ("Tariff Regulations, 2011"), which mandate that all income related to the core distribution activity, other than those specifically excluded, must be considered as NTI and adjusted against the Aggregate Revenue Requirement (ARR).

72. It is submitted that the Tariff Regulations, 2011, define NTI in a restrictive yet comprehensive manner under Regulation 1.2.1(lxxi) as income relating to the core business other than from tariff income but expressly excluding income from activities such as 'other business', 'auxiliary services', 'wheeling of electricity', 'cross-subsidy surcharge', and 'unscheduled interchange'.

1.2. (lxxi) ***Non-tariff Income*** *means income relating to the core-business other than from tariff, excluding any income from the following activities:*

a) Other business, if applicable;
b) Auxiliary Services, if applicable;
c) Wheeling of electricity, if any;
d) Receipts on account of cross-subsidy surcharge

andadditional surcharges on charges of wheeling;

e) Income from Unscheduled Interchanges;"

73. The Appellants highlight that WBERC, in its impugned Tariff Order dated 24.8.2015, Paragraph 4.10, merely adopted the NTI figures submitted by DVC without adequate prudence checking. The Commission mechanically admitted only the DPS, thereby excluding substantial incomes from other business streams integral to the core distribution business. Such selective treatment has led to material under-recovery from consumers, resulting in an artificially inflated retail tariff burden.

> *"**4.10 Non-tariff income**:*
>
> ***The Petitioner has projected Non-Tarff incomes** as shown in their submission as Rs. 189.00 lakh, Rs. 763.00 lakh, Rs. 2853.69 lakh, Rs. 3159.95 lakh and Rs. 930.00 lakh for the years 2009 – 2010, 2010 – 2011, 2011-12, 2012-13 and 2013 – 2014 respectively. The proportionate share of such income for sale to consumers in West Bengal comes at Rs. 78.73 lakh, Rs. 309.16 lakh, Rs. 309.27 lakh, Rs. 1173.89 lakh, Rs. 1361.02 lakh and Rs. 396.16 lakh for the years 2009 – 2010, 2010 – 2011, 2011-12, 2012-13 and 2013 – 2014 respectively. **The Commission admits the same**".*

74. Further, the Appellants contend that this erroneous approach has been reiterated in subsequent tariff and Annual Performance Review (APR) orders of the WBERC, including the Tariff Order dated 19.3.2020 for FY 2009-13 and the APR Order dated 31.05.2021 for FY 2009-14, again affirming the acceptance of only DPS as NTI without comprehensive prudence checks on other income elements.

75. The Appellants also point out WBERC's admitted failure to require DVC to furnish a complete and segregated Form 1.26, which lists all heads of income other than energy sales. The incomplete disclosures, coupled with the absence of a regulatory call for further details, demonstrate a lack of regulatory rigor and contravene Regulation 5.20.1 of the Tariff Regulations, which mandates clear, distinct accounting for each type of income.

76. The Appellants urge the Tribunal to observe that in stark contrast to WBERC's treatment of DVC's NTI, the State Commission has consistently accounted for holistic NTI in the case of other distribution licensees such as West Bengal State Electricity Distribution Company Limited (WBSEDCL) and CESC Limited. This inconsistent regulatory practice unfairly disadvantages the consumers in DVC's command area and runs afoul of the principle of equitable and non-discriminatory tariff determination.

77. The Respondent No. 1, the West Bengal Electricity Regulatory Commission, has submitted that the approach adopted in the Impugned Orders to consider only the DPS component as NTI stands on firm legal and regulatory foundations. It is stressed that not every component booked under 'Other Income' in a licensee's annual accounts qualifies as NTI relatable to the distribution retail business pursuant to the Tariff Regulations, 2011.

78. Specifically, WBERC submitted that, as per the filings before it, DVC itself identified only DPS (also called Late Payment Surcharge) as NTI relevant to its retail business. There was no contrary evidence on record before the Commission necessitating admission of other incomes as NTI for the distribution business. Consequently, the Commission did not err in prudently limiting the NTI to DPS alone. The Respondent contends that the

regulatory framework requires careful distinguishing between income directly related to the core licensed distribution business and that accruing from other unrelated or generation and transmission-linked activities, which fall outside the purview of NTI for retail supply.

79. Furthermore, WBERC asserted that the Appellants have not challenged these issues before the State Commission or filed objections during the statutory public consultation process, thereby waiving their right to raise such contentions in this appellate forum. The Commission, therefore, urges that the instant challenge be declined on grounds of procedural default and lack of contestation below.

80. The relevant part of the APR impugned order wherein the Commission has dealt with this issue is as follows:

> ***"2.10 Non-Tariff Income:-***
> ***DVC has shown only surcharge for Late Payment as Income other than energy sales*** *in Sl. No. 18(a) of Form E (B), but in respective Form 1.26, 'Other General receipts arising from and ancillary or incidental to the business of electricity' [Sl. No. (xii) of Form 1.26] is shown in addition to Surcharge for Late Payments. DVC clarified in its letter dated 08.03.2021 that entries against Sl. No. A (xiii)* ***are part of other income and is related to "Rebate on purchase of Power' which is already netted off in submitted forms power purchase cost,*** *hence while finalizing ARR in Format-E9(B), the income as indicated at Sl. No. A (xiii) of form 1.26 has been considered instead of form E(b),* ***only Surcharge for Late Payment has been admitted as the non-tariff income-----xx----"***

81. Hence, it is submitted that since DVC has shown only Delayed Payment Surcharge as Income other than energy sale in the filings before the Commission and Commission, without getting into further examination or prudent check, did not find any other evidence contrary to that in the record and more so the Appellant did not file any objections against such claim of the DVC, the Commission has considered only Late Payment Surcharge (LPS) or Delayed Payment Surcharge (DPS) as Non-Tariff Income of the DVC.

82. By merely accepting the submission of DVC, the State Commission has failed to undertake a prudence check in accordance with the Tariff Regulations. We find force in the submission of the Appellant that DVC's submission has been mechanically accepted by WBERC, without even any reference to the definition of NTI and other relevant provisions under the Tariff Regulations.

