

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**WEST BENGAL**

**Petition No. OA-273/18-19**

**Date of hearing: 21<sup>st</sup> February, 2019**

**Time of hearing: 14.30 hours**

**Coram:**

**Shri Durgadas Goswami, Member**

In the matter of

Application regarding adjudication of dispute on account of erroneous billing by Damodar Valley Corporation at retail supply tariff to West Bengal State Electricity Distribution Company Limited in contrary to the provisions of Electricity Act, 2003.

And

In the matter of

West Bengal State Electricity Distribution Company Limited  
Vidyut Bhavan  
Block DJ, Sector – II  
Salt Lake City  
Kolkata 700 091

..... Petitioner

And

In the matter of

Damodar Valley Corporation  
DVC Tower, VIP Road  
Kolkata 700 054.

..... Respondent

Representatives attended:

West Bengal State Electricity Distribution Company Limited (WBSEDCL)  
[Petitioner]

1. Sri Vishrov Mukherjee, Partner, J Sagar Associates,
2. Sri Debargha Basu, Principal Associate of Khaitan & Co.,
3. Sri Amit Kumar Das, Sr. Law Officer,
4. Sri Rajeev Nandan Sinha, SE (E).

**Damodar Valley Corporation (DVC) [Respondent]**

1. Sri Pradip Kumar Tarafdar, Advocate,
2. Smt. Anushree Bardhan, Advocate,
3. Sri Subodh Kumar Datta, Executive Director (Commercial),
4. Sri Manik Chandra Rakshit, Chief Engineer-I (Commercial),
5. Sri Rajib Goswami, Chief Engineer (Commercial),
6. Sri Subrata Ghosal, Deputy Chief Engineer-I (Commercial),
7. Sri Subrata Ganguly, Deputy Chief Engineer (Commercial),
8. Sri Pradip Banerjee, Deputy Chief Engineer (Commercial).

**SUBMISSION DURING HEARING**

The contention of the petition submitted by WBSEDCL is that DVC has been raising bill for supply of power to WBSEDCL at the rate of retail tariff determined by the Commission due to the reasons that as per the opinion of DVC, WBSEDCL is a HT consumer to them and not a distribution licensee. According to WBSEDCL, WBSEDCL is a distribution licensee and not a consumer as per the provision specified under paragraph 2(15) of the Electricity Act, 2003 and therefore, WBSEDCL should be billed at the tariff applicable to a distribution licensee. DVC says that as per the second part of the provisions specified under paragraph 2(15) of the Electricity Act, 2003, as far as DVC is concerned, WBSEDCL is a consumer and not a distribution licensee since WBSEDCL is drawing power from DVC in radial mode as a consumer on the basis of the arrangements settled in bilateral agreements entered into between DVC and WBSEDCL long back.

Sri V. Mukherjee, Ld. Advocate of WBSEDCL stated that –

- a) DVC had been raising bills for power drawn by WBSEDCL through 11 off-take points on radial mode, as per generation tariff determined by the CERC till the DVC's retail tariff for 2014-15 to 2016-17 was determined by this Commission;
- b) When this Commission determined tariff for WBSEDCL and the issue of purchasing power from DVC was dealt with, no objection was raised by DVC. That part of the order is clear and it is applicable for DVC as well and para 3.23 of order dated 01.12.2012 is pertinent;

- c) WBSEDCL is not a consumer as it does not use such power for its own consumption, and therefore did not raise any issue while WBERC was dealing with retail tariff of DVC;
- d) DVC did not file any prayer in his tariff petition as to what should be the tariff for sale of power to WBSEDCL;
- e) WBSEDCL meets USO while DVC does not do it. Even then DVC is trying to charge higher rate upon WBSEDCL only to make things more difficult for WBSEDCL.

Sri P. K. Tarafdar, Ld. Advocate of DVC emphasized on the arguments put forward by him in the previous days hearing i.e., i) definition of consumer (2<sup>nd</sup> part) under section 2(15), ii) why not WBSEDCL raised any objection while their tariff petition was placed on public domain seeking objection, etc. and therefore he argued that WBSEDCL is liable to pay tariff as per retail tariff determined by WBERC.

Smt. Anushree Bardhan, Ld. Advocate supplemented him while pointing out that – i) supply of power is associated with scheduling on day-ahead basis plus source i.e., from which power station it is to be supplied has to be earmarked when such sale is accomplished between a generating company and a licensee. But WBSEDCL does not have any reference to those important parameters, rather they get power from DVC's pool of power and therefore they are not entitled to pay for power purchased from DVC as per generation tariff determined by the CERC. She referred to an order dated 10.05.2010 of Hon'ble APTEL in Appeal No. 146 of 2009 & IA Nos. 332, 333, 334, 340, 341, 342, 349, 350, 351, 352, 355, 359, 360 of 2009 & 264 of 2009.

## **ORDER**

Upon hearing both the sides, the Commission directed both the DVC and the WBSEDCL to submit written arguments to the Commission by 27<sup>th</sup> February, 2019 with a copy to other side. DVC will have to separately furnish a) total generation of DVC, b) state wise apportionment of generation, c) state wise availability of power

for sale to – i) consumers and ii) others and d) quantum of power for which WBERC determined retail tariff. Based on these the Commission will pass order. No further hearing will be held in this regard, unless it is extremely required.

**DATE: 27.02.2019**

Sd/-  
**(DURGADAS GOSWAMI)**  
**MEMBER**

**(T. K. MUKHERJEE)**  
**SECRETARY**

