

**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: 2.4.2013 (2.30 p.m)

Coram: 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
Ms. Swagatika Sahoo, Advocate, DVC
Shri P.Jena, DVC
Shri D.K.Aich, DVC
Shri P.Bhattacharya, DVC
Shri A. Biswas, DVC
Shri R.B.Sharma, JSEB
Ms. Sugandha Somani, Advocate, Jai Balaji Industries Ltd
Shri Rajiv Shankar Dvivedi, Advocate, SAIL-BSL
Ms. Tulika Mukherji, Advocate, SAIL-BSL
Shri Sunil Kumar, Sr. Advocate, Impex Ferro Alloys Ltd
Shri Sagar Bandhopadhyay, Advocate
Shri Tapas Saha, Advocate
Shri Hiren Dasan, Advocate
Shri M.Prahladka, BSAL

RECORD OF PROCEEDINGS

At the outset, the Commission directed the respondents/objectors to limit their submissions on issues which had not been dwelt upon/raised by the other parties, in order to avoid repetition. The learned counsel for the respondent, JSEB referring to the relevant paragraphs of the reply made his submissions as under:

Petition No. 268/2012

- (a) The petitioner has multifarious functions like flood control, irrigation, water supply etc besides generation, transmission and distribution of power. The contention of the petitioner that the revenues earned from various sources including and in particular from generation and sale of electricity are used for such social welfare activities wherein no significant revenues accrue to the petitioner is incorrect and contrary to the provisions of the DVC Act, 1948. The provisions of Section 33 to 37 of the DVC Act, 1948 and Regulation 43(2)(i) of the 2009 Tariff Regulations clearly provides that all the three main objects, namely irrigation, power and flood control are independent of each other. Capital cost and other incidental cost covered for subsidiary activities may not be allowed for the purpose of tariff.
- (b) Regulation 9(2) provides for capitalization of expenditure only after the same is incurred. Additional capitalization which has not been permitted may be disallowed being opposed to the last proviso to Regulation 7 of the 2009 Tariff Regulations.
- (c) List of assets forming part of the project, but not in use may be furnished by the petitioner as the same is required to be taken out of the capital cost for determination of tariff.

- (d) The generating station (Bokaro TPS) is operating in sub-optimum level and the beneficiaries are paying for inefficient operation of the plant. R&M activity, which would take care of additional investment to improve the operating norms as well as life extension beyond its useful life, can be undertaken by the petitioner after complying with the provisions of Regulation 10 of the 2009 Tariff Regulations.
- (e) The petitioner may clarify as to which of the offices which can be classified under the category of head office, regional offices, administrative and technical centre whose expenses can be allocated to the object 'power' from the six offices. Expenses for subsidiary activities office centre cannot be allowed under the object 'power'.
- (f) In respect of claims related to Section 38 of the DVC Act, the petitioner has not mentioned if any capital was provided by the participating governments in respect of this station and therefore the claim on interest on capital and additional interest on notional loan may not be permissible to the petitioner.
- (g) The claim for additional O&M expenses for 2009-14 towards ash evacuation, mega insurance, amortization, additional O&M for CISF is not permissible since the petitioner is already provided with the normative O&M expense under the 2009 Tariff Regulations.
- (h) The miscellaneous claims made by the petitioner on account of contribution and interest payment for sinking fund, additional claim for pension contribution for existing employees and contribution to subsidiary fund are not maintainable as no provision exists for such expenses under separate heads except for necessary expenses to the object 'power' which are covered under various heads of the 2009 Tariff Regulations.
- (i) No details have been filed to examine the extent of claims in respect of pension and gratuity to be considered.
- (j) The claim of expenditure by relaxation of provisions in exercise of power by the Commission under Regulation 44 of the 2009 Tariff Regulations is not to be allowed since the same would disturb the balance of safeguarding the consumers interest and the recovery of cost of electricity in a reasonable manner as envisaged under Section 61(d) of the 2009 Tariff Regulations.
- (k) The RLDC charges claimed by the petitioner shall be subject to the final outcome of the order in Petition No.140/2011 pending for consideration of the Commission.

Petition No. 269/2012

- (a) All the issues raised above may be considered in respect of this petition also.
- (b) In terms of the Ministry of Environment & Forests notification dated 3.11.2009, in case the petitioner is making profits by 'sale' of fly ash or by utilization of fly ash, the same should be considered for subsidizing the cost of power.

Petition No.270/2012

- (a) All the issues raised in Petition No. 268/2012 above may be considered in respect of this petition.
- (b) The petitioner may clarify as to whether the expenditure incurred on service line for power supply to the consumer is to be borne by the petitioner.
- (c) Whether the expenditure on minor items like furniture, cooler etc can be considered under Regulation 9(2)(v) of the 2009 Tariff Regulations may be clarified by the petitioner.

Petition No.271/2012

- (a) All the issues raised in Petition No. 268/2012 above may be considered in respect of this petition.
- (b) Capital cost as mentioned in Part –II, Form-5 (modified) of the petition does not tally with the statement of capital cost as per books of accounts in Form-9A. This is required to be reconciled.
- (c) The details of O&M expenses furnished in Form-15A & 15B for the years 2003-04 to 2007-08 would show that the abnormal O&M expenses have not been excluded and in number of cases, this abnormal increase is beyond 20%. The O&M expenses also include the proportionate direct share of dams, direction and other offices and general overhead charges. The share of operating expenses of subsidiary activities has also been included in the O&M expenses. The necessity of inclusion of O&M expenses of all these activities may be furnished by the petitioner.

Petition No.272 and 273/2012

- (a) All the issues raised in Petition No. 268/2012 above may be considered in respect of these petitions.

Petition No. 274/2012

- (a) All the issues raised in Petition No. 268/2012 above may be considered in respect of this petition.

(b) The petitioner may be directed to clarify as to whether the dry fly ash system proposed by the petitioner is a commercial effort or proposed under Change in law.

Petition No. 275 and 276/2012

(a) All the issues raised in Petition No. 268/2012 above may be considered in respect of this petition.

8. The learned Senior Counsel for the objector, M/s Impex Ferro Alloys submitted that it has filed its written note of submissions in the matter and served copy on the petitioner. The learned counsel for the petitioner prayed that it may be granted some time to file its rejoinder. The learned Sr. counsel for the objector also submitted that the issues raised by other parties are not being argued again. Referring to the reply filed the learned Sr. Counsel mainly submitted as under:

(a) Additional capital expenditure claimed to the petitioner beyond the provisions of Regulation 9 may not be allowed. Any additional expenses for R&M in respect of the existing generating stations, other than the admissible O&M expenses, can only be allowed under Regulation 10 of the 2009 Tariff Regulations.

(b) The claim of the petitioner for interest on capital contributed by the participating governments treating it as notional loan cannot be allowed in terms of paras 74 and 77 of the judgment dated 10.5.2010 upholding the order of the Commission dated 6.8.2009. The petitioner is estopped from claiming this issue.

(c) The additional O&M claims made by the petitioner beyond Regulation 19 of the 2009 Tariff Regulations is not permissible. This is in line with the Tariff Policy and the Regulations framed by the Commission.

(d) Other issues like contribution and interest payment for sinking fund, pension and gratuity contribution, pay revision, contribution to subsidiary fund and relaxation of operational norms as prayed for by the petitioner may be dealt with as per the written note of submissions dated 2.4.2013.

9. The learned counsel for SAIL-BSL submitted that the arguments made by the other objectors are adopted by this objector. He further submitted that since tariff of the generating stations of the petitioner are being determined by separate orders by the Commission in view of the petitions filed by the petitioner and since the source of power i.e from which generating station HT consumers get power is not known, the Commission may make it clear by as to how the individual HT consumers would be charged tariff. Also, since new generating stations of the petitioner are selling power outside the command area of DVC, the profits margins earned should be considered in the pooling price. Similar submission was also made by the learned counsel appearing for some of the consumers of the State of Jharkhand.

10. In response to the above, the learned counsel for the petitioner mainly clarified as under:

(a) The issues relating to the claim of the petitioner under the relevant sections of the DVC Act had already been dealt with by the Appellate Tribunal and Civil Appeals are pending before the Hon'ble Supreme Court. The Commission has made special provisions relating to DVC under Regulation 43 of the 2009 Tariff Regulations, subject to the Civil appeals pending before the Hon'ble Supreme Court.

(b) After determination of final tariff by this Commission, the State Commission determines the retail tariff based on the input cost approved by this Commission.

(c) The additional O&M claims have been made by the petitioner with due justification and the Commission on prudence check may consider relaxation of provisions under Regulation 44 of the 2009 Tariff Regulations. The detailed explanation has also been submitted in the rejoinder filed before the Commission.

(d) Pension and Gratuity contribution increases along with the revision in pay. The decision of the Commission to apportion 40% during the year 2006 is no longer applicable as it relates to the period 2004-09 only.

(e) Interest on capital claimed by the petitioner may be considered as per the interpretation submitted by the petitioner.

(f) The interest on pension fund is added to the trust fund and evidence of the same has been submitted by the petitioner.

(g) The submission of the learned counsel for JSEB that the expenditure incurred on service line for power supply to the consumer is to be borne by the petitioner is not correct. This expenditure which has been booked to DVC and audited by C&AG has been incurred towards development of the transmission network /augmentation of substation bays.

(h) All the issues raised by the respondents/objectors have been dealt with by the petitioner in its rejoinder and the same may be considered by the Commission.

11. The Commission directed the petitioner to file its response, if any, to the written note of submissions filed by M/s Impex Ferro Alloys on or before 16.4.2013 and serve copy to it.

12. Subject to this, orders in these petitions were reserved.

By order of the Commission

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