

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N.Sinha, Member**
3. **Shri Bhanu Bhushan, Member**

Petition No.59/2004

In the matter of

Inter-State Transmission of Energy by M/s Power Grid Corporation of India Limited-Central Transmission Utility.

And in the matter of

Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

.....**Petitioner**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. Northern Regional Electricity Board, New Delhi
3. Ajmer Vidyut Vitran Nigam Limited, Ajmer
4. Jaipur Vidyut Vitran Nigam Limited, Jaipur
5. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur

.....**Respondents**

The following were present:

1. Shri D.P. Chirania, Chief Engineer, RVPNL
2. Shri K.K. Mittal, XEN (ISP), RVPNL
3. Shri V.R. Reddy, Senior Advocate,
4. Shri U.C. Mishra, Director, PGCIL
5. Shri U.K. Tyagi, DGM, PGCIL
6. Shri P.C. Pankaj, AGM PGCIL
7. Shri C. Kannan, CM (Fin), PGCIL
8. Shri T.S.P Rao, GM (Law), PGCIL
9. Shri R.P. Padhee, PGCIL
10. Shri M.M. Patnaik, Mgr (Law), PGCIL
11. Shri B.K. Misra, MS, NREB
12. Shri Amarjeet Singh, SE, NREB
13. Shri S.L. Dhanka, SE, JVNL

ORDER
(DATE OF HEARING 29-7-2004)

The petitioner in the present petition seeks a direction to the first respondent to raise the bills for the transmission charges to third, fourth and fifth respondents for transmission of energy allocated to them through its inter-state transmission system and a further direction to the first respondent for transfer of Power Purchase Contracts of the petitioner and assigning these Contracts to third, fourth and fifth respondents as a result of statutory requirement under the Electricity Act, 2003 (the Act), and to implement the same notwithstanding any agreement to the contrary signed with the first respondent.

2. It would be necessary to recount the salient facts leading to the filing of the petition.

3. The petitioner is a company incorporated under the Companies Act, 1956 and promoted by State Government of Rajasthan for undertaking transmission of energy within the State. The petitioner is also notified as the State Transmission Utility by the State Government under Section 39 of the Act. The first respondent, a company promoted by the Central Government and incorporated under the Companies Act is functioning as the Central Transmission Utility under Section 38 of the Act and in that capacity is responsible to undertake transmission of electricity through the inter-state transmission system, as laid down under clause (a) of sub-section (2) of Section 38 of the Act, from the central sector generating stations to the beneficiaries of these stations. The third, fourth and fifth respondents are also the companies promoted by the State Government of Rajasthan for distribution of electricity and are stated to be functioning as distribution licensees under Section 14 of the Act in the State. They are

reported to have been authorised to operate and maintain the distribution system for supplying electricity to the consumers in their respective areas of supply. These respondents are collectively referred to as “the distribution companies” in the later part of this order.

4. The first respondent, in June 1995 had entered into a Bulk Power Transmission Agreement (BPTA) with the beneficiaries of Northern Region, which included Rajasthan State Electricity Board, the predecessor of the petitioner, for transmission of electricity from the central sector generating stations on the former’s transmission system on the terms and conditions contained in the BPTA. The BPTA was said to have been renewed subsequently. The petitioner is said to have succeeded the Rajasthan State Electricity Board with effect from 20.7.2000 consequent to re-organisation of electricity sector in the State after enactment of Rajasthan Electricity Reforms Act, 1999. The petitioner, after the re-organisation, was undertaking transmission and distribution of electricity within the State. Thus, the rights and liabilities of Rajasthan State Electricity Board under the BPTA or its subsequent renewal devolved upon the petitioner. The petitioner is stated to have continued to function as the State Transmission Utility as also the distribution utility up to 31.3.2004. In that capacity, the bills for charges on account of transmission service rendered by the first respondent, in pursuance of the BPTA were raised on the petitioner. The petitioner is stated to have made payments on account of the bills received from the first respondent.

5. The State Government in the purported exercise of powers under Section 131 of the Act issued a notification on 28.2.2004, effective from 1.4.2004 to transfer the

rights relating to procurement and bulk supply of electricity or trading of electricity from the petitioner to the distribution companies. The notification recites that the step had been taken since, in accordance with Section 39 (1) of the Act, the petitioner as the State Transmission Utility cannot engage in the business of trading in electricity. The State Government notification further provides that the rights and obligations under agreements and contracts relating to procurement and bulk supply of electricity or trading of electricity to which the petitioner was originally a party would stand transferred and vested in the distribution companies in the specified ratios.

6. With effect from 1.4.2004, the petitioner is assigned the exclusive role of undertaking intra-state transmission of electricity and that of the State Transmission Utility under Section 39 of the Act.

