

In the hearing before Hon'ble One-Member Bench on 16.1.2006, the following Submissions were prayed for consideration while deciding on the fixation of Tariff of DVC with effect from the year 2004-05 :-

Submission 1

Operational Norms

The Tariff Policy states that in cases where operations have been much below the Norms for many previous years, the initial starting points in determining the Revenue Requirement and improved Trajectories should be recognized at “relaxed” levels and not the desired levels. In terms of the Tariff Policy, the Norms are required to be relatable to Past Performance and vintage, which is capable of achievement progressively reflecting increased efficiencies. DVC has already submitted its commitments towards Improved Performance in the next few years. DVC, therefore, prays for relaxed norms in respect of its old Units of DVC both 210 MW and below 210 MW sizes, taking into consideration their actual performance below the norms for many previous years. Section 61 of the Electricity Act states that the Appropriate Commission shall be guided inter-alia by Multi-year Tariff Principles to be determined from 1.4.2006. The framework should feature a five year control period.

Submission 2

Rate of Return

The objectives of the Tariff Policy are to ensure financial viability of the Sector and attract investments. It is, therefore, prayed that the Tariff Principles considered for DVC should take care of its Revenue requirements for faithful completion of its on-going Projects involving an outlay of more than Rs.7000 cr. during the 10th Plan Period. The Tariff Policy states that the Rate of Return should be such that it allows generation of reasonable surplus for the growth of the Sector.

Submission 3

Pension Fund Liabilities

DVC is required to mop up to its requirement of an amount of about Rs.1500 cr. towards its Pension Fund Liabilities in respect of its 11000 employees and 12000 Pensioners approximately on actuarial basis which so far has not been provided and, therefore, not

earlier recovered through Tariff. The Tariff Policy ensures that 'Uncontrollable Cost' (like Pension Fund Liabilities) should be recovered speedily to ensure that future Consumers are not burdened with past costs. It is, therefore, prayed for consideration that all the past liabilities towards Pension Fund in respect of the employees and pensioners of DVC are allowed as a distinct element of Tariff over and above the Normative Principles. The actual Pension Liability may vary after the actuarial assessment, which is in process.

Submission 4

Debt Equity Principles

DVC prays for a Comprehensive Study on the character of its Capital which has the characteristics of both Loan and Equity. It is prayed for consideration of the Hon'ble Bench that whatever was the resultant Participating Member Governments' Capital Fund as per the provisions of the DVC Act read with the Corporation Resolutions from time to time should be taken as the Appropriate Capital Structure at the beginning of the application of the Electricity Act, 2003. The rationale of the above prayer are submitted for kind consideration in the following paragraphs:-

1. Damodar Valley Corporation (DVC) has been a statutory body constituted under the Damodar Valley Corporation Act, 1948 (hereinafter '**the DVC Act**').
2. In terms of the provisions of the DVC Act, the promoter, the owner and the beneficiary are the three participating Governments, namely, the Central Government, the Provincial Governments of West Bengal and Jharkhand (Bihar before reorganization).
3. The status of DVC, the capital contributed by its promoters, participating Governments, the ratio of promoters contribution viz-a-viz loan capital, the status of retained earnings etc are to be decided taking into account the special provisions and the peculiar aspects contained in the DVC Act.
4. Section 14 – 4th proviso of the Electricity Act, 2003 reads as under:

“Provided also that the Damodar Valley Corporation, established under subsection

(1) of section 3 of the Damodar Valley Corporation Act, 1948 (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation”

5. It may be noted that the DVC Act has not been repealed by the provisions of the Electricity Act, 2003. The above proviso states that the DVC Act shall continue to apply in so far they are not inconsistent with the provisions of the Electricity Act, 2003.

6. One of the well settled principles is that the statute must be construed harmoniously. The attempt should be to avoid inconsistency and repugnancy. The provisions of one Act should not be read in a manner to make the provisions of another Act redundant. The rule of construction is well settled that when they are in an enactment, the two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both and this is the solemn principle of harmonious construction. Reference in this connection may be made to the decisions of the Hon'ble Supreme Court in the following cases.

- (a) AIR 1958 SC 255 at Page 268
- (b) AIR 1992 SC 1789 at Page 1794
- (c) AIR 1997 SC 1006 at Page 1009

7. There is nothing in the Electricity Act, 2003 which provides that the Debt Equity Ratio or the capital structure of an Utility should be determined in a particular manner. The Electricity Act, 2003 also does not make any provision as to what would constitute a share capital or the owners capital and what would be construed as non-owners capital. The Electricity Act, 2003 also does not make any provision in regard to the exclusion of any particular capital. In other words, there is nothing in the Electricity Act, 2003 which deals with the manner in which the Debt Equity Ratio or the shareholding pattern etc will be considered.

8. The Electricity Act, 2003 provides for the regulatory function in the appropriate Commission in regard to matters relating to tariff. This is contained in Sections 61, 62 and 79 of the Electricity Act, 2003 in so far as the Central Commission is concerned. Section 178 of the Electricity Act, 2003 enables the Central Commission to make regulations. In the circumstances the Central Commission can make regulations dealing with the manner in which the Debt Equity Ratio would be considered or what would be taken into account as to the share capital or the owners capital.

9. In the absence of any specific provision in the Electricity Act, 2003, the special provisions contained in the DVC Act dealing with capital structure etc need to be adopted particularly, in regard to the period prior to the coming into force of the Electricity Act, 2003. These cannot be done only for the period which are added or brought into after the coming force of the Electricity Act, 2003 and its application to DVC prior to the Electricity Act and its application to DVC. In this connection, it is relevant to mention that the DVC was not subjected to regulatory jurisdiction of the Central Commission under the Electricity Regulatory Commissions Act, 1998.

10. In view of the above, whatever was the resultant share capital or the owners capital or the owners contribution as per the provisions of the DVC Act, should be taken as the appropriate capital structure at the beginning of the application of the Electricity Act, 2003. The Hon'ble Central Commission had also accepted the above principle in the case of NTPC and other CPSUs where it had adopted the capital structure notified by the Government of India.

11. In the circumstances the accounts of the DVC as on 31.3.2004 should be considered in the light of the DVC Act to determine what was the owners contribution as on that date to decide on the Debt Equity Ratio.

12. The relevant provisions of the DVC Act in regard to the above are Sections 20, 30, 31, 32, 33, 35, 37, 38, 39, 40 and 45. The relevant extracts are contained in

Appendix `A`.

13. In accordance with the DVC Act, the participating Governments, namely, the Central Government, the Governments of West Bengal and the Government of Jharkhand (previously Bihar) have to provide capital to meet the expenditure of DVC in the following manner:

- (a) Each of the participating Governments are required to provide the entire capital required by the DVC for completion of any project undertaken by DVC (Section 30).
- (b) Each Government to provide its share of capital on the dates specified by the DVC (Section 31).
- (c) All receipts of the DVC (including capital provided by the participating Governments) are required to be maintained in a fund of the DVC (Section 29).
- (d) DVC shall have the power to spend such sum as it thinks fit on objects other than irrigation, power and flood control as a common expenditure out of its funds before allocating funds for the three principal objects, namely, irrigation, power and flood control (Section 32).
- (e) After meeting the expenditure on other objects as provided in Section 32, the expenditure in a project is allocated between irrigation, power and flood control based on the expenditure attributable to the specific object including a proportionate share of overhead and general charges. (Section 33).
- (f) In regard to power related activities the total amount of capital allocated shall be shared equally between the three participating Governments (Section 35).

- (g) The net profit arising out of power (after making provisions for depreciation and for reserve) shall be credited to the participating Governments in proportion of their respective share in the capital related to power. The net deficit, if any, in respect of power shall be met by the participating Governments in the same proportion (Section 37).
- (h) Before deriving at the net profit, the interest on the amount of capital provided by each participating Governments at the rate fixed by the Central Government shall be credited to the participating Governments as expenditure of DVC.
- (i) Again before deriving at the net profit, the provisions for depreciation and for reserve and other funds shall be made at such rate as may be specified by the Auditor General of India.

14. In accordance with the above, DVC should be deemed to have been vested in the capital cost of the various power sector projects and the same should be taken in account for the purposes of capital cost as on 31.3.2005 including for the purposes of determination of tariff.

15. As per the audited accounts of DVC for the year ending 31.3.2004, the fixed assets in operation of DVC relating to power object is Rs 3543.65 crores as appearing in the balance sheet attached to the Annual Performance Report of 2003-04 – Page 73. This would mean that DVC has financed for the power related assets Rs 3543.65 crores.

16. The sources of funding the above capital cost are broadly:
- (a) Capital account includes initial capital contribution and ploughed back Power Surplus up to 31.3.04 is Rs 1105.40 crores related to power object by the participating Governments as appearing in Page 70 of the above Annual Report.

- (b) Power Surplus of Rs 411.38 Crs and Interest Payable of Rs 89.71 Crs as deemed Capital for the year 2003-04 in terms of the resolution of the Corporation as per the consistent practice followed by DVC in all the past years. This amount should also be considered akin to the cash contribution to the capital account for the reasons that ordinarily this amount would have been remitted by DVC to the three participating Governments and the three participating Governments would have in turn remitted it back to DVC either as capital for the expenditure on the project or as a contribution to the net deficit as provided in Sections 30, 31,, 35, 37 and 38 of the DVC Act (as quoted in Appendix `A`).
- (c) The retained earnings used in the capital assets. This again, in the context of DVC, it should be treated as a capital contribution by the three participating Governments. The reason for the same is that if the earnings were not retained and used in the capital assets, the same would have been distributed to the three participating Governments as surplus from power object and again the Governments would have contributed in the power project. There is an element of deeming in the above. It should be deemed that the money went to the Governments and was paid back to DVC for the power project.
- (d) Loan borrowed by DVC from other sources and the balance is Rs 679 Crs as on 31.3.2004.

17. The entire capital assets should, therefore, be taken to have funded through one of the above four sources. In the first three sources, in the context of the provisions of the DVC Act, it should be treated an equity capital or owners capital. The fourth is a loan capital.

18. The Debt Equity ratio should, therefore, be determined by the process of reducing the loan capital mentioned in item (d) in Para above from the Fixed Assets in Operation

of Rs 3543.65 crores. As such the capital assets should be taken to have been contributed from the money belonging to the participating Governments and paid by the participating Governments in the discharge of their statutory obligations contained in the DVC Act. The above method would be consistent with the provisions of the DVC Act.

Submission 5

Share of Common Expenses in Tariff

DVC's non-power functions are mainly towards Subsidiary Activities namely, Afforestation, Soil Conservation, Soil Testing, Social Projects viz. Self-employment Schemes, Electrification Schemes, Sanitation, Health etc. The overall incidence of these expenditures vary between 1 paisa to 2 paisa per KWH in Tariff. The objectives of Soil Conservation activities are not only limited to arrest siltation of the Dam but also to ensure overall Economic Development of the villagers in and around DVC Valley. For example, DVC has constructed a large number of Check Dams in Hazaribagh District where barren lands have been converted into cultivable lands with multi-crop cultivation throughout the year. The Soil Conservation Training Institute also trains the local people in improvement of the soil productivity. Similarly, the expenditure on Afforestation is oriented towards a greener world and is one of the eco-friendly measures ensured by the Corporation. These are more required towards the Corporate Social Responsibilities (CSR) ensured by all the responsible Corporate Citizens globally with DVC no exception to the same. Such expenditure towards Corporate Social Responsibilities, which are also statutorily mandated to DVC in particular, are therefore required to be recovered through its three nos. Business Segments i.e. Power, Flood Control and Irrigation as per provisions of the DVC Act 1948. Power Object being the major Business Segment of DVC, therefore, bears major share of such common social expenditure as per Rules of Proportion.

Submission - 6

Share of Capital Expenditure on Direction and Other Offices for inclusion in the Cost of Capital Assets

As per consistent Accounting Practice as allowed by the C&AG and also in terms of the approved DPR which includes an element of Overhead containing the Capital Expenditure on Administrative Offices, a reasonable Share of Capital Expenditure on Direction and Other Offices is loaded on the Capital Assets. This being strictly within the norms of approved DPR and as per Audited Accounts as well it is prayed before the Hon'ble Bench to allow such Share of Actual Capital Expenditure on the Direction and Other Offices apportioned on rational basis as part of the Cost of Capital Assets for the purpose of determination of Debt and Equity.

Submission 7

Revenue Requirement/Development Surcharge

DVC has not revised its Tariff for five years till date since September, 2000. This is so in a scenario where Consumer End Tariffs are increasing nation-wide with large Demand-Supply mismatch. This has been possible for DVC through 'Performance Improvement' over the last five years and with initiation of 'Professional Cost Management' measures which off-set the escalation in the expenditures over the years. DVC has, therefore, prayed before the Hon'ble Bench to allow it to continue its existing basic Tariff till the year 2008-09 i.e. when all its 10th Plan Projects are scheduled for completion. As against DVC's existing Capital Base of Rs.5000 cr. (approx.) DVC is required to invest about Rs.7000 cr. towards its on-going 10th Plan Projects. **In the larger interest of the Consumers, it is, therefore, essential that the viability of the on-going Projects and DVC at large is ensured with to the continuation of the existing Tariff till 2008-09.** It is, therefore, prayed before the Hon'ble Bench to allow the Revenue requirement upto the year 2008-09 to garner the required Internal Resources for faithful completion of the on-going Projects or alternately by allowance of Development Surcharge for retention of the existing Tariff till 2008-09 ..

APPENDIX `A`

“20. Charges for supply of electrical energy: *The Corporation shall fix the schedule of charges for the supply of electrical energy, including the rates for bulk supply and retail distribution and specify the manner of recovery of such charges.*

Provided that the Corporation may in any contract for bulk supply of electrical energy impose such terms and conditions including a retail rate schedule as it may deem necessary or desirable to encourage the use of electrical energy.”

“30. Liabilities of participating Governments to provide capital to the Corporation: *The participating Governments shall, as hereinafter specified, provide the entire capital required by the Corporation for the completion of any project undertaken by it”.*

“31. Payment by participating Government on specified date: *Each participating Government shall provide its share of the capital on the dates specified by the Corporation and if any Government fails to provide such share on such dates the Corporation may raise loan to make up the deficit at the cost of the Government concerned.”*

“32. Expenditure on objects other than irrigation, power and flood control: *The Corporation shall have power to spend such sums as it thinks fit on objects authorized under this Act other than irrigation, power and flood control and such sums shall be treated as common expenditure payable out of the Fund of the Corporation before allocation under Section 33”.*

“33. Allocation of expenditure chargeable to project on main objects: *The total capital expenditure chargeable to a project shall be allocated between the three main objects, namely, irrigation, power and flood control as follows, namely:*

(1) expenditure solely attributable to any of these objects, including a proportionate share of overhead and general charges, shall be charged to that object, and

(2) expenditure common to two or more of the said objects, including a proportionate share of overhead and general charges shall be allocated to each of such objects in proportion to the expenditure which, according to the estimate of the Corporation, would have been incurred in constructing a separate structure solely for that object less any amount determined under clause (1) in respect of that object.”

“35. Capital allocated to power: *The total amount of capital allocated to power shall be shared equally between the three participating Governments.”*

“37. Disposal of profits and deficits: *(1) Subject to the provisions of sub-section (2) of Section 40, the net profit, if any, attributable to each of the three main objects, namely, irrigation, power and flood control, shall be credited to the participating Governments in proportion to their respective shares in the total capital cost attributed to that object.*

(2) The net deficit, if any, in respect of any of the objects shall be made good by the Government concerned in the proportion specified in sub section (1).

Provided that the net deficient in respect of flood control shall be made good entirely by the Government of West Bengal and the Central Government shall have no share in such deficit.

“38. Payment of interest: *The Corporation shall pay interest on the amount of the capital provided by each participating Government at such rate as may, from time to time, be fixed by the Central Government and such interest shall be deemed to be part of the expenditure of the Corporation.*

“39. Interest charges and other expenses to be added to and receipts taken for reduction of capital cost: *For a period, not exceeding fifteen years from the establishment of the Corporation, if the Corporation runs in deficit, the interest charges and all other expenditure shall be added to the capital cost and all receipts shall be taken in reduction of such capital cost.*

“40. Provision for depreciation and reserve and other funds: (1) *The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.*

(2) *The net profit for the purposes of Section 37 shall be determined after such provision has been made.*

“45. Annual Report:

(1) *The Corporation shall prepare, in such form as may be prescribed, an annual report within six months after the end of each financial year giving a true and faithful account of its activities during the previous financial year, with particular reference to –*

- (i) irrigation
- (ii) water supply;
- (iii) electrical energy;
- (iv) flood control;
- (v) navigation;
- (vi) afforestation;
- (vii) soil erosion;
- (viii) use of lands;
- (ix) resettlement of displaced population;
- (x) sanitation and public health measures; and
- (xi) economic and social welfare of the people

(2) *The annual report shall also give a true and faithful account of the income and expenditure during the previous financial year, the net amounts attributable to each of the three main objects and the distribution of the capital cost between the three participating Governments and show the progressive totals from the inception of the Corporation and the upto-date financial result.*

(3) *The payments provisionally made by each of three participating Governments on the basis of the budget estimates shall be adjusted as soon as possible in accordance with the allocation made in the annual report.*

(4) *Printed copies of the annual report shall be made available to each of three participating Governments by the 15th day of October each year.*

(5) *The annual report shall be laid before the Central and the Provincial Legislatures concerned as soon as may be after it is prepared”.*

No. BPE/GI-020/19-Fin/BPE/1(94)/Adv. (F)/79

Government of India
Ministry of Finance
Bureau of Public Enterprises

New Delhi
24th Sept., 1979

OFFICE MEMORANDUM

Sub: Funding of approved projects for which investment decision has been taken question regarding.

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This question of funding of approved projects for which investment decision has been taken, has been examined carefully and it has been decided that:

- a. Investment decision would cover the entire cost of the Project including expenditure during construction, interest during construction period, margin money for working capital, etc. along with other estimate heads:
- b. While the entire budgetary support for the project would normally comprise of half equity and half loan, the equity should be released first and loan would be released after the entire equity has been released.

Sd/-
(S.M.PATANKAR)
ADVISER(FINANCE)