

IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case (Tariff) No. 09 of 2020

Damodar Valley Corporation (DVC)**Petitioner**

Versus

Association of DVC HT Consumers of Jharkhand &Ors.**Respondent**

CORAM: HON’BLE MR. MAHENDRA PRASAD, MEMBER (LAW)

HON’BLE MR. ATUL KUMAR, MEMBER (TECHNICAL)

For the Petitioner: Mr. Venkatesh, Mr. Nihal Bhardwaj, and Mr. Shivam
Kumar, Advocate

For the Respondent: Mr. Saket Upadhyay, Ms. Gargi Srivastava, and Arprit
Shukla, Advocate

Date – 23rd July, 2024

1. DVC (hereinafter “Petitioner”) had filed petition for determination of ARR and category wise tariff schedule for the period from FY 2006-07 to FY 2011-12 for its distribution activity in the State of Jharkhand in Case No. 09 of 2020. The Commission vide its Order dated 31.10.2023 (Impugned Order) had finalized the retail supply tariff for FY 2006-12 by considering the entire ‘Other Income’ based on the audited accounts as Non-Tariff Income (NTI) towards its distribution business.
2. Aggrieved by the Order dated 31.10.2023, DVC had filed Appeal No. 845 of 2023 before the Appellate Tribunal for Electricity (‘the APTEL’) challenging the limited issue of computation of NTI as approved by the Commission in the Impugned Order.
3. Thereafter, the Hon’ble APTEL vide its Order dated 05.02.2024 disposed of Appeal No. 845 of 2023 & IA No. 2377 of 2023, remanding the matter back to the Commission for re-determination of the NTI, and then pass an order afresh in accordance with the law. The brief summary of aforesaid order is highlighted as hereunder:

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- a) *However, the non-tariff income, as per the audited accounts, has been divided with respect to its distribution business in West Bengal and Jharkhand, and has not been segregated between generation, transmission, distribution and other businesses.*
- b) *Hon’ble APTEL decides to set aside the impugned order and remand the matter back to Hon’ble JSERC to ascertain the break-up of the non-tariff income of the Appellant, as reflected in the audited accounts for FY 2006-07 to FY 2011-12, between its generation, transmission, distribution and other businesses; and treat only the non-tariff income,*

relating to distribution business in Jharkhand, as its non- tariff income, and pass a fresh order, preferably within three months from the date of receipt of a copy of this order.

c) DVC has submitted that it would furnish the required information/documents, in the manner sought for by the Commission within two weeks of receipt of intimation.

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4. In view of the aforesaid remand Order of the Hon'ble APTEL, the Commission has initiated the present proceedings;The matter was listed for consideration on 13.02.2024, 29.02.2024, 21.03.2024, 02.04.2024; 16.04.2024; 10.05.2024; 24.05.2024 and 28.06.2024.

Brief History and Case Proceeding Pertaining to Determination of ARR and Retail Tariff for FY 2006-07 to FY 2011-12

5. The Hon'ble Central Electricity Regulatory Commission (hereinafter "CERC") vide its Order dated 06.08.2009 has re-determined the generation and transmission tariff of petitioner for the period from FY 2006-09. Aggrieved by the same, the petitioner had filed Appeal No. 146 of 2009 dated 25.08.2009 before the Hon'ble APTEL.
6. The Hon'ble APTEL vide its Interim Order dated 16.09.2009 allowed the WBERC and JSERC to fix the retail supply tariff for FY 2010-11 by considering the generation and unified T&D tariff approved by Hon'ble CERC vide its Order dated 06.08.2009 as the input cost, but to not pass any final orders in this regards.
7. Thereafter, the petitioner had filed petition dated 31.10.2009 for the determination of ARR and retail tariff for FY 2006-07 to FY 2010-11 before this Commission. However, since the matter was sub-judice before Hon'ble APTEL and in wake of the directions of the Hon'ble APTEL to not pass any final Order, therefore, the Commission kept the matter in abeyance till the final disposal of same by Hon'ble APTEL.
8. The Hon'ble APTEL vide its Judgement dated 10.05.2010 disposed of Appeal No. 146 of 2009 and upheld the Order dated 06.08.2009 directing petitioner to issue the refunds to its consumers arising out of implementation of the said Order. Furthermore, the petitioner was also directed to approach the SERCs for finalization of its retail tariff, relevant extract reproduced herein below:

.....
.....
"107 Since, we do not find any substance in the grounds raised in the Appeal, we deem it fit to dismiss the Appeal as devoid of merits. Consequently, we direct the Appellant (DVC) to implement the Tariff as determined by the Central Commission vide its order dated 06.08.2009., DVC is also directed to revise the electricity bills raised by it for electricity consumption during April, 2006 onwards of its licensees and HT Consumers and refund the excess amount billed and collected along with the interest at the rate of 6% per annum in line with Section 62(6) of the Electricity Act, 2003. Alternatively, the Appellant (DVC) may adjust the excess amount recovered, along with interest at the rate of 6% per annum, in 24 equal monthly prospective installments, starting from July 2010 by giving credit in the monthly bills of the consumers/licensees. Thereafter, the DVC is directed to approach the concerned State Electricity Commissions for getting the final order relating to the Retail Tariff who in turn will fix the retail tariff according to law".

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9. Thereafter, aggrieved by the Order dated 10.05.2010 of Hon'ble APTEL, petitioner on 18.06.2010 had filed a Civil Appeal No. 4881/ 2010 before the Hon'ble Supreme Court vide its interim Order dated 09.07.2010, the apex court ordered a partial stay limited to the directions of refund to consumers. Since the entire Judgement of the Hon'ble APTEL was not stayed by the apex court, the Commission initiated to process the tariff petitions of petitioner in terms of the directions in the Order dated 10.05.2010.
 10. Consequently, the Commission had passed the provisional tariff Order dated 22.11.2012 as the matter was *sub-judice* before the Hon'ble Supreme Court in Civil Appeal No. 4881/2010 for:
 - (a) Estimation of ARR for FY 2006-07 to FY 2010-11 based upon the actual information submitted by petitioner;
 - (b) Projection of ARR for FY 2011-12 on the basis of past trends;
 - (c) Projection of ARR and determination of retail supply tariffs for FY 2012-13.
 11. Furthermore, the Commission in para 4.13 of its provisional Order dated 22.11.2012 clarified that the cost of distribution and retail supply business has been determined based on the input cost of inter-state generation

& unified T&D tariff as determined by the Hon'ble CERC by its Orders dated 06.08.2009 and 23.06.2011 for the period FY 2006-09 and FY 2009-13, respectively, the power purchase cost and any other cost incurred by petitioner for distributing the power to retail consumers.

12. The Commission vide Order dated 22.11.2012 had provisionally considered the NTI of petitioner asentire revenue collected through delayed payment surcharge (DPS) for FY 2006-07 to FY 2012-13 and made the observations as shown hereunder-

“The Commission has observed that the tariff petition filed by the petitioner has many data gaps and discrepancies. It is pertinent to mention that the inadequacy of data delays the determination of ARR by the Commission and thereby the tariff order which not only impacts the revenues of the Petitioner but is also is a hindrance in regulatory stability from the consumer's perspective. The Commission directs the Petitioner to maintain the data adequacy and consistency in the subsequent tariff petitions.”

13. The provisional tariff order was applicable w.e.f. 1.11.2012 subject to the final outcome of the Civil Appeal No. 4881/2010 before the Hon'ble Supreme Court and ensuring of data adequacy and consistency in the subsequent tariff petitions by petitioner.
14. The petitioner has submitted the final True-up petition dated 28.02.2014 for determination of ARR from FY 2006-07 to FY 2012-13 along with the MYT proposal for the period from FY 2013-14 to FY 2015-16. However, the Commission vide its Order dated 04.09.2014 had only determined the tariff for FY 2013-14 to FY 2015-16 and did not undertake the true-up for FY 2006-07 to FY 2012-13 since the matter was sub-judice before the Hon'ble Supreme Court in C.A. No. 4881/2010.
15. Thereafter, Anjaney Ferro Alloys (a HT consumer of DVC) on 21.10.2014 had filed Appeal No. 293 of 2014 before Hon'ble APTEL, against the Commission's Order dated 04.09.2014 challenging non-determination of the final True-up of the ARR for FY 2006-07 to FY 2012-13 and however, the same was dismissed by the Hon'ble APTEL vide its Order dated 23.03.2016.
16. Aggrieved by the Order dated 23.03.2016, Anjaney Ferro Alloys filed Civil Appeal No. 7383/2016 before the Hon'ble Supreme Court, which was disposed of vide its judgment dated 26.10.2016, with directions to this

Commission to undertake the true-up of previous years, subject to the final disposal of Civil Appeal No. 4881 of 2010 pending before it. The relevant extract of the Hon'ble Supreme Court's Judgement dated 26.10.2016 is extracted hereunder-

.....
"Therefore, this appeal is disposed of with a direction to Respondent No.1- Jharkhand State Electricity Regulatory Commission to take up the true-up issue and pass the required Orders within a period of six months from today.

However, the Commission is free to make the decision subject to the result of Civil Appeal No. 4881 of 2010 in case the said civil appeal is not disposed of before the said period".

