

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.268/GT/2012

Determination of Tariff for BTPS for the Tariff period 2009-14.

Petition No.269/GT/2012

Determination of Tariff for MTPS-1 to 3 for the Tariff period 2009-14.

Petition No.270/GT/2012

Determination of Tariff for T & D for the Tariff period 2009-14.

Petition No.271/GT/2012

Determination of Tariff for MHS for the Tariff period 2009-14.

Petition No.272/GT/2012

Determination of Tariff for PHS for the Tariff period 2009-14.

Petition No.273/GT/2012

Determination of Tariff for THS for the Tariff period 2009-14.

Petition No.274/GT/2012

Determination of Tariff for MTPS-4 for the Tariff period 2009-14.

Petition No.275/GT/2012

Determination of Tariff for CTPS for the Tariff period 2009-14.

Petition No.276/GT/2012

Determination of Tariff for DTPS for the Tariff period 2009-14.

Date of hearing: 21.3.2013

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

Petitioner: Damodar Valley Corporation, Kolkatta

Respondents: WBSEDCL, JSEB & ors

Parties present: Shri M. G. Ramachandran, Advocate, DVC
Shri P.Jena, DVC

Shri D.K.Aich, DVC
Shri A. Biswas, DVC
Shri R.B.Sharma, JSEB
Shri Amit Kapur, Advocate, BSAL
Shri G.Shroff, Advocate, BSAL
Shri R.Gupta, Advocate, BSAL
Shri M.Prahladka, BSAL
Shri Rajiv Shankar Dvivedi, Advocate, SAIL-BSL
Ms. Tulika Mukherji, Advocate, SAIL-BSL
Ms. Divya Pandey, Advocate
Shri Hiren Dasan, Advocate, BDG Power & Metals Ltd
Shri Devashish Bhamke, BFCL

RECORD OF PROCEEDINGS

During the hearing, the learned counsel for the petitioner circulated a consolidated written note of submission in the above matters and submitted the following for consideration of the Commission:

- (a) As the petition filed by DVC for approval of tariff including additional capitalization for the period 2006-09 in Petition No. 272/2010 is pending before the Commission for orders. The opening capital cost as on 1.4.2009 considered by DVC in the present petitions, would be subject to the closing capital cost as approved by the Commission as on 31.3.2009 in Petition No. 272/2010, which will form the opening capital cost as on 1.4.2009 for the purpose of determination of tariff for the period 2009-14.
- (b) All additional information and documents as required by the Commission has been filed by DVC and the directions issued to DVC by the Commission during the proceedings held on 5.2.2013 have been complied with. Rejoinder to the objections filed by DVC may be considered in respect of all the petitions.
- (c) Debt-equity ratio as followed by the Commission in its order dated 6.8.2009 in Petition No. 66/2005 in terms of the judgment of the Tribunal dated 23.11.2007 has been considered by DVC.
- (d) The depreciation rate as applicable to DVC in terms of the 2009 Tariff Regulations as specified by the Commission has been adopted. This is subject to the final outcome of the civil appeals pending before the Hon'ble Supreme Court.
- (e) As regards additional capitalization it was mainly submitted as under:
 - (i) The claim for projected additional capital expenditure for 2009-14 was made in terms of the 2009 Tariff Regulations. However, the details of actual additional capitalization incurred during 2009-10 and 2010-11 as per books of account duly audited by C&AG has been submitted as directed by the Commission. The projected capital expenditure claimed is subject to truing up as per the 2009 Tariff Regulations.

- (ii) DVC has incurred capital expenditure more than what had been initially projected in the petition e.g strengthening of transmission system during 2009-11.
 - (iii) The capital expenditure proposed by DVC is necessary and essential for the generating and transmission activities of DVC.
- (f) The computations of Return on Equity, Interest on loan, Depreciation on the common assets has also been apportioned to the generating stations and transmission system of DVC as per methodology adopted by the Commission in order dated 6.8.2009.
- (g) Interest on Capital contributed by the participated governments has been claimed as per provisions of Section 38 of the DVC Act and as interpreted and allowed by the Tribunal in its judgment dated 23.11.2007. The contention that Interest on capital should not be allowed as per interpretation of the judgment of Tribunal dated 10.5.2010 is not correct. (*Relevant paras of the judgment dated 23.11.2007 and 10.5.2010 was referred to*). The principle of law laid down earlier having not been overruled by Tribunal, the Commission may consider the same.
- (h) Contribution and interest payment for sinking fund is to be allowed in terms of Section 40 of the DVC Act read with the judgment dated 23.11.2007 of the Tribunal. The provisions of sinking fund has been provided under Regulation 43(2)(iv) of the 2009 Tariff Regulations.
- (i) The additional O&M claims on account of ash evacuation, Mega Insurance, CISF security, Amortization etc has been claimed with full justification by DVC and the same are to be allowed since these expenditures were not part of the base amount included in the O&M cost while determining the normative O&M expense for the period 2009-14.
- (j) Employee cost, pension and gratuity fund contribution and contribution to subsidiary fund have all been claimed in accordance with the judgment of the Tribunal dated 23.11.2007. Pension and Gratuity fund has been entrusted to an independent trust and the interest thereon is taken care by the trust. Pension and Gratuity fund contribution has been claimed as per actuarial valuation. The claim for additional pension contribution is not covered under the normative O&M expense and actuarial valuation as on 31.3.2009 has been submitted.
- (k) Non achievement of operational norms in some of the generating stations of DVC is on account of factors like not attributable to DVC and justification for the relaxation of norms has been submitted.
- (l) The fuel cost is subject to adjustment as per fuel surcharge formula notified by the Commission.

