CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Review Petition No. 21/RP/2019
in
Petition No. 150/TT/2018

Coram:

Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member

Date of order: 21.05.2022

In the Matter of:

Review Petition under Section 94(2) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 and Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 seeking review of the order dated 9.8.2019 in Petition No. 150/TT/2018.

Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata – 700054. …**Review Petitioner**

Vs.

1. West Bengal State Electricity Distribution Company Limited,
(Previously West Bengal State Electricity Board),
Vidyut Bhawan, Block 'D-J', Sector-11, Salt Lake City,
Kolkata - 700091.

2. Jharkhand Bijlee Vitran Nigam Limited,
Engineer's Building, Dhurwa,
Ranchi – 834004. …**Respondents**

For Review Petitioner : Shri M.G. Ramachandran, Senior Advocate, DVC
Ms. Anushree Bardhan, Advocate, DVC
Ms. Srishti Khindaria, Advocate, DVC
Shri Manik Rakshi, DVC
Shri Subrata Ghosal, DVC
Shri Subrata Ganguly, DVC
Shri Srikant Pandit, DVC
Shri Samit Mandal, DVC
Shri Debasish Mondal, DVC

ORDER

Damodar Valley Corporation (DVC) has filed the instant petition seeking review of the order dated 9.8.2019 in Petition No. 150/TT/2018 under Section 94(2) of the Electricity Act, 2003 (in short, “the 2003 Act”) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 and Section 114 of the 2003 Act read with Order 47 Rule 1 of the Code of Civil Procedure, 1908.

Background

2. The Commission vide order dated 9.8.2019 in Petition No. 150/TT/2018 approved the tariff for Transmission & Distribution Network (hereinafter referred to as “subject assets”) of DVC for the 2014-19 tariff period in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”). Aggrieved with the findings of the Commission in order dated 9.8.2019, DVC has filed the instant Review Petition and has made the following prayers:

> *“(a) admit the review petition;*
>
> *(b) review and modify the order 9.8.2019 passed in Petition 150/TT/2018 to the extent mentioned above,*
>
> *(c) Pass such further order or orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”*

3. The impugned order dated 9.8.2019 was heard by coram of Shri P.K. Pujari, Chairperson, Dr. M.K. Iyer, Member and Shri I.S. Jha, Member. Dr. M.K. Iyer, Member has demitted office. Hence, the instant review petition is heard by the coram of Shri P.K. Pujari, Chairperson and Shri I.S. Jha, Member.

4. The matter was heard through video conference on 20.7.2021 and the order was reserved. None of the Respondents have filed reply in the matter. Having heard DVC and perused the documents on record, we proceed to deal with the issued raised by DVC.

5. DVC has submitted that there are errors apparent on the face of the record in order dated 9.8.2018 and sought review and modification of the order on following issues:

a. The Commission observed in paragraph 46 of the order that the COD of the existing Transmission and Distribution Network of DVC will be 1.4.2004 and that the balance depreciable value of the asset (post the completion of 12 years i.e. 1.4.2016) will be spread over the balance useful life of the asset from the financial year 2016-17 onwards. However, in case of "depreciation rate", the provisions of Section 40 of the 1948 Act are applicable.

b. While computing the cumulative depreciation, the Commission has not adjusted the depreciation related to de-capitalized assets, i.e. three non-ISTS lines, namely, (i) Single Circuit LILO of 400 kV D/C Durgapur (PG)-Jamshedpur (PG) at DSTPS, (ii) Single Circuit LILO of 400 kV D/C Maithon PG)-Ranchi (PG) at RTPS and (iii) Double Circuit 400 kV DSTPS-RTPS till 31.3.2017 amounting to ₹6530.18 lakh.

c. While computing the interest on loan component, the adjustment in repayment of loan due to de-capitalization of assets was added to the repayment of loan head instead of reducing the same.

d. The cumulative repayment of loan with regard to the three non-ISTS lines till 31.3.2017 has not been considered while computing the interest on loan.

e. The deduction of ₹101.25 lakh on account of asset disposed in the year 2015-16 and ₹121.12 lakh in the year 2016-17 (for assets already de-capitalized) while computing the additional capital expenditure to be allowed when such adjustments were already given effect to in previous period.

f. The Commission has not allowed the claim of DVC with regard to subsidiary activities and mega insurance.

g. Common office expenses not included in the final table at paragraph 70 summarizing transmission charges allowed.

h. The Commission while considering the additional capital expenditure under the head: A-N Stage, has inadvertently mentioned that for the year 2014-15 to 2016-17 the claim of DVC is on projected basis whereas the same is on actual basis.

Depreciation rate and balance depreciable value of assets

6. DVC has made the following submissions in support of its claim for modification of depreciation rate and depreciation value:

a. The Commission's decision to approve the deemed COD of subject assets as 1.4.2004 and thereafter recovery of the balance depreciable value of the asset, after 12 years i.e. 1.4.2016, spread over the balance useful life of the asset from 2016-17 is contrary in essence to the depreciation rate allowed to DVC in terms of Section 40 of the DVC Act, 1948 (1948 Act) which was upheld by the Hon'ble Supreme Court in the matter of Bhaskar Shrachi Alloys Ltd. v. Damodar Valley Corpn., (2018) 8 SCC 281. The apex court observed that the provisions of the 1948 Act will have an overriding effect over the inconsistent provisions of the Tariff Regulations. Accordingly, in case of "depreciation rate" and "sinking fund", the provisions of Section 40 of the 1948 Act will be applicable.

b. In view of the impugned order, the depreciation rate will come down to less than 1% as against the depreciation rate of 7.72% applicable to DVC as per Section 40 of the 1948 Act and DVC will be deprived of the benefit of claiming depreciation at the higher rate in terms of Section 40 of the DVC Act, 1948 beyond 2016 till it reaches 90% of the depreciable value.

c. As per APTEL's judgment dated 23.11.2007 in Appeal No. 273 of 2006 and batch matters, the Commission should consider the COD of 'the Existing Transmission & Distribution System' as the COD of the last element of the Existing Transmission & Distribution System which is 14.2.2014 (of bays of Giridih Sub-station) instead of 1.4.2004 as decided in order dated 9.8.2019.

d. While computing the cumulative depreciation, the Commission has not adjusted the depreciation already recovered in respect of three (3) non-ISTS lines till 31.3.2017 amounting to ₹6530.18 lakh, which has already been submitted by DVC in Petition No. 334/TT/2018. DVC has already recovered the tariff of the relevant period through retail tariff as determined by the SERC and will face financial burden if the Commission's order is followed.

7. We have considered the submissions of DVC. Regulation 53(2)(iii) of the 2014 Tariff Regulations provides as follows:

> "*(iii)* ***Depreciation:*** *The depreciation rate stipulated by the Comptroller and Auditor General of India in terms of section 40 of the Damodar Valley Corporation Act, 1948 shall be applied for computation of depreciation of projects of DVC.*"

8. Accordingly, as per Regulation 53(2)(iii) of the 2014 Tariff Regulations, the depreciation rate stipulated by Comptroller and Auditor General of India as per Section 40 of the 1948 Act is applicable in case of DVC. However, inadvertently in the impugned order, the depreciation rate and the usual methodology adopted in computation of depreciation for transmission assets was applied to the subject

assets of DVC which is contrary to Regulation 53(2)(iii) of the 2014 Tariff Regulations. It is an apparent error and it needs to be corrected. Therefore, depreciation allowed for the subject assets of DVC for 2014-19 tariff period vide order 9.8.2019 shall be revised in accordance with Regulation 53(2)(iii) of the 2014 Tariff Regulations in Petition No. 482/TT/2020, filed by DVC for truing up of the tariff of the 2014-19 tariff period of the subject assets.

9. DVC has also contended that the Commission has not adjusted the cumulative depreciation till 31.3.2017 amounting to ₹6530.18 lakh in case of the three (3) de-capitalized non-ISTS lines of DVC while computing deprecation for the subject assets for the 2014-19 tariff period. The three non-ISTS lines of DVC were removed from the transmission and distribution system of DVC on the request of DVC in the order dated 9.8.2019 in Petition No. 150/TT/2018. However, the cumulative depreciation in case of the three non-ISTS lines was not adjusted in the impugned order dated 9.8.2019 inadvertently, which is an apparent error. The same shall be adjusted in Petition No. 482/TT/2020, filed by DVC for truing up of the tariff of the 2014-19 tariff period of the subject assets.

Computation of Interest on Loan

10. DVC has submitted that the cumulative repayment of loan due to de-capitalization of assets was added to the 'cumulative repayment of loan' instead of reducing from it. In paragraph 44 of the impugned order, ₹104300.74 lakh (₹91723.75 lakh + ₹12336.32 lakh + ₹240.67 lakh) was considered against 'cumulative repayment of loan up to previous year' in 2014-15, which is on account of erroneous addition of 'repayment adjustment due to de-capitalization' amounting to ₹240.67 lakh instead of subtracting the same while computing the 'cumulative repayment of loan'. DVC has further submitted that the cumulative repayment of loan

with regard to the three (3) non-ISTS line ought to have considered while computing the interest on loan.

11. We have considered the submissions of DVC. It is observed that the amount of loan repaid in case of the de-capitalized assets up to 2009 amounting to ₹240.67 lakh was inadvertently added instead of being deducted. The same shall be corrected as adjustment in opening cumulative repayment of loan in Petition No. 482/TT/2020, filed by DVC for truing up of the tariff of the 2014-19 tariff period of the subject assets.

12. As regards the adjustment of cumulative repayment in respect of three (3) de-capitalized non-ISTS lines, the impact of adjustment of cumulative repayment shall also be considered in Petition No. 482/TT/2020 filed by DVC for truing up of the tariff of the 2014-19 tariff period of the subject assets.

13. DVC has submitted that the Commission has reduced its claim against the main division for the year 2015-16 by ₹101.25 lakh from ₹325.45 lakh and for 2016-17 by ₹121.12 lakh from ₹822.39 lakh, thereby leading to double deduction, i.e. once during past tariff period and again in order dated 9.8.2019 in Petition No. 150/TT/2018.

14. We have considered the submissions of DVC. DVC in paragraph (L) in the main Petition had claimed the following actual ACE during the year 2014-15 to 2016-17 in respect of A-N stage, Transmission (Main Division) & Communication:

(₹ in lakh)

Actual Additional Capitalization			
Year	**2014-15**	**2015-16**	**2016-17**
Add-Cap for Existing Project [A-N Stage, Transmission (Main Div.) & Communication] as considered in present petition	7580.12	1842.91	5174.90

15. As can be seen from the Table above, the Petitioner has claimed the ACE of ₹1842.91 lakh and ₹5174.90 lakh for the year 2015-16 and 2016-17 respectively and DVC has not claimed any adjustment of ₹101.25 lakh and ₹121.12 lakh during 2015-16 and 2016-17. Accordingly, taking into consideration these submissions of the Petitioner, the Commission in order dated 9.8.2019 in Petition No. 150/TT/2018 allowed ACE of ₹1618.71 lakh and ₹4458.63 lakh for the year 2015-16 and 2016-17 respectively for Transmission A-N Stage and for Transmission Main Division, the claim of ACE of ₹224.20 lakh and ₹701.27 lakh for the year 2015-16 and 2016-17 respectively was not allowed due to non-submission of sanction/work order. The relevant portion of the order dated 9.8.2019 are as follows:

"30. Based on the above discussions, the additional capital expenditure claimed and allowed for the period 2014-19 is as follows: -

(₹ in lakh)

Assets	*Claimed*					*Allowed*				
Existing System	*2014-15*	*2015-16*	*2016-17*	*2017-18*	*2018-19*	*2014-15*	*2015-16*	*2016-17*	*2017-18*	*2018-19*
Transmission A to N Stage	6929.02	1618.71	4458.63	621.41	5619.57	6929.02	1618.71	4458.63	0.00	0.00
Transmission Main Division	651.02	224.20	701.27	477.20	1016.46	0.00	0.00	0.00	0.00	0.00
CE Stores	0.08	0.00	15.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	7580.12	1842.91	5174.90	1098.61	6636.03	6929.02	1618.71	4458.63	0.00	0.00

16. While considering ACE for the tariff period 2014-19, the Commission has proceeded based on the submissions of the DVC wherein DVC has not claimed any adjustment of ₹101.25 lakh and ₹121.12 lakh during 2015-16 and 2016-17. Accordingly, the ACE was approved as claimed by DVC. Therefore, there is no "double deduction" as contended by DVC. Accordingly, the DVC's contention of "double deduction" is rejected.

<u>Additional O&M Expenses</u>

17. DVC has submitted that its claim for additional O&M Expenses on account of Mega Insurance and subsidiary activities was rejected. DVC has submitted that due

to its special status recognized by the Tariff Regulations and in terms of the judgment of Hon'ble Supreme Court in the matter of Bhaskar Shrachi Alloys Ltd. v. Damodar Valley Corpn., (2018) 8 SCC 281, the Commission should consider additional O&M Expenses. The Commission in order dated 9.2.2017 in Petition No. 115/GT/2015 in respect of Mejia Thermal Power Station Extension, Unit 5 and Unit 6 (2 x 250) has allowed expenditure on Mega insurance. DVC has submitted that in the interest of consumers and securing the transmission system of DVC, the Commission may take a view on additional O&M Expenses.

18. We have considered the submissions of DVC. DVC's claim for additional O&M Expenses on account of "Mega Insurance Expenses" was considered by the Commission in order dated 9.8.2019 and it was rejected. The relevant portion of the order dated 9.8.2019 is extracted hereunder:

> *"61. We have considered the submissions of the petitioner and DVPCA. The petitioner has approached the Commission for grant of additional O&M Expense and has submitted that these expenses are in addition to the O&M Expenses approved under the 2014 Tariff Regulations. Considering the fact that these norms were specified under the 2014 Tariff Regulations after extensive stakeholder consultation and no details were furnished by the petitioner at the time of framing these regulations, we are not inclined to allow the relief as prayed for by the petitioner."*

19. The submissions made by DVC in the instant review petition are similar to submissions made in Petition No. 150/TT/2018, which were considered by the Commission while rejecting DVCs claim. DVC is trying to re-agitate the issue which has already been decided by the Commission on merits, which is not allowed in a review petition. Accordingly, DVC's plea for reconsideration of the earlier decision to disallow additional O&M Expenses on account of "Mega Insurance Expenses" is rejected.

Common Office Expenses not incorporated in the final table of transmission charges

20. DVC has contended that while allowing the transmission charges for 2014-19 tariff period, which is the input cost for determination of retail tariff for two states (West Bengal and Jharkhand), the Commission has not included the approved common office expenses towards the Transmission & Distribution Network in the Table under paragraph 70.

21. We have considered the submissions of DVC. The Table under paragraph 70 gives the details of the components of the tariff approved in the order and it is the summary of the approved transmission charges for the Transmission & Distribution Network of DVC. The "common office expenses" approved by the Commission for Transmission & Distribution Network is not part of the components of the tariff and hence it is not included in the Table under paragraph 70. However, taking into consideration the submission of DVC that a clarification in this regard would facilitate the inclusion of the same in its ARR, we would like to state that the common office expenses" approved by the Commission for Transmission & Distribution Network in order dated 9.8.2019 in Petition No.150/TT/2018 is in addition to the annual transmission charges given in paragraph 70 of the order dated 9.8.2019.

22. DVC has submitted that Commission while considering ACE during the years 2014-15 to 2016-17 under the head "A-N Stage" has mentioned that ACE is on projected basis. However, the same is on actual basis.

23. We have considered the submissions of DVC. As stated above, DVC has filed Petition No. 482/TT/2020 for truing up of the tariff of 2014-19 tariff period of the subject assets. The truing up of tariff for 2014-19 tariff period shall be on the basis of

actual capital expenditure furnished by the DVC. Therefore issue, if any, will stand rectified itself at the time of truing up of tariff for 2014-19 tariff period.

24. In the light of the above discussion and findings, Review Petition No. 21/RP/2019 is disposed of.

sd/-	**sd/-**
(I. S. Jha)	**(P. K. Pujari)**
Member	**Chairperson**