



**ARUNACHAL PRADESH STATE ELECTRICITY REGULATORY
COMMISSION (APSERC)**

Order on Petition for review of Tariff order dated 04.03.2025

for

132kV Transmission Line of M/s Devi Energies Pvt Ltd

351, Rupa Village & Town PO&PS Rupa, West Kameng District, Arunachal Pradesh

Issued on 14/08/2025

**Arunachal Pradesh State Electricity Regulatory Commission
अरुणाचल प्रदेश राज्य विद्युत नियामक आयोग
O. T. BUILDING, T. T. MARG, NITI VIHAR MARKET
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The Arunachal Pradesh State Electricity Regulatory Commission (APSERC)

Itanagar, Arunachal Pradesh

Petition No. TP – 05 of 2025

In the matter of:

Petition under Section 94 (1) (f) of the Electricity Act, 2003 seeking review of the Order dated 04.03.2025 passed by this Hon'ble Commission in petition No. TP-07 of 2024.

In the matter:

Devi Energies Private Limited-----**Petitioner**

Department of Power, Government of Arunachal Pradesh (DOP, AP) ... **Respondent.**

Appearance:

1. Mr. A L Nagaraju, Managing Director, Devi Energies Private Limited.
2. Ms. Swapna Seshadri, counsel for Petitioner through virtual Mode.
3. Mr. A K Maggu, Consultant, Devi Energies Private Limited.
4. Mr. Dorjee Wangdi Thungon, Administrative Officer, Devi Energies Private Limited.
5. Er. Duyu Tacho, Chief Engineer (P) Comm cum CEI for Respondent.
6. Er. Rajesh Sharma, J.E (Comm) for Respondent.
7. Mr. Arvind Tiwari, Consultant, for Respondent through virtual mode.
8. Mr. V. K. Gupta, Consultant, Devi Energies Private Limited.

Date of Hearing: 30. 07. 2025.

PRESENT:

Shri R.K Joshi, Hon'ble Chairperson, APSERC

Shri Nich Rika, Hon'ble Member (Law), APSERC

ORDER

(Passed on 14.08.2025)

The Petitioner Ms. Devi Energies Private Limited (herein referred to as DEPL or Petitioner) has filed the Review petition under section 94 (1) (f) of the Electricity Act, 2003, and Regulation 37 of the APSERC (Conduct of Business), 2011, seeking a review of the Order dated 04.03.2025 passed by the Hon'ble Commission in petition No. TP-07 of 2024.

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The Petitioner is a company incorporated under the provisions of the Companies Act, 2013, having its registered address at D.No. E -351, Rupa Village and Town, Rupa P.O. and PS West Kameng-790003, Arunachal Pradesh and is a Transmission Licensee operating and maintaining 32 km of 132 kV Transmission Line system, primarily used for evacuation of power from its 24 MW Dikshi HEP.

1. PROCEDURAL HISTORY

Background

1.1 The Petitioner had filed a petition for approval of True Up for FY 2019-20 to FY 2022-23, APR for FY 2023-24 & ARR for FY 2024-25 against which the Commission issued tariff order dated 04.03.2025.


1.2 Aggrieved with the order dated 04.03.2025 DEPL has filed the instant review petition on 21.04.2025 before the Commission for review of certain components as referred below:

- *O&M Expenses*
- *Terminal Benefits*
- *Petition Filing Fees*
- *Additional Capital Expenditure (Tower protection cost, Slide muck excavation cost, Road construction cost)*
- *Incentive for Availability*

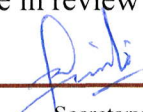
1.3 The Petitioner has made the following prayers:

- a) Admit the review petition;
- b) Allow the review of the Order dated 04.03.2025 passed in TP No. 07/2024 by this Hon'ble Commission to the extent stated above;
- c) Pass such further order(s) as deemed fit and proper.
- d) Condone any error /omission and give opportunity to rectify the same; and
- e) Permit the review petitioner to make further submissions, addition and alteration to this petition as may be necessary from time to time.

1.4 Considering the principles of Natural Justice and transparency, advance notice was served upon the Respondent (Department of Power, GoAP). The review petition was initially heard on 15.05.2025. On the prayer for adjournment by the review Petitioner matter was refixed on 11.06.2025.


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- 1.5 The Commission vide Record of Proceedings dated 11.06.2025 had admitted the petition for further hearing and directed the parties to submit written arguments. By Record of Proceedings dated 08.07.2025, a further 7 [seven] days was allowed to the respondent to file their written argument.
- 1.6 That upon completion of pleadings, the matter was heard on 30.07.2025.
- 1.7 The learned counsel for review petitioner Ms. Swapna Seshadri pleaded that the Order under review suffers from error apparent on the face of record and hence liable to be reviewed. The Order does not consider the special considerations relevant to the north east regions of India and it has arbitrarily adopted the norms applicable for the rest of India.
- 1.8 The review petitioner in support of its submissions has cited judgements of:
- i. Umrao Singh v. the Commissioner Khudkasht; the Hon'ble Rajasthan High Court, Jaipur, 1971 SCC online Raj 82,
 - ii. Gujarat Biomass Energy Developers Association v. Gujarat Electricity Regulatory Commission & Anr; The Hon'ble Appellate Tribunal in its judgement dated 12.08.2014 in A. No. 253 of 2013.
 - iii. M/s. Greenayana Solar Private Limited v. Haryana Electricity Regulatory Commission & Ors. The Hon'ble Appellate Tribunal in its judgement dated 23.04.2025 in A. No. 302 of 2024.
 - iv. Gujarat Urja Vikas Limited v. Taxus Infrastructure & Power Projects Ltd & Ors; The Hon'ble Appellate Tribunal in its judgement dated 27.05.2024 in R. P No. 08 / 2018.
 - v. Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and ORS. (2005) 13 SCC 289.
 - vi. M/s Prism Johnson Limited v. Madhya Pradesh Electricity Regulatory Commission & Ors; Hon'ble Appellate Tribunal in its judgement dated 06.01.2023 in R. P No. 10/2022.
 - vii. The selection committee for admission to Medical and Dental college, Bangalore v. M.P Naga raj. 1971 SCC online Kar 133
 - viii. Musammat Jamna Kuar v. Lal Bahadur, 1949 SCC online FC 31.
- 1.9 The Respondent being represented by Mr. Arvind Tiwari, Consultant had vehemently opposed the present review petition on the ground of maintainability as well as on merits. The Respondent further contended that the Order does not suffer from any infirmity and not within the legal scope for consideration of review under Order 47 Rule 1 CPC. The respondent further submits that grounds raised by the review fall squarely within the ambit of appeal, which is impermissible in review jurisdiction.