83. It is the submission of DVC that it does not account for any capital expenditure in its distribution business, and the capital expenditure for the entire power system is approved by CERC. For this reason, it has been submitted that only DPS has to be considered as NTI in the retail tariff determination by the WBERC.

84. We disagree with the submissions of the DVC, as the legal provisions contained in the Electricity Act, 2003, provide differently. DVC is a distribution licensee and is governed by the Electricity Act, 2003. Various relevant provisions under the Act are quoted as under:

a) Section 2(17) defines a "*Distribution Licensee*" as a '*licensee authorized to operate and maintain a distribution system for supplying electricity to consumer*'.

b) Section 2(19) defines a *"distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.*

c) *Section 42 (1) (Duties of distribution licensee and open access):* ***It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply*** *and to supply electricity in accordance with the provisions contained in this Act.*

85. DVC is supplying power to its firm consumers in its command area through a system of wires and associated facilities; therefore, it does have a distribution system as defined under Section 2 (19). The capital cost of such a distribution system should have been accounted for and approved by the WBERC while undertaking retail tariff determination, even if it falls under the total T&D system.

86. Therefore, it cannot be said that DVC does not have a distribution asset base, as also held by this Tribunal in judgment dated 23.11.2007 passed in Appeal No.271 of 2006 & batch as under:

> *"all transmission systems of DVC be considered as unified deemed inter-state transmission system, insofar as the determination of tariff is concerned and as such regulatory power for the same be exercised by the Central Commission".*

87. Nowhere has this Tribunal expressed any findings in favour of the non-existence of distribution assets. Further, this Tribunal's judgment dated

23.11.2007 recognizes DVC's distribution asset base and the need to get the cost of such asset base approved as part of retail tariff determination:

> *"K.1 One of the Respondents (GoWB) has challenged the capital base adopted by the CERC while determining the tariff.* ***GoWB has contended that certain assets should have been treated as part of the distribution network and hence should have been taken out of the purview of tariff determined by the CERC.*** *While the impact of the above would be revenue neutral on DVC as assets forming part of the distribution network would be eligible for tariff determination at the retail end. However, it would impact the power purchase bills of the beneficiary states.* ***We feel that when the process of tariff determination for distribution segment of DVC takes place, the appropriate Commission would also determine the distribution network capital base.*** *At that time DVC may approach the CERC again for adjustment of its revenue requirement and corresponding tariff."*

88. The provisions dealing with NTI under the Tariff Regulations do not lay down any capital expenditure criteria, considering, the Tariff Regulations are binding and DVC was required to provide all the specific heads of income delineated in Form 1.26. DVC cannot withhold information that is required to be submitted under Form 1.26, which forms part of the Tariff Regulations.

89. We noted that in Form 1.26, income from all investments was to be shown by DVC except those made out of profit and/ or any equity issue exclusively meant for non-core business, excluding embedded generation of licensee. Despite such a clear stipulation, DVC did not furnish any details in Form 1.26 under the head of "*Income from Investments and Bank Balances*".

Such an omission should not have been overlooked by the WBERC, as it was required to determine DVC's NTI as per the Tariff Regulations.

90. **Therefore, we are of the view that WBERC's findings on NTI are not in conformity with the Tariff Regulations, and the same are therefore deserving to be set aside.**

91. The reliance placed on the Judgment dated 29.10.2018 in Appeal No. 206 of 2015 is wholly misconceived and inapplicable to the present case. A perusal of paragraph 9.11 of the said Judgment clearly shows that this Tribunal, while upholding the decision of the State Commission, had only observed that the non-tariff income in that case was allowed after carrying out the requisite prudence check. There is no doubt that the said Judgment was subsequently affirmed by the Hon'ble Supreme Court in Civil Appeal No. 2991 of 2019; however, the said Judgment nowhere records or lays down the principle that only Delayed Payment Surcharge (DPS) is to be treated as the non-tariff income, as it was specific to that case only. Therefore, the ratio of the aforesaid judgment cannot be extended to the present case.

92. At this stage, we are not considering the issue of whether DVC is not maintaining separate accounts for generation, transmission, and distribution; we are only examining whether DVC has distribution assets or not.

93. **As per the Electricity Act, 2003, DVC has to have a distribution asset; however, its proportionate cost share is required to be determined by the State Regulator after taking note of the Transmission tariff determined by the CERC (refer to relevant sections of the Electricity Act, 2003 quoted above).**

94. Considering that the matter relates to the year 2013-14, we deem it appropriate to direct WBERC to apportion the total NTI between the transmission and distribution business of DVC. Since DVC also supplies power to licensees outside the command area, it would be appropriate to apportion only such NTI attributable to distribution business as per the ratio between the revenue from retail supply to consumers in the command area and DVC's total revenue from its power business.

95. From the record and the submissions of both parties, it is evident that WBERC, in the Impugned Orders for the tariff period FY 2009-10 to FY 2013-14, recognized only the Delayed Payment Surcharge (DPS) as NTI attributable to DVC's distribution business while excluding other incomes booked under "Other Income" or related to generation, transmission, trading activities, or joint ventures.

96. We agree with the Appellants' position that the Commission erred in mechanically accepting only DPS as NTI, without a comprehensive prudence check vis-à-vis DVC's audited accounts and without requiring detailed disclosures of income from power trading and other sideline business allied to distribution. Also, this approach artificially inflates consumer tariffs by failing to account for true NTI, which ought to have reduced the ARR and, ultimately, the tariff burden on the consumers.

97. The Appellants further underscore that WBERC's practice for other licensees, such as WBSEDCL and CESC, differs in including more comprehensive NTI, thereby cultivating regulatory inconsistency and unfair tariff distortion.

98. Therefore, we hold that the State Commission has erred in its treatment of non-tariff income by admitting only DPS as NTI for the relevant tariff period.

99. Therefore, we set aside the impugned order on this count and direct WBERC to identify the distribution assets of DVC along with the corresponding costs within the T&D costs as determined by CERC.

100. Further, the State Commission shall determine the NTI of the distribution business after obtaining all the information from DVC in accordance with the relevant Regulation.

