



सत्यमेव जयते



ORDER
OF
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
IN CASE NO. TP-71/16-17

IN RE 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 2017-18

PRESENT:

SRI RABINDRA NATH SEN, CHAIRPERSON

SRI AMITAVA BISWAS, MEMBER

SRI DURGADAS GOSWAMI, MEMBER

DATE: 08.12.2017



In RE 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 2017-18.



Noting by Office or Advocate	Sl. No.	Date	Office notes, reports orders or proceedings with signature
		08.12.2017	<p style="text-align: center;"><u>ORDER</u></p> <p>1.0 In the tariff order dated 25.05.2015 for the year 2014 – 2015 and 2015 – 2016 the Commission has given directives to Damodar Valley Corporation (DVC) for meeting their Universal Service Obligation (USO). As DVC was not coming out properly which was shown from their communication dated 24.06.2015 and 15.07.2015 the Commission felt it appropriate to have dialog with the top Management as the responsible officers were not coming out clearly on the above issues. Subsequently the Chairman, DVC was invited for understanding the difficulties and intentions on the above issues which were intimated vide letter no. WBERC/TP-57/13-14/0132 dated 22.04.2016 and again on letter no. WBERC/TP-57/13-14/Vol.II/13-14/0436 dated 15.06.2016. After repeated failure of DVC, Commission felt it appropriate to call top Management of DVC by issuing orders on 11.07.2016, 25.07.2016 and 28.10.2016 on three occasions. In three occasions no body from top management turned up and those who came for hearing did not come out clearly about the intention and the difficulties, if any. Failing to get any headway, the Commission imposed penalty vide its order dated 11.07.2016 in case no. TP-57/13-14. DVC challenged the above order in Calcutta High Court along with various other orders dated 13.08.2014, 25.05.2015, 30.06.2016 and 28.10.2016 passed by the Commission</p>



