

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Record of Proceedings

I.A.19/2009 in Petition No.66/2005

Subject: Determination of generation and inter-State transmission tariff for Damodar Valley Corporation in terms of the judgment dated 23.11.2007 of the Appellate Tribunal for Electricity in Appeal No. 273/2006.

Coram: Dr. Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri S.Jayaraman, Member
Shri V.S.Verma, Member

Date of Hearing: 16.6.2009

Petitioner: Damodar Valley Corporation, Kolkatta

Respondents: State of West Bengal, State of Jharkhand, WBSEDCL, JSEB and Ministry of Power, Govt. of India.

Parties present: Shri M.G.Ramachandran, Advocate, DVC
Shri T.K.Gupta, DVC
Shri D.K.Majumdar, DVC
Shri P.K.Choudhuri, DVC
Shri A.Biswas, DVC
Shri D.K.Aich, DVC
Shri P.Bhattacharya, DVC
Shri R.Goswami, DVC
Shri G.Bhunia, DVC
Shri G.Chaudhury, DVC
Shri Shyamal Sarkar, Advocate, BSAL
Shri Gautam Shroff, Advocate, BSAL
Shri K.P.Roy, BSAL
Shri R.R.Dubey, Advocate, JSEB

This interlocutory application has been filed by the petitioner, Damodar Valley Corporation, to consider certain additional information for re-determination of generation and inter-State transmission tariff for the period from 1.4.2006 to 31.3.2009 in Petition No. 66/2005, stated to be in terms of the judgment dated 23.11.2007 of the Appellate Tribunal for Electricity in Appeal No. 273/2006. The additional information submitted by the petitioner has been taken on record and will be considered to the extent found relevant.

2. Learned counsel for the petitioner submitted that in terms of the directions contained in the judgment of the Appellate Tribunal dated 23.11.2007 in Appeal No.273/2006, it had submitted the estimated revenue requirements for its generation, transmission and distribution networks, for the period 1.4.2006 to 31.3.2009 in Annexure-I, at Page 199 of the interlocutory application. Learned counsel for the petitioner also submitted that the estimated revenue requirements submitted included audited capital expenditure for the period 2004-08 and the provisional accounts for the year 2008-09, additional capital expenditure incurred for the period 2006-09, additional expenditure incurred towards employee cost on account of revision of pay, pension and gratuity contribution (as per actuarial valuation) pursuant to the implementation of the sixth pay commission, additional O&M expenses incurred (at actual) on old units and on account of compliances towards environmental laws. Learned counsel for the petitioner while justifying the expenditure incurred on old units, submitted that it could not afford to shut down the old units of the generating station for comprehensive refurbishment activities in the interest of its consumers in the command area and hence the old units whose useful life had already expired and have no comparable benchmark with other plants in the country were being operated and maintained. Learned counsel for the petitioner further submitted that in the absence of economic viability of major R&M of the old units, the O&M expenses to arrest capacity de-rating had considerably increased as a result of which it had become difficult for the petitioner to operate and maintain the units within the norms specified by the Commission in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 regulations"). Learned counsel for the petitioner accordingly prayed that the Commission may relax the norms for O&M expenses in respect of the old generating stations, while re-determining the tariff.

3. Learned counsel for Bhaskar Shrachi Alloys Ltd (in short "BSAL"), one of the consumer of the petitioner, submitted affidavit containing preliminary submissions to the interlocutory application and pointed out that the petitioner had widened the scope of determination of tariff in Petition No.66/2005 *vis-a-vis* the directions contained in the judgment of the Appellate Tribunal by including additional capital expenditure incurred for the years 2006-07 and 2007-08, additional O&M expenses and liabilities towards employees cost on account of revision of pay, pension and gratuity contributions and prayed that the Commission may re-determine the tariff only in accordance with the directions contained in the judgment of the Appellate Tribunal. Learned counsel referred to Annexure- E at Page 191 of the interlocutory application and submitted that the normative debt-equity ratio of 70:30 may be considered for Unit-3 of Bokaro Thermal Power Station, as it had been commissioned during the year 1993. Learned counsel also submitted that the Appellate Tribunal while confirming that the Commission had allowed O&M expenses after prudence check in order dated 3.10.2006, in Petition No.66/2005, had only allowed an increase of 4% per year towards O&M expenses, for the period 2006-09 and hence additional O&M expenses as claimed by the petitioner may not be considered. Summing up, learned counsel further submitted that the prayers

of the petitioner which were not allowed by the Appellate Tribunal shall be deemed to have been rejected and may not be considered by the Commission while re-determining the tariff for the generating stations of the petitioner.

4. In response, the learned counsel for the petitioner objected to the contentions raised by the counsel for BSAL and submitted that the directions contained in the judgment of the Appellate Tribunal on the various issues shall have to be read and interpreted *in toto* while re-determining tariff. Learned counsel for the petitioner referred to paras A-5 and A-6 of the said judgment and submitted that even though commercial operation of Unit-3 of Bokaro Thermal Power Station commenced during the year 1993, the said project had been approved by the Govt. of India prior to 1992 and hence the debt-equity ratio of 50:50 may be considered by the Commission. As regards additional expenditure incurred towards employee cost on account of revision of pay, pension liability etc, the learned counsel referred to Commission's order dated 7.4.2005 in Petition No.31/2001 and submitted that additional expenditure incurred towards employee cost be considered in the re-determination of tariff. Learned counsel for the petitioner also submitted that additional liabilities towards contribution and interest payments for sinking fund may be allowed as an item of expenditure to be recovered through tariff as mandated under section 40 of the DVC Act, 1948 and in terms of the directions contained in the judgment dated 23.11.2007. Learned counsel for the petitioner further submitted that IDC on loans deployed during the period prior to the date of commercial operation of the generating station may be considered by the Commission in the light of the judgment of the Appellate Tribunal dated 10.12.2008 in Appeal Nos.151 and 152/2007.

5. Learned counsel for BSAL submitted that the claims submitted by the petitioner may be considered in terms of the directions contained in the judgment of the Appellate Tribunal dated 23.11.2007 subject to the final outcome of the appeals against the said judgment, pending before the Supreme Court.

6. Learned counsel for the respondent, JSEB, adopted the submissions made by the learned counsel for BSAL.

7. The petitioner in compliance with the directions of the Commission during the hearing on 28.4.2009 had submitted additional information containing details of the additional capital expenditure incurred during the years 2004-05 and 2005-06 vide affidavit dated 11.6.2009. It is noticed that the petitioner had claimed capitalization of certain assets on account of replacement of old assets which had outlived their useful life and had become unserviceable. However, the details of corresponding de-capitalisation of the old assets for the year 2004-05 had not been submitted. As capitalization of assets under replacement can only be allowed after de-capitalisation of

the old assets under replacement for the purpose of tariff, the petitioner was directed to submit the following information, in respect of the assets under replacement category:

- (a) Gross value of the old asset (original);
- (b) Year in which the asset was put to use; and
- (c) Depreciation recovered in tariff during the service of the old asset.

8. The information may be submitted by the petitioner by 5.7.2009.

9. Subject to the above, order in the petition was reserved.

Sd/-
K.S. Dhingra
Chief (Legal)