101. **We also direct the State Commission to distribute the total NTI related to T&D assets between the distribution and transmission business in the ratio of the effective cost ratio of the distribution and transmission business. Till such time the actual NTI is determined, the total T&D NTI shall be distributed between the two businesses, as an approximation after obtaining the transmission and distribution assets ratio in similar States like Bihar, Tamil Nadu, or Chhattisgarh. The same will be subject to adjustment based on the actual determination.**

102. **Issue No. 2 is decided in favour of the Appellants. The State Commission's approach in recognizing only the Delayed Payment Surcharge as Non-Tariff Income in determining the Aggregate Revenue Requirement and consumer tariff for the period FY 2009-10 to FY 2013-14 is set aside as contrary to legal principles and the regulatory framework.**

Issue No. 3: *Whether the State Commission and DVC wrongly loaded the entire Transmission & Distribution (T&D) cost*

exclusively on command area consumers, without proper apportionment for sales or wheeling to external beneficiaries (including power sold outside the command area or wheeled for third parties), and whether costs for units utilized by DVC in its own premises (including construction power) were improperly recovered through consumer tariffs rather than being capitalized or otherwise excluded?

103. The Appellant contends that the Annual Fixed Charges (AFC) in respect of Damodar Valley Corporation's composite Transmission & Distribution (T&D) system are determined by the Central Electricity Regulatory Commission (CERC) and the same have to be recovered only from entities that use such system in proportion to their actual usage. The Appellant submits that the State Commission (WBERC) erred in allocating the entire T&D charges, as approved by CERC, solely to the command area consumers in West Bengal, without examining or recognizing the actual utilization of DVC's network for supplying power to beneficiaries outside the command area, including other state discoms and open access users. They argue that the T&D tariff or AFC determined by CERC should have been prorated on actual supply by DVC to:

a) Consumers within DVC's command area in West Bengal and Jharkhand;
b) Distribution licensees/beneficiaries outside the command area; and
c) Open access users availing wheeling through DVC's network.

104. The Appellant highlights the significant supply made by DVC to these external beneficiaries relying on DVC's Transmission network, which

effectively renders a portion of the T&D network used for serving these beneficiaries. However, neither DVC nor WBERC has allocated any part of the T&D charges to these external beneficiaries, resulting in the entire T&D cost burden being passed on to the command area consumers.

105. The relevant part of the impugned order reads as follows:

"2.11 Transmission and Distribution Expenses:

CERC has determined the tariff for composite transmission and distribution activities of DVC for the period 2009 – 2010 to 2013 – 2014 vide their Trueing-up order dated 29.09.2017. DVC has claimed proportionate cost for composite transmission and distribution expenses for West Bengal consumers in their APR for the respective years. DVC has not claimed any further expenditure on account of distribution systems. As per CERC order the admitted expenditure on account of combined transmission and distribution systems of DVC for the year 2009 – 2010, 2010 – 2011, 2011 – 2012, 2012 – 2013 and 2013 – 2014 are Rs. 38551.42 lakh, Rs. 41396.41 lakh, Rs. 43830.05 lakh, Rs. 48840.95 lakh and Rs. 52479.37 lakh respectively. The Commission considers that amount to arrive at the admissible amount for sale to consumers in West Bengal area on the basis of admitted utilization of energy during the respective year. Such admitted amount for the years 2009 – 2010, 2010 – 2011, 2011 – 2012, 2012 – 2013 and 2013 – 2014 comes respectively as follows:

Rs. in Lakh

Sl. No.	*Particulars*	*2009-10*	*2010-11*	*2011-12*	*2012-13*	*2013-14*
A.	*Normative Availability*	*98.00%*	*98.00%*	*98.00%*	*98.00%*	*98.00%*

	(NATAF)					
B.	*Actual Yearly Availability (TAFY)*	*98.00%*	*98.00%*	*98.00%*	*99.00%*	*94.92%*
C.	*Total Annual Transmission charge (ATC) As per latest CERC Orders (Rs lakh)*	*38551.42*	*41396.41*	*43830.05*	*48840.95*	*52479.37*
D.	*Recoverable fixed charge as per CERC formula : ATC x (TAFY/NATAF)*	*38551.42*	*41396.41*	*43830.05*	*49339.33*	*50830.02*

E.	*Share of Sale in WB Command area of DVC*	*41.65*	*40.53*	*41.14*	*43.07*	*42.87*
F= C x D/ 100	*T&D Cost in WB Command area of DVC*	*16058.21*	*16779.21*	*18029.93*	*21250.94*	*21792.86*

106. The State Commission has loaded the AFC of the T&D system as per the *"Share of sale in WB command area of DVC"*. In other words, the State Commission has not accounted for the usage of the T&D system in supplying power to beneficiaries outside the command area in West Bengal and Jharkhand.

107. There is no mention in the true-up order dated 29.09.2017 of the 400 kV lines being utilised by DVC for supplying to beneficiaries outside the command area. It appears that neither DVC disclosed the beneficiaries of the said lines nor was the identity of such beneficiaries examined by the CERC.

108. Specifically, the Appellant underscores from para 2.11 of the impugned APR order dated 31.05.2021 that WBERC has considered the entire AFC for the T&D system approved by CERC for FY 2009-14 as recoverable from sale to consumers in the West Bengal area, based on admitted utilization of energy. The Appellant submits that this is erroneous and the Commission ought to have performed a two-step allocation:

a) Allocation of the T&D cost between command and non-command area beneficiaries; and
b) Allocation of such cost within the command area between West Bengal and Jharkhand based on sales.

109. The Appellant refers to details in the impugned order revealing that only a part of the generation capacity at several DVC plants (MTPS Units 5 & 6, MTPS 7 & 8, CTPS Units 7 & 8, KTPS Units 1 & 2, DSTPS Units 1 & 2, etc.) is allocated to command area consumers, the rest being supplied to beneficiaries outside the command area. Consequently, a proportionate share of the T&D cost should have been borne by those beneficiaries, yet this has not been done.

110. Furthermore, the Appellant submits that DVC's annual reports and filings confirm the use of DVC's T&D system for wheeling power for third parties such as SAIL and Tata Steel, further raising the necessity for proportionate cost allocation, a factor WBERC has ignored.

