

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 301/2009

**Coram
Dr. Pramod Deo, Chairperson
Shri. S. Jayaraman, Member
Shri. V.S.Verma, Member**

Date of Order: 2.5.2013

In the matter of:

Petition under Sections 11, 23, 76 and 94 of the Electricity Act, 2003

Ane in the matter of:

Bhaskhar Shrachi Alloys Ltd, Kolkata

..... **Petitioner**

Vs

1. Damodar Valley Corporation, Kolkata

2. The Chairman, Damodar Valley Corporation, Kolkata **Respondents**

The following were present

1. Shri Amit Kapur, Advocate, BSAL
2. Shri Sachin Das, Advocate, BSAL
3. Shri Apoorva Misra, BSAL
4. Shri J.R.Das, Advocate, DVC
5. Shri S.Mishra, Advocate, DVC
6. Shri P.K.Choudhury, DVC
7. Shri Pulak Bhattacharya, DVC

ORDER

The petitioner, Bhaskar Sarachi Alloys Limited, an HT consumer of Damodar Valley Corporation has filed the petition with the following prayers: –



"(a) DVC be directed to forthwith implement the approved FCS (Fuel Cost Surcharge) formula passed by this Commission for calculation of Fuel Cost Surcharge from the consumers;

(b) DVC be directed to render accounts in respect of Fuel Cost surcharge levied and/or recovered till date since 1.4.2006 over and above the FCS leviable according to the approved FCS formula passed by this Commission and if necessary this Commission may appoint an auditor to check the veracity of the accounts to be submitted by DVC;

(c) DVC be directed to adjust the FCS with interest for period of recovery and retention by it forthwith or against the future tariff to be collected from the consumers;

(d) pass ad interim orders in favour of the petitioner and against DVC in terms of the prayers above."

2. Damodar Valley Corporation was established under the Damodar Valley Corporation Act, 1948 (1948 Act) to perform multifarious functions including the function of generation, transmission and sale/supply of electricity within its statutory 'Command Area'. Section 20 of the 1948 Act authorised DVC to fix the schedule of charges for the supply of electrical energy, including the rates for bulk supply and retail distribution, and the manner of recovery of such charges. Accordingly DVC had been fixing and recovering the charges for electrical energy. DVC last carried out the exercise of fixation schedule of charges in the year 2000 which included the Fuel Price Adjustment Formula for adjusting the prices, GCV etc of fuels used for generation of electricity.

3. The Electricity Act, 2003 (2003 Act) came into force from 10.6.2003. In accordance with the fourth proviso to section 14 read with section 79(1)(a) of the 2003 Act, the fixation of tariff of DVC being a generating station owned and controlled by the Central Government came to be vested in this Commission. The



tariff of the generating stations and transmission systems of DVC was determined by this Commission vide order dated 3.10.2006 in Petition No 66/2005 for the period from 1.4.2006 till 31.3.2009, after allowing a transition period of two years from 1.4.2004. In the tariff order, the basic energy charge was calculated taking into account the value of GCV, base price of fuel and normative operating parameters specified by this Commission. It was also directed that the basic energy charge would be subject to Fuel Price Adjustment in accordance with the following formula, applicable to the coal based stations of DVC: -

$$\mathbf{FPA = A + B}$$

Where,

FPA – Fuel price Adjustment for a month in Paise/kWh Sent out

A – Fuel price adjustment for Secondary Fuel oil in Paise/kWh sent out

B – Fuel price adjustment for Coal in Paise/kWh sent out

And,

$$\mathbf{A = \frac{10 \times (SFC_n)}{(100 - AC_n)} \left\{ (P_{om}) - (P_{os}) \right\}}$$

$$\mathbf{B = \frac{10}{(100 - AC_n)} \left[\left\{ (SHR_n) (P_{cm}/K_{cm}) - (P_{cs}/K_{cs}) \right\} - (SFC_n) \left\{ (k_{om} \times P_{cm}/K_{cm}) - (k_{os} \times P_{cs}/K_{cs}) \right\} \right]}$$

Where,

SFC_n – Normative Specific Fuel Oil consumption in l/kWh

SHR_n – Normative Gross Station Heat Rate in kCal/kWh

AC_n – Normative Auxiliary Consumption in percentage

P_{om} – Weighted Average price of fuel oil on as consumed basis during the month in Rs./KL.

K_{om} – Weighted average GCV of fuel oils fired at boiler front for the month in Kcal/Litre

P_{os} – Base value of price of fuel oils as taken for determination of base energy charge in tariff order in Rs. / KL.

K_{os} – Base value of gross calorific value of fuel oils as taken for determination of base energy charge in tariff order in Kcal/Litre

P_{cm} – Weighted average price of coal procured and burnt during the month at the power station in Rs. / MT.

K_{cm} – Weighted average gross calorific value of coal fired at boiler front for the month in Kcal/Kg

P_{cs} – Base value of price of coal as taken for determination of base energy charge in tariff order in Rs. /MT

K_{cs} – Base value of gross calorific value of coal as taken for determination of base energy charge in tariff order in kCal/Kg

4. DVC filed Appeal No.273/2006 before the Appellate Tribunal for Electricity (Appellate Tribunal) against the order dated 3.10.2006 in Petition No.66/2005. The said order was also assailed by the West Bengal Electricity Regulatory Commission (Appeal No.8/2007), State of Jharkhand (Appeal No.275/2006) and some HT consumers including the petitioner (Appeal Nos.271/2006 & 272/2006). The Appellate Tribunal by its judgment dated 23.11.2007 partially set aside the order of the Commission and remanded the matter for de novo consideration of the tariff order dated 3.10.2006 in terms of the findings and observations made in the judgement and according to law.

5. It is to be noted that in none of the appeals, the Fuel Price Adjustment Formula was challenged. However, Government of West Bengal as the respondent had contended before the Appellate Tribunal that the applicability of Fuel Price Adjustment is within the jurisdiction of the State Commissions. The Appellate Tribunal while rejecting the said contention in its judgment dated 23.11.2007 had observed as under:

"We find no substance in this argument as the applicable fuel price adjustment is to be decided by the Commission determining the applicable generation tariff."

6. The judgement dated 23.11.2007 was challenged by this Commission, West Bengal Electricity Regulatory Commission, the States of West Bengal and Jharkhand, and some HT consumers including the petitioner. Since no stay was granted in the appeals, the Commission vide order dated 6.8.2009 in Petition No.66/2005 implemented the judgement dated 23.11.2007 of the Appellate Tribunal. While re-determining the tariff, this Commission observed as under with regard to Fuel Price Adjustment:

"80. The Commission in para 94 of the order dated 3.10.2006 has approved the formula for fuel price adjustment in respect of thermal generating stations of the petitioner. The Appellate Tribunal in para L of the judgment dated 23.11.2007 has observed that "the applicable fuel price adjustment is to be decided by the Commission determining the applicable generation tariff". Since the formula for fuel price adjustment has not been interfered by the Appellate Tribunal, our order dated 3.10.2006 with regard to fuel price adjustment would be applicable."

5. DVC challenged the Commission's order dated 6.8.2009 before the Appellate Tribunal in Appeal No.146/2009. During the pendency of the appeal, the petitioner filed the present petition in December 2009. The petitioner has alleged that despite notification of the Fuel Price Adjustment Formula by this Commission, DVC continued to charge its consumers the Fuel Price Variation at



exorbitant rates based on its own formula formulated in the year 2000. It has been alleged that DVC has charged Fuel Price Variation at the rate of Rs. 1.3845 per unit against the Fuel Price Variation of Rs. 0.1017 per unit for the period 1.4.2006 to 31.3.2009 and Rs. 0.1743 per unit for the period 1.4.2009 to 30.9.2009, if worked out in accordance with the Fuel Price Variation Formula notified by this Commission. The petitioner has claimed that it made excess payment of Rs. 15.30 crore only on account of difference in Fuel Price Variation recovered by DVC. In the premises, the petitioner sought directions to DVC to implement the Fuel Price Variation Formula notified by this Commission for computing Fuel Price Variation, render accounts for the Fuel Price Variation already recovered and adjust the excess recoveries as per the prayers noted above.

6. DVC in its reply dated 14.6.2010 has submitted that the Fuel Price Adjustment Formula could not be invoked in isolation and can be implemented only when tariff decided by this Commission is finally held to be applicable in its entirety to DVC after disposal of appeal No.146/2009 and final determination by the appropriate Commission. DVC further submitted that the Appellate Tribunal in its interim order dated 16.9.2009 on its appeal had permitted continuation of the tariff then in force till fixation of its tariff for retail supply by the West Bengal and Jharkhand Regulatory Commissions. Accordingly, DVC pleaded that the petition was not maintainable.

7. It is pertinent to mention that the appeal filed by DVC against this Commission's order dated 6.8.2009 has been dismissed by the Appellate Tribunal



by judgment dated 10.5.2010. DVC had filed Interlocutory Application (I.A No 349/2009) seeking permission to continue to collect the tariff fixed by the DVC under Section 20 of the DVC Act. The said Interlocutory Application has been disposed of by the Appellate Tribunal by its order dated 15.5.2010, observing as under:

“...the Application filed by the DVC in IA No.349/09 seeking for the permission to continue to collect the tariff fixed by the DVC under section 20 of the DVC Act could not be sustained (1) especially when the final order had already been passed by the Central Commission on 06.08.2009 fixing the tariff; (2) particularly when the said tariff order has not been stayed by this Tribunal and (3) more particularly when we feel prima facie that impugned tariff order passed by the Central Commission is valid.

8. DVC has filed second appeal (CA No 4881/2010) against dismissal of its appeal by the Appellate Tribunal. The Hon'ble Supreme Court by its order dated 9.7.2010 has rejected DVC's application for stay of the judgment. The Hon'ble Supreme Court has, however, stayed recovery from DVC of past dues recovered in excess of the tariff determined by this Commission. Therefore, there is no stay on the operation of this Commission's order dated 6.8.2009. Meanwhile, on an application moved by one of the consumers of DVC in the appeal filed against the Appellate Tribunal's earlier order dated 23.11.2007, the Hon'ble Supreme Court by its order dated 17.8.2010 has permitted DVC, pending further orders, to raise bills on consumers appearing before the Hon'ble Supreme Court for accounting purposes alone so that any recovery made by DVC at a lower rate would be subject to the outcome of the pending appeal(s). The appeals filed by DVC before the Hon'ble Supreme Court are also pending.



9. In the background of above facts, it emerges that DVC is obliged to give effect to the tariff determined by this Commission vide order dated 6.8.2009 for supply of power from its generating stations effective from 1.4.2006, particularly when the said order has been upheld by the Appellate Tribunal vide its judgement dated 10.5.2010 in Appeal 146/2009. DVC supplies electricity to the distribution licensees, namely, West Bengal State Electricity Distribution Company Limited (WBSEDCL) and Jharkhand State Electricity Board (JSEB) and the HT consumers of the States of West Bengal and Jharkhand in its capacity as distribution licensee. WBSEDCL and JSEB are not parties before the Commission in the present proceedings. In any case it is the responsibility of WBSEDCL and JSEB to approach the respective State Commissions for determination of the retail tariff after taking into account the tariff determined by this Commission in terms of Rule 8 of Electricity Rules, 2005. Similarly, It is the responsibility of DVC as a deemed distribution licensee to approach WBERC and JERC to get the retail tariff determined for supply of power to its HT consumers in the respective States. It is clarified that while charging the retail tariff to the HT consumers as determined by the respective State Commissions, DVC would be required to charge the fuel cost in accordance with the FPA formula approved by this Commission.

10. The petitioner has prayed for calculation of the Fuel Cost Surcharge as per the FPA formula approved by the Commission and to render accounts in respect of FCS levied and/or recovered since 1.4.2006. We direct DVC to confirm that FPA has been calculated and recovered in accordance with the formula approved by this Commission and submit detailed calculation for the period from 1.4.2006



till 31.3.2013 on affidavit within a period of three months. The petitioner has also prayed for adjustment of the excess FCS with interest for the period of recovery and retention against future tariff to be collected from the consumers. In this connection, it is noticed that in Civil Appeal No. 4881/2010 filed by DVC, Hon'ble Supreme Court in its interim order dated 9.7.2010 has granted stay on refund of tariff by DVC. In view of the directions of the Hon'ble Supreme Court, we do not intend to issue any direction on this prayer at this stage.

11. It is also noticed that in the FPA formula indicated in our order dated 3.10.2006 in Petition No.66/2005 which was adopted in our order 6.8.2009 in Petition No.66/2005, an inadvertent typographical error had occurred by putting the parenthesis({) before (SHRn) in formula B instead of indicating the parenthesis({) after (SHRn). The rectified formula is given as under:

$$\mathbf{FPA = A + B}$$

Where,

FPA – Fuel Price Adjustment for a month in Paise/kWh sent out

A – Fuel Price Adjustment for secondary fuel oil in Paise/kWh sent out

B – Fuel Price Adjustment for coal in Paise/kWh sent out



And,

$$A = \frac{10 \times (SFC_n)}{(100 - AC_n)} \left\{ (P_{om}) - (P_{os}) \right\}$$

$$B = \frac{10}{(100 - AC_n)} \left\{ (SHR_n) \left\{ (P_{cm}/K_{cm}) - (P_{cs}/K_{cs}) \right\} \right.$$

$$\left. - (SFC_n) \left\{ (K_{om} \times P_{cm}/K_{cm}) - (K_{os} \times P_{cs}/K_{cs}) \right\} \right\}$$

Where

SFC_n – Normative Specific Fuel Oil consumption in l/kWh

SHR_n – Normative Gross Station Heat Rate in kCal/kWh

AC_n – Normative Auxiliary Consumption in percentage

P_{om} – Weighted Average price of fuel oil on as consumed basis during the month in Rs./KL.

K_{om} – Weighted average GCV of fuel oils fired at boiler front for the month in Kcal/Litre

P_{os} – Base value of price of fuel oils as taken for determination of base energy charge in tariff order in Rs. / KL.

K_{os} – Base value of gross calorific value of fuel oils as taken for determination of base energy charge in tariff order in Kcal/Litre

P_{cm} – Weighted average price of coal procured and burnt during the month at the power station in Rs. / MT.

K_{cm} – Weighted average gross calorific value of coal fired at boiler front for the month in Kcal/Kg

P_{cs} – Base value of price of coal as taken for determination of base energy charge in tariff order in Rs. /MT

K_{cs} – Base value of gross calorific value of coal as taken for determination of base energy charge in tariff order in kCal/Kg



12. DVC shall calculate FPA in terms of the above formula while submitting the information as directed in para 10 above. The present petition stands disposed of accordingly.

Sd/-
(V.S.Verma)
Member

Sd/-
(S. Jayaraman)
Member

Sd/-
(Dr.Pramod Deo)
Chairperson

