

IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case No. 5 of 2023

Damodar Valley Corporation (DVC) Petitioner

Vs

Association of the DVC HT Consumer of Jharkhand Respondent

**CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. A. K. Mehta, Advocate
For the Respondent : Mr. Saket Upadhyay, Advocate

Date – 09th January, 2024

1. Damodar Valley Corporation (DVC) has submitted an affidavit petition purported to be filed under section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 41 of JSERC (Conduct of Business) Regulations, 2016 for Review of Order dated 30.01.2023 passed in Case (T) no. 01 of 2021 regarding determination of ARR for the MYT period from FY 2021-22 to 2025-26 and Tariff for FY 2021-22.
2. The Prayers of the petitioner-DVC are as under: -
 - (1) Admit the present Review Petition of DVC.
 - (2) Review the order dtd. 30.01.2023 and allow expenses on account of Legal Charges and Consultancy Fees based on the submission made in present petition.
 - (3) Review the order dtd. 30.01.2023 and allow DVC to recover the AFC of T&D system and MTPS U#4 of DVC in line with the Tariff Orders issued by CERC for 2019-24 period based on the submission in the present petition.
 - (4) Review the order dtd. 30.01.2023 and allow DVC to recover Incentive on achieving Transmission Availability factor (TAFY) more than 98.5% of DVC T&D system based on the submission made in the present petition.
 - (5) Review the Revenue Gap determined for the period FY 2016-17 to FY 2021 22 and Tariff hike allowed in the impugned order based on the submission made herein above.
 - (6) Review the decision of Tariff hike allowed in the impugned order.
 - (7) Pass such other order (s) as the Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case.

Determination of ARR for MYT Period from FY 2021-22 to FY 2025-26 and Tariff for FY 2021-22

I. Disallowance of the Legal Charges and Consultancy Fees:

Petitioner's Submission

3. The petitioner has submitted that the Hon'ble Commission has disallowed the Legal Charges and Consultancy Fees on the ground that DVC has not submitted any documents in support of its claim that such expenses are not covered under normative O&M expenses as approved by CERC. Relevant portion of the order is reproduced below,

"The Commission observed that Legal Charges and Consultancy Fees are part of

Operation and Maintenance (O&M) Expenses which is approved by CERC. Hence, the Commission has not approved the Legal Charges and Consultancy Fees separately.”

4. In this respect, it is respectfully submitted that, while fixing the Normative O&M parameter for Transmission assets in the Tariff Regulations 2019, Hon'ble Central Commission has considered the average O&M parameters of the different Transmission Licensees (more specifically PGCIL, being the largest Transmission Licensees in the Country). Nowhere in the Statement of Reasons issued by CERC in connection with the Tariff Regulation for 2019-24 period, it is mentioned that legal charges have been included in the normative O&M charges. Moreover, reliance may also be placed on the fact that DVC network had been adjudged as Unified Transmission and Distribution network by APTEL vide order dated 23.11.2007. The said judgment of APTEL was challenged before the Hon'ble Supreme Court, and the Hon'ble Apex court was pleased to uphold the said Judgement of APTEL. Accordingly, the Tariff of the entire T&D network of DVC is being determined by CERC following the norms set for a Transmission Licensee. However, unlike other Transmission Licensees, DVC also undertakes distribution activity and serves hundreds of Consumers. For such additional activity of DVC, CERC does not allow any additional cost except what has been set in the Normative Parameters. However, the involvement in the distribution activity attracts more legal litigations than transmission business as the number of consumers being served is more in this business. DVC in the past, has incurred substantial amount as legal expenditure to defend its stake before different legal forums which is solely attributable to its distribution activity, Similarly, based the past data, DVC has also projected the expenditure for the period 2021-22 to 2025-26 on the same account. More importantly, in accordance with Regulation 10.7 of the JSERC Distribution Tariff Regulation, 2020, legal expenses are allowable to an O&M distribution licensee as a separate element in addition to the expenditure. Relevant extract of the regulation is reproduced below,

"The Distribution Licensee, the Legal/litigation Expenses in addition to the above details shall also submit the detailed break-up of for the previous Years (FY 2015- 16 to FY2019-20) along with the details and documentary evidence of incurring such expenses. The Commission shall approve expenses as per the legal the relevant provisions of the Jharkhand State Litigation Policy based on the necessary documentary evidence submitted for expenses at the Control Period and shall carry out due prudence check of legal the time of truing up. "

5. In view of the above, DVC ought to have been allowed the legal expenditure attributable to its Distribution Business on FY 2021-22 projection basis for the control period of FY 2025-26.
6. In this regard, it is also submitted that, Hon'ble WBERC has also allowed legal charges in the True-up order of DVC.

