

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.240/2009**

**Coram:**

**Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of Order: 30.9.2013**

**In the matter of**

Determination of tariff of generating stations and transmission systems of DVC during the period from 1.4.2009 to 31.3.2014.

**And in the matter of**

Damodar Valley Corporation, Kolkata

.....**Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd, Kolkata
2. Jharkhand State Electricity Board, Ranchi

....**Respondents**

**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, Advocate, 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

**ORDER**

This petition was filed by the petitioner, DVC, during October, 2009 for determination of tariff of its generating stations (except for Mejia TPS, Unit Nos V and VI) and inter-state transmission system for the period 1.4.2009 to 31.3.2014 based on the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009



Tariff Regulations'). The petitioner had also published the tariff petition in accordance with Regulation 3(6) of the CERC (Procedure for making of application for determination of tariff, publication of application and other related matters) Regulations, 2004 and had also served copies of the tariff petition on the respondents.

2. During the pendency of the said petition, the Commission, in exercise of its power under Clause 4 of Regulation 5 of the 2009 Tariff Regulations, granted provisional tariff for the period 2009-14 by its order dated 23.6.2011, pending determination of the final tariff. In the said order, the Commission also directed the petitioner to file separate petitions for determination of tariff in respect of the generation stations and inter-state transmission systems of the petitioner for the period 2009-14.

3. Against order dated 23.6.2011, some of the HT consumers of the petitioner in the States of West Bengal and Jharkhand filed several Writ Petitions before the Hon'ble High Court of Calcutta (W. P. No.15077 (W) of 2011 [(Jai Balaji Industries Ltd-v-UOI & ors) with 46 connected petitions]) and Hon'ble High Court of Jharkhand [(W.P (C) No. 4097 of 2011 (Gautam Ferro Alloys-v-UOI & ors) with 48 connected petitions)], challenging amongst others, the constitutional validity of Regulation 5(4) of the 2009 Tariff Regulations and the provisional tariff granted by Commission's order dated 23.6.2011.

4. During the pendency of the above Writ Petitions before the said High Courts, the petitioner, in terms of the direction contained in the order dated 23.6.2011 in Petition No. 240/2009, filed separate petitions for determination of tariff in respect of its generation stations and inter-state transmission systems for the period 2009-14 (except for Mejia TPS, Unit Nos V and VI) as summarized under:

Sl.No	Petition No	Project
1	268/GT/2012	Determination of tariff for Bokaro TPS
2	269/GT/2012	Determination of tariff for Mejia TPS, Units I to III
3	270/GT/2012	Determination of tariff for T & D systems
4	271/GT/2012	Determination of tariff for Maithon Hydel Station
5	272/GT/2012	Determination of tariff for Panchet Hydel Station
6	273/GT/2012	Determination of tariff for Tilaiya Hydel Station

7	274/GT/2012	Determination of tariff for Mejia TPS, Unit-IV
8	275/GT/2012	Determination of tariff for Chandrapura TPS
9	276/GT/2012	Determination of tariff for Durgapur TPS

5. Thereafter, the High Court of Jharkhand by its judgment dated 23.3.2012 in W.P. 4097/2011 upheld the Constitutional validity of Regulation 5(4) of the 2009 Tariff Regulations and the provisional tariff order dated 23.6.2011 and the High Court of Calcutta by its judgment dated 7.12.2012 in W.P. No.15077/2011 and others, declared Regulation 5(4) of the 2009 Tariff Regulations as *ultra vires* the Constitution and the Electricity Act, 2003 and set aside the same along with the provisional tariff order dated 23.6.2011. Against the judgment of the High Court of Jharkhand, some of the HT Consumers/Objectors have filed SLPs [(SLP (c) 10945/2012 (GFL-v-UOI & ors) and other connected petitions] before the Hon'ble Supreme Court of India. Similarly, against the judgment of the High Court of Calcutta, SLPs have been filed by this Commission in SLP(c) No. 12929-12961/2013 (CERC-v- BSAL & ors) and the petitioner, DVC in SLP (C) No 13167-13212/2013 before the Hon'ble Supreme Court and the same are pending.

6. Meanwhile, during the hearing of these tariff petitions on 5.2.2013, the learned counsel for the objector, Maithon Alloys Ltd submitted that since certain documents filed in Petition No. 240/2009 have been referred to by the petitioner in the separate tariff petitions filed in terms of the directions of the Commission, Petition No. 240/2009 would form part and parcel of the proceedings before the Commission as the same has not been disposed of. The Commission after hearing the parties observed that Petition No. 240/2009 shall be disposed of along with the separate tariff petitions filed by the petitioner for 2009-14. The Commission also clarified that since station-wise petitions have been filed in place of the consolidated Petition No.240/2009, the pleadings in the station-wise petitions will also be considered for tariff determination.

7. In terms of the above, the station-wise tariff petitions filed by the petitioner for determination of tariff for the generating stations and transmission system for 2009-14 were clubbed together and heard by the Commission on 5.2.2013, 21.3.2013 and 2.4.2013 respectively and orders reserved. After considering the submissions of the parties in those petitions including the submissions made in Petition No. 240/2009, the tariff of the generating

stations and transmission system of the petitioner for the period 2009-14 have been determined by the Commission by its various orders as detailed hereunder:

<b>Petition No</b>	<b>Project</b>	<b>Date of order</b>
268/GT/2012	Determination of tariff for Bokaro TPS	29.7.2013
269/GT/2012	Determination of tariff for Mejia TPS, Units I to III	9.7.2013
270/GT/2012	Determination of tariff for T & D system	27.9.2013
271/GT/2012	Determination of tariff for Maithon Hydel Station	7.8.2013
272/GT/2012	Determination of tariff for Panchet Hydel Station	7.8.2013
273/GT/2012	Determination of tariff for Tilaiya Hydel Station	7.8.2013
274/GT/2012	Determination of tariff for Mejia TPS, Unit-IV	9.7.2013
275/GT/2012	Determination of tariff for Chandrapura TPS	7.8.2013
276/GT/2012	Determination of tariff for Durgapur TPS	7.8.2013

8. As the submissions of the petitioner in Petition No. 240/2009 have been considered and disposed of by the Commission by various orders in the station-wise tariff petitions filed by the petitioner for 2009-14 as stated above, nothing survives in the present petition. However, the tariff actually recovered by the petitioner shall be adjusted in terms of the tariff determined by the Commission for the period 2009-14, subject to the final outcome of the Civil Appeals pending before the Hon'ble Supreme Court

9. Petition No. 240/2009 stands disposed of as above.

**Sd/-**  
**[M.Deena Dayalan]**  
**Member**

**Sd/-**  
**[V.S.Verma]**  
**Member**