

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 279/2010

Subject: Petition for determination of tariff for Mejia Extension, Unit-IV during 1.4.2006 to 31.3.2009

Date of Hearing: 3.11.2011

Coram: Dr. Pramod Deo, Chairperson
Shri M.Deena Dayalan, Member

Petitioner: Damodar Valley Corporation, Kolkata

Respondents: Department of Energy, Government of West Bengal
Department of Energy, Government of Jharkhand
West Bengal State Electricity Distribution Co. Ltd.
Jharkhand State Electricity Board, Ranchi
Ministry of Power, Government of India.

Parties present: Shri M.G.Ramachandran, Advocate, DVC
Ms. Swapna Seshadri, Advocate, DVC
Shri D.K.Aich, DVC
Shri A. Biswas, DVC
Shri R.B.Sharma, Advocate, JSEB
Shri Amit Kapur, Advocate, BSAL
Ms. Poonam Verma, Advocate, BSAL
Shri Krishan Raana, Advocate, BSAL
Shri Gautam Shroff, Advocate, BSAL
Shri Shyamal Sarkar, Advocate, BSAL
Shri R. Gupta, Advocate, BSAL
Shri Apoorva Mishra, Advocate, BSAL
Shri M.Prahladha, BSAL
Shri Amarendra Sharan, Sr. Advocate, SAIL-BSL
Shri Rajiv Shankar Dwivedi, Advocate, SAIL-BSL
Shri S.F.Kujur, SAIL-BSL
Shri Ajay Kumar, SAIL-BSAL
Shri B.N. P.Singh, SAIL-BSL
Shri Paramanand Sharma, SAIL

RECORD OF PROCEEDINGS

During the hearing, the learned counsel for the petitioner submitted as under:

- (a) This petition for determination of tariff has been filed by the petitioner in terms of the 2004 Tariff Regulations notified by the Commission, the relevant provisions of the DVC Act, 1948 and taking into account the judgment of the Appellate Tribunal for Electricity (the Tribunal). The said

determination would however be subject to the final outcome of the decision of the Civil Appeals pending before the Hon'ble Supreme Court.

- (b) The additional information/submissions sought for by the Commission have all been complied with by the petitioner and copies served on the respondents. Rejoinder to the replies filed by the HT consumers, namely BSAL and SAIL-BSL has also been filed.
- (c) The principal objection raised by SAIL-BSL pertains to the delay in filing the application and not on merits. BSAL in its replies have raised issues pertaining to the delay in the completion of the project, the capital cost, IDC, O&M expenses, corporate & office expenditure claimed, contribution to pension and gratuity. The learned counsel clarified the issues as under:
- (i) There is a delay of 7 weeks in the completion of the project. The projected period for completion was 33 months and the project was completed by 34 months and 18 days, as stated in the original petition. The cause of delay was not attributable to the EPC contractor, but due to certain external factors relating to non-EPC contract as stated clearly in Form-5B of the amended petition. Hence, deduction of liquidated damages of M/s BHEL does not arise.
- (ii) The actual capital cost incurred for the project was ₹700 crore (without IDC) in comparison to the approved cost of ₹723 crore (without IDC) and there has been cost saving, instead of cost overrun.
- (iii) The debt-equity ratio as per regulations of the Commission and the Commission's order dated 6.8.2009 in Petition No.66/2005 has been claimed and the submissions of the consumers that no interest on loan be allowed since capital cost has been financed through equity contributions / internal resources, be rejected.
- (iv) In terms of the judgment of the Tribunal dated 10.12.2008 in Appeal No. 151 &152/2007, IDC needs to be considered in cases of notional loan also. The Commission may consider the same.
- (v) No relaxation has been sought for in respect of O&M expenses claimed in the petition. The Commission may consider the same taking into account the pay revision of the employees (for which separate proceedings have been initiated by the Commission) and the subsidiary activities of the petitioner corporation (as observed in the judgment of Tribunal dated 23.11.2007 and considered by Commission's order dated 6.8.2009.
- (vi) Corporate office expenses for the petitioner has been allowed by the Tribunal in its judgment dated 23.11.2007 in Appeal No.273/2006 and the same has been further confirmed by the Tribunal in its judgment, relating to an appeal filed by NTPC on this count.

