

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
AT RANCHI**

**Case (Tariff) No. 07 & 08 of 2022**

Damodar Valley Corporation (DVC)..... .... .... Petitioner

Vrs.

Association of DVC HT Consumers of Jharkhand ..... ..... Respondent

**CORAM: MR. JUSTICE NAVNEET KUMAR, CHAIRPERSON**

**MR. MAHENDRA PRASAD, MEMBER (LAW)**

**MR. ATUL KUMAR, MEMBER (TECHNICAL)**

For the Petitioner: Mr. Sanjay Sen, Sr. Advocate, Mr. Nihal Bhardwaj and Ms. Surbhi Kapoor, Advocates

For the Respondent: Mr. Saket Upadhyay, Advocate

**ORDER**

**Date – 30<sup>th</sup> January, 2026**

1. This Order is passed in pursuant to Hon'ble APTEL remand order in Appeal No. 135 dated 29.11.2024 against the Commission's order in Case (T) 07&08 of 2022, dated 22.01.2024 for the True-up order FY 2020-21. It is provisional order in view of the fact that the determination of Non – Tariff Income for DVC distribution activities in the state of Jharkhand is subject matter to pending Appeal 332 of 2024, against the Commission's order in Case (T) 09 of 2020, dated 23.07.2024 for the True-up order FY 2006-07 to FY 2011-12 and Appeal 227 of 2025 against the Commission's order Case (T) 13 of 2024, dated 27.05.2025 for the True-up order FY 2023-24.
2. In fact, the Petitioner, Damodar Valley Corporation (DVC) had filed a tariff Petition vide Case (Tariff) No.: 07 & 08 of 2022, dated 21.09.2022 for approval of *True up of FY 2020-21, Annual Performance Review for FY 2021-22, and Annual Revenue Requirement for FY 2022-23* for the distribution of electricity in its licensed area in the State of Jharkhand.
3. After considering the submission of the Petitioner and facts available on record, the Commission passed the tariff orders in the case, i.e. Case (Tariff) No.: 07 & 08 of 2022 on 22.01.2024, which was challenged by the Petitioner before Hon'ble APTEL vide Appeal no 135 of 2024.

4. In the present order in hand, this Commission has computed the Non – Tariff Income as per the methodology adopted in truing up of FY 2023-24 vide “Order on True-up for FY 2023-24, Annual Performance Review for FY 2024-25, and Aggregate Revenue Requirement & Tariff for FY 2025-26 for Damodar Valley Corporation (DVC)” dated 27.05.2025 passed in the Petition Case (T) No. 13 of 2024. Currently, the said tariff order dated 27.05.2025 has been challenged before Hon’ble APTEL under Appeal No. 227 of 2025 (True up of FY 2023-24) by the Petitioner and the same is pending for consideration by Hon’ble APTEL.
5. Since the Commission’s new methodology for computation of Non-Tariff income of DVC in Jharkhand as enunciated in our order dated 27.05.2025, as above, is pending before the Hon’ble Tribunal in Appeal No. 227 of 2025 for True Up of FY 2023-24, therefore, the Commission has passed this order on the basis of new methodology for computation of Non – Tariff income of DVC as adopted by this Commission in Case (T) No. 13 of 2024 vide order dated 27.05.2025. It is not out of place to mention that the Commission has been passing this order in line with its affidavit dated 11.11.2025 filed before the Hon’ble Tribunal in OP No. 1 of 2025 for the purposes of calculation of Revenue Gap for the period under consideration. The relevant excerpt is reproduced as under:

*“In so far as the second period is concerned, it relates to the remand order passed by this Tribunal on 05.08.2024 in Appeal No. 80 of 2024, and the order passed in Appeal No. 135 of 2024 dated 29.11.2024, relating to the financial years 2020-21 and 2021-2022. The JSERC has already filed an affidavit stating that an order would be passed, consequent on remand, by 16.01.2026. Instead of determining the issue piecemeal, in so far as the remand order passed by this Tribunal is concerned, we deem it appropriate to defer hearing with respect to the 2nd period, till 22.01.2026”*

6. In the said order, the Commission observed that the Non-Tariff Income (NTI) of the Petitioner had remained unaccounted for in the retail supply tariff of Jharkhand over the years. Accordingly, for the True-up of FY 2020-21, the Commission considered the entire NTI as reflected in the Petitioner’s audited accounts and computed NTI of Rs. 1,355.48 crore for FY 2020-21, as against the Petitioner’s claim of Rs. 90.38 crore.
7. Aggrieved by the Commission’s order dated 22.01.2024 passed by this Commission in Case (T) No.7 and 8 of 2022 the Petitioner had filed Appeal No. 135 of 2024 before the Hon’ble APTEL challenging the computation of NTI and interest on temporary financial accommodation.
8. Thereafter, the Hon’ble APTEL vide its order dated 29.11.2024 in Appeal No.

135 of 2024 placed reliance on its earlier judgment dated 05.02.2024 in Appeal No. 845 of 2023, arising out of JSERC Case(T) No. 9 of 2020 dated 31.10.2023, which pertained to the category-wise retail supply tariff from FY 2006-07 to FY 2011-12. The brief summary of aforesaid order is as hereunder:

*"The 1st Respondent Commission's jurisdiction to determine the tariff is confined only to the retail supply business of the Appellant within the State of Jharkhand, and not beyond. Consequently, the 1st Respondent Commission lacked jurisdiction to include the non-tariff income of the Appellant arising from its generation, transmission and other businesses as its nontariff income with respect of its distribution business. The tariff of the Appellant, with respect to its generation and transmission business, is determined by the CERC in terms of its Regulations; determination of the tariff for its distribution business in the State of West Bengal falls within the jurisdiction of WBERC, and in the State of Jharkhand within the jurisdiction of the 1st Respondent Commission. Even if the CERC had not taken into consideration the non-tariff income derived by the Appellant from its generation, transmission and other businesses, in determining its tariff, such an error could only have been corrected by the CERC; and the mere fact that it may have a bearing on the input cost, while determining the tariff of the Appellant's distribution business in the State of Jharkhand, would not confer jurisdiction on the 1st Respondent to reduce such non-tariff income from the annual revenue requirement of the Appellant for its distribution business in State of Jharkhand.*

.....

*We consider it appropriate, in such circumstances, to set aside the impugned order and remand the matter to the 1st Respondent Commission 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 the Appellant's distribution business in the State of Jharkhand, as its nontariff income which is required to be reduced from its ARR for FY 2006-07 to FY 2011-12, and then pass an order afresh in accordance with law.*

.....

***In the light of the earlier order passed by this Tribunal in Appeal No. 845 of 2023 dated 05.02.2024, the order under appeal is set aside and the matter is remanded to the JSERC directing it to determine the Appellant's non-tariff income only to the extent of its retail supply business in the State of Jharkhand, and not beyond. While so determining the Appellant's non-tariff income, the JSERC shall also re-examine the issue of interest on temporary financial accommodation, since the said issue is intrinsically connected with the Appellant's claim with respect to non-tariff income."***

9. Pursuant to the Hon'ble Tribunal's Order dated 29.11.2024, the Commission initiated fresh proceedings in the matter on 08.04.2025.
10. On 23.05.2025, the matter was reserved for order, however, the Petitioner had filed an application dated 08.09.2025, seeking rehearing on the grounds of alleged double accounting of NTI and the Commission's jurisdiction to reconsider the issue.

11. Subsequently, the matter was heard on 14.10.2025 and 02.12.2025. By order dated 02.12.2025, the Commission granted the parties a final opportunity to file their written submissions, after which the matter was reserved for orders. Thereafter the case was posted for order on 14.01.2026 but due to unavoidable circumstances, the same was adjourned to 30.01.2026 for order.

**Brief History of the Remand Proceedings in Appeal No. 135 of 2024 in Case (T) No. 07 & 08 of 2022**

12. The Petitioner had filed additional submission dated 07.04.2025 pursuant to the daily Order dated 13.02.2025, which were duly taken on record by the Commission. The submission, *inter alia*, were as follows:

- a) Only DPS constitutes as NTI attributable to the distribution business of DVC, and the 'Other Income' arising from its generation and transmission business cannot be allocated to its distribution business in light of the Ld. APTEL's judgement dated 05.02.2024 passed in Appeal No. 845 of 2023 (Annexure/2). Further, in the interim order dated 15.10.2024 passed in Appeal No. 332 of 2024, the Hon'ble tribunal has reaffirmed the principles settled in its judgement dated 05.02.2024 (Annexure/3) and held only DPS can be considered as NTI.
- b) NTI comprises income incidental to the electricity distribution business, derived from sources such as disposal of assets, rent, DPS, meter rent, etc., and any revenue arising from activities outside the scope of the distribution business cannot be treated as NTI.
- c) As per the applicable JSERC Regulations, 2010; JSERC Regulations, 2015 & JSERC Regulations, 2020, only such 'Other Income' generated via the licensed business (i.e., distribution business) can be considered as NTI. Since, DVC has no asset pertaining to its distribution business, barring DPS, no 'Other Income' can be considered as NTI.
- d) DVC does not possess any capital assets attributable to its distribution business and that all assets, capital expenditure and employee-related costs pertaining to its power business relate to generation and transmission activities, the tariffs for which are determined by the Hon'ble CERC. It has been contended that DVC is a functionally integrated utility and that its transmission system constitutes a unified deemed inter-State transmission system, as recognized in judgment dated 23.11.2007 passed in Appeal No. 271 of 2007 & batch (in the case of Maithan Alloys Ltd. & Ors. vs. Central Electricity Regulatory

Commission &Ors.). DVC maintains a unified manpower structure without segregation across its business segments.

- e) The Petitioner has further submitted that the provisions of the Damodar Valley Corporation Act, 1948, particularly Part IV thereof, continue to remain applicable insofar as they are not inconsistent with the Electricity Act, 2003.
- f) The basis of the above classification with relevant extracts of the applicable tariff orders of the Hon'ble CERC was furnished as Annexure/5.
- g) Details of expenses claimed for FY 2020-21, as submitted vide letter No. Coml./Tariff/JSERC/2467 dated 30.11.2021, were furnished as Annexure A/6.
- h) In response to the Commission's queries vide letter dated 20.02.2025 and order dated 13.02.2025, DVC furnished a head-wise segregation of 'Other Income' as per audited accounts between Generation/Transmission and Distribution for items under Table-1, as Annexure A/4. Items under Table-2 and Miscellaneous income were provided without segregation. The justification furnished by the Petitioner for the non-consideration of 'Other Income' for the period from FY 2020-21 is tabulated as follows:

<b>Heads of Other Income</b>	<b>Justification for non-consideration of such Income as NTI</b>
Interest from employee loan and advance	The income is related to interest received from loans and advances to employees as an employee welfare measures and funded through the normative O&M expense allowed in the tariff determined by CERC for the generation and transmission businesses. In the distribution tariff, no employee related expenditure is approved, however, the generation and transmission charges determined by CERC becomes an input cost in RST, hence, does not qualify NTI for distribution business.
Interest from Non - Current Investment	This consist of interest earned from advances to agencies/contractors for Railway/Water Treatment Plant infrastructure works at generating stations, as it pertains solely to generation activities and thus should not be considered as NTI for the distribution business.
Interest on IT Refund	Interest accrued on advance income tax payments, over and above the actual taxes incurred. Entire Income Tax of DVC is considered by CERC in the generation and transmission tariff while allowing the RoE, therefore, does not qualify as NTI for distribution business.
Interest on advance to	DVC provided advances for completing the task given to the contractors within the scheduled time based on its urgency. This

<b>Heads of Other Income</b>	<b>Justification for non-consideration of such Income as NTI</b>
contractors and suppliers	work is related to the generating stations and transmission networks. The parties against this amount provided some interest to DVC. Thus, this income is totally related to the generation and transmission system. As the tariff of generating stations and transmission system is determined by the Hon'ble CERC, the income under this head is also having no impact for the determination of tariff for distribution business.
Profit on disposal of fixed assets and Sale of Scrap	This pertains to income generated out of disposal of fixed asset. As these scrap materials are related to its Generation and Transmission assets (no asset is allocated to distribution activity of DVC), hence does not qualify NTI for distribution.
Provision written back doubtful debts	The provision created for doubtful debt in the past year is now been written back and booked as an income item in the previous year. This is merely a book adjustment, hence does not qualify NTI for distribution.
Misc. recoveries from employees and outsiders	There are many amenities i.e. Schools, Hospitals, Transport Services, Quarters, Marriage Ceremony halls, Guest house etc.. Such amenities are being hired out to DVC's employees or outsider/visitors, guest. The charges collected for use of the same are booked under this head. As, there are no distribution assets hence does not qualify NTI for distribution.
Rental	The entire assets base is allocated to the Generation and Transmission business of DVC, whose tariff is being determined by CERC, hence, does not qualify NTI for distribution business.
LD Recoveries	This income arises from the LD recovered from vendors as per the contract agreement. The entire assets base is allocated to the Generation and Transmission business of DVC, whose tariff is being determined by CERC, hence, does not qualify NTI for distribution business.
Sale of Tenders / Papers / Forms	The income is arising from the sale of Tender/Papers /forms submitted by various vendor during tendering process. The Income is not related to the distribution business of DVC hence this income also does not qualify as NTI.
HD 6	
HD 5	
Common Service	
Capitalized	
HD 1	
HD 4	
Interest on short term deposits and others	This income is on account of the interest earned from investing own fund of DVC in the short-term fixed deposit. This has no bearing on tariff determination process. Further, the Hon'ble APTEL in the judgement dated 30.07.2010 passed in Appeal No. 153 of 2009 held that the interest income from the surplus fund cannot be considered as incidental to electricity business.

<b>Heads of Other Income</b>	<b>Justification for non-consideration of such Income as NTI</b>
Dividend Non – current investment	DVC formed joint venture companies with Tata Power, BPSCL. DVC also has equity participation in PTC. Such equity has been provided out of own fund of DVC. The dividend earned from such JV companies and PTC are booked under this head. Accordingly, any dividend received on this account has no bearing on any tariff determination process. No information has been sought out of own fund of DVC.
Income from service charge – REP	Rural Electrification Corporation Limited (RECL) has been appointed as implementing agency by the Govt. of India, Ministry of Power for rural electrification work. The funds were disbursed by RECL for rural electrification to various CPSUs including DVC. Under this scheme, DVC was entitled for service charge to be reimbursed for the expenses already incurred. Hence cannot be considered as NTI for distribution business.
Interest on CLTD	The Interest income under this head is due to the opening of 'Corporate Liquid Term Deposit'. Account opened by DVC at some field formations to defray the regular operational expenses. Such insignificant earnings occur due to existence of small amount of surplus cash maintained in these accounts for the obvious reason as explained. This income, related to operational expenses, is not linked to determination of distribution tariff as the same is not allowed separately in the distribution tariff of DVC. Hence, cannot be considered as NTI for distribution business.
Income from service charge	DVC sometimes provide consultancy and supervision service for construction of infrastructures by other agencies utilizing its own manpower. DVC claims service charges for such activities. Since, the entire employee cost is catered by CERC in generation and transmission tariff and the state Commissions do not allow any manpower cost separately. Therefore, this income does not qualify as NTI for distribution business. The manpower cost allowed by CERC on normative basis, does not cover the actual employee cost incurred by DVC and as such there is no net gain on this account to DVC.
From Others (Tariff adjustments)	DVC has made an investment out of its own fund in National High Power Testing Laboratory in the form of Loan. The investment is in no way related to the Distribution business of DVC and has not been made from the earnings out of the distribution business. Accordingly, this income also does not qualify to be considered as non-tariff income of DVC for its distribution business.

13. The matter was listed for hearing on 08.04.2025, and was thereafter reserved for orders on 23.05.2025 by the Commission.
14. However, the Petitioner thereafter filed a re-hearing application dated 08.09.2025, wherein reliance was placed on the judgment of the Hon'ble Supreme Court in *K.K. Veluswamy v. N. Palanisamy* (2011) 11 SCC 275, holding that the practice of not entertaining applications after conclusion of arguments and reservation of judgment is not an inflexible or rigid rule. The

Petitioner contended that NTI attributable to its generation and transmission businesses had already been accounted for under the tariff framework of the Ld. CERC and that any further adjustment of the same at the distribution stage would result in impermissible double recovery.

15. The Commission, by order dated 14.10.2025, heard both the parties and, subsequently, by order dated 02.12.2025, granted a final opportunity to the parties to file their written notes of arguments.
16. Pursuant thereto, the Respondents filed their written submissions on 22.12.2025, contending that DVC does possess distribution assets and that the Petitioner's assertion to the contrary is contrary to settled law. In support of this contention, reliance was placed on a series of judicial pronouncements, including the judgments dated 23.11.2007 passed in Appeal No. 271 of 2007& batch (in the case of Maithan Alloys Ltd. &Ors. vs. Central Electricity Regulatory Commission &Ors.), dated 15.09.2025 passed in Appeal No. 275 of 2015 & batch against the Hon'ble WBERC's TP-62/14-15, dated 24.08.2015 for the tariff application of DVC for the FY 2009– 2010, FY 2010 –2011, FY 2011– 2012, FY 2012– 2013 and FY 2013– 2014, and dated 14.12.2012 passed in Appeal No. 30 of 2012(Orissa Power Transmission Corporation Limited Janpath, Bhubaneswar, Orissa Versus Orissa Electricity Regulatory Commission &Ors.) by Hon'ble APTEL. The relevant extracts are reproduced below:

**“Appeal 275 of 2015 & batch dated 15.09.2025**

*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.*

*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 vide judgment dated 23.11.2007 passed in Appeal No.271 of 2007& batch (in the case of Maithan Alloys Ltd. & Ors. vs. Central Electricity Regulatory Commission & Ors.) 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 nonexistence 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.

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."

#### **Appeal No. 30 of 2012 dated 14.12.2012**

35. According to these provisions the Distribution network is a system of wires between delivery point on the transmission lines or generating station and point of connection to the consumer's installation. It also includes the electric line, sub-station and electric plant that are primarily maintained for the purpose of distributing electricity notwithstanding that such line is high pressure cables or overhead lines. We have to examine as to whether an EHT line emanating from an EHT substation of the transmission licensee and connects a consumer's installation fits in to this definition of distribution network or not. Evidently, the last mile connection is a line between delivery point on the transmission line and point of connection on the consumer's premises and is primarily used for distribution of electricity to such consumer. Therefore, it qualifies to be part of distribution network.

.....

38. Next requirement for a line to be a transmission line is that the line must be transmitting electricity. Can supply to consumer be treated as transmission of electricity? The answer is 'no'. Supply of electricity to a consumer is universal service obligation casted upon distribution licensee under section 43 of the Act and accordingly, supply to a consumer is distribution and cannot be termed as transmission of electricity."

17. It was also submitted that the Petitioner has failed to comply with its statutory obligation under Sections 41 and 51 of the Electricity Act, 2003 to maintain segregated accounts for its generation, transmission and distribution businesses. In this regard, reliance was placed on the judgment dated 30.09.2019 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 246 of 2014 (*Tata Power Delhi Distribution Ltd. v. DERC*), wherein it was held that maintenance of separate books of accounts is a mandatory statutory requirement and not discretionary.
18. The Respondents further submitted that the Commission itself has, on more than one occasion, directed the Petitioner to separate the accounts of its distribution business, including by Order dated 22.01.2024 passed in Case (Tariff) No. 01 of 2023 and reiterated in the Order dated 30.09.2024, and that the Petitioner cannot be permitted to derive any benefit from its continued non-compliance with such statutory and regulatory directions.
19. It was contended that the facts of the present case are clearly distinguishable from those in *K.K. Velusamy* (supra), as the Petitioner is not seeking to introduce any newly discovered evidence, but merely seeks to rely upon tariff filing forms for FY 2019–24 pertaining to its thermal and hydro generating stations, which form part of its true-up petitions before the Hon'ble CERC. Such tariff forms were mandatorily required to be filed and therefore, all information sought to be introduced through the present re-hearing application was already within the knowledge and possession of the Petitioner at the relevant time.
20. The Petitioner filed written submissions dated 23.12.2025, reiterating its earlier submissions as recorded above. Additionally, it was contended that interest on Temporary Financial Accommodation and DPS are intrinsically linked, and therefore, the consequential treatment of interest on Temporary Financial Accommodation may be revisited.

#### **Commission's Observations and findings**

21. The Commission has considered the submissions made by the Petitioner and respondent in light of the provisions of the applicable Tariff Regulations and the catena of judgements passed by the Ld. Tribunal for determination of NTI attributable to DVC's distribution business.
22. The entire 'Other Income' for power vertical as per the audited accounts has to be allocated between Generation/ Transmission and Distribution business of

the Petitioner. It is noteworthy, that the Ld. Tribunal in its judgement dated 05.02.2024 passed in Appeal No. 845 of 2023 2023 against our order in Case (T) 09 of 2020, dated 31.10.2023 for the True-up of FY 2006-07 to FY 2011-12 has directed the Commission to ascertain such allocation attributable to distribution in light of undertaking given by DVC to furnish such information in the manner as sought by the Commission for the period FY 2006-12. The relevant excerpt of the Order dated 05.02.2024 is reproduced as follows:

*“We consider it appropriate, in such circumstances, to set aside the impugned order and remand the matter to the 1st Respondent Commission 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 Page 7 of 7 2011-12, between its generation, transmission, distribution and other businesses; and treat only the non-tariff income, relating to the Appellant’s distribution business in the State of Jharkhand, as its nontariff income which is required to be reduced from its ARR for FY 2006-07 to FY 2011-12, and then pass an order afresh in accordance with law.*

*We may not be required to delve into the issue whether or not the Appellant had failed to comply with the request of the 1 st 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.”*

The judgement dated 05.02.2024 has attained finality with respect 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 Page 7 of 7 2011-12, between its generation, transmission, distribution and other businesses; and treat only the non-tariff income, relating to the Appellant’s distribution business in the State of Jharkhand, as its nontariff income which is required to be reduced from its ARR for FY 2006-07 to FY 2011-12, and then pass an order afresh in accordance with law. In accordance with the judgement dated 05.02.2024, the Commission passed an order in Case (T) 2020 dated 10.12.2024. Therefore, income attributable to DVC’s distribution business has been allocated as detailed hereinafter.

23. The Commission notes, that the Petitioner has repeatedly failed to comply with the directions issued in various proceedings related to segregation of ‘Other Income’ within its power vertical, duly certified by the auditor, right from the

1<sup>st</sup> control period i.e., FY 2006 onwards and for the period presently under consideration, in violation of its own undertaking to do so as recorded in its judgement dated 05.02.2024. In this regard, following is noteworthy:

- A. The audited accounts submitted by the Petitioner from FY 2020-21 is bereft of any segregation of such 'Other Income' between Generation/Transmission and Distribution;
- B. The Petitioner has failed to submit any auditor certificate in support of its justification furnished for certain heads of 'Other Income' and 'Miscellaneous Income' for FY 2020-21 for non-consideration as NTI towards distribution business.
- C. Such heads of 'Other Income' relating to 'Income from Investment' as per the regulations, has neither been segregated within the power vertical nor the Petitioner has furnished any details/documents to substantiate its claim that such 'own funds' were not created/linked to its distribution/licensed business in any manner. Only investment made out of RoE are excluded from NTI, and the Petitioner has failed to meet the statutory obligation to showcase that such funds were made out of its RoE, to claim any such exclusions.

24. The applicable Tariff Regulations provides for such heads of income which has to be treated as NTI. However, there is no segregation in the revenue and expenditure between the licensed business (distribution) and other business, for allocation of such 'Other Income' towards licensed business on actuals. The Section 51 of Electricity Act, 2003 mandates the Distribution Licensee to maintain separate account between its licensed (distribution) and other businesses (generation & transmission in the present case), in order to avoid any misinterpretation of income and expenditure incurred between all such businesses. Furthermore, Regulation 3.1 specifically defines Accounting Statement to consist of- '*Reconciliation Statement, duly certified by the Statutory Auditors, showing the reconciliation between the total expenses, revenue, assets and liabilities, of the entity as a Company and the expenses, revenue, assets and liabilities, separately for each Business regulated by the Commission and unregulated business operations*'.

25. The Hon'ble Tribunal has noted that since DVC supplies power to licensees outside the command area, NTI apportioned to distribution business as per the ratio between revenue from supply to consumers in the command area is appropriate as per Appeal No. 275 of 2015 dated 15.09.2025 against the Hon'ble WBERC's TP-62/14-15, dated 24.08.2015 for the tariff application of DVC for the FY 2009– 2010, FY 2010 –2011, FY 2011– 2012, FY 2012– 2013 and FY

2013– 2014. The relevant extract of the order are reproduced as follows:

*“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.”*

26. The Hon’ble Tribunal’s interim order dated 15.10.2024 in Appeal No. 332 of 2024 against our order in Case (T) 09 of 2020, dated 23.07.2024 for the True-up of FY 2006-07 to FY 2011-12 has directed the Commission to consider DPS as NTI, in determination of Retail Supply Tariff for FY2006-12, subject to the final adjudication of the main appeal. The issue with respect to segregation of account as mandated under Section 51 of Electricity Act, 2003, in light of the judgement dated 30.09.2019 in *Tata Power Delhi Distribution Limited Vs DERC*, has been left open to be dealt with in the proceedings in the main appeal. However, the Ld. Tribunal in its order dated 15.10.2024 in Appeal No. 332 of 2024 was of the view that to ascertain such income attributable to distribution business, an approximation exercise, on any rational basis, could have been undertaken by this Commission in absence of segregation of ‘Other Income’ within the power business.
27. In this regards, the Ld. Counsel for the Respondent submitted that the submissions made are restricted to IA No. 1282 of 2024 under Appeal No. 332 of 2024. The relevant extract of the order dated 15.10.2024 passed in IA No. 1282 of 2024 in connection with Appeal No. 332 of 2024 is reproduced as follows:

*“JSERC vide remand order was directed to ascertain the component of NTI which is attributable to distribution business, there is no deliberation on this issue in the impugned order as well as whether some or all component of NTI shown under Generation and Transmission head by Appellant could be assigned to Distribution Business. The JSERC could also have undertaken the exercise of approximation on any rational basis which they choose not to do. Initially we contemplated remanding the matter again to the JSERC to undertake a rational exercise of approximation to determine the non-tariff income of the Appellant relating to its distribution business. However, Mr. Rajiv Yadav, learned Counsel for the Respondent made it clear that their submissions were confined to the IA, and they reserved their right to put forth elaborate submissions during the final hearing of the main appeal.”*

28. In light of the observation of the Hon’ble Tribunal judgement dated 05.02.2024 in Appeal No. 845 of 2023 against our order in Case (T) 09 of 2020, dated

31.10.2023 for True-up of FY 2006-07 to FY 2011-12 and the interim Order dated 15.10.2024 in Appeal No. 332 of 2024 & IA No. 1282 of 2024 against our order in Case (T) 09 of 2020, dated 31.10.2023 for True-up of FY 2006-07 to FY 2011-12 and in absence of any segregation of 'Other Income' within the power vertical, duly certified by the auditor, the Commission now proceeds to prudently check/ascertain such heads of 'Other Income' that can be reasonably attributed to its distribution business for consideration of NTI, in exercise of its regulatory powers.

29. It cannot be accepted that the Petitioner is a deemed distribution licensee under Section 14 of the Electricity Act, 2003, in the state of Jharkhand and West Bengal, and does not have any distribution asset base inasmuch as, for DVC to undertake retail supply of power to end consumer, a "Distribution System" in terms of Section 2(19) of the Electricity Act, 2003 is required. Section 2(17) defines a "Distribution Licensee" as a *'licensee authorised to operate and maintain a distribution system for supplying electricity to consumers'*. Therefore, without a distribution asset base, DVC cannot be said to qualify as a distribution licensee under Section 14 of Electricity Act, 2003. The provisions of Electricity Act, 2003 cannot be overridden by provisions of DVC Act, 1948 in case of any inconsistency thereon, the provision of the former shall prevail, which is a settled principle in terms of the Tribunal's judgement dated 23.11.2007 passed in Appeal No.271 of 2007 & batch (in the case of Maithan Alloys Ltd. & Ors. vs. Central Electricity Regulatory Commission &Ors.).
30. It is noteworthy, that DVC's contention as to it does not have any distribution asset base or that the entire capital expenditure is under CERC's jurisdiction, therefore only DPS qualifies as NTI for its distribution business has been categorically set aside by the Hon'ble Tribunal vide its judgement dated 15.09.2025 in Appeal No. 275 of 2015 & batch in the matter of *Damodar Valley Power Consumers Association (DVPCA) and Shree Ambey Ispat Pvt. Ltd. Versus West Bengal State Electricity Regulatory Commission and Damodar Valley Corporation*. It was held that, Tariff Regulations (West Bengal) does not provide any capital expenditure criteria for determination of NTI and therefore, DVC cannot withhold information and is obligated to submit all heads of 'Other Income' and 'Miscellaneous Income' as required under the tariff regulations, which it failed to do so. Furthermore, it was noted that the Ld. Tribunal's judgement dated 23.11.2007 in Appeal No. 271 of 2007 (in the case of Maithan Alloys Ltd. &Ors. vs. Central Electricity Regulatory Commission &Ors.) recognizes DVC's distribution asset base and the need to get the cost of such asset base approved as part of retail tariff determination in light of the observations made in Para K.1 of the judgement dated 23.11.2007 and as

upheld by the Supreme Court vide its judgement dated 23.07.2018 in the matter of *Bhaskar Shrachi Alloys Limited and Others v. Damodar Valley Corporation and Others* where Hon'ble Supreme Court observed as under:-

*“55. Insofar as the issue of allowance of cost relating to other activities of the Corporation to be recovered through tariff on electricity is concerned, we have taken note of the objection(s) raised in this regard which in sum and substance is that Sections 32 and 33 of the Act of 1948 are in direct conflict with Sections 41 and 51 of the 2003 Act and, therefore, recovery of cost incurred in “other works” undertaken by the Corporation through power tariff is wholly untenable. Apart from reiterating the basis on which we have thought it proper to affirm the findings of the learned Appellate Tribunal on the purport and scope of the fourth proviso to Section 14 of the 2003 Act and the continued operation of the provisions of the Act of 1948 which are not inconsistent with the provisions of the 2003 Act, we have also taken note of the specific provisions contained in Sections 41 and 51 of the 2003 Act which, inter alia, require maintenance of separate accounts of the other business undertaken by transmission/distribution licensees so as to ensure that the returns from the transmission/distribution business of electricity do not subsidize any other such business. Not only Sections 41 and 51 of the 2003 Act contemplate prior approval of the Appropriate Commission before a licensee can engage in any other business other than that of a licensee under the 2003 Act, what is contemplated by the aforesaid provisions of the 2003 Act is some return or earning of revenue from such business. In the instant case, the “other activities” of the Corporation are not optional as contemplated under Sections 41/51 of the 2003 Act but are mandatorily cast by the statute i.e. Act of 1948 which, being in the nature of socially beneficial measures, per se, do not entail earning of any revenue so as to require maintenance of separate accounts. The allowance of recovery of cost incurred in connection with “other activities” of the Corporation from the common fund generated by tariff chargeable from the consumers/customers of electricity as contemplated by the provisions of the Act of 1948, therefore, do not collide or is, in any manner, inconsistent with the provisions of the 2003 Act. We will, therefore, have no occasion to interfere with the findings recorded by the learned Appellate Tribunal on the above score.*

31. 56. Having dealt with all the issues raised/arising in the appeals under consideration in the manner indicated above, we deem it proper to dismiss all the appeals and affirm the judgment and order dated 23rd November, 2007 passed by the learned Appellate Tribunal. We order accordingly.”

32. A parallel feature can also be drawn in the JSERC and WBERC Tariff Regulations, which does not per se provide for determination on NTI on basis of capital expenditure approved for licensed (distribution) business rather provides for all such income that is '*related to*' the regulated business other than tariff.
33. Furthermore, without prejudice to above-mentioned, generally the charges determined by Hon'ble CERC for the generating stations and transmission network are recoverable in terms of the applicable CERC regulations. However, in case of DVC, the fixed charges determined by Hon'ble CERC can only be recovered once the same become input cost in the RST approved by the state Commission in line with its own regulations. Since, NTI is not an item of expenditure but a reduction in revenue requirement of DVC's distribution business, therefore, it is governed under the JSERC Tariff Regulations. Therefore, it cannot be said that the entire asset base being serviced through Generation/Transmission tariff in case of command area consumers. In fact, DVC earns revenue on sale of power to its retail consumer based on the distribution tariff determined by the respective SERCs.
34. In light of the afore-mentioned facts and circumstances, the Petitioner has clearly failed to maintain segregated accounts between its licensed business i.e., distribution and between the other business in the power vertical i.e., Generation and Transmission. The segregation of 'Other Income' between the power vertical as per audited accounts, duly certified by the auditor, has also not been provided to ascertain the NTI attributable to DVC's distribution business. Furthermore, Petitioner has repeatedly evaded directions of this Commission to submit separate balance sheet for its distribution business. The justification furnished for non-consideration of such income is either insufficient or cannot be accepted for the reasons stated herein-above.
35. The Commission notes that the Order on "*Category-wise Retail Supply Tariff from FY 2006-07 to FY 2011-12 for Damodar Valley Corporation (DVC)*" was issued on 31.10.2023 in Case (T) No.: 09 of 2020. In the said Order dated 31.10.2023, the Commission considered the Non-Tariff Income as per the Audited Annual Accounts, which had not been admitted earlier, for the period from FY 2006-07 to FY 2011-12. Thereafter, in the Order dated 22.01.2024 on "*True-up for FY 2021-22, Annual Performance Review for FY 2022-23, and Aggregate Revenue Requirement & Tariff for FY 2023-24*", in Case (T) No. 01 of 2023 the Commission adopted a similar methodology. In order to maintain uniformity and consistency across the years, the Commission included the unassessed Non-Tariff Income for the period from FY 2012-13 to FY 2021-22 in the Order dated 22.01.2024 in Case (T) No.: 01 of 2023.

36. Now, in order to apportion the 'Other Income' attributable to the distribution business of the Petitioner, a reasonable approach can be prudently adopted in exercise of the Commission's regulatory power as enshrined under the Electricity Act,2003. Accordingly, without prejudice to the mode of segregation of accounts of the licensed business from the other business under Section 51 of Electricity Act,2003 and the tariff regulations, the Commission apportions the 'Other Income' attributable to the distribution business, as follows:

*Firstly, items such as Interest on IT refund; Provision written back stock current assets; Provision- Written back - Doubtful debts; Commission for deposit of Electricity Duty; Income from service charge-REP; cannot be construed as Non-Tariff Income attributable to the Distribution Business of DVC, in light of justification furnished by Petitioner. The same either does not have any nexus to the distribution activity or is just a notional adjustment in books of account, therefore, has no correlation to NTI attributable to distribution segment.*

*Secondly, Delayed Payment Surcharge attributable only to the extent of the command area consumers of Jharkhand is considered in entirety in accordance with the regulations. Further, Delayed Payment Surcharge attributable to non-firm consumers has been excluded.*

*Thirdly, except for the afore-mentioned items, all other subheads of 'Other Income' are apportioned to the distribution business in proportion to revenue derived from retail supply of power (firm sale) as to the total revenue derived from the sale of power (including retail/bi-lateral export/cross-border/exchange). The items considered herein qualifies as 'Other Income' attributable to the distribution business in light of the JSERC Tariff Regulations.*

37. The ratio of Revenue from Firm Sale (i.e., Distribution) to the total Revenue (from power vertical) from FY 2020-21 is tabulated hereunder:

**Table 1: Revenue share from sales for FY 2020-21**

<b>Particulars - Revenue from Operations</b>	<b>FY 2020-21</b>	
	<b>Amount (Rs. Cr.)</b>	<b>Share (%)</b>
Revenue from Firm Sale (long term arrangements)	6122.28	36%
Revenue from Bilateral export (cross-border)	9521.65	55%
Revenue from Bangladesh	1109.39	6%
Revenue from Sale through exchange and others (short term market-based sales)	444.022	3%

<b>Particulars - Revenue from Operations</b>	<b>FY 2020-21</b>	
	<b>Amount (Rs. Cr.)</b>	<b>Share (%)</b>
<b>Total</b>	<b>17,197.34</b>	<b>100%</b>

38. Additionally, for FY 2020-21, till date no Order has been passed by Ld. CERC approving NTI for DVC's Generation and Transmission business. The same becomes the basis for input cost to be considered for determination of the distribution tariff. Also, the head of 'Other Income' have been apportioned (on approximation basis) so as to exclude any NTI attributable to Generation and Transmission business. Since, Ld. CERC is still in the process of carrying up the true-up exercise for the aforesaid period, adjustments, if any, on account of the same can only be carried out on culmination of such proceedings, as and when the CERC true-up order are passed.

39. Needless to state that the methodology adopted herein is a subject matter in Appeal No. 227 of 2025 against our order in Case (T) 13 of 2024, dated 27.05.2025 for True-up of FY 2023-24 which is pending for disposal before the Hon'ble Tribunal.

40. Thus, in line with the above order, the Commission has determined the Non-Tariff Income for FY 2020-21 on similar lines:

The share of sales in Jharkhand in FY 2020-21 is 46.57%. The categorization and respective income (in Rs. Cr.) is tabulated as follows:

**Table 2: NTI Admitted for FY 2020-21 (Rs. Cr.)**

<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
	<b>Accounts</b>	<b>Admitted</b>
<b>Not considered</b>		
Intt on IT Refund	12.33	-
Commission on deposit of Electricity Duty	2.73	-
Delayed Payment Surcharge (Other than command area of JH)	1046.18	-
Provision- Written back - Doubtful debts	51.15	-
Provision Written Back - Stock current asset	6.34	-
<b>Considered In entirety</b>		
Delayed Payment Surcharge (JH)	90.38	90.38
<b>Others - Based on apportionment</b>		
Interest from Employees Loan and Advances	0.2	0.03
Interest from Non current investments	0.28	0.05
Interest on CLTD	0.28	0.05
Profit on disposal of Fixed Assets	0.28	0.05
Income from service charge	1.18	0.20
Misc Recovery from employees and outsiders	9.84	1.63

Particulars	Amount	Amount
	Accounts	Admitted
Rental	0.47	0.08
LD recoveries	3.22	0.53
Sale of scraps	6.21	1.03
Sale of Tender/Papers/Forms	3.06	0.51
Capitalized	-1.21	-0.20
Inter Head Transfer	10.47	1.74
Interest on Short Term Deposit	0.21	0.03
Dividend Non-Current Investments	110.11	18.26
Intt on Adv to Contractors & Suppliers	0.02	0.00
Common Service	-0.09	-0.01
From Other	1.84	0.31
<b>Total</b>	<b>1355.48</b>	<b>114.65</b>

41. The Commission has, considered the interest on Temporary Financial Accommodation, being linked with DPS, and has taken the same accordingly.
42. The recalculated Interest on Temporary Financial Accommodation is as follows:

**Table 3: Recalculated Interest on Temporary Financial Accommodation**

Particulars	FY 20-21
DPS	90.38
Principal Amount Outstanding (DPS/18%)	502.11
Interest Rate	11.65%
<b>Interest on Temporary Financial Accommodation</b>	<b>58.50</b>

43. As per the above calculation, the provisional Revenue Gap / (Surplus) for FY 2020-21(standalone) is tabulated as follows:

**Table 4: Standalone Revenue Gap / (Surplus) for FY 2020-21 (Rs. Cr.)**

Particulars	Formula	Amount as per Tariff Order dated 22.01.2024	Amount as per Current Order
Old Aggregate Revenue Requirement	A	3,652.89	3,652.89
Add: Old Non-Tariff Income	B		1,355.48
Less: Old Interest on Temporary Financial Accommodation	C		735.61
Add: New Interest on Temporary Financial Accommodation	D		58.50
Less: New Non-Tariff Income	E		114.65
New Aggregate Revenue Requirement	F = A + B - C + D - E	3,652.89	4,216.61
Revenue Billed	G	3,101.71	3,101.71
<b>Gap / (Surplus)</b>	<b>H = F - G</b>	<b>551.19</b>	<b>1,114.90</b>

#### **CONCLUSION**

44. In view of the aforesaid discussion and in compliance with Hon'ble APTEL order, this Commission has apportioned 'Other Income' based on the matters relevant

to the Distribution Business as NTI as shown in the Table 2 above proportionately related to distribution business of DVC within the State of Jharkhand. Furthermore, the impact of Interest on Temporary Financial Accommodation has been recalculated as per Table 3 above and the standalone Revenue Gap / (Surplus) for FY 2020-21 is tabulated in Table 4 above.

45. The Commission is passing the order in pursuance of the affidavit dated 11.11.2025 filed by the Commission in Hon'ble APTEL case no OP 01 of 2025, stating therein that the Commission shall dispose the pending Remand Orders in Appeal No. 135 of 2024 and 80 of 2024 by 15.01.2026 after giving due opportunity of hearing to all the parties concerned including Petitioner and Respondent. The order in this case is passed, subject to final disposal of Appeal 332 od 2024 and 227 of 2025.

Sd/-

Member(T)

Sd/-

Member(L)

Sd/-

Chairperson