WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-272/18-19

Date of hearing: 21st February, 2019

Time of hearing: 14.00 hours

Coram:

Shri Durgadas Goswami, Member

In the matter of

Application regarding adjudication of dispute on account of erroneous billing by Damodar Valley Corporation at retail supply tariff to India Power Corporation Limited in contrary to the provisions of the Electricity Act, 2003.

And

In the matter of

India Power Corporation Limited
Plot – X-1, 2 & 3
Block – EP, Sector – V
Salt Lake City
Kolkata 700 091 ............ Petitioner

And

In the matter of

Damodar Valley Corporation
DVC Tower, VIP Road
Kolkata 700 054. ............. Respondent

Representatives attended:

India Power Corporation Limited (IPICL) [Petitioner]
1. Smt. Shreya Mukherjee, Legal Counsel,
2. Sri Karn Pallav, General Manager (Regulatory),
3. Sri Amit Prakash, Associate Vice President (Commercial),
4. Sri Arnab Kumar Sinha, Manager (Regulatory).
The contention of the petition submitted by IPCL is that DVC has been raising bill for supply of power to IPCL at the rate of retail tariff determined by the Commission due to the reasons that as per the opinion of DVC, IPCL is a HT consumer to them and not a distribution licensee. According to IPCL, IPCL is a distribution licensee as per the provision specified under paragraph 2(17) of the Electricity Act, 2003 and therefore, IPCL should be billed at the tariff applicable to a distribution licensee. DVC says that as per the second part of the provisions specified under paragraph 2(15) of the Electricity Act, 2003, IPCL is a consumer and not a distribution licensee since IPCL is drawing power from DVC in radial mode as a consumer on the basis of the arrangements settled in bilateral agreements entered into between DVC and IPCL long ago.

Smt. Shreya Mukherjee, Ld. Legal Counsel of IPCL, while making arguments, stated that—

a) Para 3.7 of this Commission’s tariff order for IPCL for 2014-15 where the rate and amount meant for purchasing power from DVC by IPCL have been spelt out clearly and it is binding both on the DVC and the IPCL;

b) Tariff of such power purchased from DVC has got to be determined by WBERC as per section 62(1) of the Act because IPCL is a licensee and not a consumer;

c) Contracts executed between IPCL (then DPSCL) and DVC prior to coming into effect of the Electricity Act, 2003 is no longer valid and the same has got to be aligned with the provisions of the Electricity Act, 2003 and on this issue she cited – a) Supreme
Court order in Appeal No. 155 of 2010 (para 21) and b) no. 34 of 2013 (para 9), c) Case no. 323 (para 14), d) case no. 511 (para 36);

d) She also raised an issue regarding trading of power by DVC.

Sri Pradip Tarafdar, Ld. Advocate for DVC argued, inter-alia, that –

a) As per definition of consumer under section 2(15), IPCL is not barred from purchasing power from DVC in consumer mode although IPCL may be a licensee;

b) IPCL did not raise any objection when such objections were invited from the stakeholders while dealing with this tariff petition by the WBERC and therefore, once it is decided, such objection at a much later stage is not maintainable;

c) DVC offered IPCL several options in July, 2012 to choose a mode through which they liked to draw power but IPCL did not respond;

d) Smt. Anushree Bardhan, Ld. Legal Counsel of DVC stated that –

i) Railways draws power both as a consumer and as a licensee and therefore IPCL has no bar to follow the same practice;

ii) IPCL does not adhere to any scheduling of power; nor do they pay for UI charges as are required when a licensee draws power from a generating company and therefore, IPCL has to pay retail tariff as a consumer;

iii) She referred to para 103 and 104 of the judgement of Hon’ble APTEL (1677) and para 33 of Supreme Court decision (281) which entails that such determination of tariff will have to be done by CERC and not by WBERC if IPCL is to be treated as a licensee and not a consumer

ORDER

Upon hearing both the sides, the Commission directed DVC to hand over a copy of their submission to IPCL who in turn will submit written arguments to the Commission by 25th February, 2019 with a copy to DVC. DVC will separately furnish a) total generation of DVC, b) state wise apportionment of generation, c) state wise availability of power for
sale to – i) consumers and ii) others and d) quantum of power for which WBERC determined retail tariff. The next and final hearing will be held on 28th February, 2019 at 12.00 noon.

DATE: 27.02.2019

Sd/-
(DURGADAS GOSWAMI)
MEMBER

(T. K. MUKHERJEE)
SECRETARY