

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 272/2010 with Interlocutory Application No. 20/2011

**Coram: 1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri M.Deena Dayalan, Member**

Date of Hearing: 15.9.2011

Date of order: 30.9.2011

In the matter of

Determination of deferred elements tariff for the period from 1.4.2006 to 31.3.2009.

And in the matter of

Damodar Valley Corporation, Kolkata
Vs

.....**Petitioner**

1. Department of Energy, Government of West Bengal, Kolkata
2. Department of Energy, Government of Jharkhand, Ranchi
3. West Bengal State Electricity Distribution Company Ltd, Kolkata
4. Jharkhand State Electricity Board, Ranchi
5. Union of India, Ministry of Power, New Delhi

..... **Respondents**

6. Bhaskhar Shrachi Alloys Ltd, Kolkata
7. Maithon Alloys Ltd, Kolkata
8. Anjaney Ferro Alloys Ltd, Kolkata
9. Shyam Ferro Alloys Ltd, Kolkata,
10. Cosmic Ferro Alloys Ltd, Kolkata
11. Lalwani Ferro Alloys Ltd, Kolkata
12. Howrah Gases Ltd, Kolkata

.....**Interveners/Applicants in I.A.No. 20/2011**

The following were present

1. Shri M.G.Ramachandran, Advocate, DVC
2. Shri Anand K.Ganesan, Advocate, DVC
3. Shri D.K.Aich, DVC
4. Shri A. Biswas, DVC
5. Shri Amit Kapur, Advocate, BSAL
6. Shri Aporva Misra, Advocate, BSAL
7. Ms. Sugandha Somani, Advocate, BSAL
8. Shri Rajeev Ranjan, Advocate, SAIL-BSL
9. Shri Rajiv S. Dvivedi, Advocate, SAIL-BSL
10. Shri Ajay Kumar, SAIL-BSL
11. Shri B.N.P.Singh, SAIL-BSL

INTERIM ORDER

This petition has been filed by Damodar Valley Corporation (DVC), the petitioner herein, with specific prayers as under:

- A. *Decide the present application of the petitioner without prejudice to the rights and contentions of the parties pending before the Hon'ble Supreme Court.*
- B. *(i) Determine the tariff on the elements/ aspects mentioned in para 1 hereinabove, namely, the capitalization/ additional capitalization for the period 1.4.2004 to 31.3.2009 and its impact on the tariff for the period 1.4.2006 to 31.3.2009;*
 - (ii) Impact of the revision in pay, wages, allowances etc.;*
 - (iii) Consequent impact on the pension and gratuity contribution as a result of pay revision;*
 - (iv) Actual O&M expenditure incurred and actual physical operational norms with relaxation of norms in terms of CERC Regulation (13 of 2004-09); and*
 - (v) Other consequential effect.*
- C. *Direct the adjustment of contribution to pension and gratuity fund in the tariff already charged by the petitioner during the period 1.4.2006 to 31.3.2009 to the extent applicable and defer such contribution to be allowed during the period 2009-14 only to the extent not covered by the tariff levied by the Petitioner as per the tariff prevalent since September, 2000.*
- D. *Pass such other order(s) as the Hon'ble Commission may deem fit in the facts of the present case.*

2. The petitioner, in its petition has submitted that the Commission vide its order dated 6.8.2009 in a *denovo* proceedings held in terms of the judgment dated 23.11.2007 of the Appellate Tribunal for Electricity (The Tribunal) in Appeal No. 273/2006 and other connected matters, had deferred the consideration of certain elements of tariff as stated in para 1 above, for the period 2006-09, which was also upheld by the Tribunal on an appeal filed by the petitioner, by judgment dated 10.5.2010 in Appeal No.146/2009. The petitioner has also submitted that the Commission has not rejected these elements of tariff but had only deferred its consideration to a future date and hence the additional expenditure on these elements

to which the petitioner is legitimately entitled should be allowed in tariff. Accordingly, the petitioner has prayed that the Commission should consider these elements of tariff and revise the tariff for the period from 1.4.2006 to 31.3.2009.

Interlocutory Application (I.A.No.20/2011)

3. This Interlocutory application has been jointly filed by the applicants who are HT consumers of DVC, seeking permission of the Commission to implead and/or to intervene in the petition, on the ground that they are entitled to be heard before any tariff order is passed by the Commission in respect of DVC. During the hearing, the learned counsel for the applicants submitted that the Electricity Act, 2003 (the Act) read with Regulations 24, 25 and 49 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, require that the beneficiaries/persons using the transmission system should be given opportunity of hearing in the tariff proceeding. He also submitted that the petition filed by DVC without impleading the applicants, who are the HT consumers of DVC, is in violation of the provisions of the Section 79(3) of the Act. The learned counsel further submitted that out of the 120 HT consumers of DVC, some of the applicants herein were parties in the proceedings for determination of tariff of DVC for 2004-09 before the Commission, the Tribunal and the Hon'ble Supreme Court. Hence, these applicants are necessary parties, whose presence would enable the Commission to effectively and completely adjudicate the issues involved in the petition. The learned counsel prayed that the interlocutory application be allowed and DVC may be directed to serve copies of the petition to the applicants to enable them to submit their replies in the matter.