111. The State Commission has wrongly confined the apportionment of T&D costs only to the sales within DVC's command area (13872.45 MUs, 14376.91 MUs, 15118.08 MUs, 15979.05 MUs, and 16823.31 MUs during 2009-10 to 2013-14), ignoring DVC's total sales quantum, which was materially higher.

112. It is pointed out that DVC's Form 1.9(c) filed with the APR petition had disclosed the supply of power to multiple distribution licensees outside the command area, including BSES Rajdhani, BSES Yamuna, WBSEDCL, JSEB, NDPL, MPPMTL, Haryana Discom, and PSEB. These supplies necessarily utilised the DVC T&D system, yet the corresponding T&D charges were inappropriately loaded only on command area consumers.

113. Para 2.4.2.2 of the APR order itself records that during FY 2011-12, FY 2012-13, and FY 2013-14, the entire generation from DVC's older plants connected with its T&D system was not dedicated to command area consumers. Nevertheless, no proportionate allocation was made.

114. The Appellant submits that only such quantum of T&D cost as pertained to actual supply to West Bengal consumers ought to have been admitted, while the balance should have been shifted to the outside licensees of the DVC network.

115. DVC commissioned the following 400 kV transmission lines:

Sl. No.	**Transmission Asset -**	**COD**	**Line Length (Km)**
1.	**400kV LILO DSTPS transmission line.**	**1.2.2011**	**3.5**
2.	**400kV LILO RTPS transmission line.**	**1.7.2012**	**10.5**
3.	**400kV D/C DSTPS-RTPS transmission line.**	**1.8.2013**	**68.5**
4.	400kV D/C Raghunathpur-Ranchi Quad Moose	30.8.2017	155

116. The Appellant specifically challenges the allocation of AFC in respect of three 400 kV transmission lines (DSTPS LILO, RTPS LILO, and DSTPS-RTPS D/C), commissioned between 2011 and 2013, whose AFC was

imposed on command area consumers for the period from their COD up to 31.03.2017.

117. It is urged that these lines were conceptualised, constructed, and utilised primarily for the export of DVC's surplus power to beneficiaries located outside its command area under bilateral arrangements.

118. The PPA terms with licensees such as MPPCL and DTL clearly stipulated that transmission charges and losses up to the DVC bus (periphery) were to be borne by DVC itself, for the commercial purpose of offering cheaper power. Having offered such concessions, DVC was estopped from recovering these costs indirectly from West Bengal consumers.

119. Even the Minutes of the Standing Committee on Power System Planning (05.05.2007) recorded that pooling-point transmission charges were to be shared regionally and not saddled on one set of consumers. Furthermore, by letter dated 11.08.2016, DVC admitted before ERPC that certain 400 kV lines were part of the ISTS network maintained by CTU.

120. It is emphasized that CERC, in its true-up order dated 29.09.2017 (Petition No. 547/TT/2014), had only approved capital expenditure and specifically directed recovery of charges in line with the Sharing of Inter-State Transmission Charges and Losses Regulations, 2010. This clearly mandates recovery on an actual usage basis.

121. Further, the Appellant maintains that Rule 8 of the Electricity Rules, 2005, pressed into service by DVC, is misapplied. The said Rule merely provides that a State Commission need not re-determine a tariff determined by CERC when giving effect to it within the State. It does not justify blanket

loading of the entirety of CERC-approved T&D charges onto one set of consumers who have not actually utilised the entire network.

122. Allocation of T&D expenses in retail supply tariff must, as a matter of statutory mandate under Section 61, be proportionate, just, and commensurate with the actual utilisation of the network by the consumers concerned.

123. The Appellant highlights that the subsequent tariff and APR orders of WBERC post-2017 themselves demonstrate the correctness of the Appellant's position.

124. In the ARR order dated 13.03.2024 for FY 2023-26, as well as the APR orders dated 29.03.2025 (FY 2020-21) and 31.03.2025 (FY 2021-22), the Commission proportionately allocated T&D costs only to the extent the DVC network was actually used for supplying command area consumers while duly accounting for supply to other licensees and open access users.

125. In fact, in the APR order for FY 2021-22, the Commission also adjusted DVC's open access income into the ARR to avoid undue burden on command area consumers. These decisions, according to the Appellant, reveal that even the Commission has accepted the principle of proportionate allocation in subsequent orders, which ought to have been consistently applied for the subject control period as well.

126. The impugned approach loaded the entire T&D system cost, and particularly the 400 kV ISTS line costs, on command area consumers, even though significant portions of the network were utilised for supply outside the State.

127. This action is said to be contrary to law, inequitable, and violative of Section 61 principles. The appropriate and lawful approach would have been to load only proportionate T&D charges attributable to actual usage for command area consumers, while ensuring that other licensees and open access beneficiaries bore their corresponding share.

128. On the above premises, the Appellant submits that the impugned order suffers from a fundamental flaw in cost allocation methodology, and prays that only proportionate T&D charges, commensurate with actual supply to West Bengal command area consumers, be allowed as part of the retail tariff for FYs 2009-14.

129. The Appellant submits that the West Bengal consumers of DVC have wrongly been saddled with the burden of electricity utilised by DVC in its own premises as well as for construction power. Though such units were accounted for in the energy balance in para 4.4.5.1 of the impugned tariff order dated 24.08.2015, they were excluded from the total sales quantum reflected in para 5.2 of the subsequent order dated 25.08.2015.

130. As a result, units such as 138 MUs for FY 2009-10 were not factored into the denominator of revenue ÷ sales, thereby inflating the average tariff burden on consumers. It is contended that construction power, being power used for the construction or commissioning of new generating stations, ought to have been capitalised and treated as part of the project cost under CERC's jurisdiction, and not passed on to consumers. Even in the APR order dated 31.05.2021, such loading on consumers has been sustained, except for a minor correction from 130 MUs to 101 MUs for FY 2013-14.

131. The Appellant further submits that DVC's reliance on Form 1.7 is misconceived, since the said Form only relates to items for computing T&D losses and has no bearing on the recovery of the cost of self-consumed units.

132. Moreover, DVC's own submissions dated 18.08.2025 admit that a portion of the so-called "construction power" was indeed used for the construction/commissioning of generating stations, which indisputably ought to have been capitalized. DVC's additional attribution of self-consumption towards switchyard operations, maintenance, field formations, and minor civil/electrical works cannot justify recovery from consumers.

133. These are either covered under normative O&M expenses already allowed by CERC or should have been capitalised in the concerned generating or transmission assets and considered by CERC at the stage of capital cost approval. Significantly, the impugned order contains no reasoning or discussion on this issue, and the loading of such units on consumers is unsupported and arbitrary.

134. Respondent No. 1 has submitted that the allegation of wrongful allocation of the entire T&D cost to West Bengal consumers is misplaced. The CERC, in its true-up order dated 29.09.2017 in Petition No. 547/TT/2014, categorically held that DVC's network is an integrated T&D system, with all additions and augmentations undertaken to meet overall load growth and benefit all consumers without identifying specific beneficiaries. The Annual Fixed Cost (AFC) for the T&D system, as determined by CERC, is therefore binding, and the State Commission, while undertaking the APR exercise, merely adopted the T&D tariff so determined by CERC as the input cost for retail tariff purposes.

135. The State Commission has no jurisdiction to revisit or modify CERC's orders, and any challenge to its adoption amounts to an impermissible indirect challenge to CERC's determination. Reliance is placed on Rule 8 of the Electricity Rules, 2005, and Regulation 2.1.6 of the WBERC Tariff Regulations, 2011, which mandate the State Commission to adopt tariffs determined by the CERC for generating stations, transmission systems, and inter-State supply used by DVC.

136. With respect to construction power, Respondent No. 1 submits that the units utilised by DVC in its own premises, including construction power, have been duly accounted for under Regulation 2.7.2 of the WBERC Tariff Regulations, 2011. In accordance with Form 1.7 prescribed under the Regulations, DVC provided details of such consumption under the head *"Units utilised in own premises including construction power."* The Commission therefore factored the same for the purposes of computing T&D loss in the impugned order, and there is no infirmity in such consideration.

137. DVC submits that the composite T&D network is dedicated primarily to serve its command area consumers, designed originally to meet demand in both West Bengal and Jharkhand. The generating stations' and integrated T&D assets' tariffs are approved by the CERC, and such tariffs are adopted as input costs by WBERC and JSERC for retail tariff determination.

138. Respondent No. 2 (DVC) has submitted that the allegation of wrongful allocation of 100% T&D cost to command area consumers is misconceived. The issue was raised only through amendment applications belatedly allowed by this Tribunal. The entire T&D tariff of DVC for FY 2009-14 was duly trued-up and determined by CERC in its order dated 29.09.2017 in Petition No. 547/TT/2014, wherein it was categorically held that DVC's T&D network is an

integrated system, designed primarily to meet the load growth of the valley consumers, with benefits accruing to all consumers collectively. Consequently, the WBERC, during the APR exercise, treated the CERC-determined T&D tariff as an input cost, without modification.

139. It is emphasised that the present challenge, though framed against WBERC's tariff orders, is in substance an indirect challenge to CERC's determination on T&D costs. The jurisdiction to determine the generation and transmission tariff of DVC lies exclusively with the CERC; State Commissions have no power to revisit such a determination. This principle has also been affirmed by this Tribunal in its order dated 05.02.2024 in Appeal No. 845 of 2023, wherein it was held that any error, if at all, in CERC's tariff determination could only be corrected by CERC itself.

140. DVC has relied upon CERC's subsequent tariff orders dated 02.03.2022 (Petition No. 713/TT/2020) and 10.06.2022 (Petition No. 482/TT/2020), wherein CERC reiterated that, except for four identified 400 kV inter-State transmission lines certified by ERPC as "deemed ISTS lines," the transmission charges of all other assets forming part of DVC's integrated T&D system shall be included as input cost in the ARR and recovered from distribution consumers upon approval by WBERC/JSERC, and not pooled under the PoC mechanism. Apart from these four identified lines, the entire remaining network is exclusively dedicated to serving DVC's firm consumers.

141. It has further been submitted that DVC's network is designed primarily to cater to valley consumers, with sales to outside beneficiaries being a later development. Most new generating stations supplying to such beneficiaries are directly connected to the CTU grid, with only two exceptions (MTPS Units 5 & 6 and CTPS Units 7 & 8), where interconnections exist through specific

lines. These lines, however, form only a negligible portion of the network (0.97% and 2.9% respectively) and are also used for supplying valley consumers and transmitting purchased power. Thus, the demand for apportionment of T&D costs on a utilisation basis is misleading and untenable.

142. DVC also emphasises that its T&D tariffs are determined by CERC on a consolidated, system-wide basis, unlike PGCIL's line-specific tariffs. Hence, no line-specific segregation or proportional apportionment is permissible. Moreover, the Appellant did not raise this issue before CERC or even during the tariff/true-up proceedings before WBERC, indicating that the present challenge is an afterthought.

143. With respect to non-ISTS lines carrying ISTS power, DVC submits that ERPC certified certain specified 400 kV lines in 2016-17; as such, their costs are recovered under the Sharing Regulations through the PoC mechanism. These costs are not loaded onto the consumer tariff. The certification was duly considered and adopted by CERC in its above-stated tariff orders. Therefore, beyond these limited assets, the entire DVC T&D system is dedicated to serving its firm consumers, and its costs legitimately form part of the ARR for approval by WBERC/JSERC.

144. In view of the above, DVC submits that the Appellant's contentions regarding allocation of T&D costs are erroneous, misconceived, and devoid of merit.

145. DVC submits that the contention of the Appellant regarding "construction power" being unjustifiably passed on to consumers is misconceived. The term "construction power" in DVC's accounting does not relate to electricity used for setting up new generating stations, but to power drawn for essential

upkeep and operational activities such as switchyard functioning, field formations, maintenance and repair, and minor works required to ensure a continuous and reliable supply. This consumption is distinct from auxiliary consumption of generating stations, the latter being separately considered in the tariff.

146. DVC further points out that the WBERC Regulations, 2011, specifically require disclosure of units utilised in own premises, including construction power, through Form 1.7. In compliance, DVC in its APR Petitions for FY 2009-2014 disclosed both;

(a) total units utilised in its own premises, and

(b) the separate quantum of construction power consumed.

147. The figures therein demonstrate that the units of construction power were negligible and formed only a minor part of the total units consumed in their own premises. Hence, there is no merit in the claim that such consumption was hidden or wrongly passed on to consumers.

148. It is undisputed that the tariff for DVC's generation, along with the composite transmission and distribution network, is determined by the Central Electricity Regulatory Commission. The State Commission's role is limited to adopting these input costs determined by CERC for the purpose of arriving at retail tariffs for consumers within its jurisdiction, namely the West Bengal portion of the command area.

149. We note the contention of the Appellant that the entire T&D cost approved by CERC has been loaded exclusively on the command area consumers, without due allocation of cost to beneficiaries outside the command area who also utilize DVC's T&D system. The Appellant has

demonstrated that a significant quantum of power is supplied by DVC to other licensees and through wheeling arrangements to third parties, confirming that the DVC T&D network serves multiple categories of users beyond the command area.

150. The State Commission and DVC have countered that the DVC T&D network is an integrated, unified system primarily designed and operated for serving load within the command area and that only a small portion of the network, namely certain 400 kV lines certified as “non-ISTS lines carrying ISTS power,” are used for external transmission and these costs are separately allocated. They rely on CERC tariff orders, which approve the AFC of the entire unified T&D network as input cost for retail tariff determination, without further subdivision by beneficiary.

151. We find merit in the Appellant’s submission that regulatory principles under Section 61 of the Electricity Act, 2003, require that costs be allocated proportionally to usage or benefit received.

152. Since the DVC T&D network is used by external beneficiaries and wheeling users, as well as command area consumers, it is unreasonable and inconsistent with these principles to load the entire T&D cost onto only the command area consumers. While CERC determines AFC for the composite T&D system, it must be commensurate with the actual utilization of the network by all beneficiaries.

153. The failure of the State Commission and DVC to apportion and allocate the T&D costs in accordance with the actual usage between command and non-command areas results in an inequitable burden on the consumers in the DVC command area in West Bengal.

154. The fundamental principle of a reasonable cost recovery through tariff is to ensure that consumers are charged only such costs as are attributable to the supply of power to them. As a logical corollary, any excess cost that cannot be reasonably attributed to supply to consumers cannot be allowed as a pass-through in the retail tariff.

155. Further, we observe that the 400 kV interstate transmission lines constructed by DVC specifically for the export of power have been inappropriately included in consumer tariffs of the command area before their segregation as ISTS lines by CERC effective 01.04.2017. This resulted in recovery of charges from consumers for usage they did not benefit from, which is clearly erroneous.

156. It is beyond any argument that DVC's composite T&D system was utilised for supply to bilateral beneficiaries outside the command area, as well as for wheeling of power through open access. It is evident that such a system was indeed utilised during the control period for supply to entities other than firm consumers of DVC. We have taken note of the fact that utilisation of the T&D system by such other entities has not been disputed on facts by the Respondents.

157. We noted the submission of the Appellant that in FY 2009-10, only 41.55% of power generated by MTPS Units 5 & 6 was supplied by DVC to its firm consumers in West Bengal and Jharkhand. Similarly, in the other financial years of the control period, percentage allocation from each generating station has been examined, and we find that only a part of the generation quantum of DVC's generating stations has been supplied to firm consumers, as per details furnished by DVC and tabulated in para 2.4.2.2 of the impugned APR order.

The balance quantum has been supplied to beneficiaries other than firm consumers.

158. We fail to understand why the State Commission cannot examine the issue and allocate CERC-approved T&D charges in proportion to the quantum of power supplied by DVC from its respective generating stations to its firm consumers in West Bengal.

159. The Appellant vehemently argued that the State Commission, in its ARR order dated 13.3.2024 for FY 2023-26, has taken into consideration the utilisation of DVC's T&D system for open access, as well as the quantum of supply from its generating stations to bilateral beneficiaries outside the command area through the T&D system before being connected to the CTU system.

160. Therefore, any contention against such methodology, if agreed at this stage, should have been considered earlier also as a prudent practice and to avoid unnecessary overburdening the command area consumers, given the fact that the legal position remains the same.

161. We hold that the allocation of 100% CERC-approved T&D cost from firm consumers, with bifurcation between West Bengal and Jharkhand consumers, violates Section 61, as it does not take into consideration the utilisation of such DVC's T&D system for supply to bilateral beneficiaries other than firm consumers and its open access usage during the subject control period.

162. The Appellant invited our attention that, as per the PPAs signed by DVC with discoms for export of power outside the command area, DVC had assumed the obligation of transmission charges up to the delivery point at

"Bus at DVC Periphery". Beyond such a delivery point, transmission charges had to be borne by the bilateral beneficiaries.

163. Such contention needs to be examined by the State Commission, and if found materially correct, DVC cannot be double-benefited by loading such cost on the command area consumers.

164. We, thus, find merit in the submission made on behalf of the Appellant that after agreeing to bear the transmission charges up to the delivery point under the bilateral PPAs, DVC could not have saddled its command area consumers with such charges. The State Commission ought to have undertaken a prudence check to ensure that any transmission charge pertaining to the export of power by DVC through its network was not recovered from the command area consumers. We find that no such exercise has been undertaken by the State Commission. As a result, the command area consumers of DVC have been unjustly saddled with transmission charges far in excess of their proportionate utilisation of DVC's network.

165. We also noted that the State Commission did not appreciate that DVC's network was also used for wheeling of power by open access users, and details of such wheeled quantum were provided by DVC in "Form 1.9(a): Energy received for Wheeling". Since DVC was allowing open access on its network, it was required that the quantum of energy wheeled through open access was adjusted to arrive at reasonable transmission charges recoverable from the command area consumers.

166. It is recorded before us that the 400kV network, since its inception, was meant for the export of power to the northern and western regions. The formal recognition of 400 kV lines as ISTS lines by the ERPC on 24.8.2017 did not

entitle DVC to recover the transmission charges in respect of 400 kV lines from the firm consumers, when such lines were not utilised for the supply of power to them. Indisputably, the command area consumers of DVC had nothing to do with the recognition of such lines as ISTS lines.

167. **We, therefore, find it just and reasonable to set aside WBERC's erroneous approach of treating the entire T&D cost as attributable to firm consumers without taking into consideration each generating station's allocation of power supply to firm consumers, the quantum of wheeled power through open access, and the supply of power to bilateral beneficiaries.**

168. As also brought to our notice, that the quantum of power supplied from each generating station to firm consumers in West Bengal was specified in para 2.4.2.2 of the impugned APR order, we direct the State Commission to consider the same for the purpose of allocating T&D cost. The consideration of such allocation and open access usage would have avoided the excessive recovery of T&D charges from firm consumers in West Bengal.

169. **The excess recovery shall be refunded or adjusted, as the case may be, with carrying cost, to the command area consumers accordingly within the next six billing cycles.**

170. Regarding units utilized by DVC in its own premises, including construction power, we accept the Appellant's submission that these units were included in the energy balance for tariff computation but were not properly excluded from the consumptive base for average tariff calculation, effectively causing consumers to pay for power consumed internally by DVC.

171. We concur that the term “construction power” as used by DVC encompasses both actual construction activities and operational maintenance activities necessary for reliable supply. Such consumption should have been either capitalized as part of project costs or reflected under normative O&M expenses approved by CERC, and not recovered separately through consumer tariffs to avoid double recovery.

172. We note the submissions of the State Commission and DVC asserting that the Commission followed the applicable regulatory provisions and prudence in considering T&D cost as per CERC determined AFC and units consumed in own premises disclosed in the prescribed formats. However, we find that mere adoption of CERC AFC as input cost does not absolve the State Commission and DVC of the duty to undertake reasonable allocation and prudence checks in determining retail tariff, particularly when the T&D system serves multiple beneficiaries, and internal consumption is significant.

173. The Appellant argued that the contentions advanced on behalf of DVC do not form part of the petition filed before the WBERC. In fact, no reason has been given by the WBERC for loading onto the retail tariff the cost of units utilised by DVC for self-consumption, including construction power.

174. Any auxiliary consumption at DVC’s generating station level has to be accounted for in the generation tariff determined by the CERC as per the CERC (Terms and Conditions of Tariff) Regulations 2009. Similarly, under Regulation 29 of the said CERC Regulations, auxiliary energy consumption in respect of the transmission system has to be borne by the transmission licensee as part of normative operation and maintenance expenses. We find that a similar provision is there under Regulation 2.2 of the WBERC’s Tariff Regulations.

175. Once DVC has allowed the tariff for its composite T&D system approved by the CERC, normative operation and maintenance expenses have already been allowed to it as part of such tariff. Therefore, DVC should not have claimed the units consumed by it for maintenance within its generation/ transmission/ distribution activity.

176. DVC placed reliance on Form 1.7 of the Tariff Regulations to contend that the cost of units utilised in own premises, including construction power, has to be borne by consumers and the same has, therefore, been correctly allowed by the WBERC.

177. However, the view that Form 1.7 has nothing to do with the recovery of the cost of units utilised in own premises, including construction power as a pass-through in retail tariff. The said Form 1.7 deals with "T&D Loss %" and only lists out the particulars that need to be submitted for the determination of T&D loss levels. Therefore, we find Form 1.7 has no relevance to the issue at hand.

178. **In view of the above, we set aside the recovery of the cost of 'Units utilised in own premises including Construction Power' as a pass-through in the consumer tariff and direct the WBERC to ensure that such cost is not borne by the consumers.**

179. In view of the above, we hold that the entire T&D cost approved by CERC ought not to have been loaded exclusively onto command area consumers in West Bengal without proper apportionment for power supplied or wheeled to external beneficiaries, including discoms outside the command area and third-party wheeling users. Failure to allocate T&D cost

proportionately violates the principle of reasonable cost recovery and equity and leads to unjust enrichment of DVC at the expense of consumers.

180. The allocation should have been performed in two stages:

a) firstly between command and non-command area users based on actual utilization of DVC's T&D network, and
b) secondly within the command area between West Bengal and Jharkhand consumers based on sales. The record indicates that such allocation was not undertaken and must be enforced in future tariff processes.

181. The costs attributable to the usage of identified 400 kV ISTS lines dedicated to external beneficiaries should not have been recovered from command area consumers before their segregation as ISTS lines by CERC effective 01.04.2017. The Commission and DVC are directed to take corrective action to ensure cost reflectivity on this account.

182. The costs of units consumed by DVC in its own premises, including categories labelled as construction power, should not have been included in the consumer energy base for tariff calculation, resulting recovery in tariffs. Such consumption must be capitalized or allowed under normative O&M expenses as per CERC orders to avoid double recovery. The State Commission and DVC should ensure proper accounting and exclusion in future tariff orders.

183. The State Commission must discharge its statutory duty to prudently scrutinize consumer tariff proposals even while adopting CERC input costs and ensure compliance with the principles of reasonableness, fairness, and

transparency enshrined in the Electricity Act, 2003, and associated tariff regulations.

184. Accordingly, we hold that both the State Commission and DVC have erred in loading the entire T&D cost exclusively on command area consumers without due allocation and in recovering costs for units utilized in DVC's own premises through consumer tariffs. The matter deserves to be rectified in ongoing and future tariff proceedings with strict adherence to regulatory principles and equitable cost allocation, to uphold the interests of consumers and the integrity of the tariff regime.

> ***Issue No. 4:*** *Whether the State Commission was required to award carrying cost at an appropriate interest rate (such as SBI MCLR + 250 basis points) on revenue gaps/ surpluses determined at the true-up or APR stage?*

185. The Appellant contends that the Commission erred in not awarding carrying cost on the revenue surplus determined in the Impugned Orders. According to the Appellant, the revenue surplus ought to be refunded to consumers along with carrying cost at an appropriate interest rate, such as SBI MCLR (Marginal Cost of Funds based Lending Rate) plus 250 basis points on a compounding basis, enabling consumers to be compensated for the time value of money wrongfully withheld.

186. The Appellant submits that carrying costs have been considered by the State Commission in other control periods, including the relevant orders determining the revenue gap for previous years. They emphasize that the carrying cost is just and appropriate where consumers are required to bear

the undue delay in adjustment and seek equitable compensation to reflect the true financial impact.

187. The Appellant further contends that the interest/carrying cost should be granted on any revenue gap that is finally determined, and the failure to award carrying cost by the State Commission is unjust and contrary to principles of natural justice and reasonableness.

188. The State Commission submits that its Tariff Regulations provide no provision for awarding carrying costs on revenue gaps or surpluses. Such costs are neither provided to consumers nor to the utilities or licensees under the applicable regulatory framework. The only occasion on which carrying cost was considered was in the tariff orders related to FY 2006-07 to FY 2008-09, pursuant to an order dated 05.03.2019 of the Hon'ble High Court at Calcutta.

189. It is submitted on behalf of DVC that the contention of the Appellant regarding non-award of carrying cost on an alleged revenue surplus is untenable. The computation furnished by the Appellant, premised on assumptions relating to NTI treatment and legal expenses, is baseless. The WBERC, by its APR Order dated 31.05.2021, determined revenue surpluses for FYs 2009-13 but a revenue gap of ₹367.96 crore for FY 2013-14, resulting in a net revenue gap of ₹53.66 crore for the period FY 2009-14, which stood duly adjusted in the subsequent tariff order without any carrying cost.

190. Thereafter, upon Review (APR(R)-11/21-22), the revenue gap was revised to ₹106.04 crore, with the balance of ₹52.59 crore directed to be adjusted against ARR of FY 2020-21 or later. In these circumstances, the issue of carrying cost arises only with respect to the revenue gap determined by WBERC, and not on any alleged surplus, and even then, on the regulatory

framework, such carrying cost can only be considered in respect of the admitted gap.

191. The subject matter of carrying cost has been a recurring point of contest in the regulatory regime for tariff matters under the Electricity Act, 2003. The central principle underlying the claim for carrying cost is the recognition of the time value of money. It is a well-established concept in regulatory jurisprudence and finds support in multiple judicial pronouncements that when recovery of lawful dues is delayed, the affected party is entitled to appropriate compensation for the intervening period. Equally, in cases where excess recovery is made by a licensee or utility, and the same is subsequently determined to be liable for refund, the affected consumer ought to be compensated for the utility's use of their funds.

192. Section 62(6) of the Electricity Act, 2003, mandates that:

> *"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."*

193. The written submissions elucidate that carrying costs have been awarded by the State Commission to licensees (such as DVC) in some instances, especially when directed by the Hon'ble High Court. In particular, the Appellant has referred to specific APR and tariff orders for prior periods wherein the State Commission awarded carrying cost, calculated at the rate of SBI MCLR + 250 basis points. Furthermore, DVC itself does not deny that

carrying costs have previously been awarded to it when revenue gaps are determined, albeit in pursuance of a judicial directive.

194. Conversely, the Commission's stance is predicated principally on the omission of an explicit provision for carrying cost in the WBERC Tariff Regulations for the period under review. The Commission submits that, except in limited instances where judicial intervention required such an award, it has consistently refrained from providing carrying costs either to the utility or to consumers in the absence of any statutory compulsion or regulatory provision.

195. We note that the regulations are silent on the matter of carrying costs. However, the absence of an express provision does not preclude us from awarding carrying cost in the present context, especially where equity and settled principles of tariff determination require compensation for the time value of money, even the Electricity Act mandates the same as quoted above.

196. We find the Appellant's submission that carrying cost is integral to rendering a cost-reflective and equitable tariff, referencing both regulatory practice and past precedents where compensation for delay in recovery or refund has been recognized as a necessary incident of the tariff regime. Indeed, the Hon'ble Supreme Court has in multiple cases affirmed the proposition that the effect of delay or excess recovery must be neutralized by awarding interest, the carrying cost at an appropriate rate.

197. Additionally, it is evident that where consumers are made to bear excess tariff or lose the use of their funds due to delayed equilibrium in tariff adjustment, the absence of carrying cost would result in unjust enrichment of the utility at the expense of affected parties. The logical corollary of granting

carrying costs to utilities for revenue gaps is to equally and equitably grant such compensation to consumers for surpluses or recoveries due to them.

198. In the present case, we are satisfied that the Appellant has established an entitlement to carrying costs with respect to revenue surpluses found due to consumers, by reason of excess collection or delayed true-up at the APR stage, for the period in question.

199. However, the mechanism for determining the rate must be judicially balanced. We are also mindful of the observation that where a Power Purchase Agreement (PPA) provides for an explicit rate of interest on delayed payments or adjustments, such contractual arrangement has precedence and ought to be followed. In the absence of contractual terms or where the regulatory framework is silent, it is appropriate to award carrying costs at simple interest.

200. **In view of the above, we hold that the Appellant is entitled to carry cost at simple interest, equivalent to *SBI MCLR (Marginal Cost of Funds based Lending Rate) plus 250 basis points* on revenue surpluses determined to be refundable to them as a result of true-up or APR exercises for the period FY 2009-10 to 2013-14.**

201. **The carrying cost shall be calculated from the date of excess recovery (i.e., the date when the surplus was collected or became due to the consumers) till the date of actual refund or adjustment.**

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 275 of 2015 and the batch have merit and are allowed.

Accordingly, we set aside the Impugned Order, remanding the matter to the State Commission for passing consequential orders strictly in conformity with the findings and directions made hereinabove. Need not add that the matter is pending for very long, the Commission is directed to pass fresh orders within three months from the date of this Judgment.

We further direct the State Commission to ensure that the consequential financial impact arising under the remand shall be passed onto each affected consumer of the command area, within West Bengal, of DVC from whom the excess tariff has been recovered, through 6 equal instalments either by adjustment in future bills or through refund in case the consumer is not drawing power from the DVC.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 15th DAY OF SEPTEMBER, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORATBLE/~~NON-REPORATBLE~~

pr/mkj/kks