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17. Pursuant to the above directions of the apex court, the Commission initiated the process of final True-up of the period FY 2006-07 to FY 2013-14 and issued the Order dated 19.04.2017 (based on petitioner's petition dated 28.02.2014).
 18. The petitioner in its true-up petition dated 28.02.2014 contained not only revised amounts under various heads which were allowed in provisional tariff Order dated 22.11.2012 but also included claims under various new heads in it, including pension for distribution business, other costs (such as tariff filing & publication fee), Water and Pollution Cess etc. which were not considered by Hon'ble CERC in determination of the generation and Transmission tariff for the period under consideration.
 19. The Commission in its Order dated 19.04.2017, w.r.t. NTI and submission made by petitioner observed as follows-

5.52 The Petitioner, in its reply, submitted that apart from DPS, there is no other NTI attributable to the distribution business. The reply of the Petitioner is stated below:

"...DVC is a vertically integrated organization and has got generation, transmission and distribution activity in the entire Damodar Valley Area spread over in the state of Jharkhand and West Bengal. Therefore, DVC maintains its accounts which is integrated and covers all the aforesaid activities and also some other activities as mandated in DVC Act 1948. The accounting procedure followed by DVC is also approved and audited by

Comptroller & Auditor General of India It is, however, confirmed that other than Delay Payment Surcharge (DPS), there is no other Non-Tariff Income (NTI) under the distribution business of DVC and year-wise amount of DPS, as NTI has already been furnished to the Hon'ble Commission....”

5.53 The Commission has taken note of the fact that entire capital expenditure of the Petitioner is attributable to the generation and transmission business as the Petitioner does not claim any capital expenditure for the distribution business. Accordingly, the non-tariff income, other than the Delayed Payment Surcharge, may be attributable to the generation and transmission business.

*5.54 However, the Commission also notes that non-tariff income attributable to the generation and transmission business ultimately impacts the end-use consumer as the costs (net of any revenue) for generation and transmission business become the input costs for distribution business which drive the retail tariffs applicable for the end-consumer. **Hence, the Commission directs the Petitioner to submit, within one month of notification of this Order, whether such non-tariff income has been accounted for in costs for the generation and transmission business of the Petitioner. Based on the justification provided by the Petitioner, the Commission may take an appropriate view on the same and pass suitable Orders to the effect.***

5.55 Accordingly, at the moment, the Commission approves the non-tariff income pertaining to delayed payment surcharge as Rs.7.65 Cr, Rs.12.22 Cr, Rs.24.26 Cr, Rs.1.89 Cr & Rs.7.63 Cr, respectively for the aforementioned years based on actuals.

20. Furthermore, Commission vide its Order dated 19.04.2017 had also computed the surplus for the period FY 2006-07 to FY 2014-15 for DVC command area of Jharkhand as Rs. (1,428.01) Crore. Aggrieved by the same, both petitioner and DVC HT Consumers Association filed Appeal No.163 of 2017 and Appeal No.198 of 2017, respectively, against the order dated 19.04.2017, which is at present pending before the Hon'ble APTEL.
21. Furthermore, the petitioner in response to the directives issued vide Commission's Order dated 19.04.2017, reiterated its status as a vertically

integrated organization through its Letter No. Comml/Tariff/JSERC/516 dated 17.05.2017, relevant portion extracted hereunder-

“...DVC is a vertically integrated organization and has got generation, transmission and distribution activity in the entire Damodar Valley Area spread over in the state of Jharkhand and West Bengal. Therefore, DVC maintains its accounts which is integrated and covers all the aforesaid activities and also some other activities as mandated in DVC Act 1948. The accounting procedure followed by DVC is also approved and audited by Comptroller & Auditor General of India.

It is, however, confirmed that other than Delay Payment Surcharge (DPS), there is no other Non-Tariff Income (NTI) under the distribution business of DVC and year-wise amount of DPS, as NTI has already been furnished to the Hon'ble Commission...”

So far as electricity business of DVC is concerned it is to submit that the capital expenditure is made in respect of its generation and deemed unified inter-state transmission network only. As such DVC does not incur any capital expenditure for its distribution activity. Accordingly, non-tariff income for the distribution activity of DVC is only the delay payment surcharge. In the previous tariff orders of DVC dtd. 22.12.2012 & 04.09.2014 this Commission accepted the submission of DVC in this regard and considered only the delay payment surcharge (DPS) as non-tariff income after prudence check. In the instant tariff order dtd. 19.04.2017 also this Hon'ble Commission considered delay payment surcharge as non-tariff income as per the audited book of accounts of DVC.

DVC submits that since it is a vertically integrated organization, unified accounting for generation, transmission and distribution activity is maintained. DVC further submits that tariff regulation of the Hon'ble Central Commission for determination of generation and transmission tariff is based on some specific elements of fixed charges and energy charge. The said regulation does not have any provision to account for the non-tariff income. The only provision for late payment surcharge is available as per the tariff regulation of the Central Commission according to which late payment surcharge is levied as and when applicable. The entire DPS as non-tariff income considered by this Hon'ble Commission in the distribution tariff of DVC is inclusive of that late payment surcharge for its generation activity as well.

DVC therefore submits before this Hon'ble Commission to kindly consider the delay payment surcharge (DPS) as non-tariff income so far as the distribution activity of DVC is concerned."

22. The Consumer Association had filed Case No. 07 of 2017 before this Commission praying for passing the benefit of Revenue surplus arising out of true up for FY 2006-07 to FY 2014-15 of petitioner to its consumers. The relief sought was on the grounds that the Commission's order dated 19.04.2017 conducted a true up for the FY 2006-07 to 2013-14, which resulted in a cumulative surplus of Rs.1428.01 Crores up to 31.03.2015. However, the Commission has not provided any mechanism for the recovery of this surplus.

23. The Commission rejected the afore-mentioned prayer vide its Order dated 19.01.2018 in Case No. 07 of 2017, considering the fact that the Appeals filed by petitioner and DVC HT consumers Association against the tariff Order dated 19.04.2017 are in pendency before the Hon'ble APTEL, therefore, the relief of refund of surplus as prayed by the Consumer Association cannot be allowed, relevant portion extracted hereunder-

"18. In view of the said admitted position and the facts and circumstances appearing on record, we are of the view that during the pendency of Appeal No. 198 of 2017 filed by the petitioner in this case and Appeal No. 163 of 2017 filed by the respondent, DVC, before the Hon'ble Appellate Tribunal for Electricity, the order dated 19.4.2017 passed in Case (T) No. 02 of 2016 cannot be said to have attained its finality and it would not be proper to pass any order in the instant case for refund of excess charges claimed by the petitioners at this stage."

24. In light of the afore-mentioned, it cannot be said that the true up order dated 19.04.2017 has attained finality since the same was pending adjudication before Hon'ble APTEL (APL No. 198/2017 and 163/2017) as well as contained directives for clarification on certain items of ARR such as non-tariff income (*ref. Para 5.50 to 5.55 of Order dated 19.04.2017*) etc. Also, the said order was also subject to final outcome of Civil Appeal No. 4881 of 2010. Moreover, at the time of passing of the order dated 19.04.2017, some of the final tariff Orders for petitioner's generating stations for period under consideration were not issued by Hon'ble CERC. Accordingly, the Commission had approved the tariff for petitioner's own generating stations based on the provisional tariff approved by Hon'ble CERC for the generating and composite inter-state transmission system of petitioner.

25. Thereafter, as Hon'ble CERC had issued final tariff orders for the period under consideration, therefore the Commission vide its Order dated 18.05.2018 (*for true-up of FY 2015-16 and MYT for FY 2016-21*) revised the ARR based on the true-up fixed cost for FY 2006-07 to FY 2013-14, as approved by Hon'ble CERC for various stations.
26. The Hon'ble Supreme Court vide its Judgment dated 03.12.2018 dismissed the Civil Appeal No. 4881 of 2010 filed by petitioner.
27. The Commission vide its Order dated 28.05.2019 had undertaken the true-up for FY 2016-17, APR for FY 2017-18 & FY 2018-19 and ARR & Tariff for FY 2019-20. The submissions of petitioner & the Objectors in regard to the Non-Tariff Income was also duly considered. Therein, it was observed that the Revenue surplus attributable to FY 2006-15 period shall increase as carrying cost on the Revenue surplus amount was not passed onto the consumers. It would have been very difficult to refund/adjust the previous year's surplus if it was not gradually reduced. Hence, petitioner was directed **to propose a roadmap for adjustment** of the afore-mentioned surplus, clearly stating the period and manner of treatment of the said surplus within two months from the date of issuance of the said Order. (*ref. Pg. no. 113 of order dated 28.05.2019*)
28. Consequently, the petitioner vide its Letter No. Com1/Tariff/JSERC-Compliance/3057 dated 31.07.2019, submitted the Road Map for the treatment of Revenue Surplus till from FY 2006-07 to FY 2014-15 as per the directive of the Commission, wherein *inter-alia* proposed the following:
- a) *"The Commission may take a final decision towards settlement of the Revenue Surplus for the period FY 2006-07 to FY 2014-15 based on the final outcome in the Appeal Nos. 163 of 2017 and 281 of 2018 pending before the Hon'ble Appellate Tribunal.*
- b) *Determination of category wise retail tariff by the Commission for FY 2006-07 to FY 2011-12 and thereafter revision of the bills preferred earlier by DVC as per the said approved tariff. Resulting differential amount i.e., the difference between the revised bills and actual, payment realized, recovery from/refund to the individual consumers/licensees (except JBVNL) may be done along with 6% yearly simple interest in terms of the order of the Hon'ble Appellate Tribunal in the judgment dated. May 10, 2010 in the Appeal No. 146 of 2009.*

- c) DVC and JBVNL has already settled the past dues accrued up to September 2015 as a full and final settlement under the UDAY Scheme of the Government of India. Hence, there remains no further scope of any further settlement with JBVNL after determination of category wise tariff for the past period FY 2006- 07 to FY 2011-12 as proposed by the Petitioner.
- d) Submission of truing up of tariff so determined by the Commission for FY2006- 07 to FY2011-12 after final settlement with the individual consumer's/ licensees. If there remain any unadjusted dues of any consumer for the said period, presently disconnected DVC will approach Commission to adjust such differential amount in the prospective tariff.
- e) DVC started preferring the electricity bills as per the approved retail tariff by the Commission from November 2012 onwards. Therefore, for the period FY 2012- 13 to FY 2014-15 the revenue gap/ surplus as already determined by the Commission may be adjusted in the prospective tariff.
- f) The Commission may graciously be pleased to direct DVC to submit the ARR and category wise distribution/retail tariff for FY 2006-07 to FY 2011-12 for approval towards final settlement of dues of the individual consumers and licensees with retrospective effect after the final judgment is pronounced by the Hon'ble Tribunal in Appeal Nos, 163 of 2017 and 281 of 2018.”

29. The Commission vide its Order dated 30.09.2020 (in the matter of true-up for FY 2018-19, APR for FY 2019-20 and ARR for FY 2020-2021) while dealing with matter of Roadmap of Treatment of Revenue Surplus for FY 2006-07 to FY 2014-15, as submitted by petitioner, observed as under:

8.2 The Commission doesn't find any merit in Petitioner's proposal Appeal No. 163 of 2017 and 281 of 2018 as no stay has been granted in the matter. Further, during the Public Hearing various stakeholders suggested for liquidation of past surplus without any further delay. The Commission agrees with the views of the Stakeholders and therefore without any further delay the matter needs to be decided.

8.3 The Commission has however observed that the Petitioner has proposed passing on the Surplus approved from FY 2006-07 to FY

2011-12 on one-to-one basis to its consumers based on the tariff that the Commission may approve. However, the Petitioner has not submitted any Petition for the same along with the category wise and consumer wise Billing Details for the respective years. In addition, the Commission has observed that the Petitioner has not submitted the proportion of Sales or Revenue attributable to JBVNL that has to be withheld as it is no longer a consumer of DVC. As interest of various stakeholders are to be taken care of in just and fair manner therefore a separate proceeding needs to be initiated so that views of all the stakeholders are taken before deciding the matter. Hence, the Commission directs the Petitioner to submit the detailed proposal as a separate Petition along with the requisite details such as the consumer wise and category Wise Billing Details for FY 2006-07 to FY 2011-12 for Determination of Category-wise Tariff and the quantum of Sales and Revenue attributable to JBVNL that may be withheld as JBVNL is no longer the consumer of DVC, within 1.5 months of issue of this Order.

30. Accordingly, the petitioner hadfiled Case No. 09 of 2020 on 03.12.2020 for determination of ARR and Category-wise Tariff for the period FY 2006-07 to FY 2011-12 in compliance of Order dated 30.09.2020 wherein the petitioner was directed to submit the detailed proposal as a separate Petition along with the requisite details such as the Billing Details for FY 2006-07 to FY 2011-12 for determination of Category-wise Tariff and the quantum of Sales and Revenue attributable to JBVNL that may be withheld.
31. The petitioner in its petition dated 03.12.2020 in Case No. 09 of 2020, relying upon the order dated 19.01.2018 passed in Case No. 07 of 2017 had prayed to admit the ARR as submitted in Case No. 09 of 2020 for fresh computation of Tariff for FY 2006-07 to FY 2011-12, disregarding the orders dated 19.04.2017 and 18.05.2018 in the overall interest of the consumers/licensees.
32. The Commission on 31.10.2023 passed the Order in Case No. 09 of 2020 for Determination of ARR and Category-wise Tariff for the period FY 2006-07 to FY 2011-12. Therein, the Commission had considered the entire 'Other Income' of petitioner based on its audited accounts as NTI against the distribution business.
33. The petitioner had aggrieved by the Order dated 31.10.2023 in the matter of determination of ARR and category-wise tariff for the period FY 2006-07 to FY 2011-12 challenged it in Appeal No. 845 of 2023 & IA No. 2377 of 2023

before the Hon'ble APTEL. The ground raised by petitioner was limited to the incorrect treatment of non-tariff income i.e., without segregating of such income in generation, transmission, and distribution activity, and without ascertaining whether it was confined solely to its distribution activities, as the entire income considered towards its distribution business.

34. The Hon'ble APTEL vide Order dated 05.02.2024 in Appeal No. 845 of 2023 & IA No. 2377 of 2023, has passed following order:

.....

It is observed that in Para 5.19 of the impugned order records that Hon'ble JSERC had already admitted non-tariff income (delayed payment surcharge), vide order dated 18.05.2018; and, in the impugned order, it was admitting the non-tariff income as per the audited accounts, which have not been admitted earlier for FY 2006-07 to FY 2011-12. Table 15, thereunder, gives the break-up of the non-tariff income for FY 2006-07 to FY 2011-12, as approved by the Commission, in Crores. It is evident, from the said table, that the total non-tariff income, as reflected in the audited accounts, has been treated as non-tariff income of DVC's distribution business in West Bengal and Jharkhand.

Hon'ble JSERC's jurisdiction to determine the tariff is confined only to the retail supply business within Jharkhand. Consequently, Hon'ble JSERC lacked jurisdiction to include the non-tariff income of the Appellant arising from its generation, transmission and other businesses as its non-tariff income with respect of its distribution business.

The tariff of the Appellant, with respect to its generation and transmission business, is determined by the Hon'ble CERC; determination of the tariff for its distribution business in West Bengal falls within the jurisdiction of Hon'ble WBERC, and in Jharkhand within the jurisdiction of Hon'ble JSERC. Even if Hon'ble CERC had not taken the non-tariff income derived from the generation, transmission and other businesses, in determining its tariff, such an error could only have been corrected by the Hon'ble CERC itself; and the mere fact that it may have a bearing on the input cost, while determining the tariff of DVC's distribution business Jharkhand, would not confer jurisdiction on Hon'ble JSERC to reduce such non-tariff income from the annual revenue requirement of the Appellant for its distribution business in Jharkhand.

While it does appear that Hon'ble JSERC had addressed two letters calling upon the Appellant to furnish the break-up of its non-tariff income

between its generation, transmission, other businesses, and its distribution business, the fact remains that, in the impugned order, Hon'ble JSERC has not faulted the Appellant on this score while treating the entire non-tariff income as non-tariff income relating to its distribution business. If Hon'ble JSERC was constrained, because of lack of information to treat the entire non-tariff income, as reflected in the audited accounts of the Appellant, as the non-tariff income arising from the distribution business of the Appellant, Hon'ble JSERC could well have recorded, in the impugned order, that its conclusions were as a result of the Appellant's failure to provide the information sought for. The impugned order does not record any such conclusions having been arrived at by Hon'ble JSERC for treating the entire non-tariff income of the Appellant, as the non-tariff income relating to their distribution business.

It appears, from Table 17 of the impugned order, that Hon'ble JSERC has divided the admissible non-tariff income, as reflected in the books of accounts, between the distribution business relating to the State of Jharkhand and the State of West Bengal, and has taken a percentage of 62.77% for FY 2006-07 (varies in 2007-08 to 2011-12) of the total non-tariff income as the non-tariff income of the distribution business of DVC in Jharkhand.

However, the non-tariff income, as per the audited accounts, has been divided with respect to its distribution business in West Bengal and Jharkhand, and has not been segregated between generation, transmission, distribution and other businesses.

Hon'ble APTEL decides to set aside the impugned order and remand the matter back to Hon'ble JSERC to ascertain the break-up of the non-tariff income of the Appellant, as reflected in the audited accounts for FY 2006-07 to FY 2011-12, between its generation, transmission, distribution and other businesses; and treat only the non-tariff income, relating to distribution business in Jharkhand, as its non-tariff income, and pass a fresh order, preferably within three months from the date of receipt of a copy of this order.

DVC has submitted that it would furnish the required information/documents, in the manner sought for by the Commission within two weeks of receipt of intimation.

submission dated 15.04.2024 and 05.07.2024

35. In compliance of the afore-mentioned direction of the Hon'ble APTEL, the Commission vide its letter dated 12.02.2024 had sought the break-up of petitioner's Non-tariff income, as reflected in its audited accounts for FY 2006-07 to FY 2011-12, duly segregated between its generation, transmission, distribution and other businesses. The petitioner vide letter no. Coml./Tariff/JSERC/1568 dated 23.02.2024 has submitted its reply in compliance of the same along with additional submissions made vide affidavit dated 15.04.2024 and 05.07.2024. The queries raised and the responses of DVC summarized below:

A. Break-up of its Non-tariff income, as reflected in the audited accounts for FY 2006-07 to FY 2011-12, duly segregated between its Generation, Transmission, Distribution and other businesses, and to submit the detailed breakup of the items booked under Miscellaneous heads.

B. The basis for classification of the respective Non-Tariff Income element under the Generation/ Transmission/ Distribution/ Other Business head along with relevant documentary evidence in support of such classification. The excel sheets depicting the computation and allocation of Income head among different businesses was also required to be submitted.

Petitioner Reply dated 23.02.2024:

(a) The petitioner has submitted that it is a statutory body incorporated under DVC Act, 1948.

