

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 50/RP/2022

**in
Petition No. 482/TT/2020**

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 16.03.2023

In the matter of:

Petition for review of order dated 10.6.2022 in Petition No. 482/TT/2022 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.

And

In the matter of:

Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata-700 054.

.....**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-700 091.

2. Jharkhand Bijlee Vitran Nigam Limited,
Engineers' Building, Dhurwa,
Ranchi-834 004.

.....**Respondents**

For Review Petitioner : Ms. Anushree Bardhan, Advocate, DVC
Ms. Shristi, Advocate, DVC
Ms. Surbhi Kapoor, Advocate, DVC
Ms. Tanya Sareen, Advocate, DVC
Shri Aneesh Bajaj, Advocate, DVC



For Objector : Shri Rajiv Yadav Advocate, DVPCA
Shri Awanit Kumar Singh, Advocate, DVPCA

ORDER

The instant Review Petition has been filed by Damodar Valley Corporation (DVC) seeking review of the order dated 10.6.2022 in Petition No. 482/TT/2020 wherein the tariff of 2014-19 tariff period was tried up under Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations') and tariff for the 2019-24 tariff period was approved under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as 'the 2019 Tariff Regulations') in respect of the Existing Transmission & Distribution (T&D) Network of DVC 'hereinafter referred to as the 'transmission assets'.

2. The Review Petitioner initially in the petition has submitted that there are errors apparent on the face of record in the Commission's order dated 10.6.2022 in Petition No. 482/TT/2020, which are required to be reviewed and modified and they are as follows:

- (a) The Commission in paragraph no. 96 of the impugned order has observed that normative Operation and Maintenance (O&M) for 303 number of bays located in the power house switchyards shall not be considered for computation of normative O&M Expenses. As per existing tariff regulations, the bays associated with switchyard of power generating station are part of the generating plant. The Commission held that the capital cost of these bays are part of gross block of the respective generating stations and,

therefore, O&M Expenses of 303 number of bays was not allowable under the Transmission and Distribution.

- (b) The Commission while allowing total normative O&M for Transmission & Distribution (T&D) System has inadvertently not considered the total allowed O&M amount for 4850 MVA at 220 kV voltage level i.e. ₹1188.3 lakh for 2019-20, ₹1231.9 lakh for 2020-21, ₹1275.6 lakh for 2021-22, ₹1319.2 lakh for 2022-23 and ₹1367.7 lakh for 2023-24.
- (c) The Commission did not consider the closing equity of ₹54137.39 lakh as opening equity as on 1.4.2019. Accordingly, the computation of 'RoE' during 2019-24, period requires upward revision considering opening equity for 2019-20 as ₹54167.39 lakh in place of ₹54166.48 lakh.

3. During the course of hearing on "admission" of the instant review petition on 6.3.2023, learned counsel for the Review Petitioner submitted that the Commission vide corrigendum dated 23.7.2022 in Petition No. 482/TT/2020, has rectified and corrected the errors in the impugned order dated 10.6.2022, on the issues of (i) total normative O&M for T & D System including 4850 MVA at 220 kV voltage level for 2019-24 period, and that (ii) closing equity of ₹54137.39 lakh as opening equity as on 1.4.2019 and revision in computation of RoE during 2019-24 tariff period. Learned counsel further submitted that the relief sought in the present Review Petition is now limited to the issue of disallowance of normative O&M Expenses allowable for bays located in the power house switchyards but used for termination of either transmission or distribution lines.

4. We have perused the impugned order and have also gone through the record. We notice that the Commission vide Corrigendum order 23.7.2022, has already



modified the order dated 10.6.2022 in Petition No. 482/TT/2020, on the issues of total normative O&M for T & D System including the total allowed O&M amount for 4850 MVA at 220 kV Voltage level for 2019-24 tariff period as well as considered the closing equity of equity of ₹54137.39 lakh as opening equity as on 1.4.2019. Resultantly, the debt-equity allowed as on 1.4.2019 in the order dated 10.6.2022 in Petition No. 482/TT/2020 and consequential changes in 'Interest on Loan' for 2019-24 period, Return on Equity allowed for 2019-24 period were modified and corrected suitably. The Commission vide Corrigendum order dated 23.7.2022 also modified the O&M Expenses for 2019-24 tariff period and also effected consequential changes in Interest on Working Capital for 2019-24 period in the order dated 10.6.2022. Owing to these corrections, corresponding changes in Annual Fixed Charges for 2014-19 and 2019-24 tariff periods were also made by way of Corrigendum order dated 23.7.2022 in the order dated 10.6.2022 in Petition No. 482/TT/2020.

5. In view of above discussion, the issue which now survives for our consideration is whether normative O&M Expenses for bays located in the power house switchyards used for termination of 'Transmission and Distribution Lines' are required to be allowed. Accordingly, in this order, we confine the submissions of the Review Petitioner to this issue only.

6. The main submissions of the Review Petitioner are as follows:

- (a) The Commission, in the impugned order, under the head 'O&M Expenses' has observed that normative O&M Expenses for 303 number of bays located in the power house switchyards shall not be considered for computation of normative O&M Expenses.



- (b) The Commission, in the impugned order, observed that out of 734 bays, 303 bays are part of generation switchyard, and that as per the existing tariff regulations, the bays associated with switchyard of power generating station are part of generating plant. It was further observed that capital costs of these bays are part of gross block of the respective generating stations. Accordingly, the O&M Expenses in respect of 303 number of bays are not allowed under the head of 'Transmission and Distribution'. The Commission, in the impugned order, allowed O&M Expenses for the balance 431 number of bays which are used for 'Transmission and Distribution' purposes.
- (c) The Commission has erred in the impugned order by disallowing normative O&M Expenses allowable for 303 bays which are utilized for 'Transmission and Distribution' purposes and also maintained by 'Transmission and Distribution Wing' of the Review Petitioner on the basis that they are part of generation switchyard. The Tariff Regulations nowhere stipulate that normative O&M Expenses shall be eligible only when capital cost is there.
- (d) The capital cost is related with computation of Return on Equity (RoE), Depreciation and Interest on Loan (IoL). The O&M Expenses is fixed norm based on number of bay, length of transmission line in case of transmission system and on lakh/MW capacity basis for thermal power plant. If normative O&M Expenses is linked with capital cost, then the asset owned or transferred on 'zero value' shall not be eligible to get any O&M Expenses. However, the fact is that in order to maintain any asset on day to day basis, some amount of expenditure is required for which liability of maintenance and payment lies with the owner and user or beneficiary of that asset.

- (e) The Review Petitioner is having integrated generation, transmission and distribution businesses. Old plants at DTSP, CTSP and BTSP have already been de-commissioned, resultantly, they are not eligible to get any O&M Expenses on normative lakh/MW basis. However, the switchyard is still under operation and giving service to the 'Transmission and Distribution System' of the Review Petitioner meaning thereby that the benefit is extended to the ultimate retail consumers, and that switchyard of these plants have already been handed over to 'Transmission and Distribution System.
- (f) The Review Petitioner is the only entity under the Commission having transmission, distribution and generation activities. The O&M Expenses norms have been fixed by the Commission based on data of generating stations who do not have transmission and distribution licence. As a result, those power generating stations are not required to extend the switchyard to cater to large transmission as well as distribution system as is done by the Review Petitioner. Those power generating stations switchyard is limited only to the generator bay and associated bay for power generation and evacuation only. The Review Petitioner while claiming has duly excluded those bays associated with generation. Hence, O&M for such switchyard is limited to the generation activity only cannot at all be compared with large switchyard of the Review Petitioner's generating station where bays for transmission and distribution system co-exist with generator and associated bays. In fact, there are two separate control rooms which exist at each power station wherein one control room is overlooking the transmission and distribution activity part of the switchyard

and the other control room is overlooking bays associated with generation activity. In that way, the power house switchyard may be re-looked as one separate Transmission and Distribution Sub-station which co-exists in the same switchyard as that of the power plant.

- (g) In view of above, the Commission is required to re-consider the implication of 303 bays both for 2014-19 and 2019-24 tariff periods.

Analysis and Decision

7. We have heard learned counsel for the Review Petitioner on the issue of admissibility of the present Review Petition.

8. We shall first examine whether the present review petition can be admitted in the light of the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908.

Order XLVII Rule 1 of the Code of Civil Procedure, 1908 provides as follows:

“Any person considering himself aggrieved

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”

9. The Review Petitioner referring to paragraph no. 96 of the impugned order has contended that the Commission has erred by observing that normative O&M Expenses for 303 number of bays located in the power house switchyards shall not be considered for computation of normative O&M Expenses. The Review Petitioner has contended that the impugned order is erroneous in so far as it observed that out of 734 bays, 303



bays are part of generation switchyard, and that as per the existing tariff regulations, the bays associated with switchyard of power generating station are part of generating plant. The observation of the Commission in the impugned order that capital costs of these bays are part of gross block of the respective generating stations and disallowance of the O&M Expenses in respect of 303 number of bays under the head of 'Transmission and Distribution' is erroneous. The Commission has erred by observing that as per the tariff regulations normative O&M Expenses are admissible only when capital cost is there and disallowed 303 number of bays utilized for 'Transmission and Distribution' purposes and they are maintained by 'Transmission and Distribution Wing' of the Review Petitioner. The Review Petitioner is having integrated generation, transmission and distribution businesses. The old plants at DTSP, CTSP and BTSP have already been de-commissioned and they are not eligible for any O&M Expenses on normative lakh/MW basis. However, the switchyard is still under operation and providing service to the 'Transmission and Distribution System' of the Review Petitioner and that the benefit is given to the ultimate retail consumers. It is pointed out that the switchyard of these plants have already been handed over to 'Transmission and Distribution System'. The Review Petitioner has contended that the Commission has failed to notice that Review Petitioner while claiming O&M Expenses has duly excluded the bays which are associated with generation. The Review Petitioner has further contended that the O&M Expenses for such switchyard is limited to the generation activity only and it cannot at all be compared with large switchyard of the Review Petitioner's generating station where bays for transmission and distribution system co-exist with generator and associated bays. It is contended that there are two separate control rooms which exist at each power station wherein one control room is overlooking the transmission and distribution activity part of the



switchyard while the other control room is overlooking bays associated with generation activity. Therefore, the power house switchyard may be re-looked as one separate Transmission and Distribution Sub-station which co-exists in the same switchyard as that of the power plant.