7. According to the petitioner, with effect from 1.4.2004 it ceases to be a beneficiary of the central sector generating stations, whose power is being transmitted by the first respondent. It is stated that the central sector generating companies, namely, NTPC, NHPC, etc, have already signed supplementary agreements with the distribution companies as successors of the petitioner and are raising their energy bills on the distribution companies who are said to be making payments. However, it is averred, the first respondent continues to raise the bills for transmission charges on the petitioner though the petitioner has ceased to be the bulk power customer consequent to re-organisation of power industry in the State in terms of the notification dated 28.2.2004. The first respondent is said to have expressed its reservations on the question of signing supplementary agreements with the distribution companies on

the lines signed by the central power generating companies. In this background, the petitioner seeks directions as noted in para 1 above to the first respondent.

8. The distribution companies who are impleaded in the petition as third, fourth and fifth respondent have supported the case of the petitioner. The first respondent in its reply has stated that the petitioner is a signatory or assign of the signatory of the BPTA and is, therefore, bound by the provisions of the BPTA which enjoins upon the petitioner to make payment for the transmission charges on account of the service of transmission of electricity rendered by the first respondent. It is stated that in the process of inter-state transmission of electricity generated at the central power generating stations, the first respondent transmits power up to the network belonging to the petitioner and the same is further carried by the petitioner to the distribution companies. Therefore, the petitioner as an interface between the first respondent and the distribution companies, continues to be the beneficiary of the transmission system and should be liable to pay the transmission charges due to the first respondent, which the petitioner may ultimately recover from the distribution companies, along with its own intra-state transmission charges. The first respondent has also referred to certain practical difficulties likely to be faced in case it is required to raise bills on the distribution companies because of their large number, which may further inflate in future. The first respondent has placed reliance on the opinion of the former Attorney General of India to support its claim that the arrangement within its own contemplation does not amount to trading by the petitioner and, therefore, does not fall within proviso to Section 39(1) of the Act or the third proviso to Section 41 thereof, which prohibits trading in electricity by a transmission licensee.

9. We have heard Shri D.P. Chirania, Chief Engineer for the petitioner and Shri V.R. Reddy, Senior Advocate along with Shri U.C. Mishra, Director for the first respondent.

10. We agree with the opinion of the former Attorney General of India that the kind of arrangement being propagated or preferred by the first respondent, does not amount to engaging in trading by the petitioner. Trading as defined in Section 2(71) of the Act, means purchase of electricity for resale thereof. According to the petitioner itself, the electricity is sold by the generating companies to the distribution companies who make the payments to the concerned generating companies. The petitioner would be neither purchasing power nor re-selling it. The petitioner, as an intermediary between the first respondent and the distribution companies for collecting and paying the transmission charges, will not become a trader in electricity. Thus in our opinion, there is no legal bar under the Act which would prevent the petitioner from collecting transmission charges from the distribution companies and paying to the first respondent. It is also noted that the second prayer of the petitioner is for issuing "directions to M/s PGCIL that the transfer of Power Purchase Contracts of RVPN and assignment to Discoms are result of statutory requirement under the Electricity Act 2003 and the same have to be implemented notwithstanding any agreement to the contrary signed with PGCIL". The reference here is only to the power purchase agreements signed with Central generating companies, and the petitioner itself has not argued anywhere that assignment of Bulk Power Transmission Agreement (BPTA) with the first respondent to the distribution companies is a statutory requirement. All the argument that the petitioner has put forth is that it is no longer a "Bulk Power Customer".

11. In their respective submissions, the three Discoms (third, fourth and fifth respondents) have uniformly stated that “RVPN in view of cessation of its bulk supply business w.e.f. 1.4.2004 cannot work in contravention of the Electricity Act 2003 to continue to work as a bulk power customer in the BPTA with PGCIL”. This again implies that since the present BPTA is between the first respondent and “Bulk Power Customers”, it shall have to be assigned to the distribution companies, unless modified to take care of this aspect. Since the issue raised presently by the petitioner would be relevant for all States as and when their State Electricity Boards are unbundled in compliance with the Act, we would proceed to examine whether the petitioner was under any legal obligation of payment of the transmission charges to the first respondent and then recover them from the distribution companies.

12. Prior to re-organisation, the electricity industry was vertically integrated as it was normal for electricity utilities simultaneously to generate, transmit and distribute electricity. However, the unbundling of State Electricity Boards into the generation utility, transmission utility and distribution utility is the striking feature of the Act and is part of reformatory process. The State Government of Rajasthan in its notification of 28.2.2004 seems to have acted in the direction of giving effect to the mandate of the law. As a result of this, it has sought to separate the transmission and distribution functions, the generation function having been already unbundled consequent to the Rajasthan Electricity Reforms Act, 1999. Accordingly, the distribution companies have come into existence. These distribution companies have stepped into the shoes of the petitioner as far as ‘Bulk Power Customer’ role is concerned. In accordance with clause (a) of sub-section (1) of Section 62 of the Act, the Commission is to determine the tariff for supply of electricity by a generating company to a distribution

licensee. Thus, it means that for sale of power from a generating company, distribution licensee is at the hub. In keeping with these provisions of the Act, the central power generating companies have already signed supplementary agreements with the distribution companies and they are raising energy bills directly on the distribution companies. The power so sold to the distribution companies is being transmitted by the first respondent. In other words, the first respondent while transmitting the central sector power is rendering service to the distribution companies whose power is transmitted. Therefore, it is only the distribution companies who are the beneficiaries of the transmission system owned and operated by the first respondent. Mere injection of power at focal points controlled by the petitioner and its further transmission to the distribution companies does not make the petitioner the beneficiary of the transmission system owned or operated by the first respondent. On this view of the matter, the petitioner cannot be legally compelled to pay the transmission charges of the first respondent any more.

13. Reliance has been placed on behalf of the first respondent on the provisions of the BPTA in support of its contention that it is the petitioner who is the bulk power customer and liable to make payment for the transmission charges for the transmission of electricity from central power generating stations to its transmission network. For this purpose, the learned senior counsel for the first respondent extensively referred to the different clauses of the BPTA. We do not find any merit in the contention raised. Neither do we consider it necessary to refer to these clauses in detail. The preamble of the BPTA itself makes clear that the expression "bulk power customer" used in the BPTA shall, unless repugnant to the context or meaning thereof, include the successors and assigns of the parties. We have already noted

that the distribution companies have succeeded the predecessor of the petitioner (the original signatory to BPTA) as the bulk power customers through the notification of the State Government of Rajasthan issued in exercise of the statutory powers. Therefore, the distribution companies are the successors or assigns of the petitioner so far as the rights and obligations under the present BPTA are concerned. This interpretation of ours cannot be said to be repugnant to the context since no such repugnancy has been brought to our notice. Therefore, the distribution companies are now the “bulk power customers” referred to in the present BPTA and liable to pay the transmission charges due to the first respondent.

14. We now come to the practical aspects, some of which have been raised by the first respondent. The foremost aspect, in our view, is the federal nature of our constitution. As is well known, the Central Government decides and notifies the allocation of various States in the central generating stations (which in turn determines the ratio in which transmission charges for the first respondent’s system have to be paid by the Bulk Power Customers in the respective States, as a whole). Distribution licensee-wise break up of a State’s total allocation is to be decided and notified by the respective State Government, as has already been done in Rajasthan. The above break-up can also be modified by the State Government, depending on the developments/situation in the State, from time to time. The first respondent may not even come to know about any such changes, as he is otherwise concerned with only the total allocation of the State.

15. The petitioner, as the STU, has important roles and responsibilities. SLDC operated by the petitioner has to supervise the operation of intra-State power system,

which will necessarily involve coordinating between all intra-State entities, and also coordinating with outside agencies. The STU cannot abdicate this role. The petitioner has in any case to collect the transmission charges for intra-State system, as well as the SLDC fee and charges, from the intra-State utilities. It should be easily possible for it to collect from the latter their respective share of the charges to be paid by the State for the inter-State transmission system and the RLDC.

16. We have also to point out that the special nature of electricity (which differs in many ways from other commodities) and of the power system operation has been duly recognised in the Act, in section 25, wherein the need for “voluntary inter-connections and coordination” has been brought out. The Commission is keen to see a harmonious working arrangement between the CTU and the STU. The parties have accordingly been advised, during the hearing on 29.7.2004, to discuss the above aspects and work out mutually satisfactory arrangements. It is possible that they find that the balance of convenience lies in STU serving as the interface between the CTU and the State entities. At the most, for monthly payment of transmission and RLDC charges, the petitioner could get letters of credit in favour of the first respondent opened by the distribution companies totalling atleast up to the State’s total liability. It would still have to be the petitioner’s responsibility to keep the first respondent advised as to the proportion/amount for which each distribution company is to be billed every month by the first respondent.

17. In case the petitioner and the first respondent are unable to resolve the issue through mutual discussion, the first respondent shall bill the distribution companies directly for the period from 1.9.2004 onwards.

18. The petitioner has placed on record a copy of the letter dated 11.2.2004, written by its Chairman & Managing Director (Annexure 6 to the petition) wherein it is stated that he had discussed the framework for separation of trading function from RVPN (the petitioner), among others, with Chairman and Member of this Commission, who expressed the view supporting the pattern envisaged. We want to place it on record that the CMD of the petitioner of his own volition, sought to visit the Commission to pay a courtesy call immediately after he took charge. No discussions on the lines mentioned in the letter dated 11.2.2004 were held. In fact, there could not be any such occasion since by that time the notification of the State Government had not even seen the light of the day, the notification having been issued on 28.2.2004 only.

19. The petition No.59/2004 stands disposed of.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 19th August, 2004