(vii) The submissions of the consumers that actuarial valuation has not been submitted for contributions to pension and gratuity is not tenable, since the said information has been submitted through certificates providing the details of apportionment to pension and gratuity.

(viii) The Commission may determine the tariff of the generating station as prayed for in the petition.

2. The learned Sr. Counsel for the respondent, SAIL-BSL submitted mainly as under:

(a) The Commission shall be guided by the provisions contained in Section Clauses (c) to (e) of Section 61 of the Electricity Act, 2003 in the determination of tariff. Also, Regulation 87 (1) (4) of the CERC (Conduct of Business) Regulations lay down the procedure for consideration of the petition for determination of tariff.

(b) Pointing to various pages of the petition, the learned counsel submitted that petitioner has not filed the instant petition in line with the terms of the above said provisions and is not in conformity with the 2009 Tariff Regulations notified by the Commission, since no proper justification and/or details have been provided. Prudence check by the Commission was not possible without submission of adequate information/asset-wise break-up details, by the petitioner.

(c) There is difference in the date of commercial operation (COD) of the generating station as submitted by the petitioner. Also, no proof has been submitted as to whether Regulation 14(x) of the 2004 Tariff Regulations, has been complied with by the petitioner. No notice was given to the beneficiaries and no averment has been made in this connection by the petitioner. It could have been possible to verify the COD of the generating station if Form-5B of the petition was duly filled up and submitted by the petitioner. The learned counsel for the petitioner clarified that no notice was required to be given to the consumers. He further clarified that Form-5B takes colour from Form-9 of the petition and the particulars submitted may be considered by the Commission.

(d) There was no provision for pooling of power and no specific reasons have been given by the petitioner with regard to deferred liabilities.

(e) If loan has been financed through internal resources as stated by the petitioner, then no interest on loan can be recovered in tariff by the petitioner, as a deemed loan component.

(f) There has been considerable delay in filing the instant application and the petitioner cannot take advantage of its own delay. The application filed by the petitioner is not proper and the Commission may direct the petitioner to file proper tariff application in terms of the 2004 Tariff Regulations.

3. The learned counsel for the respondent, BSAL submitted the photocopy of the slides of power point presentation, containing the history of filings, the objections, the proposed capital cost and allowable cost and the estimated impact of tariff on account of such changes and requested to take the said document on record. He further submitted as under:

- (a) Against the approved timeline of 30 months, the petitioner has taken 34 months and 18 days for construction of the project and the financial implication consequent upon such delay should not be loaded on the consumers. No justification has been given for the delay and the same if allowed would tantamount to rewarding inefficiency.
- (b) The reasons for variation submitted by the petitioner in page-15 of the affidavit filed during December, 2010 do not substantiate the claims made by the petitioner. Form-5B of the petition does not contain details and the petitioner may be directed to file the information as required under the 2004 Tariff regulations with proper justification, so that the Commission could analyze and examine the element of cost involved.
- (c) No relaxation of the norms of operation has been sought for by the petitioner. The format enclosed in this regard is at variance with the provisions of the 2004 regulations.
- (d) The petitioner may provide the arrear pay revision impact regarding the installment of 40% payable in 2008-09. The balance 60% payable during 2009-10 is beyond the purview of the present petition. Also, the petitioner should provide complete data for justification of the claim for 11.5% of human resources cost, under the O&M expenses.
- (e) The interest income earned at the corporate level has not been accounted for by the petitioner. While claiming the provision for pension & gratuity contribution fund, the petitioner has not deducted the interest earned on such investment of funds.
- (f) The annual capacity charges based on the above objections would be ₹598.23 crore and the excess claim of ₹78.91 crore by the petitioner, may be disallowed. Referring to the various pages of its objections, the learned counsel prayed that the petitioner may be directed to provide complete data for prudence check by the Commission.

4. Due to paucity of time, the learned counsel for the respondent, JSEB could not make his submissions.

5. The Commission directed that the document containing objections of the consumer, BSAL be taken on record. The petitioner was directed to file reply to the same, if not filed earlier, with copy to the respondents/consumers, on or before 30.11.2011. The respondents/consumers are directed to file their response by 14.12.2011, with copy to the petitioner. Additional documents, if

any, may be filed with copy to the other party and the pleadings are directed to be completed by the parties by 21.12.2011.

6. Matter shall be listed for final hearing on 5.1.2012.

Sd/-
(T.Rout)
Joint Chief (Law)