Commission's Analysis

7. The Commission has outlined Clause 10.7 of the JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2020 for the approval of Legal Charges and Consultancy Charges, as reproduced below,

"10.7 The Distribution Licensee, in addition to the above details shall also submit the detailed break-up of the Legal/Litigation Expenses for the previous Years

(FY 2015- 16 to FY 2019-20) along with the details and documentary evidence of incurring such expenses. The Commission shall approve the legal expenses as per the relevant provisions of the Jharkhand State Litigation Policy based on the necessary documentary evidence submitted for the Control Period and shall carry out due prudence check of legal expenses at the time of e truing up.”

8. With regard to the aforesaid, the Commission has disallowed the claims of the Petitioner provisionally, and the same may be allowed subject to prudent check while truing-up, based on actual expenditure incurred on production of relevant data and documentary evidence.
9. In view of the above, **Issue No-I**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

II. Error in Computation of AFC of DVC T&D system and MTPS U#4 for the MYT period FY 2021-22 to 2025-26

Petitioner's Submission

10. The Petitioner has submitted that, Table - 25 to Table - 29 of the impugned order reveals that, the Commission has considered Rs 453.84 Cr and Rs 135.74 Cr as the Annual Fixed Charge (AFC) of T&D Network and MTPS#4 respectively for all the financial years of the control period (2021-22 to 2025-26). However, CERC vide order dated 23.07.2022 (Existing Elements), 02.03.2022 (New elements) and 30.11.2022 (MTPS U#4) has approved different AFCs for each financial year of the control period of 2019-24. In terms of Rule 8 of Electricity Rule, 2005, tariff determined by the Central Commission is not subject to redetermination by the State Commission. Relevant portion of the rule is reproduced below,

"Tariffs of generating companies under section 79,- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission."

11. The petitioner has further submitted that the Commission has considered the AFC of FY 2019-20 in respect of T&D Network and MTPS U#4 of DVC as per CERC order dated 23.07.2022 and 02.03.2022 (Existing elements and New elements) and order dated 30.11.2022 (MTPS U#4) for the computation of AFC for five years of the MYT period FY 2021-22 to FY 2025-26.
12. The petitioner has also submitted that in the latest order of CERC the AFC for DVC T&D system for FY 2021-22 to 2023-24 are Rs. 509.21, Rs. 499.97 Crs., Rs. 506.65 Crs. respectively. Similarly, CERC has approved Rs. 140.40 Crs, 145.69 Crs and Rs. 150.88 Crs. as AFC for FY 2021-22 to FY 2023-24 respectively in respect of MTPS U#4. However, the Hon'ble Commission has considered the AFC as Rs.453.84 Crs and Rs. 135.74 Cr. for all the five years FY 2021-22 to 2025-26 i.e. T&D Network and MTPS U#4 respectively.

13. It is pertinent to mention here that vide corrigendum order issued by CERC on 27.01.2023 in respect of MTPS U#4 has separately allowed the ash disposal expenditure being not a part of the Annual Fixed Charge (AFC). Therefore, the recovery of the Ash Evacuation Expenditure is to be considered without linking the plant availability factor.

Commission’s Analysis

14. The Commission is of the opinion, that the CERC had passed an order on the transmission tariff for the Eastern Region of DVC for FY 2019–20 to 2023-2024 without considering incentives, as mentioned in the Order dated 10.06.2022 and the Corrigendum Order dated 23.07.2022.
15. Accordingly, the Commission is of the view that the computation of Incentive for Achievement of Transmission Availability Factor (TAF) of DVC T&D system shall be revised by this Commission when Hon’ble CERC issues the True up Order for the Control Period FY 2019–20 to 2023-2024.
16. The Commission has observed that there has been an inadvertent error in computation of AFC of T&D system and MTPS U#4 for the MYT period FY 2021-22 to 2025-26. Accordingly, the computation of AFC of T&D system and MTPS U#4 has been reviewed as tabulated below.

Particulars	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26
Normative Availability (NAPAF)	85.00%	85.00%	85.00%	85.00%	85.00%
Plant Availability Factor (PAFY)	80.49%	77.29%	78.35%	82.89%	81.74%
Annual Fixed Charge (AFC) (Rs. Cr.)	140.40	145.68	150.88	150.88	150.88
Recoverable fixed charges as per CERC formula (Rs. Cr.)	132.95	132.47	139.08	147.14	145.10
Share of Firm Consumer	100.00 %	100.00 %	100.00 %	100.00 %	100.00 %
Recoverable Fixed Charge from Firm Consumers (Rs. Cr.)	132.95	132.47	139.08	147.14	145.10

17. The effect on Gap/(Surplus) shall be passed while conducting the True-up exercises for the respective years.
18. In view of the aforementioned rectifications, **issue no-II** raised by petitioner is partially accepted and rectified accordingly.

III. Error in Computation of Incentive for Availability of Transmission Availability Factor (TAF) of T&D System more than 98.5%:

Petitioner’s Submission

19. In accordance with clause 46 (2) of the CERC (Terms and Conditions of Tariff) Regulation, 2019, the petitioner has submitted that if a Transmission System achieves Availability factor of more than 98.5% during the whole financial year, Incentive on the Annual Fixed Cost (AFC) is allowable for the availability factor on or above 98.5% subject to ceiling of 99.75%.
20. It was submitted that the Hon’ble Commission has approved the Annual Transmission Availability factor for T&D system during the FY 2021-22 to 2025-26 as 99.47%, 99.53%, 99,58%, 99.54% and 99.54% respectively. Therefore, in terms of the above-mentioned regulation, DVC is entitled to an incentive on the recovery of the AFC for its T&D network. However, no incentive was allowed to

DVC on the recovery of AFC of the T&D network in the Impugned order.

Commission’s Analysis

21. The Commission is of the opinion, that the CERC had passed an order on the transmission tariff for the Eastern Region of DVC for FY 2019–20 to 2023-2024 without considering incentives, as mentioned in the Order dated 10.06.2022 and the Corrigendum Order dated 23.07.2022, even though the CERC (Terms and Conditions of Tariff) Regulations, 2019 contains provisions for approval of incentive on Transmission Charges based on Transmission System Availability.
22. Accordingly, the Commission is of the view that the computation of Incentive for Achievement of Transmission Availability Factor (TAF) of DVC T&D system shall be revised when CERC issues the True up Order for the Control Period FY 2019–20 to 2023-2024.
23. In view of the above, **Issue No-III**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

IV. Basis of Reassessment of Revenue from Sale of Power in the state of Jharkhand:

Petitioner’s Submission

24. It was submitted that, in Table-44, under para 5.66 of the impugned order, the Hon'ble Commission has reassessed the revenue from sale of Power as Rs 4010.04 Cr against 7664.85 MU of power for the FY 2021-22 in the state of Jharkhand. Therefore, it is evident that, the Revenue from Sale of Power was reassessed at an Average Billing Rate of Rs 5.23 per unit (4010.04/7664.85x10) for the FY 2021-22. However, the basis of consideration of billing rate of Rs 5.23 per kWh for FY 2021-22 is not provided in the Tariff Order.

Commission’s Analysis

25. For the sake of understanding, the Commission provides the basis of Reassessment of Revenue from Sale of Power in the state of Jharkhand for Damodar Valley Corporation area as shown below.