4. In response, the learned counsel for the petitioner objected to the prayer for impleadment of the applicants and submitted that the applicants are at liberty to participate in the proceedings by filing objections/comments after downloading copies of the petitions posted in the website of the petitioner. He also submitted that filing of

separate applications by HT consumers for impleadment would delay the hearing and disposal of the matter. The learned counsel further submitted that the issue of impleadment of HT consumers had been settled by the Hon'ble Supreme Court in C.A No. 7722/2009 [against Appeal No. 146/2009 (DVC-v- CERC & ors)] wherein, it was observed by the Hon'ble Supreme Court that instead of applications for impleadment, the HT consumers could file objections in the proceedings before the Tribunal. He further submitted that the observations of the Hon'ble Supreme Court which is in terms of the Clauses (6) and (7) of Regulation 3 of the Central Electricity Regulatory Commission (Procedure of making of application for determination of tariff, publication of application and other related matters) Regulations, 2004 should be adopted in the instant case also. The learned counsel added that the Commission is within its powers to regulate the proceedings before it and finally dispose of the petition.

5. In response to the above, the learned counsel for the applicants reiterated that the HT consumers are all affected parties and hence have right to participate in the proceedings. He further submitted that the petitioner should accordingly be directed to serve copies of the petition on the applicants.

6. Heard the parties. We now set out the provisions of the various Regulations notified by the Commission with regard to initiation of proceedings, the procedure for making application, filing of reply, objections etc.

7. Regulations 24 and 25 and Regulations 49 to 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 provides as under:

Initiation of Proceedings

24. The Commission may initiate any Proceedings suo motu or on a Petition filed by any affected or interested person.

25. The notice of the initiation of the proceedings may be issued by the Commission, and the Commission may give such orders and directions as may be deemed necessary, for service of notices to the affected parties, the filing of reply and rejoinder in opposition or in support of the Petition in such form as it may direct. The

Commission may, if it considers appropriate, issue orders for publication of the petition inviting comments on the issues involved in the proceedings in such form as the Commission may direct.

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Filing of reply, opposition, objections, etc.

49. Each person to whom the notice of inquiry or the Petition is issued (hereinafter called the 'respondent') who intends to oppose or support the Petition shall file the reply and the documents relied upon within such period with seven copies. In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or the Petition and may also state such additional facts as he considers necessary for just decision of the case. The reply shall be signed and verified and supported by affidavit in the same manner as in the case of the Petition.

50. The respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the petitioner or his authorised representative and file proof of such service with the office of the Commission.

51. Where the respondent states additional facts as may be necessary for the just decision of the case, the Commission may allow the petitioner to file a rejoinder to the reply filed by the respondents. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.

52. (1) Every person who intends to file objection or comments in regard to a matter pending before the Commission, pursuant to the publication made for the purpose (other than the persons to whom notices, processes, etc. have been issued calling for reply) shall deliver to an Officer designated by the Commission for the purpose the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.

(2) The Commission may permit such person or persons including associations, forums and bodies corporate as it may consider appropriate to participate in the proceedings before the Commission if, on the report received from the Officer, the Commission considers that the participation of such person or persons will facilitate the proceedings and the decision in the matter.

(3) Unless permitted by the Commission, the person filing objection or comments shall not necessarily be entitled to participate in the proceedings to make oral submissions. However, the Commission shall be entitled to take into account the objections and comments filed after giving such opportunity to the parties to the proceedings as the Commission considers appropriate to deal with the objections or comments.

8. Regulation 3 of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of application and other related matters) Regulations, 2004, provides as under:

Procedure for making application

(1) The application shall be made to the Commission in the form appended as Appendix I to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and shall be accompanied by such fee as may be specified by the Commission from time to time.

- (2) *Before making the application, the applicant shall serve a copy of the application on each of the beneficiary.*
- (3) *The applicant shall post complete application on its own website or any other authorised website, before making the application to the Commission.*
- (4) *While making the application to the Commission, the applicant shall indicate whether copy of the complete application has been served on each of the beneficiary and whether the application has been posted on its own website or any other authorised website, with address of the website whereon the application has been posted.*
- (5) *The application made shall be supported by affidavit of the person acquainted with the facts stated in the application. The application shall be kept on the website at least for 30 days from the date of publication of the notice of application in accordance with clause (6) of this regulation.*
- (6) *The applicant shall, within 7 days after making the application, publish a notice of his application in at least two daily newspapers, one in English language and one in vernacular language, having circulation in each of the State/Union Territory where the beneficiaries are situate in the same language as of the daily newspaper in which the notice of the application is published, as per the specimen given in the schedule to these regulations.*
- (6) *The suggestions and objections, if any, to the proposal for determination of tariff, may be filed before the Secretary, Central Electricity Regulatory Commission, 7th Floor, Core-3, Scope Complex, Lodi Road, New Delhi-110003 (or other address where the office of the Commission is situate) by any person, including the beneficiaries within 30 days of publication of the notice with a copy to the applicant.*
- (7) *The applicant shall within 15 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file before the Commission relevant copies of the newspapers in which the notice has been published.*
- (8) *The applicant may file his comments on affidavit on the suggestions and objections, if any, received in response to the public notice within 45 days of its publication in the newspapers, with an advance copy to the person who has filed the suggestions and objections on the proposals made in the application.*

