

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:
Shri V S Verma, Member
Shri Deena Dayalan, Member

Date of Hearing: 16.5.2013
Date of Order : 30.9.2013

Petition No. 277 of 2010

In the matter of

Petition under Section 94 read with Sections 62 (6) of the Electricity Act, 2003 and Regulation 22(iii) of the CERC (Terms and Conditions of Tariff) 2004

And in the matter of

Bhaskar Shrachi Alloys Limited	Vs	...Petitioner
1. Damodar Valley Corporation		
2. The Chairman, Damodar Valley Corporation		...Respondents

Petition No. 293 of 2010

And in the matter of

Steel Authority of India Limited	Vs	...Petitioner
1. Damodar Valley Corporation		
2. The Chairman, Damodar Valley Corporation		...Respondents

The following were present:

1. Shri Amit Kapur, Advocate, BSAL
2. Shri M.G.Ramachandran, Advocate, DVC
3. Shri A.K.Sil, DVC

ORDER

Both these petitions raise the common issues and seek similar relief. As such these are being disposed through this common order.

Petition No.277/2009

2. The petitioner, Bhaskar Shrachi Alloys Limited, has filed Petition No.277/2010 under section 94 read with section 62(6) of the Electricity Act, 2003 (the Act) and Regulation 22(ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (2004 Tariff Regulations). The petitioner has submitted that this Commission determined the tariff of the generating stations and transmission systems of Damodar Valley Corporation (DVC) vide order dated 3.10.2006. On appeal, the Appellate Tribunal for Electricity by order dated 23.11.2007 remanded the matter to the Commission on limited issues. Though the petitioner had filed Civil appeal No.971-973 of 2008 against the order of the Appellate Tribunal, the order has not been stayed. Pursuant to the order of the Appellate Tribunal, this Commission has issued a revised tariff order dated 6.8.2009. On appeal by DVC, the tariff order of the Commission has been upheld by the Appellate Tribunal vide judgment dated 10.5.2010. DVC has filed Civil Appeal No.4881/2010 in the Supreme Court against the said judgment which is pending. Though no stay has been granted on the operation of the judgment, Hon'ble Supreme Court in its order dated 9.7.2010 has stayed the refund of excess amount collected by DVC till the hearing of the appeal. The petitioner has stated that even though the Commission's order dated 6.8.2009 has not been stayed, DVC had raised the bills dated 29.7.2010 which specifically stated that it did not accept the tariff as fixed by the Commission as the said order is under challenge before the Supreme Court. Steel Authority of India, the petitioner in Petition No 293/2010, filed an Interlocutory Application before the Hon'ble Supreme Court seeking stay of these bills. The Hon'ble Supreme Court vide its order dated 17.8.2010, *inter alia* directed that "Pending further orders, it is clarified that Damodar Valley Corporation, for

Accounting purposes alone, may raise bills on consumers appearing before us so that any recovery made by the Damodar Valley Corporation at a lower rate would be subject to the outcome of the pending appeal(s).”

3. In view of the above order of the Hon’ble Supreme Court, the petitioner was advised that bills of DVC should be verified in case it appeared that DVC was charging beyond the tariff approved by the Commission. The petitioner believed that the actual tariff in accordance with the order dated 6.8.2009 would be around `2.0416/kWh and accordingly forwarded cheques for payment of the consumption charges for the months of May, June and July 2010 and August 2010. However, on 11.10.2010, the petitioner received a notice dated 9.10.2010 from DVC to pay `201,25,725/- within 15 days or face disconnection. DVC claimed that the said bill had been raised in accordance with the order dated 6.8.2009 and in support thereof, DVC had enclosed a calculation chart. The petitioner claimed that the figures were inflated and window dressed by DVC. The petitioner has alleged that DVC charged an exorbitant tariff of `3.78/kWh against the tariff of `2.0416 per kWh worked out by the petitioners’ consultant, M/s Deloitte on the basis of the Commission’s order dated 6.8.2009. The petitioner has alleged that even as per the respondent’s own computation, the tariff of `2.943/kWh becomes chargeable. Accordingly the petitioner filed the present petition challenging the bills raised by DVC.

4. In the provisional energy bills, the DVC has claimed the following charges, among others:

(i) Capacity Charge	106.96 paise/kWh
(ii) Energy Charge	83.26 paise/kWh
(iii) FPA Charge	104.08 paise/kWh
Total	294.30 paise/kWh

5. The petitioner, based on its calculation of the fixed/capacity charge and fuel supply adjustment, has submitted that DVC has charged 30 paisa extra towards capacity charges and 56.36 paisa extra towards Fuel Price Adjustment, aggregating about 86.36 paisa. If the same is reduced by 86.36 paisa, the cost of electricity will come to `2.0794/kWh. The petitioner has submitted that the calculation of its consultant in letter dated 27.8.2010 giving the unit cost as `2.064/kWh was more or less correct and the calculation of DVC was inflated. Accordingly, the petitioner has filed the present petition to compute the correct level of capacity charges and Fuel Price Adjustment that is chargeable by DVC in terms of the order dated 6.8.2009.

Petition No.293/2010

6. SAIL-BSIL has filed the present petition under section 62(6) of the Act read with Regulation 22(ii) of the 2004 Tariff regulations seeking a direction to DVC to raise the bill upon the petitioner as per the order of the Commission dated 6.8.2009 in Petition No.66/2005 among other prayers. The petitioner has submitted that the Appellate Tribunal for Electricity in its judgment dated 10.5.2010 in Appeal No. 146/2009 had directed DVC to issue bills in accordance with the revised tariff order of the Commission dated 6.8.2009 and to refund the excess amount taken by it during 1.4.2006 to 31.3.2009 over and above the rate chargeable under revised tariff order dated 6.8.2009. DVC filed Civil Appeal No. 4881/2010 in the Supreme Court against the judgment of the Appellate Tribunal. The Hon'ble Supreme Court did not stay the judgment dated 10.7.2010 or the order dated 6.8.2009, but stayed the directions for refund of excess amount. DVC issued bills for the months of May, June and July 2010 stating as under:

“DVC does not accept the tariff fixed by CERC and the same is subject matter of challenge before the Supreme Court. The present bill is being claimed provisionally subject to further order of the Hon’ble Supreme Court”.

The petitioner filed an IA before the Supreme Court in Civil Appeal No.4881/2010 and the Hon’ble supreme Court in its order dated 17.8.2010 issued the following directions:

“Pending further orders, it is clarified that Damodar Valley Corporation, for Accounting purposes alone, may raise bills on consumers appearing before us so that any recovery made by the Damodar Valley Corporation at a lower rate would be subject to the outcome of the pending appeal(s).”

The petitioner has submitted that according to the Hon’ble Supreme Court order, the petitioner and other consumers of DVC who were paying the bills in terms of the Commission’s order dated 6.8.2009 were on the lower side than the bills raised by DVC which were not in accordance with the Commission’ order and therefore, Hon’ble supreme court clarified that the bills raised by DVC were for the accounting purposes and recovery made by DVC would be subject to the outcome of the appeals.

7. The petitioner has submitted that it received from DVC the bills for the months of May, June and July, 2010 along with a disconnection notice to be effective in case of non-payment or less payment. DVC had also enclosed its own calculation for the bills for the months of May, June and July 2010. The petitioner has submitted that it paid the bills under protest. The petitioner has submitted that DVC had not raised the bills in accordance with the order of the Commission dated 6.8.2009 due to the following reasons:

(a) DVC has adopted different and incorrect formula for fixation of Annual Fixed Charge and Fuel Price Agreement;

(b) It has adopted various parameters which are not in accordance with the tariff order;

(c) The figures taken by DVC for calculating its tariff is inflated and incorrect and has been adopted just to overreach the tariff order of the Commission dated 6.8.2009.

8. Accordingly, the petitioner has prayed for the following:

“(I) Pass appropriate orders by directing the DVC to raise the bills upon the petitioner correctly as per the tariff order dated 6.8.2009 passed by this Hon’ble Commission.

(II) Be further pleased to determine the correct tariff rate to be raised by DVC in terms of the revised tariff order.