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			<p>where they informed the Hon'ble Court that they have submitted DPR to the Commission. However, the Hon'ble Court vide its order dated 09.01.2017 inter alia directed DVC the followings:</p> <p>“Quote:</p> <p>.....The orders impugned in this Writ Petition are modified to the extent that the portions where the direction for personal appearance of the Chairman and the imposition of penalty are concerned are hereby set aside. 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 filed 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.....</p> <p>Unquote”</p> <p>2.0 Subsequently, having failed to submit application for investment proposal within the time limit as per directive of the Hon'ble Court, DVC filed a CAN Application in the Calcutta High Court praying for extension for a further period of 3 months over and above 4 weeks granted under the order dated 09.01.2017 for submission of investment</p>
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			<p>proposal in the prescribed format.</p> <p>3.0 Earlier, DVC had filed the Tariff Petition 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 2017-18.</p> <p>4.0 The Commission vide its order dated 25.04.2017 had directed DVC to submit the application for investment proposal within 30.06.2017 in the context of the order of the Hon'ble High Court at Calcutta dated 09.01.2017 passed by the Hon'ble Justice Harish Tandon in W.P.26442 (W) of 2016. Under the order of the Hon'ble High Court DVC was further directed by the Commission in its aforesaid order dated 25.04.2017 to submit a Supplementary Petition to the tariff petition submitted on 29.12.2016 for determination of tariff for the year 2017 – 2018 considering and/or including the tariff impact of the said investment proposal.</p> <p>5.0 DVC again did not comply with the direction of the Commission by submitting their investment proposal and the supplementary petition as well. Instead, DVC vide its letter No. Coml/WBERC/977 dated 29.06.2017 informed the Commission that a detailed project report for development of LT network in its entire area of supply in the State of West Bengal in accordance with the directions of the Commission has been prepared and referred to the finance department of DVC for its comments / inputs with an expectation to put up the same before the Board by 3rd week of July, 2017. Accordingly, DVC prayed before the Commission to extend the date till 31.07.2017 so that they</p>
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			<p>can place the matter before the Board and proceed further.</p> <p>6.0 On receipt of the aforesaid prayer from DVC, the Commission informed DVC to submit their prayer for extension of time through duly sworn-in Affidavit. 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. After due consideration of DVC's prayer, Commission extended the time for submission of application for investment proposal upto 31.07.2017 and conveyed the same to DVC vide its letter no. WBERC/TP-71/16-17/0695 dated 28.07.2017.</p> <p>7.0 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.</p> <p>8.0 On perusal of the contents of the aforesaid sworn-in Affidavit dated 28.07.2017, the Commission called for a hearing upon serving of notice dated 25.08.2017, fixing the date of hearing on 14.09.2017 at 13.00 hours.</p> <p>9.0 After issuing the hearing notice, DVC subsequently filed one petition before the Commission on 08.09.2017 in the matter of submission of investment proposal where along with several documents, DVC prayed before the Commission as below:</p> <p>a) to issue appropriate directions with regard to the requirement and extent of parallel network to be developed by DVC in the State of West Bengal in view</p>
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			<p>of the stand of the representatives of the Central Government and the State Governments of Jharkhand and West Bengal having regard to the statutory mandate to develop distribution network in an economic, coordinated and optimum manner; keeping in view the current status of distribution network in West Bengal; and also having regard to the principles laid down by Hon'ble Appellate Tribunal on development of parallel network in appeal no. 246 and 229 of 2012,</p> <p>b) to consider the alternate option of allowing DVC to supply power to LT consumers through open access in accordance with applicable Regulations to meet its USO obligations till such time that appropriate directions under prayer (a) above are issued.</p> <p>10.0 The hearing on prayer for further extension of time for a period of two months i.e., upto 30.09.2017 was held on 14.09.2017 at 13.00 hours as scheduled, where the representatives of DVC were present. During the hearing, the Commission had made it clear to the representative of DVC that this hearing has been convened only to hear the prayer of DVC for extension of date for submission of DPR before the Commission which in turn means that whether at all DVC would submit the DPR before the Commission within the extended date as sought for. The Commission will not hear anything other than the justification of the date of extension of time. The Commission also informed DVC during the hearing that as the present hearing is for further extension of time in respect of submission of DPR of investment approval, the recently submitted petition dated 08.09.2017 is not being taken into cognizance for hearing</p>
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			<p>right now and will be dealt with separately on merit. A hearing, if necessary, will be held separately. The contention of the Commission, as mentioned aforesaid, was also conveyed to DVC vide its order dated 09.11.2017.</p> <p>11.0 In terms of the deliberation made by the Commission, as mentioned hereinabove under paragraph 10.0, a hearing notice vide No. WBERC/TP-71/16-17/1200 dated 17th November, 2017 was issued to DVC requesting them to be present at the hearing on 29th November, 2017 at 12.30 hours in the office of the Commission for admission of petition dated 08.09.2017 submitted by DVC. Upon issuance of the hearing notice dated 17.11.2017, a letter dated 22.11.2017 was received from DVC praying for preponement of the hearing on 28.11.2017 due to difficulties for attending the hearing on 29.11.2017 by their defending counsel. Accordingly, the hearing was preponed on 28.11.2017 at 14.30 hours.</p> <p>12.0 The hearing was held on 28.11.2017 at 14.30 hours as scheduled. In the hearing, Sri Sakya Singha Chowdhury, Ld. Counsel of DVC along with Sri Deb Kumar Aich, Principal Chief Engineer (E), Sri Suman Kumar Bose, Chief Engineer – I (SPE) and other officers of DVC were present with due authorization.</p> <p>13.0 The representatives of DVC placed various arguments / examples in respect of –</p> <p>a) requirement and extent of parallel network to be developed by DVC in the State of West Bengal in view of the stand of the representatives of the Central Government</p>
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			<p>and the State Governments of Jharkhand and West Bengal having regard to the statutory mandate to develop distribution network in an economic, coordinated and optimum manner; keeping in view the current status of distribution network in West Bengal; and also having regard to the principles laid down by Hon'ble Appellate Tribunal on development of parallel network in appeal no. 246 and 229 of 2012, and</p> <p>b) to consider the alternate option of allowing DVC to supply power to LT consumers through open access in accordance with applicable Regulations to meet its USO obligations till such time that appropriate directions under prayer (a) are issued.</p> <p>14.0 Upon hearing the above submissions of DVC, the Commission observed that as far as the parallel LT network to be developed by DVC in its entire licensed area of supply in the State of West Bengal is concerned, section 43 of the Electricity Act, 2003 read with regulations framed by WBERC and clause 5.4.7 of the National Electricity Policy specify that DVC has to provide electricity to all consumers without any restriction of volts. This was also admitted by the Hon'ble Justice Harish Tandon of Hon'ble High Court at Calcutta in W.P.26442 (W) of 2016 submitted by DVC. 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 shall have to take up the matter with the Hon'ble High Court at Calcutta.</p> <p>15.0 For the prayer of DVC to consider the alternate option of allowing DVC to supply power to LT consumers through</p>
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			<p>open access, it is to be mentioned that open access in distribution / sale of electricity with the connected load of 1 MW and below is not permitted as per the regulation 3 of West Bengal Electricity Regulatory Commission (Phasing For Open Access in Distribution/Sale of Electricity) Regulations, 2006.</p> <p>16.0 In view of the above, the Commission does not admit the petition dated 08.09.2017 of DVC for consideration.</p> <p>17.0 With the above decision, the petition dated 08.09.2017 of DVC is disposed of.</p> <p>18.0 Let a copy of this order be served upon DVC.</p> <p style="text-align: center;">Sd/- (DURGADAS GOSWAMI) MEMBER</p> <p style="text-align: center;">Sd/- (AMITAVA BISWAS) MEMBER</p> <p style="text-align: center;">Sd/- (R. N. SEN) CHAIRPERSON</p> <p>DATED : 08.12.2017</p>
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