10. We have considered the above contentions of the Review Petitioner and have perused the order dated 10.6.2022 which is impugned before us in the present review petition. The Commission in para 96 of the order dated 10.6.2022 in Petition No. 482/TT/2020 observed as follows:

“96. We have considered the submissions of the Petitioner. The Commission vide order dated 9.8.2019 in Petition No.150/TT/2018 allowed 84 number of 220 kV bays and 501 number of 132 kV and below level bays. The Petitioner in the instant true-up petition has claimed 49 number of 400 kV bays, 209 number of 220 kV bays and 1544 number of 132 kV and below level bays. Details of allowable/not allowable bays are as follows:

Details	No. of Bays	Allowable /not allowable
(a) Bays which existed as on 31.3.2014 and considered in truing-up order for 2009-14 & tariff order dated 9.8.2019 for 2014-19 period	585 number (220 kV: 84+132 kV: 501=585 in number)	These are the existing bays as on 31.3.2019. Therefore, 84 number of 220 kV bays and 501 number of 132 kV and below voltage level bays are allowed.
Bays added during 2006-09 but inadvertently could not be considered in 2009-14 and 2014-19 (Petition No. 150/TT/2018)	83 number (220 kV: 30 number and 132 kV and below:53 number)	With respect to these 83 number of bays, we are of the view that these are the existing bays. Accordingly, O&M for 83 number of bays is allowed.
(b) Consumer end bays existing on 31.3.2014 but could not be claimed	324 number (220 kV: 4 number and 132 kV and below: 320 number)	These are the existing consumer bays as on 31.3.2014. Therefore, 324 number of 220 kV bays and 501 number of 132 kV bays are allowed.
(c) Consumer end bays added during 2014-19 period for new consumers & not considered earlier but liberty given to claim in 2014-19 true-up period.	64 numbers (132 kV and below)	The Commission had given liberty to the Petitioner and accordingly the O&M Expenses towards 64 number of bays are allowed.
(d) Bays which are either part of Power house switch yard and serving for T&D purpose or existing substation bays omitted inadvertently	734 numbers (400 kV):	It is observed that out of 734 bays, 303 bays are part of generation switchyard. As per existing tariff regulations, the bays associated with switchyard of power generating station is part of generating plant. Further it is observed that the capital costs of these bays are part of gross block of the respective generating stations.

		<i>Accordingly, O&M Expenses of 303 number of bays is not allowed under T&D. The balance 431 number of bays which are used for transmission and distribution purpose is allowed. The Petitioner is directed to clarify whether the capital cost of these 431 bays is part of T&D, if so, submit the duly vetted by the Auditor.</i>
<i>(e) Bays added in 2017-19 and considered in order dated 9.8.2019 in Petition No. 150/TT/2018.</i>	<i>10 number</i>	<i>10 number of bays are allowed</i>
<i>(f) Bays added in 2014-17 and could not be considered in order dated 9.8.2019 in Petition No. 150/TT/2018.</i>	<i>2 number</i>	<i>2 number of bays allowed.</i>
<i>Total bays allowed</i>	<i>1499 number of bays</i>	

11. The Review Petitioner is aggrieved with the disallowance of the O&M Expenses for 303 bays which are part of the generating switchyard. The Review Petitioner has contended that these bays in the switchyard of the generating stations are being used for transmission and distribution of power and hence should be allowed O&M Expenses considering them as part of the transmission system. The Review Petitioner has not produced any document to show that these 303 bays are not booked under the respective generation stations. As per the existing tariff regulations, the bays associated with switchyard of power generating station are considered as part of generating plant.

12. The Review Petitioner has further contended that the old plants at DTPS, CTPS and BTPS have been de-commissioned but, the bays in the switchyards are still under operation and are being used for transmission and distribution of power. However, the Review Petitioner has not submitted when these above said generating stations were decommissioned and since when these bays have become part of the transmission and distribution system. Accordingly, the Commission disallowed the O&M Expenses

for the 303 bays that are associated with the generating station. It is a well-considered decision and it is as per the tariff regulations. The Review Petitioner has failed to show as to how the finding of the Commission that the 303 bays are part of the generating station in order dated 10.6.2022 is erroneous. The Review Petitioner is merely trying to re-agitate the issue which is not permissible and is not within the purview of the Review Petition.

13. For the reasons mentioned above, we do not find any ground for admission of the present Review Petition under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Hence, the present review petition is dismissed.

14. The Review Petition No. 50/RP/2022 is disposed of in terms of above.

**sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I.S. Jha)
Member**