(III) That DVC be asked to notify monthly, coal, oil price alongwith quantity purchased and the handling and transportation charges paid. The grade of coal and authentic GCV must also be notified monthly along with unit-wise generation.

(IV) Direct DVC to refund the excess amount being charged by the DVC over and above the revised tariff of this Hon’ble Commission dated 6.8.2009.”

Replies of DVC

9. DVC has filed its reply to both petitions. DVC has submitted that the billing for the generation and sale of electricity to the petitioners is being done only as per the applicable regulations and in terms of the order dated 6.8.2009 in Petition No.66 of 2005. DVC has further submitted that in accordance with clause (3) of Regulation 5 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter “2009 Tariff Regulations”), the prevalent tariff as approved by this Commission as on 31.3.2009 is the applicable tariff for billing the consumers from 1.4.2009 onwards till the final determination of tariff in accordance with the 2009 Tariff regulations. The respondent has further pointed out that the retail supply tariff has not been determined by respective State Commissions and even by

considering that the tariff determined by this Commission is the total tariff realizable from all the consumers of DVC, the tariff as applicable as on 31.3.2009 would be the appropriate tariff. The respondent has submitted that though the annual fixed charges for the year 2008-09 determined in the order dated 6.8.2009 was `1244.0914 crore on account of inability of some of its generating stations to achieve the normative plant load factor and one generating station achieving more than the normative availability, the total annual fixed cost payable during 2008-09 worked out to `1167.3279 crore. Based on the annual fixed charges of `1167.3279 crore and after taking into total MWh of 10913853 during 2008-09, the fixed charge component of tariff works out to 106.96 paisa/kWh. DVC has submitted that the bill raised by DVC on the consumers including the petitioners specifically provide for the said fixed charges. As regards the energy charge, DVC has explained that the weighted average rate of base energy @ `0.8326/kWh mentioned in the bills has been calculated based on this Commission's order dated 3.10.2006 which has been upheld by the Appellate Tribunal. As regards the Fuel Charge Adjustment, DVC has submitted that it has applied the price adjustment formula notified by the Commission in the order dated 3.10.2006. The fuel data taken for the purpose is as per the Fuel Certifying Authority on month to month basis. The prices of oil have been considered on the basis of the average consumption price of oil consumed by the respective projects inclusive of transport charges to the premises of the respective projects. The fuel cost for the month of April, 2010 has been considered and applied for the period upto December, 2010 subject to adjustment of upward and downward as per records of the final availability of the certified fuel data. On the question of recovery for Pension and Gratuity Fund, the respondent has submitted that the recovery has been made in terms of the order dated 6.8.2009. So far as

recovery of incentive is concerned, the respondent has explained that during 2008-09, the respondent was unable to achieve the normal Plant Load Factor in respect of its generating stations, except Chandrapura TPS which achieved the capacity of more than normative availability and hence the petitioners were billed for incentive for this generating station. The respondent has denied any error in computation of FPA charge as the charge has been computed considering the actual coal prices as per the invoices raised by the supplier, Coal India Ltd.

10. On the basis of the directions issued by the Commission from time to time, the respondent has submitted the following information on affidavits:

- (a) Copies of the monthly bills (tariff) claimed from different consumers;
- (b) Basis of allocation of tariff along with details of computations of such allocation, to the petitioner and also to other consumers;
- (c) Details of the Capacity Charges and Energy Charges billed along with the back-up calculations of all components of fixed charge and the Energy Charges on month to month basis relating it with the tariff order dated 6.8.2009 of the Commission;
- (d) Any other relevant information/documents necessary to verify/examine the correctness of the billing to the petitioner and other consumers.
- (e) Year in which the actual availability mentioned in column (3) of Annexure-II of the affidavit dated 22.12.2012 was achieved and the basis for supporting these figures.
- (f) The actual availability the actual generation based on actual availability and total sales from all the thermal power stations as well as from all the units of different stations separately, including Meija Unit 4, Unit 5 & Unit 6 for the year 2008-09.
- (g) Details of the beneficiary constituents of Meija Unit 4, Unit 5 & Unit 6 generating stations along with their respective allocation. The details of actual sale and the revenue earned from the sale during 2008-09 from the beneficiary constituents and whether any quantum from above units was/is being supplied in the Command Area.

(h) Actual cost of coal & oil and GCV of coal & oil as received for the month of May, June and July, 2012 in all the thermal power stations in the CERC tariff pro-forma Form-15 & Form 16 of CERC Regulations, 2009. In place of preceding 3rd, 2nd and 1st (as mentioned) the same shall be July, June and May, 2010. If any adjustment amount (+/-) is claimed because of adjustment in quantity supplied (+/-), the same should be furnished. In addition, certificate from Coal Company and Oil Company, as regards the basic prices of coal & taxes, duties etc. should be furnished.

11. DVC during the hearing raised the question of maintainability of the petitions during the hearing and reiterated in the written submissions filed subsequently vide affidavit dated 16.9.2011 in Petition No.277/2010. According to the respondent, the petitioners are the consumers of electricity and in case they are aggrieved by billing of electricity charges, they have necessarily to go to the Consumer Grievance Redressal Forum established under sub-section (5) of Section 42 of the Act. The respondent has submitted that this Commission is not the proper forum to determine whether billing is being carried on properly or not. In support of its plea, the respondent has relied upon the following judgments:

- A. Maharashtra State Electricity Distribution Company Limited vs Lloyds Steel Industries Limited (AIR 2008 SC 1042:)
- B. BSES Rajdhani Power Ltd. vs Delhi Electricity Regulatory Commission & Anr (Judgment dated 30.3.2009 in Appeal No. 181 of 2008)
- C. M/s Polyplex Corporation Limited vs Uttaranchal Power Corporation Limited (Judgment dated 30.3.2007)
- D. Dakshin Haryana Bijli Vitaran Nigam Limited v. DLF Services Ltd (2007 APTEL 356)
- E. Dakshin Haryana Bijli Vitaran Nigam Limited v. Princeton Park_Condominium (2007 APTEL 764):

The respondent has submitted that Jharkhand State Electricity Regulatory Commission in JSERC (Distribution License Conditions) Regulations, 2005 and

West Bengal Electricity Regulatory Commission in WBERC (Licensing and Conditions of License) Regulations, 2004 have confirmed DVC as a deemed licensee in the State of Jharkhand and West Bengal respectively. The respondent has submitted that all HT consumers including the petitioners shall have to pay the tariff that will be determined by JERC and WBERC taking the tariff determined by this Commission as an input cost. Moreover, DVC being a deemed distribution licensee in both areas of West Bengal and Jharkhand follows the standards of performance notified by the respective State Commissions in carrying on distribution of electricity. DVC has further submitted that under section 50 of the Act, the State Commission has been given power to specify the Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of electricity supply for non-payment thereof and restoration of supply of electricity etc. The Parliament has consciously chosen the words "State Commission" in section 50 and therefore, there can be no harmonization of section 50 with section 79(1)(a) to (i) of the Act. If the Commission assumes jurisdiction in the matter, then the provisions of section 50 will have to be read down. DVC has submitted that the reliance placed by the petitioners on para 100 and 111 of the judgment of the Appellate Tribunal for Electricity regarding the conveyance of power to the HT consumers through the inter-State transmission lines or dedicated transmission lines is selective and ex-facie arbitrary as the said observation cannot be read to confer jurisdiction on the Commission over the HT consumers. DVC has further submitted that HT consumers are supplied power through 66 kV or 132 kV transmission lines belonging to transmission licensees but that does not mean that they remain consumers of the transmission lines or generating company. The HT consumers remain the consumers of the distribution licensees and the billing is done

by the distribution licensees. DVC has submitted that the tariff payable by the petitioners will be as determined by the West Bengal and Jharkhand Commissions before whom DVC has filed tariff petitions.

12. The petitioners have submitted that the remedy under sub-section (5) of Section 42 of the Act is available to the consumers who are supplied electricity by the distribution licensee within the State and not to the case of the petitioners who are directly connected to the generating station of DVC for supply of power directly to HT consumers which is regulated by this Commission. Accordingly, the dispute raised by the petitioners is within the jurisdiction of this Commission. According to the petitioners, in case this Commission declines to exercise jurisdiction, HT consumers would be left without any remedy as the respondent in its capacity as the distribution licensee has not established the Consumer Grievance Redressal Forum. It has been argued that taking into consideration the functions of this Commission specified under clause (a) of sub-section (1) of Section 79 of the Act, this Commission only has the jurisdiction to deal with the issues raised in the petition by HT consumers. It has been urged that even in terms of the judgment of the Constitution Bench of the Hon'ble Supreme Court in PTC vs Union of India & Ors, this Commission exercises plenary powers under the Act.

13. During the hearing, SAIL-BSL argued that it is a distribution licensee and beneficiary of the generating stations of DVC and accordingly this Commission has jurisdiction to adjudicate the dispute between SAIL-BSL under section 79(1)(f) of the Act. In the record of Proceedings for the hearing dated 8.2.2011, the Commission directed SAIL-BSL to clarify whether it was a direct beneficiary of supply of power from a specific generating station of DVC or was a consumer within the control area

of DVC. SAIL-BSL has submitted that it is directly connected to Chandrapura Thermal power Station of DVC by means of dedicated transmission lines. SAIL-BSL was a bulk consumer of DVC as it had the sanction from the then State of Bihar under Electricity (Supply) Act, 1948 to distribute electricity in the township of Bokaro Steel City. After the Act came into force, SAIL-BSL was granted a distribution license by JERC on 20.9.2005 for supply of power to the Steel Plant and the township of Bokaro Steel City. SAIL-BSL has submitted that the dispute between the distribution licensee and the generator DVC is squarely covered under section 79(1)(f) of the Act and therefore, the Commission has the jurisdiction to hear the present dispute. SAIL-BSL has submitted that it is also a beneficiary in accordance with the provisions of the Grid Code as it has a share in the ISGS and has a Power Purchase Agreement dated 1.4.2009 with DVC for firm allocation of 145 MVA which has been raised to 200 MVA by further mutual understanding. It has been submitted that the petitioner being a distribution licensee itself and being a beneficiary as well as HT consumer is not subjected to distribution tariff.

Analysis and Decision

14. We have considered the submissions of the petitioners and respondent. The question is whether the petitions are maintainable before the Commission under section 79(1)(f) of the Act. Section 79(1) (a) to (f) of the Act is extracted as under:

“79. (1) The Central Commission shall discharge the following functions, namely:-

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c) to regulate the inter-State transmission of electricity;

- (d) to determine tariff for inter-State transmission of electricity;
- (e) to issue licenses to persons to function as Transmission Licensee and electricity trader with respect to their inter-State operations.
- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

15. Section 79(1)(f) of the Act is concerned about adjudication of dispute involving generating company or transmission licensee in respect of clauses (a) to (d) of the said section. On a plain reading of this provision it emerges that the dispute must concern the regulation and determination of generation tariff of the generating stations owned or controlled by the Central Government or those having a composite scheme for generation and supply to more than one state, determination of tariff for inter-state transmission of electricity and regulation of inter-state transmission of electricity. The word 'involving' a generating company or transmission licensee means that one of the parties to the dispute shall be either a generating company or a transmission licensee. The other party to a dispute shall be an entity with whom the generating company or the transmission licensee has a commercial relationship in terms of the provisions of Section 79(1)(a) to (d) of the Act. In case of determination of tariff of the generating companies, there is a direct commercial relationship between the generating company and the distribution licensee as the Commission is required to determine the tariff only when the electricity is supplied by the generating company to the distribution licensee in terms of Section 62(1)(a) of the Act. There is no provision in the Act which requires this Commission to determine the tariff of the generating company for supply to consumers. In fact, under Section 10(2) of the Act, a generating company has the freedom to supply electricity to any consumer, subject to the regulation made by the concerned State Commission under Section 42(2) of the Act. Therefore, there is no direct commercial relationship

between a generating company and a consumer in so far as the determination of tariff of the said generating company is concerned. Under Section 86(1)(a) of the Act, the State Commission shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. Therefore, the jurisdiction to determine the bulk or retail tariff vests in the State Commission. Since the HT consumers except SAIL-BSL, are not distribution companies, they do not have the *locus standi* to seek relief under Section 79(1)(f) of the Act. In so far as SAIL-BSL is concerned, it is a distribution licensee of Jharkhand Commission. However, there is nothing on record to show that SAIL-BSL has firm allocation of power from the generating stations of DVC in its capacity as a distribution licensee. SAIL-BSL has placed on record copy of the Power Supply Agreement between DVC and SAIL-BSL dated 1.4.1989. A perusal of the said agreement reveals that SAIL-BSL is a HT consumer of DVC with a sanctioned contract demand of 145000 KVA. Therefore, SAIL-BSL cannot be considered as a beneficiary distribution company of DVC in so far as determination of generation tariff of DVC is concerned.

16. The petitioners have argued that since the Appellate Tribunal has held that the Central Commission has the jurisdiction to determine the tariff of the dedicated transmission lines connecting the generating stations of DVC with the HT consumers by treating them as deemed ISTS. In this connection it is pertinent to extract the relevant portion of the judgment of the Tribunal dated 23.11.2007 as under:

"111. DVC has been supplying power from its generating stations to West Bengal Electricity Board and Jharkhand Electricity Board along with nearly 120 HT-Consumers either through inter-state transmission lines or through the point-to-point 'dedicated transmission lines'. We, therefore, conclude that all transmission systems of DVC be considered as unified deemed inter-state transmission system, insofar as the determination of tariff is concerned and as such regulatory power for the same be exercised by the Central Commission."

Thus the direction of the Tribunal pertains to jurisdiction of the Commission which will decide the transmission tariff of DVC considering the peculiar nature of the integrated transmission system of DVC. The Tribunal has held that only for the purpose of determination of tariff and regulatory control over the deemed ISTS lines, the Central Commission can exercise the jurisdiction. Even though this Commission has determined tariff of the transmission system of DVC treating the same as deemed ISTS, the transmission tariff is not separately raised by DVC on the HT consumers in the manner it is raised on the distribution companies, but as part of the bulk tariff decided by the respective State Commissions. Therefore, the petitioners including the bulk consumers cannot invoke the jurisdiction of this Commission under Section 79(1)(f) of the Act.

17. It is on record that DVC has filed the application for determination of distribution tariff before the respective State Commissions of Jharkhand and West Bengal. Since DVC does not have any retail consumers, but only HT consumers, the distribution tariff determined by the State Commissions shall be applicable to the HT consumers including the petitioners.

18. Even though we have held that HT consumers do not have *locus standi* to approach this Commission under Section 79(1)(f) of the Act, they can participate in the proceedings of this Commission in their capacity of being HT consumers. The Commission has allowed their participation in the proceedings for tariff determination of the generation and transmission system of DVC by directing DVC to provide copies of the tariff petitions and other relevant documents including facilitating the access of the HT consumers to the information which are filed, through the website

of DVC and by granting opportunity to the HT consumers during hearing of the matters.

19. In the present case, since DVC has raised bills claiming it to be based on the generation tariff determined by this Commission, pending determination of the distribution tariff by the State Commissions, the petitioners have questioned the veracity of these bills. To this extent, this Commission has considered it appropriate to look into the issues to decide whether DVC is charging the tariff broadly in accordance with the tariff decided by this Commission in order dated 6.8.2009.

20. The petitioners are aggrieved that the capacity charge and FPA charge are sought to be recovered in excess of those approved by this Commission. The first grievance is that actual generation from Mejia TPS Unit 4 has not been considered while computing the capacity charge. According to the petitioners, non-consideration of actual generation of Mejia Unit 4 has inflated the tariff by 15 paise/kWh. The petitioners accordingly seek recalculation of the capacity charge on this ground. The contention of the petitioners is without basis. The capacity charge approved by this Commission in its order dated 6.8.2009 in respect of Mejia TPS was for Units 1, 2 and 3. The capacity charge for Mejia TPS Unit 4 was not included in the capacity charge approved. Therefore, actual generation of Mejia TPS Unit 4 could not have been considered for computing the capacity charge per kWh. In order to satisfy ourselves about the correctness of billing by the respondent, we have seen the calculation of capacity charge per kWh based on the capacity charge approved for Mejia TPS Unit 4 and its generation during 2008-09. We find that capacity charge per kWh in such case is `1.07495, slightly higher than the capacity charge per kWh billed by the respondent. As a result, we do not find any infirmity in the capacity

charge per kWh calculated by the respondent. Therefore, the first ground of the petitioners that computation of capacity charge per kWh should be inclusive of actual generation of Mejia TPS Unit 4 stands rejected.

21. It is however, noted that the capacity charge per kWh for the months of May, June and July 2010 has been calculated by taking into account the cumulative availability for the year 2008-09. The capacity charge for the months of May, June and July 2010 should have been computed by taking the availability for the respective month in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and not based on cumulative availability for 2008-09.

22. The second grievance of the petitioners relate to alleged excess recovery towards Pension and Gratuity Fund. The petitioners have alleged that the respondent recovered an excess amount of `184.138 crore which also increased the tariff by 15 paise/kWh. The respondent has denied any excess recovery on this count and has submitted that the recovery has been made in terms of the order dated 6.8.2009. The petitioners have not brought on record any evidence of the excess recovery to establish the allegation. Therefore, we accept the contention of the respondent. Accordingly, the second ground of the petitioners' is turned down. As directed in the order dated 6.8.2009, the recovery of `61379.60 lakh towards Pension and Gratuity Fund is to be spread over five equal yearly installments of `12275.92 lakh during 2009-14.

23. The petitioners are further aggrieved by the recovery of incentive amounting to `9.95 crore. The respondent has explained that during 2008-09 availability of Chandrapura TPS exceeded the normative availability and hence was entitled to

recover incentive. This action of the respondent cannot be faulted as recovery of incentive is provided for in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

24. Lastly, the petitioners have alleged excess recovery of the FPA charge, which according to the petitioners led to increase of tariff by 56 paise/kWh. The respondent has denied the allegation and has asserted that the FPA charge has been recovered in accordance with the formula given in the order dated 3.10.2006.

25. We have verified the correctness of the FPA charge for the month of April 2010 based on the details furnished by the respondent under its affidavit dated 16.9.2011. The FPA formula approved in order dated 3.10.2006 in Petition No. 66/2005 and adopted in order dated 6.8.2009 had been rectified by us in our order dated 2.5.2013 in Petition No. 301/2009, after correction of inadvertent typographical error. We find that the FPA charge has been calculated by the respondent by applying the formula correctly based on the actual landed price and GCV of coal. It cannot be said that the respondent has over-charged the petitioners or applied the wrong FPA formula. However, it is observed from the impugned bills that the FPA charge has been billed based on the charge calculated for the month of April 2010. This action of the respondent cannot be upheld. Any variation in GCV of coal burnt and its landed cost has to be adjusted on month-to-month basis. Accordingly, the FPA charge recovery is to be made by the respondent on month-to-month basis considering the weighted average price and GCV of fuel for the respective month.

26. The respondent has contended that the provisional billing was in accordance with clause (3) of Regulation 5 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, according to which the tariff as

approved by this Commission as on 31.3.2009 is applicable for billing the consumers from 1.4.2009 onwards till the final determination of tariff. There is merit in the respondents' contention. It is, however noted that this Commission has determined the final generation and transmission tariff of DVC for the period 2009-14 as per details given hereunder:

Petition No	Project	Date of order
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

The respondent is therefore required to file the application for determination of retail tariff before the respective State Commissions for the period 2009-14 and pursue the matter for expeditious determination of distribution tariff. Based on the distribution tariff determined by the respective State Commissions, the under recovery /overpayments, as the case may be, shall be adjusted by DVC.

27. Petition Nos. 277/2010 and 293/2010 is disposed of as above.

Sd/-
(M.DEENA DAYALAN)
MEMBER

Sd/-
(V.S.VERMA)
MEMBER