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POWER OF REVIEW:

1.10 This petition has been filed under section 94 (1) (f) of the Electricity Act, 2003 for review of the Order 04.03.2025 in petition No. TP-07 of 2024. The said section reads as:

“94. Powers of Appropriate Commission.—(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) discovery and production of any document or other material object producible as evidence;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning of any public record;*
- (e) issuing commission for the examination of witnesses;*
- (f) reviewing its decisions, directions and orders;*
- (g) any other matter which may be prescribed.*

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

1.11 The above section confers power to this Commission to review its own orders or decisions which are the same powers vested in a civil court under Civil Procedure Code while trying a suit.

1.12 We may note that Section 114 of CPC is the substantive provision dealing with scope of review and is quoted below:

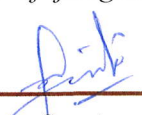
“114. Review. —Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.*
- (b) by a decree or order from which no appeal is allowed by this Code, or*
- (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”*

1.13 The grounds on which review of a judgment / order can be sought, have been specified in Order XLVII of the CPC which is reproduced herein below: -

“ORDER XLVII - REVIEW

1. Application for review of judgment. — (1) Any person considering himself aggrieved-


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(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes,
and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation. —The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

1.14 A bare reading of these relevant legal provisions would make it clear that an application for review of a judgment / order is maintainable upon (i) discovery of a new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the review applicant, or could not be produced by him when the judgment / order was passed; or (ii) on account of some mistake or error apparent on the face of record; or (iii) for any other sufficient reason.

1.15 The expression “error apparent on the face of record” used in Order XLVII Rule 1 indicates an error which is self-evident and stares one in the face. Any error or mistake which is not self-evident and has to be deduced from a process of reasoning cannot be said to be an error apparent on the face of record justifying exercise of power of review. The power of review may be exercised only where a glaring omission or a patent mistake is found in the order under review. It is also settled that the power of review can be exercised only for correction of a patent mistake, and not for substituting one view for

another, as a review petition cannot be permitted to be an appeal in disguise.

1.16 The Commission has reiterated that review proceedings are not by way of an appeal and must be strictly confined to the scope and ambit of Order XLVII Rule 1 of the CPC. In review jurisdiction, mere disagreement with the view taken in the Order cannot be the ground for invoking the same so long as the point in question has already been dealt with and answered. The parties are not entitled to challenge the impugned Order in the guise that an alternative view is possible under the review jurisdiction. The conclusion of our Order dated 04.03.2025 cannot be questioned as it would amount to re-hearing the entire matter which is not permissible under the review scope.

1.17 To ascertain that the present review petition is well within the provisions of laws as dealt above, a detailed analysis of the submission concerning the issues raised by the Petitioner for review, along with the Commission's observations and analysis, is discussed in the following paragraphs.

A. O&M Expenses

Petitioners Submission

1.18 The Petitioner has stated that the Hon'ble Commission has approved O&M Expenses "in accordance with the normative values prescribed by the Central Electricity Regulatory Commission (CERC)" in the CERC (Terms and Conditions of Tariff) Regulations, 2019 ("CERC Regulations"). However, the Commission has failed to consider that the CERC Regulations are not binding on the Hon'ble State Commission and as part of the conducting the prudence check of the costs, the Commission should have considered that the terrain and security costs increase due to challenging conditions in the State.

1.19 Further, the Hon'ble Commission has majorly disallowed the security costs even though the CERC Regulations do not prescribe any security costs and require a prudence check on the same. However, the Hon'ble Commission, has on a perfunctory basis, without considering the challenges faced by the Petitioner, disallowed the costs on a comparison of the same with the rest of India. The above approach is inherently arbitrary and contrary to the requirement that each State Commission prescribe regulations or considering the costs on the basis of a prudence check that is within the context of where the Project is situation.

1.20 The special challenges prevailing in the northeast region have also been recognised by the Central Commission. The latest tariff regulations, the CERC (Terms and Conditions of Tariff) Regulations, 2024, provide that O&M Costs for northeast regions would be arrived

"multiplying 1.50 to the normative O&M expenses prescribed." Hence, it is respectfully submitted that the Hon'ble Commission has erroneously applied the incorrect norm to the Petitioners transmission system. The relevant portion Regulation 36(3) of the 2024 CERC Regulation is extracted below:

"Provided further that the O&M expenses for Transmission Licensees whose transmission assets are located solely in NE Region (including Sikkim), States of Uttarakhand, Himachal Pradesh, the Union Territories of Jammu and Kashmir and Ladakh, district of Darjeeling of West Bengal shall be worked out by multiplying 1.50 to the normative O&M expenses prescribed above.

(b) The total allowable operation and maintenance expenses for the transmission system shall be calculated by multiplying the number of substation bays, transformer capacity of the transformer/reactor/Static Var Compensator/Static Synchronous Compensator (in MVA/MVAr) and km of line length with the applicable norms for the operation and maintenance expenses per bay, per MVA/MVAr and per km respectively."

1.21 The MYT Regulations did not specify any normative value or benchmark for determination of O&M Costs. The relevant provisions are as under:

"1.3 Definitions:

....59. O&M expenses mean the expenditure on operation and maintenance or part thereof and includes the expenditure on man power, repairs, spares, consumable insurance, over heads but exclusive of fuel expenses.