- (m) Levies, duties payment of fees are recovered as per the regulations of the Commission. DVC is also engaged in other social activities and the revenues earned from various sources are used for these social welfare activities.
- (n) The question of violation of natural justice and lack of transparency does not arise since all information submitted from time to time have been placed in the web site of the Commission and made available to any party desirous of getting any information. Moreover, as per directions copy of CDs/additional submissions have been given to the parties.
- (o) Mercados' report submitted by the objectors on affidavit shall be rejected as it has been given with a disclaimer taking no responsibility. Thus, there is no merit in the submissions of the objectors.
- (p) Time may be granted to submit the particulars regarding de-capitalization made from 2009 onwards
- (q) Further submissions, if any, would be made after submissions are made by respondents/ HT consumers.

2. The learned counsel for the objector, Maithon Alloys Ltd clarified that the question of natural justice no longer survived. The following submissions were made.

- (a) The Mercados' report which contains calculations/computations with regard to the claim of the petitioner for tariff has been filed on affidavit by the objectors and the Commission may consider the same as deemed fit.
- (b) In respect of issues for which clarifications have been furnished as above by the petitioner e.g capital cost, de-capitalization etc., the objectors do not have any grievance and the Commission may consider the same accordingly.
- (c) Issues which have not been dealt with by the petitioner, including legal issues, are placed for consideration of the Commission as under:
 - (i) DVC has claimed ₹369 crore towards expenditure relating to fly ash. The balance sheet of DVC for the year 2009-10 show that DVC has entered into agreements with M/s Lafarge cement and M/s Ultratech cement for manufacturing cement from fly ash sold by DVC and is selling to other users also. DVC is earning substantial amount from fly ash and the claim of DVC should not be allowed. On the contrary, DVC should be directed to disclose the amounts realized and the said amount should be reduced from the ARR. As the same has not been disclosed by the petitioner, the Commission may consider the issue on prudence check. The learned counsel for the petitioner objected to the above and submitted that fly ash is given free of cost and the same has been indicated by the petitioner.

On a query by the Commission as to whether any proof could be submitted showing that DVC selling fly ash, the learned counsel for the objector clarified

that it relied upon the CEA report and the balance sheet of DVC for the 2009-10 and the same may be considered by the Commission. Moreover, the expenses towards slurry pond to deposit fly ash or to construct ponds are contrary to the Government of India notification and DVC should be directed to take steps to dispose of the same through a tendering process.

(ii) The submission of DVC that it is entitled to interest on capital contributed by participating governments in terms of Section 38 of the DVC Act is contrary to the findings of the Tribunal in its judgments dated 23.11.2007 and 10.5.2010. The submission of DVC that depreciation cannot be taken towards adjustment of normative loan is contrary to Regulation 16 and the judgment of the Tribunal. Accordingly, the claim of the petitioner is barred by the principle of *res judicata* and /or *estoppel*. (*Paras 68 to 71 and 72 to 74 of the respective judgments were referred to*). The Commission had rightly rejected the claim of the petitioner in its earlier orders. Reliance was also placed on the judgments of SC referred to in 2005 (1) SCC 784 and 2005 (7) SCC 190.

(iii) There is no claim of DVC for additional O&M expenses towards ash evacuation, amortization, subsidiary activities, Mega insurance, pay revision, CISF, pension liability, etc., in respect of the generating units which are meant for exports. These expenses have been claimed in respect of the generating units of DVC which serve the command area, thereby inflating the cost. (*Reference was made to Durgapur Steel TPS (Unit-I & II) station which does not serve the command area*). The Commission may direct DVC to claim the same in respect of all the generating units of DVC. Similarly, the common expenses (director office, central office, IT etc) claimed should be apportioned to all the generating units of DVC in accordance with the installed capacity. Even otherwise, DVC is also not entitled to additional O&M expenses beyond the normative O&M expenses allowed under the 2009 Tariff Regulations. This issue has been settled in the earlier orders of the Commission determining tariff of DVC and hence barred by the principle of *res judicata* and /or *estoppel*.

(iv) The claim of DVC towards Sinking fund, one as depreciation and other as sinking fund, has been challenged by the objectors before the Hon'ble SC and the claim of DVC is subject to the final outcome in the said Civil appeals.

(v) The operational norms like, GSHR, NAPAF etc, including PLF shall be considered by the Commission on actual basis, while determining the tariff of the generating station for 2009-14.

(vi) The submissions made above shall be adopted by the Commission in respect of the other objectors M/s Jai Balaji Industries Ltd and M/s Bhaskar Shrachi Alloys Ltd. Reply filed by the objectors shall accordingly be considered by the Commission.

3. Due to paucity of time further hearing in the matter could not be continued. The respondent, JSEB shall commence its submissions during the next date of hearing.

4. The learned senior counsel for the objector, M/s Impex Ferro Alloys prayed that it may be granted time to file its reply before the next date of hearing. The Commission accepted the same and directed the objector to file its reply with copy to the petitioner, before the next date of hearing.

5. The petitions shall be listed for hearing on **2.4.2013**.

By order of the Commission
Sd/-
(T Rout)
Joint Chief (Law)