

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/RP/2013

in

Petition No. 272/2010.

Coram:

Shri Gireesh Pradhan, Chairperson

Shri V.S Verma, Member

Shri M.Deena Dayalan, Member

Shri A.K.Singhal, Member

Date of Hearing: 12.11.2013

Date of Order: 28.1.2014

In the matter of

Review of Commission's order dated 8.5.2013 in Petition No.272/2010 pertaining to the determination of deferred elements of tariff for generation and inter-State transmission of electricity in respect of Damodar Valley Corporation for the period 1.4.2006 to 31.3.2009.

And in the matter of

Damodar Valley Corporation, Kolkata.

...Petitioner

Vs

1. Department of Energy,
Govt of West Bengal,
Secretariat, Kolkata
West Bengal

2. Department of Energy,
Government of Jharkhand,
Secretariat, Ranchi
Jharkhand

3. West Bengal State Electricity Distribution Company Ltd,
Vidyut Bhawan, Block 'DJ', Sector-11, Salt Lake City
Kolkatta-700091

4. Jharkhand State Electricity Board,
Energy Building, HEC, Dhurwa,
Ranchi-834004

5. Union of India,
Ministry of Power,
Shram Shakthi Bhawan,
New Delhi-110001

...Respondents



Present:

Shri M.G. Ramachandran, Advocate, DVC

Shri S.Ganguly, DVC

Shri R.B.Sharma, Advocate, JSEB

Shri Apoorva Misra, Advocate, BSAL

Ms.Radhika Gupta, Advocate, BSAL

ORDER

This review petition has been filed by the petitioner, Damodar Valley Corporation, for review of order dated 8.5.2013 in Petition No. 272/2010 pertaining to determination of deferred elements of tariff for generation and inter-State transmission of electricity in respect of Damodar Valley Corporation for the period 1.4.2006 to 31.3.2009. Aggrieved by the said order, the petitioner has submitted that there is error apparent on the face of order and has sought review on the following issues:

- (a) Disallowance of expenditures without considering the justification given in respect of the items as described in the statement filed as (Annexure-A) of this petition.
- (b) Disallowance of expenditure on the ground that the assets are of minor nature or covered under the O&M expenses.
- (c) Non-consideration of the additional transmission and distribution assets during the period 2004-09.
- (d) Non-consideration of the decision of the Appellate Tribunal with regard to the asset of inter-unit transfer.
- (e) Disallowance of the expenditure incurred in RLA studies.

2. The petition was heard on 17.9.2013 on 'admission' and the Commission after hearing the learned counsel for the petitioner admitted the petition on the issues raised in serial nos. (a) to (d) of paragraph 1 above. However, the issue of disallowance of expenditure incurred in RLA studies was not pressed for by the learned counsel for the petitioner.

3. Reply to the petition has been filed by the respondent, JSEB and M/s Bhaskhar Shrachi Alloys Ltd (BSAL), the objector herein. The petitioner has filed its rejoinder to the same.

4. Heard the parties and examined the documents available on record. We shall now proceed to consider the issues raised in the petition as follows:

Disallowance of expenditures without considering the justification given in respect of the items as described in the statement filed as (Annexure-A)

5. The issues raised by the petitioner in clauses (a), (b) and (c) of paragraph 1 above are clubbed together and examined under this head. The petitioner has submitted that the Commission in its order while disallowing certain claims for additional capitalization in respect of thermal and hydro generating stations for 2006-09 and transmission & distribution systems for the period 2004-09 had not fully considered the justification provided by the petitioner in respect of each of the items therein. The petitioner has pointed out that though the Commission in its order has disallowed the expenditures on the ground that the petitioner had not submitted proper justification, the statement at Annexure-A filed by the petitioner would clearly indicate that enough justification was given. The petitioner has contended that the petitioner was in a position to clarify or to provide further details to the Commission in case of doubt on the justification submitted by the petitioner prior to the passing of the said order. The petitioner has also stated that disallowances made by the Commission on the ground that the assets are of minor nature are also not correct, if the specific nature of assets is looked into. e.g Switchyard. It has further stated that assets established for enduring benefits cannot be covered under O&M expenses and the same ought to have been capitalized for the purpose of tariff. The petitioner has explained that the Commission while disallowing the O&M expenditure claimed for transmission and distribution assets during the period 2004-09 had not considered the impact of additional transmission and distribution assets commissioned during the period 2004-09 and accordingly, the O&M expenses allowed by the Commission is less than the claim admissible in terms of the provisions of the 2004 Tariff Regulations. The petitioner has submitted that the expenditure on 3rd Oxygen analyzer has been disallowed by the Commission without analyzing the justification submitted and that the expenditure on such capital assets was necessary as the existing assets were not sufficient to operate the generating station.

6. The respondent JSEB in its reply has submitted that the justification for the capitalization of expenditure on works is required and not the earmarking the capital expenditure against the said work. It has also submitted that it is the duty of the petitioner to justify each and every work

undertaken for additional capitalization and justify the amount incurred on such works if it is intended to be claimed through tariff from the beneficiaries. The respondent has also pointed out that the petitioner had ample opportunities to justify the additional capitalization in the petition and thereafter in the rejoinder filed and during the hearing of the case. The respondent has argued that despite this, the petitioner has remained silent and it has now stated that it was in a position to clarify and give further details. The respondent has further contended that the petitioner, under the guise of review has sought for reconsideration of the whole issue afresh by making the same submissions which is not permissible under law. The respondent had also contended that the items of minor nature are not allowed under Regulation 18(3) of the 2004 Tariff Regulations and that the works of O&M nature are required to be met from O&M expenses. The respondent has submitted that the alleged disallowance of the expenditure on the ground that the assets are minor in nature or covered under O&M expenses is without any merit as the petitioner has questioned the judgment on this issue. The respondent has also submitted that the non-consideration of the impact of additional T&D assets in the order would only mean that the same is deemed to have been refused by the Commission. To substantiate, reference was made to the order of the Commission dated 27.8.2007 in Review Petition No. 70/2007 in Petition No. 24/2007. Accordingly, the respondent has pointed out that there is no mistake on this issue and the error in judgment even if presumed, cannot be cured in a review petition.

7. The objector M/s BSAL in its reply has submitted that the petitioner has sought *de novo* consideration of the elements of tariff which were disallowed by the Commission after giving detailed reasons in the order. It has also pointed out that the petitioner has filed fresh justifications which were in the knowledge of the petitioner even at the time of hearing of the main petition. The objector has further submitted that the Commission has given its finding after considering all the data before the Commission and the correctness of the findings rendered by the Commission cannot be challenged by way of review. As regards the disallowance of O&M expenditure for T&D assets commissioned during 2004-09, the objector has submitted that the Commission had considered the same on the basis of data submitted by the petitioner and has

disallowed the same primarily on the ground that the petitioner had failed to furnish sufficient justification to support its claim and therefore the petitioner cannot seek the re-opening of the issue on merits in review jurisdiction. The objector has further contended that the petitioner cannot agitate fresh issue in support in its case which was within its knowledge and were not presented despite ample opportunity granted by the Commission. Accordingly, the objector has prayed that the review petition is liable to be dismissed. The petitioner vide its rejoinder has submitted that there is no merits in the submissions of the respondents/objector and prayed that the same may be rejected.

8. We have examined the matter along with the justifications furnished in Annexure-A of this petition and our observations are as under:

Thermal generating stations

9. The additional capital expenditure for the period 2006-09 were allowed in the order dated 8.5.2013 after examining the asset-wise details, the justification furnished in the original petition (Petition No. 272/2010) and the additional information/submissions filed by the petitioner, as directed by the Commission, under the provisions of the 2004 Tariff Regulations. It is observed that the asset-wise justifications furnished by the petitioner in Annexure-A of this petition are the same justifications which were furnished earlier by the petitioner in Petition No. 272/2010. These justifications submitted in the original petition were duly considered by the Commission before arriving at a conclusion for allowing/disallowing of a particular expenditure in order dated 8.5.2013. Since the findings in our order were based on the submissions/justifications furnished by the petitioner, we find no reason to review of our order dated 8.5.2013. In view of this, there is no merit in the submission of the petitioner that the Commission had not fully considered the justification given by the petitioner. The Commission after prudence check, had disallowed the capitalization based on reasons indicated in order dated 8.5.2013. Accordingly, there is no error apparent on the face of the record and review on this ground is rejected.

10. In respect of other works/assets disallowed by the Commission, review has been sought for by the petitioner which is also examined hereunder:

Bokaro Thermal Power Station

11. For the year 2006-07, the expenditure of other items amounting to ₹7.95 lakh which include expenditure of ₹3.32 lakh for Switch Room for electric supply to vendors of Central market, ₹2.19 lakh for compound wall of Post Office and ₹2.44 lakh towards garage building for cars in quarters were disallowed in terms of Regulation 18 (3) of 2004 Tariff Regulations. Moreover, these assets do not provide any direct benefit to the beneficiaries. For the year 2007-08, the expenditure of ₹30.79 lakh which include expenditure towards concretization of floors of cable yard, open yard near godown, development of Central market, construction of garage, providing grill in veranda of school, construction of cycle stand in DVC school, Digital multimeter and infrared digital non conduct thermometer etc., were disallowed as these assets are in the nature of minor assets or works of O&M nature. Moreover, these assets do not provide any direct benefit to the beneficiaries. For the year 2008-09, the expenditure of ₹18.61 lakh towards installation of overhead water tank in building and laying of ERW steel rising from Bokaro to Simla house was disallowed as these were found to be extra facilities provided to the occupants. Also, the expenditure of ₹22.32 lakh for providing chain link fencing & concreting of base at yard, verandah in DVC school, Cycle shed, switch room in central market etc. were disallowed as the expenditure is of minor nature or in the nature of O&M works and they do not provide any direct benefit to the beneficiaries. We are of the view that the petitioner should bear this expenditure from their profits and the beneficiaries should not be burdened with such expenditure.

Durgapur Thermal Power Station

12. For the year 2006-07, the expenditure of ₹3.95 lakh towards balance weight & measurement, hydraulic jacks, insulation tester were disallowed as these assets were tools & tackles which were being minor assets and not admissible under Regulation 18(3) of the 2004 Tariff Regulations. For 2007-08, the expenditure of ₹1.48 lakh for PH meter, hydraulic hand pump, portable pump etc. were not allowed under Regulation 18 (3) of 2004 Tariff Regulations being minor assets. Also, the expenditure of ₹8.56 lakh for 3rd oxygen analyzer was disallowed

on the basis that the two oxygen analyzer allowed to be capitalized would be sufficient to cater to the need of the two units.

Mejia Thermal Power Station Units I to III

13. For the year 2008-09, the expenditure of ₹13.02 lakh for temporary residential building was disallowed being temporary assets.

14. As noticed above, the Commission after prudence check had disallowed the capitalization of the works/assets as discussed in the previous paragraphs for the reasons mentioned therein. Accordingly, the submission of the petitioner that the assets established for enduring benefits cannot be covered under O&M expenses and the same ought to have been capitalized for the purpose of tariff, is not acceptable. For these reasons, we find no error apparent on the face of the order dated 8.5.2013 and review on these ground are rejected.

Non-consideration of the decision of the Appellate Tribunal with regard to the asset of inter-unit transfer

15. The petitioner has submitted that the Commission has not considered the aspect of inter-unit transfer and the decision of the Appellate tribunal to the effect that there has to be a corresponding addition of capital value of assets in the transferee unit in case of de-capitalization of the value of assets in the transferor unit. It has also pointed out that the Commission has de-capitalized the value of the assets in the transferor unit without capitalizing the value of the same assets in the transferee unit, thereby excluding the assets in operation being serviced through tariff. The respondents have objected to the same and have submitted that the same cannot be cured in the review petition being an error in judgment.

16. We have considered the matter and our observations are as under:

Hydro Generating Stations

17. As stated, the petitioner in Petition No.272/2010 had sought the capitalization of Switchyard equipment of ₹264.08 lakh in Maithon Hydro Power Station during 2007-08. It is noticed that in order dated 8.5.2013, the expenditure of ₹264.08 lakh during 2007-08 towards the transfer of Switchyard assets from Transmission & Distribution System to Maithon Hydro

Power station had been disallowed as it was a book entry. The nature of assets pertains to the Transmission system and should have been claimed by the petitioner in T&D system and not under Maithon Hydro Power Station. Thus, the disallowance of capitalization of ₹264.08 lakh towards Switchyard equipment, which form part of T&D assets is in order. Accordingly, there is no error apparent in the order and review on this ground is rejected.

Transmission and Distribution (T&D) System

18. The Commission in its order dated 8.5.2013 had disallowed the capitalization of expenditure on assets /work under T&D system for want of proper justification, non-furnishing of the value of old assets replaced and assets bought after the cut-off date being either minor in nature or in the nature of O&M. Further, in respect of claim for additional O&M, the petitioner had only furnished the amounts without any detailed justification for the same, despite direction of the Commission by letter dated 9.3.2011 seeking information on the basis and details for calculation of O&M expenses along with the justification for the claim of additional O&M expenses for the years 2006-07, 2007-08 and 2008-09. Thus, the submission of the petitioner that it would have furnished information/justification in case it was sought for by the Commission cannot stand legs. As contended by the respondents, it is the bounden duty of the petitioner to claim expenditure with proper justification/information to the satisfaction of the Commission since, the expenditure if allowed, is recoverable from the respondents. Hence, there is no error apparent on the face of the order dated 8.5.2013 in respect of disallowance of T&D assets and review on this ground is accordingly rejected.

19. While the petitioner has sought the capitalization of ₹264.08 lakh for transfer of switchyard assets in Maithon Hydro Power Station from Transmission & Distribution System, it is noticed that the petitioner had also adjusted this asset in the T&D assets by negative entry of ₹264.08 lakh as "Other adjustment" during 2007-08. However, as the petitioner had not properly linked this adjustment (of negative entry) against capitalization of ₹264.08 lakh in Maithon Hydro Power Station, the Commission as a result had allowed the negative adjustment of (-) ₹264.08 lakh in T&D assets. This had resulted in double deduction of the same asset, i.e once in Maithon Hydro Power Station and again in T&D assets. Since these assets pertain to T&D

assets, their transfer to the project would lead to many adjustments. Since this is a book adjustment, these assets may continue to be serviced in T&D assets. Accordingly, while the non-capitalization of these assets in Maithon Hydro Power Station is in order, these assets shall be restored in T&D assets by ignoring the negative entry (de-capitalization) of ₹264.08 lakh in T&D assets. Based on this, the review of order dated 8.5.2013 is limited to ignoring of the negative entry of (-)₹264.08 lakh for Switchyard equipment in T&D assets in 2007-08. Accordingly order dated 8.5.2013 is reviewed to the extent indicated above.

Disallowance of expenditure incurred in Consultancy and RLA studies

20. As regards the claim for expenditure towards Consultancy charges for up-gradation of Coal Handling Plant (CHP) for improvement of plant performance etc., the Commission in its order dated 8.5.2013 had disallowed the same with the observation that "*it has been the consistent approach of the Commission to allow such expenditure only after R&M works based on RLA studies are incurred and benefits passed on to consumers*". As stated, the learned counsel for the petitioner during the hearing on 17.9.2013 did not press for the issue of disallowance of expenditure on RLA studies. In view of this, this issue has not been considered.

21. The prayer of the petitioner for review of order dated 8.5.2013 stands disposed of in terms of the above observations. Consequent upon the negative entry of (-) ₹264.08 lakh for Switchyard equipment in T&D assets in 2007-08 being ignored as stated above, there is revision in the closing capital cost of T&D system as on 31.3.2008 and 31.3.2009 respectively. However, the change in capital cost and the consequent revision of annual fixed charges for the T& D assets for the period 2007-09 shall be determined by a separate order.

Sd/-
(A.K.Singhal)
Member

Sd/-
(M. Deena Dayalan)
Member

Sd/-
(V.S. Verma)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson