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ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: TP(R)-51/24-25

IN REGARD TO APPLICATION SUBMITTED BY DAMODAR VALLEY CORPORATION FOR REVIEW OF THE ORDER DATED 13.03.2024 PASSED BY THE HON'BLE COMMISSION IN CASE NO. TP-104/22-23 IN THE MATTER OF DETERMINATION OF TARIFF FOR DISTRIBUTION AND RETAIL SUPPLY OF ELECTRICITY IN THE DAMODAR VALLEY AREA IN THE STATE OF WEST BENGAL FOR THE TARIFF PERIOD FY 2023-24 TO 2025-26.

PRESENT:

DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 02.07.2024

Facts in brief:

1.0 Damodar Valley Corporation (DVC) has submitted a petition under section 94(1)(f) of the Electricity Act, 2003 read with regulation 1.7.5 and 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 seeking review and rectification of the order dated 13.03.2024 (Impugned Order) passed by the West Bengal Electricity Regulatory Commission in case no. TP-104/22-23.

2.0 By order dated 13.3.2024, this Hon'ble Commission approved the ARR and retail tariff for consumers in the Damodar Valley Area in the State of West Bengal for the 8th Control Period i.e MYT order for the tariff period 2023-24 to 2025-26.

3.0 In their review petition, DVC has submitted that, there are errors apparent on the face of the record in the MYT order of the Commission and accordingly, they are filing the review petition with a prayer to admit the petition and review the MYT order to the extent indicated in the petition. DVC in their petition inter-alia put forward the following issues for review:

A) Unjustified revision of own generation cost
B) Non consideration of incentive on transmission system availability as provided in regulations.
C) Non consideration of any additional employee expenses on new 11 kV lines.
D) Unjustified Disallowance of interest cost on temporary financial accommodation.
E) Disallowance of O&M Expenses of ULDC Scheme.
F) Inappropriate hike in Tariff.
G) Clarifications on the new provision of Green Tariff

Observations of the Commission:

4.0 Now, the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of Section 114 and Order 47 Rule 1 of CPC, according to which a person aggrieved by order of a Court can file review on the following grounds, if no appeal against the said order has been filed:

(a) Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him when the decree was passed or order made.

(b) On account of some mistake or error apparent on the face of record; and

(c) For any other sufficient reason.

In this connection, reference could be made to the following judgements:

(a) In **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]** Judgment, the Hon'ble Supreme Court has held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review…."

(b) In **Union of India vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}**, the Hon'ble Supreme Court has held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

(c) In **M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India 2018 SCC Online SC 930**, the Hon'ble Supreme Court has held as under:

"In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"

2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency"

5.0 The review sought by DVC on the items mentioned in paragraph 5.0 above have been discussed below:

A. UNJUSTIFIED REVISION OF OWN GENERATION COST:

Submission of IDVC:

DVC submitted that, the Commission in its impugned order has approved the generation from own sources of DVC considering Plant Load Factor (PLF) of all thermal generating stations at 80%, as against average PLF of around 74% as was submitted by DVC in the MYT application for 8th Control Period considering the followings for projection of the generation data in respect of the thermal generating station,

i. Past Trend of Generation,
ii. Schedule of planned overhauling.
iii. Fuel availability and quality (particularly during rainy seasons).
iv. probable backing down of generation due to surrender of power in lean period and integration of solar power.

In this regard, DVC has pointed out the following:

i) DVC submitted that the plant wise generation depends on variation in intra-day demand of the consumers, which is in the range of 350 MW to 450 MW. Apart from daily variation of the demand, there is also seasonal variation of demand. There is considerable amount of hydro power as well as generation from DVC's own hydro plant purchase in the power portfolio of DVC where generation also varies seasonally. During low generation from such hydel plants, system demand is met through augmented generation from DVC's own thermal power stations which is otherwise required to be backed down during peak hydel generation. Therefore, the PLF of a generating station is not entirely under control of DVC, rather it depends on the various power system dynamics on real time. Accordingly, based on the past trend, DVC had projected its Generation from the thermal Generating Station with an average PLF around 74% which was around 20% higher than the past five-year average.

ii) Due to the increase in the PLF, Commission has considered higher energy output from own generating station to the tune of 3000 MU to 3600 MU as compared to the projected own generation. After allocation to firm consumer, this additional energy has been considered in the ARR without implication of any fixed charge. This has resulted in a reduction in per unit fixed cost from own generation to the tune of 11 paisa/kWh to 14 paisa/kWh. As a result, there has been reduction of fixed cost of its own generating stations from that projected by DVC for distribution business.

iii) DVC also stated that, if DVC has to achieve average 80% PLF in above situation, it will lead to deviation from schedule supply to the tune of 350 MW to 450 MW which will result in gross violation of grid discipline. In the context, DVC submitted that average national PLF for central sector thermal generating station was around 69.71% during the FY 2022-23 based on CEA report. DVC also stated that it may not be technically feasible to consider 80% PLF for the purpose of determination of tariff considering the near expiry of useful life of some of the old generating units of DVC.

iv) Further, DVC submitted that it is not possible for DVC to take any appropriate action for FY 23-24 since the order has been issued at the fag end of the year 2023-24.

In this regard, DVC has made submission in this review petition to consider a rate of INR 5.2 per kWh as given in the para 4.6.5 of the impugned tariff order to adjust the gap between the energy requirement and energy availability based on energy balance by purchasing power from energy exchange instead of the above-mentioned approach.

Observation of the Commission:

The Commission observes that the matters of the generation from own sources of DVC have been elaborated in para 4.4.2.3 to 4.4.2.6 of the Tariff Order which are self-explanatory in nature.

Hence as per para 4.4.2.7 of the Tariff Order, the own generation will be trued up based on Audited Annual Accounts of the respective years during Annual Performance Review (APR) and thus directs DVC to submit details in this respect as required in their APR petitions for FY 2023-24 to 2025-26.

B. NON-CONSIDERATION OF INCENTIVE ON TRANSMISSION SYSTEM AVAILABILITY:

Submission of DVC:

DVC submitted that, the Commission has allowed the transmission and distribution cost of DVC network considering transmission system availability at normative levels of 98% as against Transmission System Availability Factor of 99.2% projected by DVC for its composite T&D network in the MYT application for 8th Control Period based the actual performance of past years. As per regulation 46(2) of CERC Tariff Regulations 2019, transmission system having availability more than 98.5% (normative level being 98%) is entitled to get incentive on transmission charges and such incentive for Transmission System Availability Factor of 99.2% was not considered in the impugned order.

Further, DVC submitted that it was allowed T & D network availability more than 98.5% by the Commission even in the MYT tariff order for the period of FY 20-21 to FY 22-23 dated 7th March 2024 based on actuals i.e. 99.6% for FY 20-21, 99.67% for FY 21-22 and 99.69% for FY 22-23. After allowing higher than normative figures for past years, it is not justified for the Hon'ble Commission to reduce the performance targets for transmission system availability at normative levels i.e. 98%, especially when DVC is consistently achieving availability much higher than normative value.

DVC has made submission in this review petition to consider the transmission system availability as per the projections made by DVC based on actual past performance and the order dated 07.03.2024 issued by the Hon'ble Commission.

Observation of the Commission:

The Commission observes that the matters of consideration of Normative Transmission availability of 98% for 8th Control period, instead of 99.2% as projected by DVC, has been elaborated in para 4.7.3.2 of the Tariff Order which are self-explanatory in nature Further to mention that Commission has allowed transmission system availability in the MYT tariff order for the period of FY 20-21 to FY 22-23 dated 7th March 2024 (i.e Control period is over) based on actuals i.e. 99.6% for FY 20-21, 99.67% for FY 21-22 and 99.69% for FY 22-23.

The incentive, if any, for the 8th Control period will be trued up during APR of the respective years based on actual performance for which DVC requires to submit requisite documents as per direction of Commission in the Tariff Order.

C. NON CONSIDERATION OF ANY ADDITIONAL EMPLOYEE EXPENSES ON NEW 11 KV LINES:

Submission of DVC:

DVC submitted that the Commission for the first time had allowed R&M expenses and A&G expenses based on its own approach as detailed out in the respective sections in the impugned tariff order, based on the claim of DVC for the new 11 kV lines of DVC whose investment proposal has been duly approved by the Hon'ble Commission. Commission has not considered any employee expenditure on the new 11 kV lines stating that the same has been considered in the CERC O&M expenditure as well as in the absence of submission of separate employee expenditure.

In this regard, DVC has pointed out the following:

i) that such employees are required for operation and maintenance of the network assets and carrying out the necessary functions of distribution and retail supply. Further, DVC submitted that it did not claim the O&M expenses for 11 kV under CERC since the norms determined by CERC were based on the actual costs incurred by different transmission companies in the previous control period of FY 2014-19 and there was no 11 kV lines present in DVC for claiming or showing any separate employee/ O&M expenses. Tariff Order passed by CERC for transmission and distribution network of DVC for the control period of FY 2019-24 also did not make any reference regarding allowing the employee cost for 11 KV network. It further stated that. the planned completion date for the 11 kV network is in phased manner ending in FY 2024-25 which is outside the purview of the present control period of CERC tariff order 2014-19 and thus there cannot be any double claim of O&M expenditure. DVC submitted that the employee expenses for the 11 kV network is being claimed only under WBERC as the investment approval for this 11 KV asset has been taken from WBERC.

ii) that, in regards to the disallowance of employee expenses for the 11 kV network for not furnishing the segregated employee data for the 11 kV, the work of segregation of accounts into generation, transmission and distribution is in progress in DVC. As such DVC craves leave of the Commission to submit the segregated data for this tariff order.

In this context, the submission of DVC that till the time segregated data of employee expenses is available, the employee expenses may be allowed for DVC based on percentage of Gross Fixed Assets.

Observation of the Commission:

The Commission observes that. DVC in this review petition has not submitted any additional fact to consider the additional employee cost on new 11 kV lines.

Hence the additional employee cost for new 11 kV lines, if any, may be considered during true up of the APR application of the respective year, if DVC can provide requisite documents as per para 4.20.2, and CERC does not consider this additional employee cost for new 11 kV network in the employee Cost of the transmission tariff for the composite T&D system of DVC.

D. DISALLOWANCE OF INTEREST ON TEMPORARY FINANCIAL ACCOMMODATION:

Submission of DVC:

DVC submitted that, the Commission in the impugned order dated 13.03.2024, has disallowed the entire claim of DVC made in terms of Regulation 5.6.5.4 of WBERC 'Terms and Conditions of Tariff' Regulations, 2011 since. no such provision exists in the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) (Fourth Amendment) Regulations 2023, which has come into force on and from 01.04.2023.

In this regard, DVC has pointed out the following:

i) that it claimed the expenditure towards temporary financial accommodation since the entire delayed payment surcharge has been considered by this Hon'ble Commission as Non-Tariff Income and has been deducted from the ARR. When there is default in payment by a consumer beyond due date, DVC has to arrange the required cash flow through short term loan. The cost of such loan is to be borne by DVC and present amendment of Tariff Regulation 2023 does not consider this as a pass-through element **of** tariff. Hence, if the entire delayed payment surcharge is being adjusted in the ARR, then the associated cost to finance the unrealized dues should logically be allowed to the licensee in the ARR.

ii) that there are various cases like Appeal no. 153 of 2009 (NDPL versus DERC) and Appeal no. 177 and 178 of 2012 (BSES Rajdhani versus DERC) dealt by Hon'ble Appellate Tribunal of Electricity (APTEL) where the Hon'ble APTEL had clearly pointed out that the distribution licensee is allowed for interest on working capital which is limited to two months of receivables. As such, if the receivables increase beyond two months, then additional working capital is required for which additional interest cost should be allowed.

iii) that there are short term borrowings of DVC to meet the unrealized consumers' arrears as projected by DVC in the petition. DVC has also submitted in the tariff petition the state wise break – up of the Delayed Payment Surcharge and the corresponding amount of interest on temporary financial accommodation attributable to the West Bengal distribution business. It is also mentioned that in the tariff orders for DVC for distribution and retail supply in Jharkhand, DVC has been allowed interest on temporary financial accommodation to cover the shortfall in revenue due to accumulation of arrears.

In this context, the submission of DVC is to allow the Temporary Financial Accommodation on notional basis commensurate to the projected Delayed payment surcharge (DPS) income which is adjusted in the ARR as Non-Tariff Income (NTI)

Observation of the Commission:

The Commission observes that the matter has been elaborated in paragraph 4.12.2 of the impugned order dated 13.03.2024. Hence DVC's review is not accepted.

E. DISALLOWANCE OF AMC CHARGES FOR ULDC SCHEME:

Submission of DVC:

DVC submitted that Commission has disallowed DVC's claim stating that there is no specific direction by CERC for O&M expenses of SCADA/EMS system of ULDC scheme on unified T&D network of DVC. Thus Commission did not admit any amount as recoverable from the DVC's retail Distribution Business for AMC charge paid for ULDC communication system.

In this regard, DVC has pointed out the following:

i) that this is contrary to the previous APR order dated. 14.09.2023 for FY 2017-18 wherein, this Commission has allowed the claim of DVC under this same head as this a part of power purchase and part of Distribution Business of DVC.

ii) that in terms of the CERC order for Operation & Maintenance of ULDC scheme, DVC has entered into a contract with PGCIL & other vendors for maintenance of entire ULDC scheme established by PGCIL for the system of DVC. DVC also submitted that the direction of CERC regarding the Annual Maintenance Contract of SCADA/EMS was a part of the Tariff Order of PGCIL. The same is naturally cannot be made part of the tariff order of T&D network of DVC by Central Commission as the assets belong to PGCIL.

iii) that PGCIL raised the bills of ULDC in terms of the order dated 14.12.2017 of Hon'ble CERC which includes all other element of the Tariff except the O&M cost related to communication assets established by PGCIL under ULDC scheme. Such bills have been included in the Power Purchase cost and approved by the Commission in the instant order.