Revenue at Existing Tariff for FY 2021-22									
Category	No. of Cons.	Conn. Load (MVA)	Sales (MU)	Fixed Charges	Energy Charges	FC (Rs. Cr.)	EC (Rs. Cr.)	Total Revenue (Rs. Cr.)	ABR
LT Commercial	5	7.57 MW	40.72	Rs. 150.00 /kW/Mon.	Rs. 4.20 /kWh	1.36	17.10	18.46	4.53
HT Supply	146	1495.22	7624.13	Rs. 350.00 /kVA/Mon.	Rs. 3.75 /kVAh	627.99	3363.59	3991.58	5.24
Total Revenue	151	1502.79	7664.85			629.35	3380.69	4010.04	5.23

26. Accordingly, Revenue from Sale of Power in the state of Jharkhand Damodar Valley Corporation area had been calculated and approved in the Order dated 30.01.2023.
27. In view of the above, **Issue No-IV**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

V. Inadequate Tariff hike to cover the expenditure of DVC.

Petitioner's Submission

28. It was submitted that under para 6.5 of the impugned order, the Hon'ble Commission has mentioned that considering the Provisional Revenue Gap, Commission has allowed 6.71% hike in Tariff to cover the provisional revenue gap. Relevant extract of the order is reproduced below,

"The Petitioner has brought to the notice of the Commission that CERC has carried out the truing up for FY 2014-19 of T&D system on June 10, 2022 (Corrigendum issued on July 23, 2022) and truing up of generating stations (MTPS U#4) on November 30, 2022 and the Petitioner has requested the Commission to allow the same as an additional recovery. The Commission is of the view that since the true up of FY2020-21 is still under scrutiny, which will result in the change in gap/(surplus) position from FY 2020-21 onwards. Thus, the Commission in this Order has not considered the impact of true up carried out by CERC as mentioned above and will be considered along with truing up of FY2020-21. Further, taking into account the provisional gap as tabulated below, the Commission in this order approves an increase of ~6.71% in the tariff,"

29. In this respect, it was submitted that, the Hon'ble Commission has approved 5.34 Rs. /kWh as Average Cost of Supply (ACoS) for the FY 2021-22. However, from the Tariff Schedule as approved in the impugned order it is evident that DVC cannot achieve the average billing rate more than 4.60 Rs/kWh. This can also be established from the fact that, based on the prevailing Tariff Order (dtd. 30.09.2020) the existing Average billing rate of DVC was Rs. 4.28 per unit, if 6.71% hike is considered then the New average billing rate will be around 4.57 Rs. /kWh. So, it is amply clear from the Tariff Schedule that it is not even sufficient to cover the expenditure of DVC as it is much lower than the Average Cost of Supply of 5.34 Rs./kWh as approved by the Hon'ble Commission for FY 2021-22. Therefore, how the recovery of the provisional gap of Rs. 1391 Cr has been ascertained by such a meager tariff hike is beyond the comprehension of DVC.
30. It will not be out of context to mention here that, if the Applicable Tariff is not sufficient enough to cover the expenditure of DVC, it will further be added up in the existing Regulatory assets and will be a strong reason for Tariff Shock in future for the Consumers of DVC in the state of Jharkhand. The prolonged accumulation of regulatory assets is creating severe cash crunch condition for DVC. Therefore, it is becoming very difficult for DVC to manage funds to ascertain adequate coal stock in its Generating Stations and/or resort to open market for purchase of Power during the exigency condition. If this situation is allowed to persist for long will this ultimately lead to degradation of supply quality of the Corporation in the state of Jharkhand. Therefore, DVC humbly prays before this Hon'ble Commission to kindly reconsider Tariff hike allowed in

the impugned order and the formulation of Tariff Schedule.

Commission's Analysis

31. The Commission is of the view that Tariff Hike should be given in a progressively increasing manner as to avoid tariff shock to consumers and also compensate the revenue gap to Licensee.
32. On scrutinizing and analyzing the material, information, actual figure and details submitted by the petitioner and on prudent check the Commission had approved the ARR, and the cumulative Gap/(Surplus). Accordingly, a tariff hike of approximately 6.71% had been given in the Order dated 30.01.2023.
33. In view of the above, **Issue No-V**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.
34. Accordingly, the petition is disposed off in terms of the above observations.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson