



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN CASE NO. TP-71/16-17

IN RESPONSE TO THE APPLICATION SUBMITTED BY DAMODAR VALLEY CORPORATION (DVC) ON 29.12.2016 FOR DETERMINATION OF TARIFF FOR DISTRIBUTION AND RETAIL SUPPLY OF ELECTRICITY FOR THE PART OF THE DAMODAR VALLEY AREA FALLING WITHIN THE TERRITORY OF THE STATE OF WEST BENGAL FOR THE YEAR 2017 - 2018.

PRESENT:
SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 20.05.2021

In response to the application submitted by Damodar Valley Corporation (DVC) on 29.12.2016 for determination of tariff for distribution and retail supply of electricity for the part of the part of the Damodar Valley area falling within the territory of the State of West Bengal for the year 2017

FACTS IN BRIEF

- 1.0 Damodar Valley Corporation (DVC) submitted Tariff petition on 29.12.2016 for determination of tariff for distribution and retail supply of electricity for the financial year 2017 – 18 for the part of Damodar Valley command area falling within the territory of the State of West Bengal.
- 2.0 Earlier, the Commission had directed DVC to build up infrastructure to meet the Universal Service Obligation (USO) and to come up with an investment proposal through an order dated 13.08.2014 in case no. SM-11/14-15 which DVC did not comply.
- 3.0 In the tariff order dated 25.05.2015 for the year 2014-2015 and 2015-2016, the Commission had given directives to DVC to meet Universal Service Obligation (USO). DVC was directed to furnish a report regarding their readiness to supply to all consumers. An investment proposal for building up infrastructure to give electricity supply to low and medium voltage consumers was to be submitted. DVC failed to comply with the directions in the Tariff order. Further, it failed to prepare DPR within the timeline of six (6) months as per directions of the Commission.
- 4.0 The Commission, through an order dated 22.11.2016, had summoned the Chairman of DVC to personally appear before the Commission and to explain the reasons for non-compliance. DVC was also fined for non compliances of the directions of the Commission under section 142 of the Act. DVC had moved to Hon'ble High Court at Calcutta against the said order.
- 5.0 In the writ petition being W.P 26442 (W) Of 2016 filed by DVC in the Hon'ble High Court at Calcutta, the Hon'ble Justice Harish Tandon by the judgment and order dated 09.01.2017, inter alia, passed the following directions:

“.....Since, the Regulation requires an application for investment proposal to be taken out in a prescribed format, the petitioner is directed to file the same within 4 (four) weeks from the date. If, such application is files within the time indicated herein above the Regulatory Commission shall proceed with determining the tariff by observing the requirements envisaged under the relevant Regulations and Act.....”.

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- 6.0 However, after expiry of four weeks, when no such application was filed by DVC, the Commission by an Order dated 25.04.2017, directed DVC to comply with the directions and orders dated 09.01.2017 of the Hon'ble High Court so as to enable the Regulatory Commission to proceed with the determination of tariff. In the said order, DVC was also directed to submit a Supplementary Petition to the tariff petition considering and/or including the tariff impact of the said investment proposal.
- 7.0 As DVC did not comply with the directions given by the Commission in its order dated 25th April, 2017 in respect of the said tariff petition of DVC, Commission again directed DVC vide an Order dated 23rd June 2017 to submit the application for investment proposal and the supplementary petition to the tariff petition considering and / or including the tariff impact of the said investment proposal in compliance of the directions given in the order dated 25.04.2017 within 30.06.2017 so as to enable the Commission to determine the tariff of DVC.
- 8.0 DVC vide its letter No. Coml/WBERC/977 dated 29.06.2017 informed the Commission that a DPR for development of LT network in command area falling in West Bengal has been prepared as per direction of the Commission and has referred the same to the finance department of DVC for its comments/ inputs with an exception to put up the same before the Board by 3rd week of July, 2017. DVC vide its letter No: Coml/LT/2017-01-1212 dated 19.07.2017 submitted their prayer for extension of time till 31.07.2017 through a duly sworn-in Affidavit and the Commission granted their prayervide letter no. WBERC/TP-71/16-17/0695 dated 28.07.2017. DVC, again vide its letter no. Coml/LT/2017-01/1319 dated 28.07.2017 submitted a duly sworn-in Affidavit praying for further extension of time for a period of two months, i.e., upto 30.09.2017 with a view to conduct further board meetings in relation to the approval of the DPR as the process of approval of the DPR by the Board was deferred. The Commission called for hearing on 14.09.2017 serving the notice dated 25.08.2017.
- 9.0 On 08.09.2017, DVC filed a petition before the Commission in the matter of investment proposal where DVC prayed before the Commission:
- a) for directions with regard to requirement of parallel network to be developed
 - b) to consider alternate option of allowing DVC to supply power to LT consumers through Open Access till direction by Commission is given.

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10.0 During the hearing on 14.09.2017, the Commission did not take into cognizance the petition dated 08.09.2017 and decided that separate hearing will be held on merit. Representatives of DVC informed that DPR has already been prepared and it requires approval of the Board before submitting to the Commission. Also, representatives of the government of West Bengal, Jharkhand and Central Govt. are required to contribute/assume liability towards capital expenditure amounting to Rs. 9862.00 Crore. When specifically asked by the Commission, representative of DVC confirmed that DVC will not be able to submit the DPR duly approved by the DVC Board before the Commission within 30.09.2017 and did not seek further extension for submission. The Commission in the Order dated 9th November, 2017 expressed that DVC is continuously misleading the Commission in regard to submission of proposal of investment Approval/DPR and playing double standard role. DVC was also directed to submit their proposal for investment approval/DPR in compliance with the orders of the Commission and the Hon'ble High Court at Calcutta.

11.0 The hearing on petition dated 08.09.2017 was held on 28.11.2017. The Commission in para 14.0 of the corresponding Order dated 08.12.2017 observed that the compliance of Universal Service Obligation has been admitted by the order dated 09.01.2017 passed by the Hon'ble Justice Harish Tandon in W.P.26442(W) of 2016 and being sub-judice, the Commission has no scope to give direction otherwise. Relevant portion of para 14.0 of the order is reproduced below:

In fact, the Commission has hardly any scope to give direction as the matter of investment proposal is sub-judice and as such for any diversion/ alternative proposal, DVC has to take up the matter with the Hon'ble High Court at Calcutta.

The alternated proposal of DVC for USO through Open Access was not agreed by the Commission and Petition dated 08.09.2017 was not admitted.

12.0 DVC was communicated vide letter no. WBERC/TP-71/16-17/2509 dated 19.07.2018 to submit investment proposal and supplementary petition considering and/or including the tariff impact of the investment proposal as well as CERC orders for the period 2014-2019 within 31.07.2018 in compliance with the High Court order. In response, vide letter dated 31.07.2018, DVC requested to allow another two weeks time and the Commission allowed two weeks' time for submission of proposal for investment approval/DPR vide letter no. WBERC/TP-71/16-17/2646 dated 08.08.2018.

13.0 DVC vide letter no. Coml/Tariff/WBERC 2017-18/3108 dated 27.08.2018 submitted

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supplementary petition revising the ARR by incorporating CERC orders for 2014-2019 but investment proposal/DPR and its tariff impact were not submitted. In clarification for not submitting the investment proposal, DVC submitted that DVC Board, comprising of representatives from two State Governments as well as Central Government, did not approve the proposal placed in the Board meeting dated 29.07.2017 for investment of Rs 9862 Cr towards creation of such infrastructure as the representative members of the State of Jharkahand, & State of West Bengal thought it would be a wastage of public exchequer. In view of the above, the Commission vide letter no. WBERC/TP-71/16-17/3737 dated 14.03.2019 again asked DVC to submit the same complying with the High Court Order and Order of the commission dated 09.11.2017. Another letter, too, was issued to DVC on 07.06.2019.

14.0 DVC in reply vide letter no. Coml/Tariff/WBERC/2792 dated 11.07.2019 submitted the following:

- i. In view of existing LT network set up created by WBSEDCL, establishment of parallel network will be wastage of public exchequer.
- ii. The letter from MOP, GOI dated 27.11.2007 had intimated the following i.r.o establishment of LT Network by DVC:

SEB/successor company shall have the duty and power to supply any consumer even in valley area as per Electricity Act 2003. They will not require permission from DVC to supply at 30000 volt or above. SEB/successor company has to discharge obligation U/s 43 of the Electricity Act 2003.

DVC will also be able to sell electricity to consumers at a pressure of less than 30000 volts with the permission of the concerned state government U/s 18 of the DVC Act. But it will not have any obligation to do so.

- iii. Section 43(1) of EA 2003 does not provide for an absolute mandate that in all cases a parallel distribution licensee should necessarily establish a total LT infrastructure network.
- iv. Despite advertising in newspapers several times inviting application from LT Consumers DVC has received only one application which they have complied. Therefore, developing LT network where there already exists one and with hardly any desirous consumer will be an infructuous investment. This will adversely impact

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the existing consumers of DVC.