Accordingly, DVC has claimed the AMC charges paid to PGCIL & other vendors in the tariff petition.

In view of the above, DVC had prayed to review its decision to the extent mentioned above.

<u>Observation of the Commission</u>:

From the submission made in the review petition, it is observed that DVC has not submitted any additional fact in regards to the above issue.

Hence. AMC charges for ULDC scheme may be considered separately during true up in APR application of the respective year, if, DVC submits the requisite documents clearly mentioning the expense for ULDC charges and expense for AMC paid for ULDC communication scheme & the same is not part of O&M expense approved by CERC.

F. INAPPROPRIATE HIKE IN TARIFF:

<u>Submission of DVC</u>:

DVC submitted that Commission, in paragraph 5.12 of the impugned tariff order has approved Average Cost of Supply as 5.2349 Rs. /kWh for the FY 2024-25 which includes the adjustment of the past period Revenue Gap. This Hon'ble Commission, under para 6.3.1

has also clarified that based on the average tariff rate, the Tariff schedule has been approved by the Commission.

In this regard, DVC submitted that the Average Billing Rate (ABR)of the energy bills to its consumers in the consumption month of April'2024 based on the Tariff Schedule of FY 2024-25, after adjustment of the Power Factor and Load Factor Rebate, has arrived at Rs.4.9771/ kWh i.e ABR is lower by 25.78 paisa/kWh from the approved ACoS. Considering the estimated sale for FY 2024-25 is around 10,000 MU, yearly loss of revenue on account of lower tariff rate will be around Rs. 257.8 Cr. (10,000 x 25.78). It is also stated that, in the subsequent seasons, i.e. monsoon and winter, the approved energy charge will further reduce the Average Billing Rate from the month of April for which the approved energy charge is the maximum being the summer season.

In the context, the submission of DVC is to review the Tariff Schedule and modify accordingly to help DVC generate adequate cash flow to mitigate the exposure to short term loan and also save consumers from getting Tariff shock in future since the difference in the Average Cost of Supply and the Average Billing Rate (ABR) will create commensurate Revenue Gap in the Annual Performance Review (APR).

Observation of the Commission:

The Commission observes that the Revenue realizable in the control period depends on the projected consumption pattern in the Tariff petition along-with the projection of Power Factor and Load Factor of the consumers of the said control period & consequential impact of such projection on those rebate & surcharge. Any gap due to variation of actual from projection is adjustable in APR of respective years based on the Audited Annual Account. Further in accordance with the paragraph 6.7 of the order dated 13.03.2024, DVC is entitled to raise the enhanced fuel and power purchase cost, if any, after the date from which Tariff Order takes effect prospectively.

Hence any gap due to variation of actual from projection is adjustable in APR of respective years based on the Audited Annual Account.,

G. CLARIFICATION ON NEW PROVISION OF GREEN TARIFF:

Submission of DVC:

Commission in the impugned order has introduced a new tariff provision called Green Tariff at the rate of 50 paise/kWh in view of the Green Open Access Rules and "Go Green" initiatives taken by the Government. In this regards, DVC has prayed for clarifications on the following aspects of Green Tariff:

a. Whether the energy supplied to the retail supply consumers under Green Tariff can also be accounted for the Renewable Purchase Obligation (RPO) Compliance of the distribution licensee?
b. Whether the distribution licensee can purchase REC to supply power under "Green Tariff"?
c. Whether the Green Tariff would be charged over the base tariff or over and above the base tariff plus Differential Energy Charge Rate and Monthly Variable Cost Adjustment (MVCA)?

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Observation of the Commission:

Clarification on Green Energy sought by DVC does not come within the mischief of review under section 114 and order 47 Rule 1 of CPC.

6.0 Thus, the review prayer for on the issues raised as in points A B. C. D, E & F above are considered by applying prudence by the Commission and no ingredients for review are manifest in the relevant submissions. The Commission, keeping in mind that it is estopped from usurping appellate jurisdiction, does not propose to entertain the above prayers on review.

Issues raised in points no A B. C. D, E, & F have no merit for consideration in the affirmative as it is found from due consideration of the said issues and keeping in mind that the commission cannot sit in appeal on its own order or cannot substitute its view. The other issue such as G is found to be clarification on Green Energy which does not come within the mischief of review under section 114 and order 47 Rule 1 of CPC.

Order:

7.0 Based on the foregoing analysis, Issues raised in points no A B. C. D, E, F & G are decided in the negative since having no merit.

8.0 The review petition is thus disposed of.

9.0 A copy of the order shall be posted in the website of the Commission.

10.0 DVC shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-	**Sd/-**
(PULAK KUMAR TEWARI)	**(MALLELA VENKATESWARA RAO)**
MEMBER	**CHAIRPERSON**

Dated: 02.07.2024

Sd/-
(SECRETARY)