(b) A single book of accounts for all activities including Generation, Transmission and Distribution is maintained in accordance with part IV of DVC Act 1948. Furthermore, section 45 of DVC Act, 1948 provides for the Annual Audit report for every Financial Year for all its activities including irrigation, water supply, electrical energy, Flood Control etc. Section 47 of the DVC Act specifies that the account shall be maintained as prescribed by CAG.

(c) It has been settled by the Hon'ble APTEL in judgement dated 23.11.2007 in A. No. 271 of 2006 & batch, as upheld by the Hon'ble Supreme Court by its Judgement dated 23.07.2018 in C. A. No. 971-973 that the provision of DVC Act, 1948 inconsistent with that of the EA, 2003 shall stand repealed and the provision which are not

inconsistent with the Act (but inconsistent with the regulations made thereunder) shall remain applicable.

(d) Accordingly, as a vertically integrated entity it prepares unified accounts as per the provisions of DVC Act, 1948 and accounting procedure as approved by CAG. *Hence, it is not possible for DVC at this stage to submit all its income and expenditure explicitly segregated into generation, transmission, distribution, and other business activities.*

(e) The petitioner does not have any capital assets attributable to its distribution activity and does not claim any employee expenditure for distribution in the retail supply ARR. Entire capital expenditures and employee costs for the electricity business are included in the generation and transmission tariffs approved by Hon'ble CERC. As such, entire income in DVC's Annual Accounts pertains only to generation and transmission tariffs. Additionally, DVC claims other miscellaneous expenses in the Distribution ARR, such as power purchase cost, RPO cost, tariff filing and publication expenses, water cess, and Income Tax, which are merely in nature of reimbursement costs without any profit. Accordingly, only the delayed payment surcharge attributable to distribution consumers qualifies as Non-Tariff Income for consideration in the ARR for distribution activity.

(f) Since, there's no asset base and manpower attributable/considered in the ARR for distribution business, accordingly no income qualifies to be considered under '*Income from other business*' in terms of Section 51 of EA, 2003.

(g) DVC submitted income reported in annual account in the format provided by the Commission as Table-1 to annexure-1 of the its reply dated 23.02.2024. However, *there are some income which are not qualifying in the format recoded under Table-2 to annexure-1.*

(h) Relevant data as certified by auditor along with the annual report attached as annexure-2 of the reply dated 23.02.2024.

C. Further, each income head under Non-Tariff Income claimed to be the Distribution Business was required to be duly mapped with the appropriate Regulations of this Commission.

Petitioner Reply dated 23.02.2024:

(a) The details of NTI for each financial year from FY 2006-07 to FY 2011-12 is submitted along with letter no. Coml./Tariff/JSERC/1568 dated 23.02.2024.

D. In addition to the above, the petitioner was also directed to submit the income from Trading business separately for each year of the period FY 2006-12.

Petitioner Reply dated 23.02.2024:

(a) The petitioner has not undertaken any trading business during the period FY 2006-07 to FY 2011-12.

E. Furthermore, the Petitioner was directed to provide expenses claimed before this Commission for FY 2006-12 which is attributed to Generation/Transmission business.

Petitioner Reply dated 23.02.2024: -

(a) The petitioner has submitted the year wise details of the expenses claimed before Commission for the FY 2006-07 to FY 2011-12 in the specified under **annexure-3** to the reply dated 23.02.2024.

36. Vide daily Order dated 02.04.2024, office of the Commission raised certain queries in response to which petitioner made additional submission dated 15.04.2024. The queries raised and submissions made are summarized herein-below:

A. The Commission on scrutinizing and analyzing the data/information submitted by the petitioner, finds that the relevant non-tariff income has not been segregated under different heads with respect to Generation, Transmission and Distribution business. Hence, redirected the petitioner to submit the NTI duly segregated between its generation, transmission, Distribution and other business as sought vide letter dated 12.02.2024.

Petitioner Reply 15.04.2024:

(a) DVC's has already submitted the segregated non-tariff income for the income being generated from all the activities in its submission dated 23.02.2024. The year wise NTI element was provided in Table-1

by considering the Generation and Transmission together as tariff for both regulated by the Ld. CERC.

(b) Further, in Table-2, petitioner had provided the break-up of the income generated from the Dividend Income from PTC& BPSCL, Interest on Bonds, Interest on short term deposits &Ors., Interest from Service Charge, Interest on advance from MPL and interest from NPCI as the said investment has been done from the own fund of petitioner and cannot be attributed to the distribution business.

(c) Item listed in Table-2, presented on a year wise basis, cannot be feasibly segregated into generation, transmission, Distribution categories as per the format provided by this esteemed commission.

(d) Entire income has been apportioned into generation and transmission based on the ratio derived on the basis of capital cost as approved by Ld. CERC. Details of capital cost allowed by the Hon'ble CERC for power business of DVC enclosed as Annexure-A/4 to its submissions dated 15.04.2024. NTI for audited accounts segregated between Generation, Transmission, distribution and other business enclosed as Annexure-A/5 to its submissions dated 15.04.2024.

(e) However, in adherence to prudent utility practices, DVC has submitted necessary documentation along with detailed explanations, substantiating the reasons as to why the aforementioned income cannot be interpreted as non-tariff income related to the distribution business of DVC.

(f) ***Interplay of JSERC Regulation and DVC Act:*** The submissions in regards to provisions of DVC Act being consistent with that of EA, 2003 and the preparation of its unified account in terms of the provisions of DVC Act has been reiterated and are not being repeated herein for the sake of brevity.

(g) ***DVC does not possess any assets related to distribution business:*** Ld. Counsel reiterated its submissions as to non-existence of any assets attributable to the distribution business and all the assets of its power business pertains to its Generation and Transmission activity. Thus, as such, the entire income booked in the Annual Accounts of DVC relates only to and is generated from its

generation tariff and transmission activities, barring delayed payment surcharge which has duly been disclosed and already considered by this Hon'ble Commission. DVC also provided list of all its assets being utilized in the power sector to substantiate the claim that all the assets of its power business pertain to the generation and transmission business.

(h) DVC has unified manpower and there is no segregation of the manpower for its respective Generation, Transmission, and distribution business.

(i) Petitioner has furnished comprehensive details regarding all assets pertaining to its power business. Further, petitioner has furnished a list of assets specifically earmarked for capitalization within petitioner Generation and Transmission business, as outlined by Hon'ble CERC in different tariff orders enclosed as Annexure-A/2 and book value of the said assets as Annexure A/3 to the submission dated 15.05.2024. Pertinently, the book value of petitioner assets comprises of the closure of operations for BTPS-A, Gas Turbine, as well as disallowed capital costs linked to MTPS 7-8, CTPS 7-8, and other disallowances. Therefore, there is a difference in the book value and Capex approved by Ld. CERC, on this account.

(j) It is also a settled position that the determination of both generation tariff and transmission tariff of DVC falls under the jurisdiction of Hon'ble CERC. DVC also does not claim any separate profit margin i.e. Return on Equity while proposing the distribution tariff in addition to the Return on Equity as approved by Hon'ble CERC in the generation and transmission tariff.

(k) As such, the profit from sale of power, if any, earned by DVC is attributable only to its generation and transmission activity only and not to its distribution activity. Moreover, the non-tariff Income attributable to Generation and Transmission Activities are required to be ascertained, if at all, by the Ld. CERC as per the relevant Regulations of Hon'ble CERC. This position has been re-affirmed by the Hon'ble APTEL in its Order dated 05.02.2024 passed in APL No. 845 of 2023.

(l) Reliance has also been placed on the provisions of NTI under JSERC (Terms and Conditions for Distribution Tariff Regulations,

2004; JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2010, wherein NTI pertains to income which is incidental to electricity distribution business which has specifically been derived from the consumers or from the assets of distribution business. Since, DVC has no assets pertaining to the distribution business therefore no NTI is being generated by the licensed distribution business of DVC, barring delayed payment surcharge

(m) The Hon'ble APTEL in its judgment dated 30.07.2010 passed in A. No. 153 of 2009 held that only the income incidental to electricity business can be considered as NTI, therefore any revenue originating from activities outside the scope of electricity business, cannot be considered as NTI. This distinction ensures that only income directly linked to the core operations of supplying electricity is accounted for under the NTI category of the distribution business, thereby maintaining clarity and accuracy in financial reporting.

B. The Hon'ble Commission vide tariff Order dated 18.05.2018 in Case no. 05 of 2016 has determined revenue surplus of Rs. 1755.21 Cr. The petitioner has not furnished any details regarding the said revenue surplus which shows lack of transparency on its part, therefore, to submit clarification with respect to the said revenue surplus.

Petitioner Reply 15.04.2024:

(a) The ld. counsel submitted that in the Order dated 18.05.2018, there was no direction to refund the surplus amount and the category wise distribution/retail tariff for FY 2006-07 to FY 2011-12 for approval towards final settlement of dues of the individual consumers for the period FY 2006-07 to FY 2011-12. Further, the amount of surplus, i.e, Rs. 1775 Cr. has been challenged by DVC by its appeal, being Appeal No. 281 of 2018.

(b) Vide Order dated 28.05.2019, DVC was directed to submit roadmap for adjustment of cumulative surplus till FY 2014-15. Accordingly, on 31.07.2019, submitted the roadmap for treatment of surplus. However, the commission vide its Order dated 30.09.2020 directed to file a separate petition for the afore-mentioned. DVC, on 03.12.2020 filed the instant case and the present proceeding will be the basis for retail tariff determination for the period under

consideration and subject to the final outcome herein, DVC will refund/adjust the surplus so determined to the individual consumers.

SAIL-BSL (hereinafter referred as Respondent) Submission dated 16.04.2024 & 21.05.2024

37. The learned Counsel for the respondent 'SAIL-BSL' has submitted that, being a HT Consumer of DVC, it is anticipating a refund from DVC due to the revision in the tariff as per the JSERC Order dated 31.10.2023 on category-wise Retail Supply Tariff from FY 2006-07 to FY 2011-12 Order dated 31 October 2023.
38. The Commission vide its letter dated 12.02.2024 directed the petitioner to segregate its NTI however, the petitioner has not yet submitted the required data for justifying its claims towards NTI, which is causing delay in the refund process to the DVC's Consumers of Jharkhand including SAIL and is in complete violation of the commission order dated 12.02.2024
39. In terms of the Regulatory Principle adopted by the Hon'ble CERC, the benefits of NTI in case of generating station and transmission system is to be shared between the beneficiaries or the long-term customers. Hence, the Hon'ble Commission in Order dated 31.10.2023 has correctly considered the effect of NTI of DVC, from the generation and transmission business, while determining the distribution tariff for the period under consideration which ultimately impacts the end-use consumer as the costs for generation and transmission business become the input costs for distribution business which drive the retail tariffs applicable for the end-consumer.
40. The counsel has further submitted that the legitimate deductions in the ARR as per the set regulatory framework should be performed by the Hon'ble Commission in the consumer interest in terms of Section 61 of the Electricity Act 2003. Further, the same is already reflected in the ruling of Hon'ble Commission in Order dated 31.10.2023. The counsel for the respondent prayed to continue the same approach as considered by Hon'ble Commission in the Order dated 31.10.2023.
41. The Learned counsel for the respondent has pointed out that the petitioner has not complied with Hon'ble APTEL's Judgement in which Hon'ble APTEL had directed it to furnish the requisite documents within stipulated time of two weeks in the manner as directed by the Hon'ble Commission. Further, petitioner's inefficiency to furnish data should not result in the consumer

hardship due to carrying cost. Hon'ble Commission has highlighted the same in many instances. The relevant extract from the JSERC Order dated 28.05.2019 is as below.

“8.11 The Commission however notes that the said surplus shall increase as carrying cost is to be allowed on the amount not adjusted/refunded. It would be very difficult to refund/adjust the previous years' surplus if it is not gradually reduced.”

(Emphasis added.)

42. The learned counsel for the respondent prayed to reject any additional submission of petitioner and prayed to be disposed of the matter in accordance with principle of natural justice.

Association of DVC HT Consumer Submission (hereinafter referred to as “Respondent” or “JCADVC”)

Counter-affidavit dated 12.04.2024 of JCADVC against DVC reply dated 23.02.2024

43. The respondent rejected all the contentions of the petitioner and submitted that denial of DVC to submit segregated accounts is in direct violation of the undertaking given by DVC in terms of the remand Order dated 05.02.2024 passed in A. No. 845/2023.
44. The ld. counsel denied with the petitioner's claim as to the its entire asset being attributable towards its Generation and Transmission activities and the alleged absence of distribution assets based on the following findings:
- a. That, the Hon'ble CERC in its Single Member Bench Report dated as 05.05.2006 has subjected DVC's entire network i.e., Transmission and Distribution system to a ratio of 87:13, since a precise separation of the two was not possible. The afore-mentioned findings of the Commission have not been contested or set aside by any of the higher forums.
 - b. Further, DVC vide its previous Petition No.55/2004, in the matter of 'Redressal of complaint under Regulation 35 of the CERC (Open Access in inter-state transmission) Regulations, 2004', had clearly stated that it does own/possesses distribution assets.
 - c. Further, there is inconsistency in the stance taken by DVC w.r.t. the existence of its distribution assets. In Case No.4/2023 and 5/2023, in the matter of Review of the Order dated 30.01.2023 for true-up of FY 2019-20 and Review of the Order dated 30.01.2023 for the MYT

determination of period from FY 2021-26 respectively, DVC has claimed legal and Consultancy charges i.r.o. its distribution business. DVC in a Reply, dated 31.10.2023 filed in C. No.04/2023 and 05/2023 has stated that it has a unified Transmission and Distribution system, whose tariff is adjudged by the Ld. CERC based on normative parameters provided only i.r.o. transmission activity. DVC had claimed legal charges pertaining to the activity of Distribution within the State Commissions of West Bengal and Jharkhand.

45. It was submitted that DVC is in direct violation of the Hon'ble JSERC Order dated 19.04.2017, remand order dated 05.02.2024 passed by the Hon'ble APTEL by not submitting segregated information in the format sought by the Ld. Commission. Furthermore, by such conduct petitioner is avoiding the due benefit to consumers in Jharkhand and West Bengal, leading the State Commission left with no alternative but to consider the entire incomes as NTI as per the audited accounts in the Order dated 31.10.2023.

Reply of JCADVC to DVC submission dated 15.04.2024.

46. Learned counsel for respondent in its reply dated 09.05.2024 against DVC additional submission dated 15.04.2024, stated that NTI in terms of the EA, 2003 r/w the DVC Act, 1948, consists of both the income generated from the licensed business (i.e., Retail Supply activity of DVC's Distribution business) other than tariff income as well as Income generated from its other businesses.
47. The Learned counsel for the respondent has further placed reliance on Section 51 of Electricity Act., 2003 which mandates the Distribution Licensee to maintain separate accounts between its licensed and other businesses, to avoid any misinterpretation of income coming from other businesses. The section 45 and section 47 of the DVC Act relied upon by the petitioner corporation is not inconsistent with the provisions of Section 51 of EA, 2003.
48. Furthermore, by its own violation DVC had agreed to segregation of NTI in Generation, transmission and distribution business, it cannot now rely on the provisions of DVC Act to contend that segregation of accounts is not possible in the manner sought by the Ld. Commission. Accordingly, the Ld. Commission vide its Order dated 31.10.2023 had rightly in the absence of segregation of accounts approved the entire 'other income' based on the accounts as NTI.

49. Further, it is trite the petitioner is required to maintain its accounts as per the provisions of Part-IV (Section 27 to 47) of the DVC Act, 1948 and the same shall also form the basis of tariff determination. However, there is no express bar in terms of the DVC Act, 1948 to provide the segregation of accounts towards the Generation, Transmission and distribution.
50. Learned Counsel for the respondent submitted that the petitioner has failed to segregate its accounts in its Reply dated 23.02.2024 and the Additional Submissions dated 15.04.2024 despite of the several directions by the Hon'ble Commission and the Ld. Tribunal in this regards.
51. Petitioner's assertions in regards to the attribution of entire NTI barring DPS towards Generation and Transmission activities due to the alleged absence of distribution assets is incorrect on the following counts:
- A. DVC in C. No. 55/2004, in the matter of- '*Redressal of complaint under Regulation 35 of the CERC (Open Access in inter-state transmission) Regulations, 2004*', had clearly stated that it does own/possesses distribution assets. That, the Hon'ble CERC in its Single Member Bench Report dated as 05.05.2006 had also made observation as to the existence of the distribution assets of DVC.
 - B. Further ld. counsel submitted that, The Hon'ble CERC vide its Order dated 06.08.2009 passed in C. No. 66/2005 had also observed that DVC does own/possess distribution assets and have accordingly proceeded with the tariff determination of its unified T&D network.
 - C. The O&M expenses allowed vide Order dated 06.08.2009 was for the entire transmission and distribution network of DVC. In fact, the operational norms were specifically provided for the distribution segment of DVC (i.e., separately for 132kV & above and for below 132kV system) since, the CERC Tariff Regulations, 2004 were applicable only for inter-state transmission system and DVC had distribution assets as well. Further, accumulated depreciation as on 31.03.2004 allowed to be recovered by the Ld. CERC in case of the transmission system also included the distribution assets of DVC.
 - D. Nowhere, the Ld. Tribunal in its Judgement dated 23.11.2007 and as upheld by the apex court vide its Judgement dated 23.07.2008 had altogether set aside the findings as to the existence of the distribution assets of DVC nor had it been observed that there are no distribution assets altogether attributable to DVC's power business.

E. DVC is a deemed distribution licensee as per its own admissions in various proceedings before the Hon'ble Commission, it cannot be said that it does not have any distribution assets.

F. The Id. Commission had also allowed composite T&D losses attributable towards the wire/network base of DVC from FY 2006 onwards, though Ld. CERC is empowered to approve losses in cases of ISTS system. Accordingly, it cannot be said there are no distribution assets otherwise DVC would have only been eligible for losses i.r.o. its transmission network as per the CERC Regulations.

G. DVC is a peculiar case for the fact that as a deemed ISTS, recovery of its Annual Transmission Charges is not governed under the relevant CERC Regulations though charges being determined thereunder. *Per contra*, the said charges are recoverable as input cost in the retail tariff within the purview of the respective SERCs (i.e., akin to an intra-state transmission licensee). In other words, had there been no distribution assets, the AFC would have been recoverable in terms of CERC Regulations instead of as an expense item in the ARR of the RST by the respective State Commissions of Jharkhand and West Bengal

52. It is wholly incorrect that the capital assets attributable to the power vertical of petitioner is getting serviced exclusively through Generation/Transmission tariff. In fact, the capital assets and manpower (common pool) are getting serviced through the Retail Tariff since, same is recoverable as an expense item under the ARR of the Retail Tariff. Therefore, any reduction in revenue requirements in the Retail Tariff on account of NTI also lies with the respective SERCs.
53. In absence of any segregation of accounts, the entire 'other Income' attributable to petitioner Power business is liable for reduction from the ARR of its RST as same can be linked to the items of expenditure allowed therein. In regards to the same, reliance has also been placed on the Judgement dated 10.04.2008 passed by the Hon'ble APTEL in A. No. 86 & 87 of 2007.
54. Since, no segregation of the 'Other Income' has been made available, income from other business of petitioner (i.e., Generation and Transmission) is eligible to be reduced from the ARR in terms of Section 51 of EA, 2003 r/w Regulation 6.51 of the Tariff Regulations, 2010. In this regard reliance is also

being placed on the Judgement dated 30.09.2019 passed in A. No. 246 of 2014.

55. It is not that the reasonable recovery of the cost/expenditure undertaken on these assets by DVC is getting restricted by way of reduction in the ARR of RST on account of entire 'Other Income' considered as NTI towards its distribution business.

Written Submission by DVC Dated 05.07.2024

56. This Commission vide its order dated 28.06.2024 had given liberty to all parties to file written statement if any within a week. Accordingly, the petitioner had filed its written submission on 05.07.2024 before this Commission.
57. The Hon'ble Commission cannot go beyond its power to regulate licensed utilities, that is in present case Hon'ble JSERC can only reconsider the NTI of DVC from its distribution business in the state of Jharkhand and on the same basis determine DVC's ARR for FY 2006-2007 to FY 2011-2012 to compute the category-wise retail supply tariff for DVC, in line with the directions in the remand order dated 05.02.2024.
58. The submissions in regards to provisions of DVC Act being consistent with that of EA, 2003 and the preparation of its unified account in terms of the provisions of DVC Act has been reiterated and are not being repeated herein for the sake of brevity.
59. The submissions in regards to non-existence of any capital base and manpower attributable towards distribution has been reiterated and are not being repeated herein for the sake of brevity. In this regards, reliance has also been placed on the Judgement dated 29.10.2018 passed in APL No. 206 of 2015, which provides that by and large, all physical assets of DVC are entirely either generation or transmission assets which are taken into account by the Central Commission while deciding the input cost for determination of retail tariff.
60. It was submitted that the Hon'ble Commission cannot go beyond its power to regulate licensed utilities. Hon'ble Supreme Court in the case of *Bhavnagar University v. Patilana Sugar Mill (P) Ltd. and Ors* has held that it is settled law that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The APTEL has

framed the limited issue of reconsideration of only the NTI of the distribution business of DVC in view of the findings of the Hon'ble APTEL and basis the same to re-determine the ARR. The scope of the present proceedings is limited to the reconsideration of only the NTI of DVC from its distribution business, going beyond that will exceed the limit of jurisdiction of this commission.

61. DVC is not able to recover its, bare cost of Generation and T&D network as determined Hon'ble CERC i.e. 5.17 Rs. /kWh. In fact, the ABR in Jharkhand in FY 2023-24 was 4.77Rs. /kWh against ACoS of 6.01 Rs. /kWh which is 1.24 Rs. /kWh lower.
62. The additional impact of NTI and the double accounting of the Revenue Surplus for the period FY 2006-07 to FY 2011-12 is liable to be set aside, accordingly, the revenue surplus of Rs. 13,248 Crores as decided by tariff order dated 22.01.2024, thus, will stand revised to a revenue-gap of Rs. 6000 Crores approximately.

Commission observation and finding

63. The Commission has initiated the present proceeding to comply with the directions of the Ld. APTEL's judgement dated 05.02.2024 passed in Appeal No. 845 of 2023 & IA No. 2377 of 2023, wherein it has ruled as shown herein below-

.....
.....

“DVC has submitted that it would furnish the required information/documents, in the manner sought for by the Commission within two weeks of receipt of intimation.

Since determination of the non-tariff income of the Appellant will have a bearing on determination of their ARR for FY 2006-07 to FY 2011-12, we request the Commission to undertake the exercise with utmost expedition, and endeavor to pass an order afresh at the earliest, preferably within three months from the date of receipt of a copy of this order. Needless to state that, before passing an order afresh in the light of the aforesaid observations, all the parties to the proceedings shall be afforded a reasonable opportunity of being heard.

The appeal is, accordingly, disposed of. All pending IAs, if any, shall stand disposed of.”

64. In light of afore-mentioned, the Commission had directed the petitioner-DVC to submit its reply and data in the petition for category-wise Retail Supply Tariff from FY 2006-07 to FY 2011-12 as shown hereunder: -

- i. The Commission had directed the petitioner to submit the break-up of its Non-tariff income, as reflected in the audited accounts for FY 2006-07 to FY 2011-12, duly segregated between its generation, transmission, distribution and other businesses. DVC should also submit the detailed breakup of the items booked under Miscellaneous heads.*
- ii. The Commission had also directed the Petitioner to submit the basis for classification of the respective Non-Tariff Income element under the Generation/ Transmission/ Distribution/ Other Business head along with relevant documentary evidence in support of such classification. The excel sheets depicting the computation and allocation of Income head among different businesses is also to be provided.*
- iii. Further, each income head under Non-Tariff Income claimed to the Distribution Business must be duly mapped to the appropriate Regulation of this Commission.*
- iv. In addition to the above, the petitioner had also directed to submit the Income from Trading business separately for each year of the period FY 2006-12.*
- v. Furthermore, the Petitioner had directed to provide expenses claimed before this Commission for FY 2006-12. Which is attributed to generation & Transmission Business.*

65. Thereafter, the Commission had listed the matter for consideration on 13.02.2024, 29.02.2024, 21.03.2024, 02.04.2024; 16.04.2024; 10.05.2024; 24.05.2024 and 28.06.2024. The parties in the matter had sought time to file their replies, which was duly accepted by the Commission.

66. The petitioner vide its submissions dated 23.02.2024, 15.04.2024 and 05.07.2024, had stated that it does not possess any distribution assets and therefore other than Delayed Payment Surcharge (DPS), no 'Other Income' is attributable to its distribution business. Furthermore, the capital assets attributable to petitioner's power vertical are serviced exclusively through the Generation/Transmission tariff, therefore, the 'Other Income' to the

exclusion of DPS is attributable to its Generation/Transmission business, within the jurisdiction of the Hon'ble CERC.

67. *Per Contra*, the objectors, Steel Authority India Limited (SAIL) and DVC HT consumers Association vide its submissions dated 21.05.2024, 16.04.2024 and 12.04.2024, 09.05.2024 respectfully had vehemently objected to petitioner's submissions. Keeping in mind the observations of the Ld. APTEL, petitioner was directed to submit the segregation of its NTI amongst generation, transmission, and distribution business, however it has simply reiterated its status as a vertically integrated organization to state that it does not have any distribution assets therefore, barring DPS, no 'Other Income' is attributable towards its distribution business. In this regards, the Objectors submission are not being repeated herein for sake of brevity. Moreover, in absence of segregation of accounts despite of the several opportunities provided to petitioner, the Commission in terms of Section 61 of EA, 2003 had proceeded to consider the entire 'Other Income' based on the audited accounts as NTI towards its distribution business in the impugned order. It is also noteworthy that no adjustment on account of NTI has ever been undertaken by the Ld. CERC in petitioner's Generation/Transmission tariff.
68. Considering the submissions of all the parties, the Commission notes the following factual aspects as mentioned hereinafter:
- a) The proceedings in respect of determination of RST for period under consideration did not culminated till the passing of the impugned Order. The Commission in the impugned Order has not undertaken any change of methodology in determination of NTI as same was left open subject to submission of relevant information by petitioner. The Commission vide its Order dated 19.04.2017, directed petitioner to provide for the segregation of its NTI and based on the said information Commission was to consider the NTI towards the distribution business. Petitioner in response to the said directives, reiterated its status as a vertically integrated organization through its Letter No. Comml/Tariff/JSERC/516 dated 17.05.2017 and failed to provide any segregation therein.
 - b) Furthermore, petitioner in its petition dated 03.12.2020 had itself prayed for the determination of tariff based on its submissions made therein, instead of the methodology adopted in the Order dated 22.11.2012, 19.04.2017 and 18.05.2018. Accordingly, the

Commission after due prudence check had allowed the claim of Water & Pollution Cess and Income Tax in the impugned order, despite the same being not allowed in the earlier orders for the period under consideration.

- c) It is noteworthy, that the Hon'ble CERC has not adjusted any NTI towards Generation/Transmission tariff since, there are no provisions therein.
- d) Moreover, despite of the Hon'ble APTEL's direction in the remand order dated 05.02.2024, the Commission's direction vide letter dated 12.02.2024 and the daily order dated 02.04.2024, DVC has failed to provide any such segregation in its submissions dated 23.02.2024, 15.04.2024 and 05.07.2024. Therein, the petitioner had also submitted that-***Income from PTC & BPSCL, Interest on Bond, Interest on short-term deposit &Ors., Interest from Service Charge, Interest on advance from MPCL and interest from NPCI, cannot be feasible segregated into Generation, Transmission and Distribution as per the format provided by this esteemed Commission' since***, the income earned are from investments which have been made through DVC's own funds. In this regards, no details/documents have been furnished to show the basis of such submission and that such funds were not created out of its power business.
- e) Petitioner's reliance on provisions of Part-IV (Section 27 to 47) of the DVC Act, 1948 for the manner of preparation of its annual accounts is misplaced as the same does not bar it in any manner to provide for such segregation of its accounts in Generation/Transmission and Distribution. Neither these provisions are inconsistent with that of the mandate of Section 51(***other business of the distribution licensee***) of EA, 2003. This also stands settled by the Hon'ble APTEL Judgement dated 23.11.2007 passed in A. No. 271 of 2007 & batch, and re-affirmed by the apex court's Judgement dated 23.07.2018 passed in C.A. No. 971-973 of 2008.
- f) The Petitioner in Appeal No. 845/2023 before the Hon'ble Tribunal itself has given an undertaking to provide for such segregation of accounts in the manner sought by the Commission, based on which the remand order was passed, therefore, cannot now argue otherwise. The relevant extract from the Hon'ble APTEL is reproduced as under.

*“We may not be required to delve into the issue whether or not the Appellant had failed to comply with the request of the 1st Respondent Commission in its earlier letters seeking information, in view of the undertaking, furnished on behalf of the Appellant by Mr. Shri Venkatesh, learned Counsel, that, within two weeks of receipt of intimation by the 1st Respondent Commission of whatever information or records they seek, **the Appellant would forthwith furnish the required information/documents, in the manner sought for by the Commission.**”*

- g) The Petitioner is a deemed distribution licensee under Section 14 of EA, 2003 and therefore, it does own/possess distribution assets.
- h) Petitioner’s Generation assets and unified T&D network is serviceable only by way of retail tariff, since the generation and unified T&D tariff is recoverable only as an input cost in the ARR of the Retail Supply Tariff as determined by this Commission and the Ld. WBERC.

69. The contention of petitioner is against its own submissions in earlier proceedings as well as in utter disregard of the observations/directions of this Commission thereon in matters pertaining to FY 2006-07 to FY 2011-12. As such, the Commission is of the view that throughout the years, the Non-Tariff Income of the Petitioner has been left un-accounted in retail supply tariff in the state of Jharkhand.

70. The Commission on scrutinizing and analyzing the submissions of DVC dated 23.02.2024; 15.04.2024; 05.07.2024 and the arguments put forward by the ld. counsel for the petitioner, has observed that the relevant Non-Tariff Income was not segregated in the format so specified by the Commission. The same is also evident for the reasons mentioned hereinafter:

- a) The list of assets submitted by DVC, simply provides for details of the additional capitalization approved by the Ld. CERC in its various tariff Orders from FY 2006 onwards and not of the original capital cost so approved. [ref. Pg. No. 30 of Additional Submissions dated 15.04.2024]. The entire capital cost of Rs.56440.46 lakhs (based on the audited accounts as on 01.04.2004) of assets attributable to the power business was admitted as the fixed input cost for the RST applicable

from FY 2006 onwards. DVC has failed to furnish the details of such assets on record, which are inclusive of the distribution assets.

b) Furthermore, DVC had submitted that items under Table-2 of its reply dated 23.02.2024 (investment income) cannot be feasibly be segregated into Generation, Transmission and Distribution as per the format provided by this Commission since, the income earned are from such investment which have been made through own funds. No details/documents have been furnished to show that these 'own funds' were not created out of its power business. The Commission is of the view that such funds are majorly attributable to DVC's power business since its other businesses viz.- Irrigation and flood control are social welfare activities and not as such income generating activities. Therefore, such Interest income earned out of Investments qualifies as NTI in terms of clause 21.1 and clause 6.49 of the JSERC Tariff Regulations 2004 and JSERC Tariff Regulations 2010, respectively.

c) As per DVC's submissions, the items (Ref. Table-1 of DVC's Reply dated 23.02.2024) viz.- Rental; Income from sale of scraps; Interest on IT refund; Liquidated damages and Miscellaneous recovery from employees and outsiders has been attributed towards the activity of Generation and Transmission, since there are no distribution assets. The same is liable to be rejected for the reasons mentioned hereinafter:

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i. The Hon'ble CERC in its Single Member Bench Report dated as 05.05.2006 had also acknowledged the existence of the distribution assets of DVC. It's noteworthy that the tribunal's judgment dated 23.11.2007 in APL No. 271 of 2006 & batch, as upheld by the apex Court vide its Judgement dated 23.07.2018 in C.A. No. 971-973 of 2008 also provides for the distribution assets of DVC, relevant excerpt of the judgment dated 23.11.2007 produced herein below:

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.*

- ii. The Hon'ble CERC vide its Order dated 06.08.2009 passed in C. No. 66/2005 had allowed the O&M expenses for the **entire transmission and distribution network of DVC**. Similarly, the accumulated depreciation as on 31.03.2004 allowed to be recovered by the Ld. CERC in case of the transmission system also **included the distribution assets of DVC**. The relevant excerpt of the Order dated 06.08.2009 passed in C. No. 66/2005 is reproduced herein below: -

*53. The cumulative depreciation recovered as on 31.3.2004 has been considered as per the order of the Commission dated 3.10.2006. **Since the capital cost as on 1.4.2004 in Case of transmission systems (inclusive of distribution asset base) has been revised in terms of the judgment Appellate Tribunal, the Cumulative depreciation recovered in case of transmission system is inclusive of the distribution assets.***

- iii. The petitioner has also been allowed composite transmission and distribution losses attributable towards the wire/network base. Clearly, same comprises of its distribution assets as well since, such losses are computed for petitioner by both the state commissions of Jharkhand and West Bengal and allowed as a pass through in tariff.

71. The Petitioner has consistently maintained that it is a vertically integrated organization, accordingly, a single book of accounts is maintained for all its activities including Generation, Transmission and Distribution in terms of the provisions of the DVC Act, 1948. The Commission is of the view that despite of giving numerous opportunities, petitioner has failed to segregate the cost between its various activities i.e., generation, transmission and distribution. Therefore, in light of the same, the direction contained in the remand Order dated 05.02.2024 to consider the 'Other Income' only to the

extent attributable to distribution, cannot be effected to, in absence of such segregation of accounts.

72. Further, ideally if the Annual Fixed Charges (AFC) of the transmission network and generation station is being determined by Hon'ble CERC, then the same shall also be recoverable as per the CERC regulations in place. However, in petitioner's case, the AFC for both the generating station and the T&D network, becomes recoverable once its approved as an expense item in the ARR of RST determined by the respective SERCs. Therefore, NTI is not an item of expense in terms of the applicable CERC regulation but more of reduction in the revenue requirement governed under the RST determination, ultimately impacting the retail end consumers.
73. In addition, the Commission is of the opinion that there's no basis to petitioner's submission as to its entire asset base being serviced through Generation/Transmission tariff, therefore barring DPS no income is attributable to distribution. The Commission allows Interest on working capital (IoWC), Income tax, own generation and T&D cost which provides for servicing of the entire capital assets of petitioner's power business.
74. The Commission is of the view that such Non-Tariff Income cannot be left un-accounted as it adversely affects the RST of the entire state of Jharkhand, *inter alia* owing to the fact that petitioner supplies power to all other Distribution Licensees in the State as well. Accordingly, the Commission is constrained to admit the NTI as per the audited annual accounts for the FY 2006-07 to FY 2011-12 in absence of such segregation of accounts.
75. Furthermore, the Commission holds the opinion that Non-Tariff Income (NTI), as per the Electricity Act, 2003, and the applicable Regulation, includes both income generated from the licensed business (i.e., the retail supply activity of petitioner's distribution business) aside from tariff income, as well as income generated from its other businesses.
76. The Section 51 of EA, 2003 mandates the Distribution Licensee to maintain separate account between its licensed and other businesses, in order to avoid any misinterpretation of income and expenditure incurred against such other businesses. Therefore, this Commission in absence of segregation of account considers the entire 'other income' based on the audited account as NTI.
77. The petitioner corporation even after being given several opportunities, has failed to provide segregation of accounts in the format provided by the

Commission, therefore, has violated the directions of the Id. Tribunal contained in the remand order dated 05.02.2024. In light of the aforementioned, the entire other Income' attributable to petitioner Power business is liable for reduction from the ARR of its RST as same can reasonably be linked to the items of expenditure allowed by the Commission.

78. In the above context, owing to non-submission of the segregated accounts and relevant data/information by petitioner, the Commission is of the view that the entire 'Other Income' based on the audited accounts is liable for reduction from the ARR, in line with the mandate of reasonable cost recovery and transparency as enshrined under Section 61 read with Section 51 of EA, 2003.

ORDER

79. In compliance of the direction of Hon'ble APTEL, the petitioner-DVC had submitted the data/information/material vide letter no. Coml./Tariff/JSERC/1568 dated 23.02.2024. However, the Commission on scrutinizing and analyzing the data/information submitted by the petitioner has observed that the relevant Non-Tariff Income was not segregated under different heads pertaining to the Generation, Transmission and Distribution as specified by this Commission. Accordingly, the Commission had re-directed the petitioner to submit the Non-Tariff Income duly segregated between its generation, transmission, distribution and other businesses.
80. In reply to data discrepancies the petitioner has failed to provide any such segregation of accounts in its submission dated 23.02.2024, 15.04.2024 and 05.07.2024, despite of the several directions by this Commission and the hon'ble Tribunal in this regard. The same is also evident from the reasons mentioned hereinabove.
81. Furthermore, the Commission holds the opinion that Non-Tariff Income (NTI), as per the Electricity Act, 2003, and the JSERC Tariff Regulation,

includes both income generated from the licensed business (i.e., the retail supply activity of petitioner's distribution business) aside from tariff income, as well as income generated from its other businesses.

82. Therefore, the Commission is the view that the entire 'Other Income' based on the audited accounts, in absence of any segregation for the reasons set out hereinbefore is liable to be deducted from the ARR of the distribution/retail supply tariff of petitioner.

NON-TARIFF INCOME (RS. CR.) FOR THE YEARS FY 2006-07 TO FY 2011-12 APPROVED BY THE COMMISSION

Particulars	Computation	Approved					
		FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Sale of Power	A	4,313.51	4,487.52	5,283.21	5,553.58	5,619.62	7,358.18
Rental Charges	B	3.01	4.43	1.71	7.30	5.02	4.88
Recovery of old dues	C	-	-	-	-	-	-
Miscellaneous	D	49.01	89.42	72.97	164.16	46.76	91.57
Dividend Income from PTC & BPSCL	E	2.35	2.35	2.35	2.35	2.55	2.85
Interest on Bonds	F	134.14	120.38	106.62	92.86	79.11	65.35
Interest on Short Term Deposit & Others	G	117.58	248.78	187.53	60.48	1.37	0.20
Share of Dams (Transferred from Part-III)	H	0.21	0.21	0.21	0.28	0.28	0.10
Share of Subsidiary Activities (Transferred from Part-IV)	I	0.08	0.08	0.09	1.41	0.23	0.25
Total Revenue	J = Sum(A:I)	4,619.88	4,953.17	5,654.69	5,882.43	5,754.94	7,523.38
Total Non-Tariff Income	K = J - A	306.36	465.65	371.48	328.85	135.33	165.20
Non-Tariff Income Less Share of Dams & Subsidiary Activities	L = K - Sum(H:I)	306.08	465.36	371.18	327.16	134.81	164.86
Delayed Payment Surcharge as per Cost Breakup of Ledger Accounts	M	7.65	12.22	24.26	1.89	7.63	28.54
Admissible Non-Tariff Income	N = L - M	298.43	453.14	346.92	325.27	127.18	136.32

83. Based on above, the Commission approves the ARR for FY 2006-12 as tabulated hereunder:

SUMMARY OF ARR COMPONENTS (RS. CRORE) AS APPROVED BY THE COMMISSION.

Particulars	UoM	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Own Generation Cost	Rs. Cr.	2,523.16	2,466.62	2,601.92	3,786.35	4,189.29	5,332.87
Power purchase cost	Rs. Cr.	35.42	84.92	82.10	753.11	600.04	555.00
T&D Cost	Rs. Cr.	164.32	173.19	173.73	Included in own generation cost		
Pension as allowed by CERC	Rs. Cr.	628.19	628.19	628.19			
Sinking fund	Rs. Cr.	40.43	30.72	27.55			

Particulars	UoM	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
contribution as allowed by CERC							
Pension for distribution activity	Rs. Cr.	1.23	1.23	1.23	0.49	0.49	0.49
Others Costs (incl. Of Tariff filing & Pub. Exp.)	Rs. Cr.	0.25	0.25	0.33	1.12	1.17	1.38
Income Tax	Rs. Cr.	33.76	20.43	21.19	-	-	-
Water and Pollution Cess	Rs. Cr.	2.76	2.27	1.84	2.79	2.75	2.06
Rebate on Sale of Power	Rs. Cr.	-	-	-	-	-	-
Interest on Temp Financial accommodation	Rs. Cr.	-	-	-	-	-	-
Legal Expenses	Rs. Cr.	-	-	-	-	-	-
Total Cost	Rs. Cr.	3,429.52	3,407.82	3,538.07	4,543.86	4,793.74	5,891.80
Less: Non-Tariff income	Rs. Cr.	7.65	12.22	24.26	1.89	7.63	28.54
Less: Admissible Non-Tariff income	Rs. Cr.	298.43	453.14	346.92	325.27	127.18	136.32
Net Cost	Rs. Cr.	3,123.43	2,942.46	3,166.89	4,216.70	4,658.93	5,726.94
Ratio of sales in Jharkhand area to total DVC area	Rs. Cr.	62.77%	59.71%	60.00%	58.35%	59.47%	58.86%
Allocation of cost to Jharkhand area in ratio of energy sales in Jharkhand area	Rs. Cr.	1,960.46	1,757.03	1,900.18	2,460.27	2,770.50	3,371.11
Add: Tariff filing & Publication Expense JSERC	Rs. Cr.	0.24	0.23	0.27	0.63	0.66	0.34
Add: Interest on working capital	Rs. Cr.	2.15	2.76	3.35	3.67	3.38	4.44
Add: Interest on security deposit	Rs. Cr.	-	-	-	-	-	1.02
Total ARR for Jharkhand area	Rs. Cr.	1,962.85	1,760.02	1,903.80	2,464.57	2,774.54	3,376.91
Energy sold to consumers in Jharkhand	MU	6,761.61	7,394.85	7,740.31	8,094.00	8,549.41	8,899.12
Energy Sold to HV & EHV Consumers & licensees excluding JBVNL	MU	4,032.52	4,379.53	4,659.63	4,908.43	5,244.73	5,438.63
ARR recoverable from HV & EHV Consumers & licensees excluding JBVNL	Rs. Cr.	1,170.61	1,042.35	1,146.08	1,494.59	1,702.07	2,063.77
Average cost of supply for HV & EHV consumers & licensees excluding JBVNL	Rs./kWh	2.90	2.38	2.46	3.04	3.25	3.79

84. The retail tariff for the period FY 2006-12 applicable to the consumer is dealt in next chapter of this Order.

TARRIF SCHEDULE

Applicable from 01.04.2006

Ceiling Tariff

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to

Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability:Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (33kV)	Rs./kVA/month	365.00	2.02

High Tension (HT) Industries at 132 kV

Applicability:Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	2.02

Traction Services at 132 kV

Applicability:Applicable for use of railway traction connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	2.02

Applicable from 01.04.2007

Ceiling Tariff

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability:Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)

HTS (33kV)	Rs./kVA/month	365.00	1.51
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High Tension (HT) Industries at 132 kV

Applicability:Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	1.51

Traction Services at 132 kV

Applicability:Applicable for use of railway traction connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	1.51

Applicable from 01.04.2008

Ceiling Tariff

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability:Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (33kV)	Rs./kVA/month	365.00	1.59

High Tension (HT) Industries at 132 kV

Applicability:Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	1.59

Traction Services at 132 kV**Applicability:**Applicable for use of railway traction connected at 132 kV.**Service Character:** 50 Cycles, 3 Phase at 132 kV**Tariff:**

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	1.59

Applicable from 01.04.2009**Ceiling Tariff**

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV**Applicability:**Applicable for consumers connected at 33 kV.**Service Character:** 50 Cycles, 3 Phase at 33 kV**Tariff:**

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (33kV)	Rs./kVA/month	365.00	2.19

High Tension (HT) Industries at 132 kV**Applicability:**Applicable for consumers connected at 132 kV.**Service Character:** 50 Cycles, 3 Phase at 132 kV**Tariff:**

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	2.19

Traction Services at 132 kV**Applicability:**Applicable for use of railway traction connected at 132 kV.**Service Character:** 50 Cycles, 3 Phase at 132 kV**Tariff:**

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	2.19

Applicable from 01.04.2010

Ceiling Tariff

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability:Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (33kV)	Rs./kVA/month	365.00	2.49

High Tension (HT) Industries at 132 kV

Applicability:Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	2.49

Traction Services at 132 kV

Applicability:Applicable for use of railway traction connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	2.49

Applicable from 01.04.2011

Ceiling Tariff

The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to

Supply at lower and more competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability:Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (33kV)	Rs./kVA/month	365.00	2.94

High Tension (HT) Industries at 132 kV

Applicability:Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (132kV)	Rs./kVA/month	365.00	2.94

High Tension (HT) Industries at 220 kV

Applicability:Applicable for consumers connected at 220 kV.

Service Character: 50 Cycles, 3 Phase at 220 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
HTS (220kV)	Rs./kVA/month	365.00	2.94

Traction Services at 132 kV

Applicability: Applicable for use of railway traction connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	Fixed Charges		Energy Charges
	Unit	Rate	(Rs./kWh)
Traction	Rs./kVA/month	365.00	2.94

Directive

85. The Commission in accordance with the Hon'ble APTEL judgement dated 10.05.2010 hereby directs petitioner-DVC to:

- a) Report the consumer-wise principal amount to be refunded or to be recovered post implementation of the instant Tariff Order along with the Auditor's certificate providing the amount to be refunded within 30 days.

- b) Refund the surplus or recover the deficit (one to one basis) as computed herein along with the interest at the Rate of 6% per annum (Simple Interest) in 24 equal monthly prospective instalments as creditor debit in the monthly bills (issued immediately post notification of the instant Order) of the consumers/ licensees.

For illustration,

Let's assume that a refund or a deficit is assessed against the amount billed for the month of April 2006 in respect of any particular consumer. Therefore, the Simple Interest would be computed at 6% p.a. for the period April 2006 till July 2024 (month of issuance of this Order).

Likewise, the refund or the deficit has to be assessed against all the months during the period April 2006 to March 2012 which shall be the principle amount. The Interest amount must be assessed in respect of each bill for the period (as illustrated above) issued for a particular consumer. Total amount to be refunded or to be recovered from any consumer would be principle and interest as computed above.

- c) Submit the monthly compliance report providing the status of refund or recovery as the case may be.

86. The petition is disposed off accordingly.

Sd/-

**ATUL KUMAR
MEMBER (TECHNICAL)**

Sd/-

**MAHENDRA PRASAD
MEMBER (LAW)**