- v. Jharkhand SERC in Clause 15.2 of Tariff order dated 28.05.2019 i.r.o complying USO has stated that to avoid duplication of infrastructure, the petitioner, he petitioner should strive to utilize the existing infrastructure wherever possible and construct new infrastructure only if necessary.
- vi. In similar matter MSERC has issued guidelines that for larger interest of consumers duplication/laying of parallel infrastructure needs to be avoided and consumers may be allowed to have flexibility to choose its preferred supplier who can supply using existing infrastructure wherever possible.

With the aforesaid clarifications, DVC prayed the following before the Commission:

- a) The implication of establishing duplicate LT infrastructure below 30,000 volts may please be reviewed by the Commission.
- b) Wherever infrastructure is not available, DVC may be directed to create new infrastructure to facilitate new consumers.
- c) If required other licensees can use the new infrastructure created by DVC.
- d) DVC requested guidelines from commission so that infructuous investment to create parallel distribution infrastructure can be avoided and wherever infrastructure is not available, DVC may be directed to create new infrastructure to facilitate new consumers.

15.0 Surya Alloy Industries Ltd, an HT consumer of DVC, in its writ petition in W.P. no. 5616(W) of 2020 before the Hon'ble High Court at Calcutta prayed for stay of the disconnection notices dated 21st April 2020 issued by DVC in its two premises ignoring the shutdown of manufacturing operation of the consumer directed by the orders of governments i.r.o pandemic measures. WBERC was made Respondent No-1 in the petition whereas DVC is respondent no-2. In writ petition in W.P No. 6548(W) of 2020 before the Hon'ble High Court at Calcutta, the petitioner Surya Alloy Industries Ltd, a consumer of DVC, submitted that WBERC is not fixing the tariff for several years for DVC. The petitioner also submitted that if such tariff fixation is made by WBERC, the petitioner shall be getting a lot of amount towards refund.

16.0 In this context, DVC was communicated vide letter dated 18.11.2020 to submit report on steps taken by DVC towards compliance of Hon'ble High Court's two fold directions as also the order of the commission in this matter in compliance to the order of the Hon'ble

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Court mentioning that DVC was required to submit the application of investment proposal following the provision of extant regulations of the Commission in compliance with the order dated 09.01.2017 passed by the Hon'ble Justice Harish Tandon in W.P.No. 26442(W) of 2016 so that Commission can proceed with determining the tariff observing the requirement envisaged under the relevant Regulations and Act. This was also mentioned in the letter that in absence of such investment proposal complying the direction in the order dated 09.01.2017, the Commission can not proceed with determination of tariff of DVC for the years 2017-18 and onwards as well as APR of 2017-18 and onwards.

17.0 DVC in their reply vide letter No Comml/Tariff/WBERC/592 dated 25.11.2020, submitted that they have filed petition before the Hon'ble High Court seeking modification and/ or clarification of the order dated 09th January, 2017 passed by Hon'ble Justice Harish Tandon in 'NP No. 26442(W) of 2016.

OBSERVATION

18.0 The Commission observed that DVC is consistently not complying with several orders issued by the Commission as well as specific judgment & order of The Hon'ble High Court, Calcutta.

19.0 DVC has submitted tariff petition for the year 2017 – 2018 and subsequent years of sixth control period consisting the years 2018 – 2019 and 2019 – 2020 as well as seventh control period consisting the years 2020 – 2021, 2021 – 2022 and 2022 – 2023 whereas the last Tariff Order of DVC was issued for the year 2016 – 2017 on 03.03.2017.

20.0 Under the circumstances, the Commission has no scope to issue tariff orders without the investment proposal.

ORDER

21.0 In view of above, the Commission decides to direct DVC to submit the application of investment proposal following the provision of extant regulations of the Commission in

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compliance with the order dated 09.01.2017 passed by the Hon'ble Justice Harish Tandon in W.P.No. 26442(W) of 2016 and if such application is filed by DVC the Commission shall proceed with determining the tariff observing the requirement envisaged under the relevant Regulations and Act for the years 2017 – 2018 and onwards.

Sd/-

**SRI PULAK KUMAR
TEWARI**

(MEMBER)

Sd/-

**SRI DURGADAS
GOSWAMI,**

(MEMBER)

Sd/-

**SRI SUTIRTHA
BHATTACHARYA**

(CHAIRPERSON)

DATED: 20.05.2021