

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

Coram:

1. Shri Ashok Basu, Chairman
2. Shri K.N. Sinha, Member
3. Shri Bhanu Bhushan, Member

**Petition No. 55/2004**  
(Suo motu)

**In the matter of**

Redressal of complaint under Regulation 35 of the CERC (Open Access in inter-state transmission) Regulations, 2004

**And in the matter of**

1. Eastern Regional Electricity Board, Kolkata
2. Damodar Valley Corporation, Kolkata
3. Govt. of Jharkhand, (Energy Deptt), Ranchi
4. Jharkhand State Electricity Board, Ranchi
5. Tata Iron and Steel Co. Ltd., Jamshedpur
6. Amalgamated Transpower (India) Ltd., New Delhi.....**Respondents**

**The following were present:**

1. Shri R.B. Sharma, Member Secretary, EREB
2. Shri M.G. Ramachandran, Advocate, DVC
3. Shri R.K. Dasgupta, DCE(Law), DVC
4. Shri Amit Kapoor, Advocate, TISCO
5. Shri P.S. Bhullar, Advocate, TISCO
6. Shri A.N. Singh, TISCO
7. Shri Taruna Singh Baghel, TISCO

**ORDER  
(DATE OF HEARING 28.10.2004)**

**Introduction**

The short and straight question involved in the present petition is the applicability of the Central Electricity Regulatory Commission (Open Access in

Inter-state Transmission) Regulations, 2004 (hereinafter referred to as “the regulations on Open Access”) to 132 kV D/C line (hereinafter referred to as “the line in question”) connecting the sub-station belonging to Damodar Valley Corporation (hereinafter referred to as “DVC”) at Jamshedpur to Golmuri sub-station also at Jamshedpur belonging to Tata Iron and Steel Company (hereinafter referred to as “TISCO”).

### **Factual Background**

2. TISCO, a registered company with the previous sanction of the State Government under Section 28 of the Indian Electricity Act, 1910 (hereinafter referred to as “the 1910 Act”) is, inter alia, engaged in the business of supplying electricity within the township of Jamshedpur. TISCO has its captive generation of 147.5 MW. It also buys power from DVC (up to a maximum demand of 85 MVA) and its sister concern, namely, Tata Power Company Ltd (307.5 MW) at Jojobera. The line in question has been constructed at the expense of TISCO but its ownership is vested in DVC who maintains and operates this line.

3. It transpires that TISCO was having some surplus power. Amalgamated Transpower India Limited (hereinafter referred to as “ATL”) also a company registered under the Companies Act, under the interim orders of the Commission could undertake inter-state trading in electricity. ATL entered into an agreement with TISCO on 28.2.2004, whereby the former agreed to buy 50 MW of power from the latter for resale to Haryana Vidyut Prasaran Nigam Ltd. The transfer of

power was to be effected through the line in question. DVC, however, denied Open Access on the line in question to ATL on the ground that the said line forms part of its distribution system and therefore, is not governed by the regulations on Open Access, which apply to the inter-state transmission system. ATL reported the matter to Member Secretary, Eastern Regional Electricity Board (for short “EREB”) in accordance with Regulation 35 of the regulations of Open Access. Member Secretary, EREB in its report has concluded that the line in question is a transmission line, forming part of inter-state transmission system. Despite a finding to that effect by Member Secretary, EREB, the issue could not be resolved. Therefore, Member Secretary, EREB reported the matter to the Commission. The present suo motu proceedings have been started against the above background facts, though initially the report of Member Secretary, EREB was considered a petition.

### **Statutory Provisions**

4. Under Section 2(19) of the Electricity Act, 2003, (hereinafter referred as “the 2003 Act”), “distribution system” is defined to mean a “system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.” Under Section 2(72), the “transmission lines” are defined to mean “all high pressure cables and overhead lines (not being an essential part of the distribution system of the licensee) transmitting electricity from a generating station to another generation station or a sub-station, together with step-up and

step-down transformers switchgear and other works necessary to and used for the control of such cables or overhead lines and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works”.

5. Section 35 of the 2003 Act, provides that the Commission may, on an application by any licensee, by order, require any other licensee, owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with the licensee. Any dispute regarding the extent of surplus capacity available with the licensee is to be adjudicated upon by the Commission. Under Section 36 of the 2003 Act, every licensee shall on an order made under Section 35 provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon and in case these cannot be mutually agreed upon by the licensees, the Commission may specify rates, charges and terms and conditions. Under Section 40 of the 2003 Act, it is a duty cast upon a transmission licensee to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges or any consumer on payment of transmission charges and a surcharge thereon as may be specified by the State Commission. Under sub-section (2) of Section 42 of the 2003 Act, the State Commission is enjoined to introduce open access on the distribution system belonging to the distribution licensee. Under Section 178 of the 2003 Act, the Central Commission is authorised to make regulations consistent with the

provisions of that Act and the rules, generally to carry out the provisions of that Act. In exercise of above noted powers under the 2003 Act, the Commission has specified the regulations on Open Access. Under the regulations on Open Access, the transmission customers have been divided into two categories, namely long-term customers and the short-term customers. These regulations lay down the criteria for allowing open access to the long-term and short-term customers. Regulation 35 of the regulations on Open access further lays down the redressal mechanism, according to which, all complaints regarding malpractice, delays, discrimination etc. are to be directed to Member Secretary, Regional Electricity Board, or Regional Power Committee as the case may be of the region in which the authority against whom the complaint is made, is located. Member Secretary has been given power and authority to investigate and make endeavours to resolve the grievances and any matter which Member Secretary is unable to resolve is to be reported to the Commission for a decision.

6. DVC is a statutory body constituted under Section 3 of Damodar Valley Corporation Act, 1948 (hereinafter referred to as “the DVC Act”). Section 12 of the DVC Act relates to functions of DVC. Among others, DVC is assigned the function of “the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydro-electric and thermal”. For the performance of these functions, DVC has its own generating stations and also has long-term allocation from the Central generating stations located in the Eastern Region. As laid down under sub-section (ii) of Section 18

of the DVC Act, DVC may sell electrical energy to any consumer in the Damodar Valley, but no such sale shall, except with the permission of the State Government concerned, be made to any consumer requiring supply at a pressure of less than 30,000 volts. Under sub-section (iii), DVC may with the permission of State Government concerned, expand its transmission system to any area beyond Damodar Valley and sell electrical energy in such area. Under fourth proviso to Section 14 of the 2003 Act, DVC is a deemed licensee and is not required to obtain a license for undertaking the functions assigned to it under the DVC Act.

7. Under Section 3 of the 1910 Act (repealed by the 2003 Act), the State Government could grant a licence to person to supply energy in any specified area. Under Section 28 of the 1910 Act, any person other than a licensee under Section 3, could engage in the business of supplying energy to the public with the previous sanction of the State Government and in accordance with such conditions as the State Government prescribed in this regard.

### **Proceedings before the Commission**

8. DVC in its submissions in the present proceedings before the Commission has reiterated that line in question is a part of the distribution system and, therefore, open access on such a line cannot be claimed as a matter of right till such time the State Regulatory Commission specified the terms and conditions for open access on the distribution system, under Section 42 of the 2003 Act. It is

stated that TISCO utilises the electricity supplied for its steel plant and is a bulk consumer of DVC. Accordingly, it is submitted that the line in question is used for supply of power to a bulk consumer of DVC through the distribution system. It is contended that DVC even after the 2003 Act came into force, continues to be a vertically integrated utility carrying on the business of generation, transmission, distribution and supply of electricity within the area of Damodar Valley and beyond that area with the approval of the State Government, as a deemed licensee under fourth proviso to Section 14 of the 2003 Act.

9. TISCO has supported the findings of Member Secretary, EREB. According to TISCO, the line in question falls outside the Damodar Valley and was extended by DVC under sub-section (iii) of Section 18 of the DVC Act with the sanction of the then State Government of Bihar accorded vide letter dated 10.12.1949. It is urged by TISCO that the line in question cannot be said to be part of the distribution system of DVC, as defined in the 2003 Act, for the reason that DVC cannot be considered a distribution licensee beyond Damodar Valley. It has been argued that by virtue of sanction granted under sub-section (I) of Section 28 of the 1910, Act, TISCO is a licensee under the 2003 Act for supply of power within the township of Jamshedpur.

10. We heard Shri M.G. Ramachandran, Advocate for DVC, Shri Amit Kapoor, Advocate for TISCO and Shri R.B. Sharma, Member Secretary, EREB in person. There was no representation on behalf of the State Government of

Jharkand and the Jharkand State Electricity Board, though they were also impleaded as respondents in the present proceedings.

## **Findings**

11. First of all we have to consider the contention of DVC that TISCO is its bulk consumer. Learned counsel for DVC relied upon the agreement dated 25.7.2002 signed between DVC and TISCO wherein TISCO has been referred to as “the Consumer”. DVC has also placed reliance on the advice dated 10.5.2003 given by Shri Soli J. Sorabjee, the then Attorney General for India.

12. TISCO had obtained sanction of the State Government under sub-section (1) of Section 28 of the 1910 Act for supply of power within the township of Jamshedpur, vide letter dated 9.11.1923, a copy of which has been placed on record. Certain conditions were added to the sanction under Bihar Government’s letter dated 29.1.1974. By virtue of the sanction dated 9.11.1923, TISCO became a licensee as defined under Section 2 (6) of the Electricity (Supply) Act, 1948, according to which “licensee” means a person licenced under Part II of Indian Electricity Act, 1910 to supply energy or a person who has obtained sanction under Section 28 of that Act to engage in business of supply of energy (Emphasis added). Therefore, TISCO, prior to enactment of the 2003 Act was a licensee as defined under the Electricity (Supply) Act, 1948. TISCO has also placed on record certain documents to show that it had been obtaining approval of the State Government as a licensee for the tariff for supply of electricity within



the township of Jamshedpur. Thus, there should be no dispute that under the Electricity (Supply) Act, 1948 (also repealed by the 2003 Act), TISCO was considered to be a licensee.

13. Under Section 12 of the 2003 Act, no person can distribute electricity unless he is authorised to do so by a licence issued by the Commission under Section 14 of this Act or is exempt under Section 13 thereof. Further, first proviso to Section 14 lays down that any person engaged in the business of supply of electricity under the provisions of repealed laws (which includes the 1910 Act) on or before the appointed date (that is, 10.6.2003) shall be deemed to be a licensee for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws. Under the 2003 Act, the distinction between a licensee under Section 3 of the 1910 Act and a sanction holder under Section 28 thereof has been done away with as there is no separate category of sanction holders corresponding to Section 28 of the 1910 Act on the date the 2003 Act came into force. Thus, by virtue of its operations under Section 28 of the 1910 Act, TISCO is also deemed to be a licensee under the 2003 Act.

14. TISCO is reported to have approached Jharkand Electricity Regulatory Commission for grant of licence under Section 14 of the 2003 Act. TISCO has placed on record a copy of the order dated 24.3.2004 made by Jharkand Electricity Regulatory Commission which authorises TISCO to continue to

undertake supply of electricity in Jamshedpur township in accordance with the terms and conditions of licence. When considered the matter from this angle also, TISCO is a distribution licensee. The consumption of electricity by TISCO for its steel plant does not change the position for the reason that at Golmuri sub-station, the electricity from three different sources of supply loses its distinctive character in relation to its source of supply. Therefore, it cannot be said which particular supply is used for the steel plant. Therefore, it cannot be said to be a consumer. A similar conclusion will follow by the comparative analysis of sub-sections (ii) and (iii) of Section 18 of the DVC Act. Under sub-section (ii), DVC is entrusted with the responsibility to sell electrical energy to any consumer in the Damodar Valley. However, under sub-section (iii), which empowers DVC to sell electrical power beyond Damodar Valley, there is no such restriction or qualification for sale to a consumer. In other words, beyond Damodar Valley, sale to a licensee, like TISCO, is authorised by the DVC Act. Accordingly, the supply of electricity by DVC to TISCO through the line in question is not supply to a consumer. Further, it is noted that the 2003 Act does not authorise an electricity consumer to sell electricity further to another consumer. In case TISCO is considered to be a consumer, supply of electricity by it to the other consumers in Jamshedpur town will not be covered under the 2003 Act.

15. In our opinion, the nomenclature of consumer used in the agreements signed between DVC and TISCO cannot change TISCO's status as a licensee and nomenclature given under the agreement is to be confined to the

interpretation of the agreement. We may point out that the agreement executed on 25.7.2002 refers to sale of 132 kV power by DVC to TISCO for TISCO's "own load and resale" (Emphasis added). This is an evidence to show that DVC is fully aware of licensee status of TISCO and power supplied by DVC to TISCO is also meant for "resale" to latter's consumers. Under these circumstances, DVC cannot be heard to say that TISCO is its bulk consumer and not a licensee.

16. A few words about the opinion of the learned Attorney General a copy of which has been filed by DVC, though the brief which formed the basis for the opinion has not been placed on record. From the opinion it appears that DVC, with the permission of the State Governments of West Bengal and Jharkhand granted under Section 18 (iii) of the DVC Act has extended its transmission system beyond its command area in Damodar Valley. DVC has proposed to supply power to the consumers in Purulia sub-station area in view of interest shown by some of them. DVC in its letter dated 29.5.2001 addressed to Minister of Power, Govt. of West Bengal, appears to have pointed out that when permission is granted by the State Government under Section 18 (iii) of DVC Act for extension of transmission system outside the command area "the right to sale electrical energy in such area is inherent in this permission". However, this stand of DVC seems to have been disputed by the State Government by stating that the question of DVC exercising discretion to sell power to any consumer without specific permission of the State Government did not arise. Against the background of these facts, the learned Attorney General opined that if DVC had

obtained permission of the State Government to extend its transmission system to an area, it would carry with it the right to sell electrical energy in the area beyond Damodar Valley. Nevertheless, the learned Attorney General advised DVC to make an application to the State Government of West Bengal for grant of permission to sell electrical energy beyond Damodar Valley.

17. The above facts would reveal that no conclusive view has emerged on the question whether permission to DVC under Section 18 (iii) of the DVC Act to extend its transmission system beyond Damodar Valley carries with it permission to sell electrical energy to the consumers beyond Damodar Valley. It further emerges that DVC has extended its transmission system to Purulia sub-station area beyond Damodar Valley but is not selling electrical power to the consumers in that area, meaning thereby that DVC has treated extension of transmission system in the area beyond Damodar Valley separately from sale of electrical energy in that area since otherwise it would have engaged in the business of sale of electrical energy to the consumers in Purulia sub-station area when it extended its transmission system to that area. It accordingly, follows that extension of transmission system beyond Damodar Valley and sale of power under Section 18 (iii) of the DVC Act have been considered distinct functions. Under State of Bihar's letter dated 10.12.1949, DVC was accorded permission for extension of the transmission line at Jamshedpur. On the above analogy, it would imply that the sanction did not carry with it power to sell electrical energy

to TISCO as a consumer. This further lends support to the view that sale of electrical energy to TISCO by DVC is not in the capacity of a consumer.

18. Now we consider the contention of DVC that the line in question is not the transmission line but is an essential part of its distribution system. A line in order to qualify to be categorised as a transmission line:

- (a) should be a high pressure cable or over head line,
- (b) it should not be an essential part of the distribution system of the licensee, and
- (c) it should be transmitting electricity from a generating station to another generating station or sub-station.

19. Pressure of an electric cable or overhead line is an indicator of its voltage. Under Clause (av) of the Indian Electricity Rules 1956, where the voltage does not exceed 250 volts under normal conditions it is said to be “low”; where the voltage does not exceed 650 volts under normal conditions it is defined as “medium”; where voltage does not exceed 33,000 volts under normal conditions it is said to be “high”; and where the voltage exceeds 33,000 volts it is categorised as “extra high”. It is not in dispute that the line in question is operated at 132 kV. Therefore, the line in question is an extra high pressure line. Therefore, the first ingredient of the definition of the “transmission line” given under the 2003 Act is satisfied. It is also not disputed that the line in question is used for transmitting and supply of electricity from the generating station or sub-station. Therefore, the third ingredient extracted above also stands satisfied.

20. The only question left for our consideration in this context is whether it is an essential part of the distribution system. The learned counsel for DVC vehemently argued that since DVC is a vertically integrated utility undertaking generation, transmission, and distribution under the DVC Act, the line in question should be considered as an essential part of the distribution system owned and operated by DVC. According to the learned counsel, in case of an integrated utility, like DVC where electrical lines and associated facilities are used for delivery of electricity to the consumers, the entire system should be treated as distribution system and generation and transmission are to be considered incidental to the distribution of electricity and the high pressure cables or over-head lines should not be considered as a part of the transmission business, but an essential part of the distribution system. Learned Counsel submitted that when the DVC Act was enacted in 1948 transmission of electricity was not considered as an activity separate from the distribution of electricity. For this reason also, according to the learned counsel, even the high pressure lines are to be taken as an essential part of the distribution system of the licensee. Therefore, in the submission of the learned counsel, notwithstanding that the line in question is a high pressure cable or over-head line, it has to be construed as an essential part of the distribution system of DVC. Our specific attention was drawn to Clause 2 (a)(iii) of the agreement dated 25.7.2002 between DVC and TISCO on the utilisation of the line in question. According to this clause, DVC is entitled to supply other consumers from the line in question or apparatus fixed at TISCO's sub-station or DVC sub-station and for that purpose to erect and

maintain such additional lines and apparatus as may from time to time. The learned counsel built an argument that the line in question could be used for supply of electricity to the consumers other than TISCO.

21. We have already held that for the purpose of supply of electrical energy by DVC, TISCO is not a consumer. Therefore, the supply of power by DVC to TISCO does not at all involve the distribution system belonging to DVC. Nothing has been brought to our notice to indicate that the line in question is being used to supply power to any other consumer. Accordingly, in our judgement, the line in question cannot be said to be an essential part of DVC's distribution system for supply of power within or outside Damodar Valley. It is located outside Damodar Valley and is exclusively used for transmission of electricity from DVC sub-station to TISCO's sub-station. Therefore, notwithstanding Clause 2(a) (iii) of the agreement between DVC and TISCO, the line is used solely for the purpose of conveyance of electricity to TISCO at Golmuri sub-station. In our opinion, only those high pressure cables or overhead lines which are embedded in the distribution system of a distribution licensee are outside the scope of "transmission line" defined in Section 2(72) of the 2003 Act. The interpretation placed by DVC, if accepted, would lead to serious consequences as in that case every transmission line, may have to be construed as an essential part of the distribution system since the transmission lines are invariably utilised for conveyance of electricity up to the delivery point in the distribution system. Such a restrictive construction of the term "transmission line" will render otiose the

provisions relating to Open Access on the transmission and thereby defeat the laudable objects of the 2003 Act of promotion of competition in the electricity industry and further impede trading in electricity. Also, we do not find any merit in the submission of the learned counsel for DVC that prior to enactment of the 2003 Act, transmission of electricity was not recognised as a separate activity. Section 12 (b) of the DVC Act, relating to the functions of DVC, specifically provides transmission of electricity as a separate function of DVC. Similarly, under the Electricity (Supply) Act, 1948, a clear distinction is made between transmission and distribution of electricity.

22. DVC has placed on record sanction from State Government of Bihar accorded by the letter dated 10.12.1949 issued under Section 18 (iii) of DVC Act to grant extension of DVC transmission line to Jamshedpur beyond the command area of DVC. This letter also refers to the line in question as “transmission line of 132 kV to Jamshedpur” and supports our conclusion recorded in the preceding para.

23. We close the discussion by concluding that the line in question is not an essential part of the distribution system belonging to DVC.

24. The line in question is an integral part of the transmission system owned by DVC, traversing the territories of the States of West Bengal and Jharkhand,



used for evacuation of electricity from its generating stations located in the State of West Bengal, and thus is a part of inter-state transmission system.

### **Conclusion**

25. In the light of above analysis, 132 kV line connecting DVC sub-station with TISCO sub-station (the line in question) is a part of inter-state transmission system belonging to DVC and shall be governed by the regulations on Open Access specified by the Commission.

**Sd/-  
(BHANU BHUSHAN)  
MEMBER**

**Sd/-  
(K.N. SINHA)  
MEMBER**

**Sd/-  
(ASHOK BASU)  
CHAIRMAN**

New Delhi dated the 30<sup>th</sup> November, 2004