....

2.7 (2) Some illustrative variations or expected variations in the performance of the applicant, which may be attributed by the Commission to "Controllable factors" include, but are not limited to the following:

....

(e) variation in operation and maintenance except those attributable to the directions of the commission

....

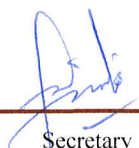
7.8 Operation and Maintenance expenses:

(1) The norms for O & M expenses on the basis of circuit kilometres of transmission lines, transformation capacity and number of bays in substations shall be submitted for approval of the Commission.

(2) The Commission shall verify the budget estimates and estimates and projections and allow the expenditure depending on its use about reasonableness of the projections.

(3) In case of O & M expenses due to natural calamities or insurgency of other factors not in control may be approved by the Commission."

1.22 Since, the MYT Regulations did not specify any value for O&M Costs, the Petitioner made its submissions based on the CERC Regulations. However, the Hon'ble Commission has erroneously not considered additional costs for transmission projects in the northeast.


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1.23 The O&M expenses approved in the Order under review do not adequately reflect the actual and unavoidable costs associated with operating transmission assets in the geographically and climatically challenging region of Arunachal Pradesh. The Hon'ble Commission, has without assigning any reason allowed only a small portion of the Petitioner's claim and merely because it appeared high. It is respectfully submitted that in a project specific tariff determination, the costs prudently incurred on the project should be approved.

1.24 The relevant portions of the Order under review reads as under:

"We have considered the Petitioners claim of Operation & Maintenance (O&M) Expenses for the period FY2019-20 to FY2022-23, and the Respondent's objection. We are of the view that the O&M expenses claimed by the Petitioner are on the higher side and require optimization. Therefore, in accordance with the methodology adopted by the Commission in order dated 20.12.2019 i.e. O&M Expense are being approved as per the norms specified by CERC and is dealt in details in the relevant sections of this order pertaining to O&M Expenses."

"h) In view of the above observations the Commission has adopted the same approach as outlined in its order dated 20.12.2019 for the determination of O&M Expenses. Accordingly, the O&M Expenses has been approved in accordance with the normative values prescribed by the Central Electricity Regulatory Commission (CERC).

i) Furthermore, the Commission is of the opinion that seven numbers of security guards for such properly secured area is not justified. However, the Commission has considered 4 nos. security guards (1 no for each shift considering 3 shifts in a day and an additional to compensate for the weekly off for each individual). Bases on above, the O&M expenses is calculated considering 4 nos. security guards. The Commission has considered the audited value of security expense and has apportioned it for four number of security guards. For FY2023- 24 & FY2024-25 the Commission has escalated the approved value of FY 2022-23 by 5.72% accordingly. The Commission has considered the license fee as stipulated in APERC (Payment of Fees) Regulations (1st Amendment)2017."

1.25 The Petitioner has stated that the Hon'ble Commission has erred in not considering the actual ground conditions in the state of Arunachal Pradesh, the O&M expense approved are not reflective of the significantly higher costs incurred due to:

- A. Hilly and remote terrains
- B. Inclement weather and difficult access
- C. Theft of tower materials requiring costly protective measures
- D. Harsh working conditions requiring additional manpower incentives

E. Hiring of manpower from other states at higher salary /wages

1.26 The Hon'ble Commission's reliance on the CERC Regulations applicable for all India, without considering the specific challenges of the hilly regions has resulted in significant disallowance of necessary O&M expense. It is respectfully submitted that the Hon'ble Commission should consider actual O&M expenses, using its discretionary powers. Even for the generation projects, the Central Commission provides for higher costs for projects in the northeast. For example, the CERC (Terms and Conditions for Tariff from Renewable Energy Sources) Regulations, 2024, provides higher cost for Small hydro projects as under:

"30. Operation and Maintenance expenses (1) Normative O&M Expenses for the first year of the Control Period, i.e. Financial year 2024-25 shall be as under:

Region	Project Size	O&M Expenses(Rs.Lakh/MW)
Himachal Pradesh,Uttarakhand,West Bengal, Union Territory of Jammu Kashmir, Union Territory of Ladakh and North Eastern States	Below 5MW	49.24
	5MW to 25 MW	36.93
Other States	Below 5MW	39.66
	5 MW to 25 MW	28.72

1.27 The table below shows the amount of O&M claimed and allowed by the Hon'ble Commission. The Hon'ble Commission has allowed O&M expenses based on the CERC regulations for O&M of lines and Bay and additionally also considered part security expenses. O&M expenses based on the CERC regulations for O & M of lines and Bay and additionally also considered part security expenses.

Year	Claimed (Rs.Cr)	Allowed(Rs.Cr)
2019-20	0.70	0.47
2020-21	1.24	0.86
2021-22	1.18	0.89
2022-23	1.72	1.06
2023-24	1.82	0.97
2024-25	1.92	1.22

1.28 The Petitioner has stated the Hon'ble Commission appears to have assumed single shift for security staff whereas it is round the clock in reality. Keeping in view of the requirements of security for two shifts with weekly off on rotation basis for a stretch of 32 km transmission system in hilly terrain, seven numbers of security staff is minimum requirement and is very well justified. It is to humbly request the Hon'ble Commission to allow the actual security expenses.


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Commissions Analysis

1.29 The Commission has duly taken note of the submission made by the Petitioner regarding the review of Operation and Maintenance (O&M) costs, citing various challenges arising from difficult terrain and other geographical conditions. However, the Commission had already addressed this matter in its earlier Order dated 04.03.2025. The Petitioner's contention that its submission was not been considered is without merit and wholly unjustified, as the Commission has thoroughly scrutinised and analysed the submission in detail. Pursuant to a prudence check and based on rational and objective considerations, the Commission arrived at its conclusions as set forth in the aforementioned Order dated 04.03.2025. In doing so, the Commission has also duly referred to Clause 7.8 of the APSERC (MYT) Regulations, 2018, as extracted below:

"7.8 Operation and Maintenance Expenses:

(1) The norms for O&M expenses on the basis of circuit kilometres of transmission lines, transformation capacity and number of bays in substations shall be submitted for approval of the Commission.

(2) The Commission shall verify the budget estimates and projections and allow the expenditure depending on its views about the reasonableness of the projections.

(3) Increase in O&M expenses due to natural calamities or insurgency or other factors not within its control may be approved by the Commission."

1.30 Since this pertains to the first control period of the transmission system, the Commission did not have any historical reference data available to determine the O&M costs specific to the said transmission line. Accordingly, the Commission adopted the normative parameters prescribed by the Central Electricity Regulatory Commission (CERC) under the CERC Tariff Regulations, 2019. These Regulations provide a standardized framework for determination of O&M expenses for transmission systems, which is also being followed by other transmission licensees operating within the same region and under similar geographical conditions as those of the Petitioner.

1.31 Further the Commission has duly examined the Petitioner's submission regarding the deployment of seven (7) security personnel for a 32 km transmission line, which was considered to be on the higher side. The matter has already been deliberated in detail in the Commission's order dated 04.03.2025. Upon careful and reasoned consideration, the Commission had allowed the associated security expenses in the said order. Therefore, the Petitioner's contention regarding non-consideration by the Commission is unjustified.

1.32 In view of the foregoing observations, Issue No. A as raised by the Petitioner is found to be devoid of merit and does not warrant any interference under the scope of review. Accordingly, the prayer for review in respect of this issue stands rejected.

Terminal Benefits

Petitioners Submission

1.33 The Petitioner has submitted that the Hon'ble Commission has erroneously not recognized that the cost of terminal benefits for the staff should have been factored in while approving O&M expenses. The year-wise breakup of terminal benefits for which a provision has been made in annual employee costs is as follows: -

Year	Amount
FY 2019-20	Rs.210704
FY 2020-21	Rs.346794
FY 2021-22	Rs.510854
FY 2022-23	Rs.730904

1.34 The Petitioner has requested the Hon'ble Commission to consider the above cost of terminal benefits. The Petitioner contends that the Hon'ble Commission failed to appreciate that these costs are incurred on actuals, and should be recognized in the approved O&M Expenses.

1.35 The Petitioner has further stated that the ground staff working in the North-Eastern hilly region are entitled to special compensatory allowance, as recognized by the Government of India which include Special Duty Allowance, High Altitude Allowance, Uncongenial Climate Allowance among others. It is submitted that these allowances are essential to retain qualified personnel in areas that have extremely challenging living and working conditions, and the salary expenditure must necessarily be reflected in the approved O&M expenses.

1.36 The Review Petitioner humbly prays that the Hon'ble Commission consider and incorporate the actual O&M costs, as per the Audited Balance Sheet, including terminal benefits, in the approved O&M expenses.

Commissions Analysis

1.37 The Commission has taken note of the Petitioner's submission regarding the provision of terminal benefits for the respective years. However, it is pertinent to be note that terminal

benefits typically refer to financial entitlements such as gratuity, pension, provident fund, etc., which are payable to an employee upon completion of service, whether by way of retirement, resignation, termination, or death. Considering that terminal benefits fall under the category of uncontrollable expenditures, the Commission shall allow such costs on the basis of actual disbursement, rather than on the basis of estimated provisions

- 1.38 Taking into consideration the aforesaid observations, Issue No-B, as raised by the Petitioner, is found to be devoid of merit and does not warrant any interference in review. Accordingly, the prayer for review of the issue is hereby rejected.

B. Filing Fees

Petitioners Submission

- 1.39 The Petitioner has submitted that the Hon'ble Commission, in the Tariff Order for FY 2022-23, has admitted an amount of Rs. 5.00 Lakhs towards filing fees as reflected in Table 61 (Page 72) of the order under review. It is submitted that the filing fee is payable for tariff petitions for all relevant financial years i.e. FY 2019-20, 2020-21, FY 2021-22, FY 2023-24 and FY 2024-25, even if filed together and therefore ought to be considered for each year under consideration.
- 1.40 The Petitioner humbly requests to allow tariff petition filing fees paid as detailed below: -
- 1) Dec 20, 2018- Rs. 5,00,000/-
 - 2) May 12, 2022 - Rs. 5,00,000/-
 - 3) May 30, 2024 - Rs. 15,00,000/-
 - 4) Jan 21, 2025 - Rs. 10,00,000/-

Commission's Analysis

- 1.41 The Commission has taken note of the submission made by the Petitioner and has also referred to the original Petition No. TP-07 of 2024 and the corresponding order dated 04.03.2025. In the said Petition, the Petitioner had sought approval of the filing fee for only one year, i.e. FY 2022-23. Accordingly, the Commission had allowed the filing fee for that year alone. However, the Commission has further observed that the Petitioner had submitted petition fees along with each of the petitions filed previously. The details of the petition fees, as submitted by the Petitioner and as per the records maintained by the Commission, are as follows:

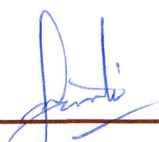
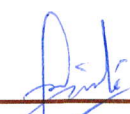

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Table 1 Details of Petition Fee submitted by the Petitioner(Rs)

S.No	Particulars	Amount(in Rs)
1	Petition Fee for ARR FY 2019-20,FY 2020-21 & FY 2021-22	500000
2	Petition Fee for True Up FY 2019-20	500000
3	Petition Fee for True Up FY 2020-21	500000
4	Petition Fee for True Up FY 2021-22	500000
	Total	2000000

- 1.42 Upon verification of the petition fees received from the Petitioner, as detailed in the table above, the Commission has reconsidered the matter and approved the petition fees accordingly. Furthermore, during the course of this examination, the Commission observed that the Petitioner had not submitted the petition fee in respect of the True-Up Petitions for FY 2019–20 and FY 2020–21. However, for the time being, the Commission has adjusted the fees submitted by the Petitioner for the APR of FY 2023–24 and the ARR for FY 2024–25 against the True-Up Petitions for FY 2019–20 and FY 2020–21. **In this regard, the Commission hereby directs the Petitioner to submit the petition fee amounting to ₹10 lakhs, corresponding to the aforesaid True-Up years for which no petition fee has been submitted.** It is further clarified that any petition fee not considered by the Commission at present shall be duly adjusted during the True-Up exercise of the respective years.
- 1.43 The scope of interference in review proceedings is extremely limited. It is only where the tests stipulated in Order XLVII Rule 1 CPC are satisfied that review of the earlier order can be sought, that does not mean that this Tribunal can, in no case, review its earlier order. However, limited the scope of interference in review proceedings may be, what is required to be ascertained is whether the review sought by the petitioner satisfies the requirements of Order 47 Rule 1 CPC and, if it does, then the earlier order of this Tribunal must, necessarily, be reviewed and set aside to the extent it suffers from an error apparent on the face of the record.
- 1.44 The Hon'ble Supreme Court, **in judgement in Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753**, “held that the power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate; an application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.”
- 1.45 Accordingly, the contention raised by the Petitioner, as referred to in Issue no C, is partially accepted and allowed to the extent indicated hereinabove.


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C.Additional Capital Expenditure(CAPEX)

Petitioners Submission

a) Tower Protection Cost

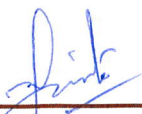
1.46 The Petitioner respectfully submits that the Hon'ble Commission, while considering the Additional Capex incurred for tower protection and strengthening during FY 2022-23, has approved only 8.44 Lakhs against the actual CAPEX claim of 74.00 Lakhs. The Petitioner had spent Rs. 47.73 lakhs on restoration works. However, without considering the complete materials on records and the requirement of restoration due to theft. Further, it has placed the blame of the theft on the Petitioner which is patently unjustified. The Hon'ble Commission declined to admit such costs in the order under review:

"5.106 The Commission notes that the Petitioner filed an FIR dated 08.07.2022 for the theft of tower members, but the complaint pertains only to Tower 87. The accompanying letter states that all towers were inspected, and theft was observed only at Tower 87, indicating that any subsequent thefts at other towers occurred at a later stage. The Commission finds that the Petitioner had ample time to implement preventive measures, such as welding tower bolts, to mitigate further thefts. Therefore, the Petitioner cannot be compensated for its lack of vigilance, and no payment for the replacement of stolen members is admitted. Additionally, the photographs submitted show that barbed wire fencing has been provided; however, such fencing is ineffective in preventing theft. The Commission considers this to be an infructuous expenditure, and accordingly, the cost is not admitted."

1.47 The Review Petitioner respectfully submits that the entire expenditure was undertaken as an urgent restoration and reinforcement effort necessitated by theft and heightened vulnerability of multiple towers, even if the initial theft was recorded only at Tower 87. The expenditures incurred are supported by bills which have already been submitted along with original petition and are available with all the parties including Hon'ble Commission. The Asset register of the transmission assets is annexed as Annexure C.

1.48 The Review Petitioner respectfully submits that, subsequent to the implementation of the tower protection and strengthening measures, no further incidents of theft or structural compromise have been reported, thereby demonstrating the effectiveness and long-term utility of the preventive interventions undertaken.

1.49 In view of the above, the Review Petitioner humbly requests the Hon'ble Commission to rectify the error in the order under review and allow the claim of Rs. 47.63 lakhs towards


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the restoration works, recognizing the urgent, safety-critical, and preventive nature of the expenditure.

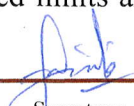
Commissions Analysis

- 1.50 The Commission has duly noted the submissions made by the Petitioner; however, it is of the considered view that the issue raised has already been deliberated upon in detail in the Commission's order dated 04.03.2025. Accordingly, the Commission finds no merit or justification in reconsidering the matter under the present review.
- 1.51 Taking into consideration the aforesaid observations, Issue No. D(a), as raised by the petitioner is found to be devoid of merit and does not warrant any interference, accordingly the prayer for review of the issue is hereby rejected.

b) Slide muck excavation cost

Petitioners Submission

- 1.52 The Review Petitioner had claimed an amount of Rs. 18.06 Lakhs under Additional capital expenditure towards excavation and, removal of slide muck and creation of proper bench at location no. 79 to increase ground clearance and to create proper grazing ground for livestock to avoid frequent earth faults and to avoid electrocution of livestock. Against this expenditure, the Hon'ble Commission has admitted only Rs. 12.74 lakhs, and that too only in O&M expenditure.
- 1.53 However, it is stated that there is a mistake in the rates considered by the Hon'ble Commission. The Hon'ble Commission has relied on the 2021 Schedule of Rates ("SOR") of the Government of Arunachal Pradesh and admitted only Rs. 332/- per cubic meter of rock. However, it is stated that Rs. 332 is applicable pertains to excavation in ordinary rock by manual means whereas the Work Order was for Excavation & removal of Both Soft & Hard Rock. Because as per the SOR, the prescribed rate for excavation in hard rock is Rs. 539/- cubic metre, while the rates for excavation using mechanized and manual methods are Rs. 1,256/- cubic metre. A copy of the relevant pages of 2021 Schedule of Rates is attached hereto and marked as Annexure D.
- 1.54 Hence, the Hon'ble Commission has applied an incorrect rate of Rs. 332/-for soft rock, whereas the actual work involved removal of both hard rock & soft rock.
- 1.55 Because the Hon'ble Commission has failed to consider that the Review Petitioner has not inflated rates beyond the prescribed limits and the rate applied by the Review Petitioner


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which is Rs. 500 per cum for 3840 cubic meter is reasonable. The necessity of safe removal of muck to protect transmission infrastructure, this expenditure qualifies as a genuine, one-time O&M expense, incurred in good faith.

1.56 However, the Hon'ble Commission has treated Rs. 12.74 Lakhs of the same as a one-time O&M expense and not properly included the same in the O&M costs approved for FY 2022-23.

"Regulation 1.3 defines Additional capitalization as follows:

"3) "Additional capitalization" means the capital expenditure actually incurred or projected to be incurred after the date of commercial operation of the project and admitted by the Commission after prudence check;"

Further, the following works are to be considered for additional capitalisation:

"4.4 Additional capitalizations: (1) The following capital expenditure, actually incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to the prudence check:

- (a) Due to Un-discharged liabilities within the original scope of work;*
- (b) On works within the original scope of work, deferred for execution;*
- (c) To meet award of arbitration and compliance of final and unappealable order or decree of a court arising out of original scope of works;*
- (d) On account of change in law;*
- (e) On procurement of initial spares included in the original project costs subject to the ceiling norm specified; (Any additional works/services, which have become necessary for efficient and successful operation of a generating station or a transmission system or a distribution system but not included in the original capital cost: Provided that original scope of work along with estimates of expenditure shall be submitted as a part of Capital Investment Plan Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating Unit/Station or transmission system or distribution system. Provided further that the assets forming part of the project but not put to use, shall not be considered.*

(2) Impact of additional capitalization on tariff, as the case may be, shall be considered during Truing Up of each financial year of the Control Period."

1.57 It is respectfully submitted that the Hon'ble Commission allow the amount of Rs.18.06 Lakhs instead of Rs. 12.74 lakhs.


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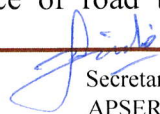
Commissions Analysis

- 1.58 The Commission has noted the submissions of the Petitioner regarding the expenditure incurred for the removal of slide muck. Reference is also made to the Commission's order dated 04.03.2025, wherein a liberal view was taken by adopting the rate of ₹332 per unit for removal of ordinary rock through manual means, as per the Schedule of Rates (SOR) of Arunachal Pradesh. Considering that the area in question is a grazing land, gently sloped and accessible to mechanical equipment such as JCBs or bulldozers—whose applicable rate is only ₹90.00 per cumec as per the SOR—the Commission had, on this basis, approved an expenditure of ₹12.74 lakh.
- 1.59 The Commission is of the view that “muck” generally consists of soft soil or mud, often intermixed with loose soft rock/boulder, and notes that the Petitioner has indicated that the work pertains to a grazing area, which is usually gently slope. The Commission further observes that the Petitioner has only furnished the work order dated 05.09.2022 issued to M/s Pema Dema for the removal of a total quantity of 3,840 cumecs, without submitting any substantive evidence of the actual work executed (such as photographic documentation) and without providing any justification for the adoption of the magic rate of ₹500 per cumec, which is nowhere in the Schedule of Rates (SOR) of Arunachal Pradesh.
- 1.60 The matter has already been addressed and dealt with in detail in the Commission's order dated 04.03.2025. As the issue requires no further deliberation, the Commission finds no ground for interference under the present review proceedings. Accordingly, the prayer for review of Issue D(b) is hereby not allowed.

c) Road Construction Cost

Petitioners Submission

- 1.61 Similarly, the Review Petitioner had claimed an amount of Rs. 4.75 Lakhs under Additional capital expenditure towards strengthening the road to switching station. Against this expenditure, the Hon'ble Commission has erroneously stated that the same is an O&M expenditure, but has not allowed the same.
- 1.62 The road was required for efficient operation of the plant and should have been included in additional capitalisation and allowed by the Hon'ble Commission. It has stated that the work order mentioned "maintenance of road to switching station" and only on this basis


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categorized the same as O&M. However, the Hon'ble Commission has committed an error in going by the title of the work order instead of the nature of works which is not in the nature of repair or maintenance.

1.63 It is respectfully submitted that the nature of the expenditure incurred is not recurring and cannot be classified as part of routine maintenance. It constitutes a one-time special intervention, undertaken to address specific infrastructural challenges that directly impact the accessibility and operational reliability of the switching station.

1.64 The Review Petitioner respectfully prays that the Hon'ble Commission may allow the claimed amount of Rs. 4.75 Lakhs as a one-time O&M expense.

Commissions Analysis

1.65 The Commission has duly noted the submissions made by the Petitioner and is of the considered view that the matter has already been addressed and dealt with in detail in the Commission's order dated 04.03.2025. As the issue requires no further deliberation, the Commission finds no ground for interference under the present review proceedings. Accordingly, the prayer for review of Issue D(c) is hereby not allowed.

D. Incentive for Availability

Petitioners Submission

1.66 The Petitioner respectfully has submitted that, due to an inadvertent oversight in the earlier petition, no claim was made for incentive towards achieving transmission line availability beyond the normative target for the relevant control periods. A certificate issued by the State Load Dispatch Centre confirming 100%-line availability has already been submitted to the Hon'ble Commission and is on record.

1.67 It is settled law that a mistake, even by the parties, is a ground for review and the same may be included by this Hon'ble Commission. In view of the above, the Petitioner humbly requests that the incentive for achieving higher target availability for all eligible years be considered and allowed.

Commissions Analysis

1.68 The Commission has taken note of the submission made by the Petitioner seeking consideration of incentive for achieving higher availability. In this regard, the Commission


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has also referred to Clauses 7.7(2) and 7.11 of the APSERC MYT Regulations, 2018, which are reproduced below for reference

“7.7 Norms of Operation.....

(2) Target availability for full recovery of annual transmission charges

The Normative Annual Transmission Availability Factor (NATAF) of the Transmission System shall be as follows:

(a) AC system: 98 %.

(b) HVDC bi-pole links & HVDC back to back stations: 95 %.

For incentive consideration:

(a) AC system: 98.5 %.

(b) HVDC bi-pole links & HVDC back to back stations: 96 %.

Provided that for new HVDC station NATAF shall be considered as 95% for first three years of operations for the purpose of incentive:

Provided that no incentive shall be payable above the availability of 99.75%:

Provided further that the computation of incentive/disincentive shall be undertaken during annual performance review and at the end of Control Period.”

“7.11 Transmission Charges:

(1) The fixed cost of the transmission system shall be computed on annual basis, in accordance with norms contained in these regulations, aggregated as appropriate, and recovered on monthly basis as transmission charge from the users, who shall share these charges in the manner specified in these Regulations.

(2) The transmission charge (inclusive of incentive) payable for a calendar month for a transmission system or part thereof shall be

$$AFC \times (NDM / NDY) \times (TAFM / NATAF)$$

Where, AFC= Annual fixed cost specified for the year, in Rupees

NATAF= Normative annual transmission availability factor, in per cent

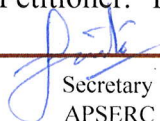
NDM = Number of days in the month

NDY = Number of days in the year

TAFM = Transmission system availability factor for the month, in Percent (%).

The procedure for calculation of TAFM is shown in Annexure II. The transmission licensee shall raise the bill for the transmission charge (inclusive of incentive) for a month based on its estimate of TAFM.”

1.69 The Commission, upon referring to the aforementioned provisions and the original petition TP-07 filed by the Petitioner, notes that no claim for incentive on account of higher availability was made by the Petitioner. The Petitioner's performance was, however,


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supported by a certificate issued by the State Load Despatch Centre (SLDC), Arunachal Pradesh, vide No. EE/SLDC/W-113/2019-20 dated 10th September 2024, wherein it was confirmed that the Petitioner's line had not undergone any shutdown since its commissioning and has been operating satisfactorily, meeting the power supply requirements of the area.

- 1.70 A mistake or oversight can be a valid ground for review, but only under specific circumstances. The mistake must be a "mistake or error apparent on the face of the record," or a reason analogous to those specified in Order 47 of the CPC. The term mistake or error apparent by its very connotation signifies as error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation of the facts. We may refer to the Judgement in **Lily Thomas V. Union of India, SCC p.251**, Para-56 "it follows therefore that power of review can be exercised for correction of mistake but not to substitute a view. Such power can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated like an appeal in disguise." The review petitioner is within their right to the claim for incentive on account of higher availability and if denied, the parties are left to bear the expenses of an appeal, which ultimately rendered miscarriage of justice.
- 1.71 In the present case, the Commission notes with concern that the availability certificate issued by the SLDC does not conform to the methodology prescribed in Annexure-II of the APSERC MYT Regulations, 2018, which mandates certification of system availability on a monthly basis with reference to the specified parameters outlined in the Regulations.
- 1.72 **The Commission has taken note of this discrepancy and accordingly directs the Petitioner to submit the system availability data on a monthly basis, in accordance with the prescribed methodology, duly certified by SLDC for availing incentive benefits in all future true up petitions.**
- 1.73 In the absence of detailed monthly availability data, but taking into account the certification issued by SLDC stating that the line has been operating successfully without any shutdown or disruption, the Commission has taken the availability of the line as indicated in the said certificate. However, for the purpose of incentive calculation, the Commission has restricted the availability to a maximum of 99.75%, in accordance with the Clause 7.7 of the APSERC (MYT) Regulations, 2018.
- 1.74 Taking into consideration the Commission's observations and approvals as outlined in the preceding paragraphs, the revised Aggregate Revenue Requirement (ARR) for the Petitioner, as approved by the Commission, is detailed below:

Table 2 Aggregate Revenue Requirement approved by the Commission (Rs.Cr)

S. No.	Particulars	FY20		FY21		FY22		FY23	
		PD	NA	PD	NA	PD	NA	PD	NA
1	O&M Expenses	0.47	0.47	0.86	0.86	0.89	0.89	1.06	1.06
2	Depreciation	1.76	1.76	3.04	3.04	3.07	3.07	3.07	3.07
3	Interest and Finance Charges	2.70	2.70	4.34	4.34	4.10	4.10	3.18	3.18
4	Interest on Working Capital and deposits from TSUs	0.12	0.12	0.28	0.28	0.28	0.28	0.31	0.31
5	Return on Equity Capital	1.78	1.78	3.07	3.07	3.09	3.09	3.10	3.10
6	Total Revenue Expenditure	6.83	6.83	11.59	11.59	11.43	11.43	10.72	10.72
7	Less: Non-Tariff Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8	Petition and License Fee	0.017	0.117	0.03	0.08	0.03	0.08	0.08	0.08
9	Net ARR	6.85	6.95	11.62	11.67	11.46	11.51	10.80	10.80

• PD: Approved in order dated 04.03.2025

• NA: Now Approved

1.75 The Commission referring to clause 7.7 and 7.11 of the APSCRC (MYT) Regulations 2018 has computed the incentive for the Petitioner as given below:

Table 3 Incentive approved by the Commission for FY 2019-20

S.No	Month	No of days	Approved ARR (Rs.Cr)	TAFM	NATAF	ARR inclusive of Incentive(Rs.Cr)
1	April	30	6.95	99.75	98.00	0.5799
2	May	31	6.95	99.75	98.00	0.5993
3	June	30	6.95	99.75	98.00	0.5799
4	July	31	6.95	99.75	98.00	0.5993
5	August	31	6.95	99.75	98.00	0.5993
6	September	30	6.95	99.75	98.00	0.5799
7	October	31	6.95	99.75	98.00	0.5993
8	November	30	6.95	99.75	98.00	0.5799
9	December	31	6.95	99.75	98.00	0.5993
10	January	31	6.95	99.75	98.00	0.5993
11	February	29	6.95	99.75	98.00	0.5606
12	March	31	6.95	99.75	98.00	0.5993
13	Total	366			Total	7.075
14	Approved ARR for FY 2019-20					6.95
15	Incentive					0.12
16	Incentive considering 7 months					0.072

Table 4 Incentive approved by the Commission for FY 2020-21

S.No	Month	No of days	Approved ARR (Rs.Cr)	TAFM	NATAF	ARR inclusive of Incentive(Rs.Cr)
1	April	30	11.67	99.75	98.00	0.9759
2	May	31	11.67	99.75	98.00	1.0057
3	June	30	11.67	99.75	98.00	0.9759

4	July	31	11.67	99.75	98.00	1.0085
5	August	31	11.67	99.75	98.00	1.0085
6	September	30	11.67	99.75	98.00	0.9759
7	October	31	11.67	99.75	98.00	1.0085
8	November	30	11.67	99.75	98.00	0.9759
9	December	31	11.67	99.75	98.00	1.0085
10	January	31	11.67	99.75	98.00	1.0085
11	February	28	11.67	99.75	98.00	0.9109
12	March	31	11.67	99.75	98.00	1.0085
13	Total	365			Total	11.87
14	Approved ARR for FY 2020-21					11.67
15	Incentive					0.205

Table 5 Incentive approved by the Commission for FY 2021-22

S.No	Month	No of days	Approved ARR (Rs.Cr)	TAFM	NATAF	ARR inclusive of Incentive(Rs.Cr)
1	April	30	11.51	99.75	98.00	0.9633
2	May	31	11.51	99.75	98.00	0.9954
3	June	30	11.51	99.75	98.00	0.9633
4	July	31	11.51	99.75	98.00	0.9954
5	August	31	11.51	99.75	98.00	0.9954
6	September	30	11.51	99.75	98.00	0.9633
7	October	31	11.51	99.75	98.00	0.9954
8	November	30	11.51	99.75	98.00	0.9633
9	December	31	11.51	99.75	98.00	0.9954
10	January	31	11.51	99.75	98.00	0.9954
11	February	28	11.51	99.75	98.00	0.8991
12	March	31	11.51	99.75	98.00	0.9633
13	Total	365			Total	11.68
14	Approved ARR for FY 2021-22					11.51
15	Incentive					0.173

Table 6 Incentive approved by the Commission for FY 2022-23

S.No	Month	No of days	Approved ARR (Rs.Cr)	TAFM	NATAF	ARR inclusive of Incentive(Rs.Cr)
1	April	30	10.80	99.75	98.00	0.9035
2	May	31	10.80	99.75	98.00	0.9336
3	June	30	10.80	99.75	98.00	0.9035
4	July	31	10.80	99.75	98.00	0.9336
5	August	31	10.80	99.75	98.00	0.9336
6	September	30	10.80	99.75	98.00	0.9035
7	October	31	10.80	99.75	98.00	0.9336
8	November	30	10.80	99.75	98.00	0.9035
9	December	31	10.80	99.75	98.00	0.9336
10	January	31	10.80	99.75	98.00	0.9336
11	February	28	10.80	99.75	98.00	0.8432
12	March	31	10.80	99.75	98.00	0.9336
13	Total	365			Total	10.99
14	Approved ARR for FY 2022-23					10.80
15	Incentive					0.192

1.76 The Net Revenue Requirement after consideration of incentive for the respective years i.e. FY 2019-20 to FY 2022-23 is given in the table below:

Table 7 Revised Net Revenue Requirement as approved by the Commission for FY 2019-20 to FY 2022-23

S.No	FY	Particulars	Amount(Rs.Cr)	Net ARR (Rs.Cr)
1	FY 2019-20	ARR	6.95	7.02
		Incentive	0.07	
2	FY 2020-21	ARR	11.67	11.87
		Incentive	0.21	
3	FY 2021-22	ARR	11.51	11.69
		Incentive	0.17	
4	FY 2022-23	ARR	10.80	10.99
		Incentive	0.19	

1.77 The Commission, after considering the parameters approved hereinabove and in accordance with Clause 2.6 of the APERC MYT Regulations, 2018, hereby approves the revised Net Revenue Gap/(Surplus) for the Petitioner as indicated below:

Table 8 Revenue Gap/(Surplus) as approved by the Commission for FY 2019-20 to FY 2022-23(Rs.Cr)

S.No	Particulars	FY20	FY21	FY22	FY23	FY24	FY25	FY26
1	ARR approved	7.02	11.87	11.69	10.99	-	-	-
2	Revenue Recovered	6.99	11.81	11.45	11.45	-	-	-
3	Gap/(Surplus)	0.03	0.06	0.24	(0.46)	0.00	0.00	0.00
4	Opening Gap/(Surplus)	0.00	0.03	0.10	0.37	(0.08)	(0.09)	(0.10)
5	Addition	0.03	0.06	0.24	(0.46)	0.00	0.00	0.00
6	Closing Gap/(Surplus)	0.03	0.10	0.34	(0.09)	(0.08)	(0.09)	(0.10)
7	Average Gap/(Surplus)	0.02	0.07	0.22	0.14	(0.08)	(0.09)	(0.10)
8	Rate of Interest (%)	11.80%	10.87%	11.01%	12.55%	13.67%	13.90%	13.90%
9	Carrying Cost	0.0012	0.0074	0.024	0.017	(0.010)	(0.012)	(0.008)
10	Total surplus including carrying cost	0.035	0.103	0.366	(0.075)	(0.085)	(0.097)	(0.105)

1.78 In accordance with Clause 3.8 of the APERC (MYT) Regulations, 2018, the Commission has determined a revised cumulative revenue surplus of ₹0.105 Crore for M/s Devi Energies Private Limited, based on the revised ARR approved for the 132 kV transmission system up to July 2025.

1.79 The Petitioner is hereby directed to refund or adjust the surplus amount within a period of six months from the date of issuance of this order.

1.80 In view of the above observations and approvals of the Commission, the Review Petition TP-05 of 2025 is hereby disposed of accordingly.

Date: 14th August 2025

Place: Itanagar

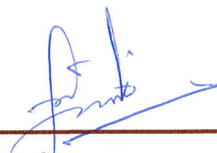
Sd/-

Shri Nich Rika
Member (Law)



Sd/-

Shri R.K Joshi
Chairperson


Secretary
APSERC

