

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
RANCHI**

Case No. 01 of 2007-08

CORAM  
Shri S.K.F. KUJUR, Chairman  
Shri P.C. Verma, Member (Tech)  
Smt. Shakuntala Sinha, Member (Legal)

IN THE MATTER OF

An application for determination of tariff for retail supply of electricity for the year 2006-07 by Damodar Valley Corporation in the area falling within the territory of State of Jharkhand.

AND

IN THE MATTER OF

Damodar Valley Corporation ..... Petitioner/Applicant

For the Petitioner : S/Shri M.G. Ramchandran, Sr. Advocate, S. Choudhary,  
C.S. Singh, Advocates  
S/Shri S.K. Saha, CE (Comml.), K.K. Singh, Resident Director,  
P.K. Choudhuri, Dy. CE (Comml.), D.K. Aich, SE (Comml.)  
and P.R. Bhagat, Addl. Dir (P)all officials from DVC

For the Commission : Shri S. Shrivastava, Advocate

ORDER  
(06.06.2007)

Heard.

The applicant-DVC has filed an affidavit with regard to the determination of tariff for retail supply and the Commission by its order dated 27.4.2007 directed the applicant-DVC to file tariff petition as per Regulation of the Commission and the Electricity Act 2003 within one month on the request made by the learned counsel appearing on behalf of DVC and the officers of the DVC present during the hearing on that day. Pursuant to this order the "Submission of views/comments of DVC along with additional information" (hereinafter referred to as 'petition') has been filed on 24.5.2007 duly supported by an affidavit dated 21.5.2007 sworn by the Chief Engineer (Commercial), DVC. On receipt of the above

*Handwritten notes:*  
Kumar  
S. K. Saha  
24/05/07  
S. K. Saha  
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The learned counsel appearing on behalf of the applicant/petitioner submitted that the prayers made in the petition be allowed which are as under:

- (a) Take on record the documents filed the entire documents filed before the Central Commission.
- (b) Delete the observation contained in order-dated 27.04.07 on the matter concerning defects in the petition or on the representation that the applicant will not fulfill the universal supply obligation.
- (c) Proceed with the application as filed.
- (d) Delete the direction in regard to charging of tariff as an interim measure contained in the order dated 27.04.2004; and
- (e) Pass such further order or orders as the Hon. Commission may deem just and proper in the circumstances of the case.

So far the prayers made in the instant petition the submissions advanced was that the Commission has wrongly recorded that the counsel for the applicant had admitted that due to confusion and paucity of time the petition has not been correctly filed or otherwise not in proper shape. It has also been wrongly recorded that the applicant is not taking into account the Universal Supply Obligations. It was further argued that the applicant is not and cannot be required to submit the various details as per the format prescribed in the Regulation of the Commission because the applicant DVC has special status unlike other distribution utilities. It was also submitted that almost all the aspects relating to the determination of tariff including distribution and retail supply have already been considered by the Central Commission. Therefore, this Commission cannot reagitate and reconsider the above issues in the present proceeding. Further submitted that the Central Commission has considered most of the revenue requirements even pertaining to distribution and retail supply activities as

Commission may consider those documents and details with regard to determination of Revenue Requirements.

It was further argued that the DVC's ARR (including for the distribution segment) has already been finalized and approved by Hon'ble CERC and hence SERCs have no option but to accept that, subject to the out come of the appeal filed by DVC before the Hon'ble Appellate Tribunal. To the clarification sought by the Commission about the procedure and details required by the licensee to provide to the Commission as per Commission's Regulations, the learned counsel reiterated that all the documents regarding ARR was submitted to Hon'ble CERC and the same has been made available to this Commission also. According to the learned counsel, the Hon'ble CERC had approved the ARR and also decided that 87% of that will be treated for transmission and 13% for distribution. The learned counsel also clarified that DVC was an integrated entity with generation, transmission, distribution in the two states and trading as its function and it was not possible to segregate the expenditure between transmission and distribution and as such the Hon'ble CERC had taken that view and decided the percentage. He also stated that since a statutory body (Hon'ble CERC) has taken this decision and which is to be taken as guideline for SERCs, it is to be accepted by the Commission. It should not increase or decrease the ARR so approved by the CERC. It was submitted that the details of revenue from Power Trading activities would be provided to the Commission within a week.

After hearing the submissions made by the learned counsel for the applicant-DVC and after perusing the petition filed by the applicant-DVC, the Commission find that so far submission with regard to deletion of observations contained in order dated 27.4.2007 with regard to Universal Supply Obligations is concerned, the Commission wanted clarification as to why the petitioner-DVC is not taking into account the Universal Supply Obligations as a

contended in this regard that DVC is supplying electricity to consumers at voltage 30,000 and above level in accordance with the provisions of DVC Act, 1948. As explicitly contained in the provisions of the 4<sup>th</sup> Proviso of Section 14 of the Electricity Act, 2003; the DVC is a deemed licensee and for that matter deemed distribution licensee under this Act and the provisions of DVC Act 1948 continue to apply to the DVC in so far as they are not inconsistent with the provisions of this Act (Electricity Act 2003). Sub-section (1) of Section 42 “Duties of distribution of Licensee and Open Access” read with Section 43 “duty to supply on request” in Part VI “Provisions with respect to distribution licensee” of the Electricity Act, 2003 deals with the most basic and necessary duties of the distribution licensee i.e. distribution licensee shall have to develop and maintain efficient, coordinated and economical distribution system and shall have to supply electricity and in accordance with the provisions contained in this Act in his area of supply and that every distribution licensee shall have to give electricity supply to any premises in his area of supply on application made by owner or occupier of the premises i.e. Universal Supply Obligations is the basic and necessary conditions of distribution license under the Act and it is to counter the monopoly and to provide level playing field to all licensees. The only exception to Universal Supply Obligation is the Section 44 “exception from duty to supply electricity” i.e. if the distribution licensee is prevented from doing so by cyclone, storms or other occurrences beyond his control. Obviously the said provisions of DVC Act that the DVC will supply electricity to consumers at voltage level 30,000 or above only and not to any applicant including those below voltage level of 30,000 within its area of supply being in contravention of the provisions of Sub-section (1) of Section 42 read with Section 43 and 44 of the Electricity Act, 2003. In this regard learned counsel of the DVC also pleaded at the same time that up till now no application demanding electricity supply at voltage level below

submission in this regard. Firstly this submission is contradictory to his earlier submission and secondly the fixation of tariff for HT categories of consumers is related with some of the categories of LT consumers like domestic, agriculture etc because normally their tariff does not cover the full cost of the supply of electricity for historical reasons and their tariffs are normally below their cost of supply and are cross-subsidized by other categories including the HT categories for which the DVC has submitted tariff proposal. The petitioner DVC is required to submit complete tariff proposal as per the Act. Since the network for the distribution and electricity supply below 30,000 Volt level is yet to be installed and operationalized, the proposal may be submitted on the basis of reasonable forecast and norms. Obviously the petitioner DVC has not filed the tariff application as per the Regulations of the Commission which is clear from the pleading of the learned counsel of DVC that DVC is not required to furnish all the details as per the regulations and that was rightly admitted so and time for filing the petition as per the regulations was taken by the learned counsel in course of hearing on 27.04.2007 and that was recorded as such in the order dated 27.04.2007.

Moreover, the submission that the Commission has wrongly recorded certain part of the order though that was not submitted by the counsel for the applicant-DVC, is not acceptable because neither any affidavit by the concerned counsel has been filed in this regard nor he supported this though he was present during the course of hearing on 1.6.2006. Thus the aforesaid prayer for deletion of the observation in the order dated 27.4.2007 is rejected.

So far the submissions with regard to the fact that the applicant-DVC, having a special status unlike other distribution utilities, is not and cannot be required to submit the details as per the format prescribed in the Regulation of the Commission. specially on the

regarding distribution and retail supply of electricity activities is concerned, the Commission find that the aforesaid submission is not tenable because from the perusal of Para 9,10,17&20 of tariff order of Hon'ble CERC dated 03.10.2006 quoted below it is clear that the Hon'ble CERC in its exercise and proceedings is concerned with the determination of tariff or generation and transmission of electricity only in accordance with their regulations and they have not even addressed the issue of distribution tariff since this matter falls within the jurisdiction of the State Commission.

**Quote:**

**Para 9 "At this stage itself, we make it clear that this commission is concerned with determining tariff for generation and inter-State transmission of electricity undertaken by the petitioner Corporation. We have not addressed the issue of distribution tariff since this matter falls within the jurisdiction of the State Commission"**

**Para 10 "The terms and conditions for determination of tariff for the period from 1.04.2004 to 31.03.2009 are notified in terms of the Central Electricity Regulatory commission (terms and Conditions of Tariff) Regulations 2004 (hereinafter referred to as " the 2004 regulations") under Section 61 read with Section 178 of the 2003 Act.....Therefore, by virtue of powers under the 2004 regulations, the commission is considering norms for O&M expenses and the operational norms specific to the generating stations and the transmission assets owned by the petitioner Corporation."**

**Para 17 "The objection raised by BFCL does not merit any consideration since the Commission is not determining distribution tariff which will be determined by the respective State Commissions. The objector may be at liberty to raise the issue when the petitioner corporation approaches the concerned State Commission for approval of**

**Para 20** “As regards other issues raised, the Commission is not determining the total revenue requirement of the petitioner Corporation. Therefore, adjustment of income accruing to the petitioner Corporation for undertaking trading etc. may be taken into account by the State Commission who will be approving distribution tariff.”

From perusal of paragraph 24 of the Tariff Order dated 3.10.2006 issued by the CERC it is evident that the Central Commission has bifurcated the capital cost between transmission and distribution system in the ratio of 87:13, and has not determined the ARR for the distribution and retail sale of electricity.

**Para 24:-** “..... Therefore, recommendation of one-member bench for bifurcation of capital cost between transmission and distribution system in the ratio of 87:13 is accepted.”

Further, paragraph 82 of the said order states “**Out of the projected liability of Rs.1709 crores, as recommended by the Actuary for DVC as a whole, Rs. 1690.15 crores has been allocated to power business. Of this amount, Rs.6.13 crores pertains to Distribution Business and Rs.149.52 crores pertains to Unit-4 of the MTPS (4 unit) since the tariff for distribution will be determined by the concerned SERCs, Pension liability allocated to distribution system will be dealt with by them.....**”

Moreover, in **Para 97** the CERC has directed that the revenue earned by the petitioner corporation through its business of trading shall be accounted for while projecting ARR before the State Regulatory Commissions.

From the above it is evident that Hon'ble CERC has not determined or addressed the issue of determination of ARR of the distribution and retail sale of electricity by the petitioner DVC rather it has adopted the bifurcation of the capital cost of transmission and distribution assets in the ration of 87:13 and has adopted the allocation of pension liability between generation, transmission and distribution. The petitioner DVC may take these figures from the orders of the Hon'ble CERC in filing their ARR for the distribution and retail sale of electricity giving the basis and assumptions for the same and the Commission

by the petitioner DVC in the state of Jharkhand only for the instant application. The assets and cost which are clearly attributable to the distribution and electricity supply in the state of Jharkhand (which is generally so) should be segregated accordingly but those assets and costs which are common to the state of West Bangal or to transmission business should be allocated on a reasonable basis according to the ground realities. But all the same the fact remains that the ARR of the distribution and retail sale of electricity in the area of supply of the petitioner DVC within the state of Jharkhand; this being an activity distinct from generation and transmission with its own issues and considerations some of which different from that of the generation and transmission; will have to be determined as per the regulations on the subject framed and notified by the Commission after wide consultation with all the stake-holders of the State including the consumers who are one of the most important stake-holders and participants in the proceeding in the tariff determination and that this regulation is applicable and has been applied alike in the matter of determination of tariff to all the distribution licensees in the state and petitioner DVC cannot be given in preferential treatment. Accordingly the petitioner DVC shall be required to submit the ARR computed in accordance with the procedure laid down in the regulation of the Commission and submit the required details in the manner and in the format prescribed in the regulations; like Revenue from trading in Form RT-10, Average cost of supply in Form B-1, Categorywise cost of supply in Form B-2, Details of subsidy (tariff and capital) in Form B-3, Details of T&D losses in Form C-5 and C-5A and etc, to name a few for example, because these issues are needed to be addressed to in the proceeding for determination of tariff for distribution and electricity supply. It goes without saying that all the submissions made by the petitioner DVC including submission of the said copy of the documents pertaining to the Hon'ble CERC proceedings will be taken note of by the Commission in its instant proceedings.

below the petitioner DVC has to file the ARR computed as per the procedure laid down in the regulations and has to file the tariff application as per the regulations of the Commissions.

**Quote:**

**Section 62 “(5) The commission may require a licensee or a generating company to comply with such procedure as may be specified for calculation the expected revenues from the tariff and charges which he or it is permitted to recover”**

**Section 64 “(1)An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as my be determined by regulations”**

The applicant-DVC itself stated in Para 11 of the petition that the applicant-DVC will submit such further clarification or documents, as the Commission may deem necessary in regard to discharge of its function to decide the distribution and retail supply tariff, as and when directed by the Commission. Moreover, once the stand of the petitioner DVC is that the order of CERC has been challenged before the Appellate Tribunal and at the same time they are saying that ARR for distribution tariff has been approved by the CERC should be accepted by this Commission.

In view of the above premises, the claim of the applicant-DVC that the CERC has already decided ARR is found to be incorrect and thus the Commission directs the applicant-DVC to submit the ARR and required details in the manner and in the Format prescribed in the Regulation of this Commission for determination of the tariff for distribution and retail sale of electricity in the areas of supply of the DVC in the state of Jharkhand within a fortnight from the receipt of this order.

Before parting the Commission shows its displeasure and takes exception to the language used in the petition by the applicant-DVC and warns that in future petition must be

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(Commercial), Commercial Department, DVC, Kolkata to file a petition seeking unconditional and unqualified apology within the aforesaid period.


With the above observations and directions the petition dated 21.5.2007 is hereby disposed of.

Sd/-  
(S. Sinha)  
Member (Legal)

Sd/-  
(P.C. Verma)  
Member (Tech)

Sd/-  
(S.K.F. Kujur)  
Chairman

TRUE COPY

  
6/6/07  
SECRETARY  
Jharkhand State Electricity  
Regulatory Commission, Ranchi