9. Similarly, first proviso to Clause 4(1)(b) of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of application and other related matters) Regulations, 2004, provides as under:

“Provided that the Commission may in its discretion, afford an opportunity of hearing to the applicant, the beneficiary, or any person who has filed suggestions or objections, or any one or more of them before issuing the tariff order”

10. The prayer of the applicants for impleadment in the matter is examined against the background of the above quoted statutory provisions.

11. The petitioner has nearly 120 HT consumers, out of which 7 HT consumers have approached the Commission with this interlocutory application for impleadment. Filing of applications by all 120 HT consumers for impleadment in the matter would inevitably delay the hearing and disposal of the petition for determination of tariff of the petitioner for the period 2006-09. Since, the admitted capital cost of the generating station as on 31.3.2009 to be determined in the present petition would also form the basis of determination of tariff for the period 2009-14 in Petition No. 240/2009 filed by the petitioner, we consider it necessary to expedite the disposal of the present petition after considering the submissions of the parties.

12. Therefore, keeping in view the provisions of the above said regulations and the nature of the issues involved, we feel that instead of the HT consumers filing applications for impleadment in the matter, no prejudice would be caused if these HT consumers are allowed to participate in the proceedings before us by filing their objections/comments, after obtaining copies of the complete application with annexure, from the petitioner.

13. Accordingly, we direct the petitioner to post the copy of its petition along with its annexures in its web-site to enable the HT consumers to download copies of the same and file its comments/objections. The HT consumers willing to file objections, if any, in the matter shall also have the option to obtain copies of the petition to be made available by the petitioner in compact disc (CD) at its office in Kolkata and Ranchi, up to 17.10.2011. Thereafter, the respondents/HT consumers are directed to file their replies/objections on or before 31.10.2011, with copies to the petitioner, who shall file its rejoinder, if any, by 10.11.2011.

14. Interlocutory Application No. 20/2011 is disposed of in terms of the above.
15. The petitioner is directed to furnish additional information, on affidavit, on the following:
- (a) Details of Ash Handling Systems of Bokaro TPS, Durgapur TPS, Chandrapura TPS and Mejia TPS (Units I to III).
 - (b) Justification for the necessity of ash evacuation from ash pond with reference to the present system of ash handling system available to the above generating stations.

Additional capital expenditure for 2004-09 in respect of transmission and distribution assets:

- (c) Complete information as sought for in terms of letters of the Commission dated 11.3.2011 and 28.3.2011 as regards additional capital expenditure for Transmission and distribution assets for the period 2004-05 to 2008-09 should be submitted. For example, as per paragraph 9 of the submission dated 8.4.2011, further details/documents which were required has not been submitted. The required details including the item-wise detailed break-up of work and the justification for corresponding expenditure etc., have also not been submitted.
- (d) The details of work along with the justification for the works (clearly indicating what works were done and why the subject works were required) undertaken under additional capital expenditure for transmission and distribution, for each item, separately, as mentioned in the petition for the period 2004-05 to 2008-09.
- (e) Justification for the amount of expenditure for each item, separately, commensurate with the details of work mentioned against the expenditure along with the necessary explanation/calculation in order to justify the expenditure corresponding to specific works mentioned against the expenditure. The relevant documents in support of justification of expenditure i.e copies of Letter of Award, Purchase orders etc., need to be submitted.
- (f) There are number of items i.e. transmission lines, sub-stations, transformers, bays etc. which appear to be new asset. Complete information as to whether the work mentioned against each item is in the nature of additional capitalisation in existing assets or has been commissioned as new asset, is to be submitted.
- (g) In terms of the submission dated 8.4.2011, new assets are requested to be considered as additional capital expenditure. Detailed reason and justification, indicating the specific provision under the CERC (Terms and Conditions of Tariff) Regulations, 2004, for considering the new works i.e transmission lines, sub-stations, bays, transformers etc. as additional capital expenditure in existing assets.
- (h) Details of O&M along with details of ckt-km, number of bays and applicable normative parameters.

16. The above information shall be submitted on or before 15.10.2011 and shall also be posted in the web-site of the petitioner. The parties shall complete their pleadings within the date as specified in paragraph 13 above and request for extension of time shall not be entertained.

17. Matter shall be listed for hearing for final disposal on 17.11.2011.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[S.JAYARAMAN]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON