

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

Shri A.H. Jung, Member

Petition No 9/2003

In the matter of

Petition under Section 13(h) read with Section 13(c) of the Electricity Regulatory Commissions Act, 1998 – Recovery of outstanding dues on account of wheeling charges from 01/2001 to 07/2001 from APTRANSCO.

And in the matter of

Orissa Power Transmission Corporation Ltd. **...PETITIONER**

Vs

1. Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
2. Andhra Pradesh Generation Corporation Ltd., Hyderabad
3. Orissa Hydro Power Corporation Ltd, Bhubaneswar **..RESPONDENTS**

The following were present:

1. Shri R.K. Mehta, Advocate, GRIDCO
2. Shri Ananta Charan, GRIDCO
3. S.R. Sarangi, GRIDCO
4. Shri K. Gopal Choudhary, APGENCO
5. Shri J. Ramakrishnan, APGENCO

ORDER

(DATE OF HEARING 24.1.2007)

This petition was filed by Grid Corporation of Orissa Ltd (GRIDCO) seeking direction to Transmission Corporation of Andhra Pradesh (APTRANSCO) to pay GRIDCO a sum of Rs.3.41 crore outstanding as wheeling charges on account of wheeling of power through GRIDCO's system to APTRANSCO from January 2001 to July 2001 along with interest @ 24% per annum on the said amount of Rs.3.41 crore from the date of filing of the petition till the date of payment.

2. Background of the case is as follows. Ministry of Power, vide letter dated 29.11.2000 allocated 500 MW of power (out of unallocated share) from NTPC generating stations in Eastern Region (ER) to the constituents in Southern Region. The State of Andhra Pradesh was allocated 220 MW out of total of 500 MW through Jeypore-Gazuwaka transmission line of POWERGRID. During January 2001 to April 2001 and during July 2001 Southern Region constituents, including APTRANSCO imported the power via Western Region utilising GRIDCO's transmission system at Budhipadar. GRIDCO filed this petition for recovery of wheeling charges and delayed payment surcharge thereon for the use of its system. Subsequent to filing of the petition, GRIDCO's system was again used for wheeling of power to APTRANSCO during the period April 2003 to April 2004. GRIDCO has revised its claim accordingly.

3. Right from the beginning, the Commission's endeavour was that the parties should sort out the dispute through mutual discussions. For this purpose, the Commission gave many opportunities to the parties. On a few occasions hearings were adjourned on the request of the parties as they needed more time to mutually settle the dispute. When these efforts of mutual reconciliation did not bear fruit, the Commission vide order dated 28.3.2006 deputed me for investigation of the claim of GRIDCO and make appropriate recommendations to the Commission for its consideration and decision.

Preliminary Issue

4. APTRANSCO vide its additional affidavit dated 1.2.2007 after conclusion of the hearing has urged that the Commission does not have the

jurisdiction to entertain the petition. This contention of APTRANSCO is raised nearly 11 months after the matter was referred to me. The issue raised by APTRANSCO in its additional affidavit is beyond my terms of reference. Accordingly, I am refraining from taking a view on the submissions made in the additional affidavit dated 1.2.2007 by APRANSCO and leave it to be determined by the Commission.

Facts

5. During the period January 2001 to April 2001 and during July 2001 Southern Region constituents, including APTRANSCO imported ER NTPC power via Western Region utilising GRIDCO's transmission system at Budhipadar. Accordingly, wheeling charges bills for Rs.3.41 crore for utilisation of GRIDCO's transmission system during the above periods were sent to APTRANSCO by GRIDCO. As payment was not received, the matter was taken up by CMD, GRIDCO and Director, GRIDCO with APTRANSCO authorities.

6. APTRANSCO vide its letter dated 18.4.2002 informed that the outstanding wheeling charges to be paid to GRIDCO by APTRANSCO (Rs.2.46 crore) were adjusted against the dues of Orissa in respect of power purchased from Machhkund HE Project, a joint venture of the States of Orissa and Andhra Pradesh. This was not accepted by GRIDCO. GRIDCO has argued that pursuant to the enforcement of power sector reforms in the State of Orissa, the assets and liabilities of Machhkund HE Project were transferred to Orissa Hydro Power Corporation (OHPC). Therefore, it is contended,

GRIDCO is not liable for any adjustment of the dues payable by erstwhile OSEB in respect its generation undertakings including Machhkund HE Project. In view of the above, GRIDCO has prayed for adjudication of the dispute under clause (h) of Section 13 of Electricity Regulatory Commissions Act, 1998.

7. GRIDCO vide affidavit dated 11.3.2005 submitted break-up of the outstanding dues for the period from January 2001 to July 2001 as under:

Principal amount	:Rs.2.46 crore
Delayed Payment Surcharge (D.P.S) (@2% per month)	:Rs.0.95 crore
Total	:Rs.3.41 crore

8. GRIDCO has further submitted in the aforesaid affidavit that during the pendency of the petition APTRANSCO continued to avail GRIDCO's system during April 2003 to July 2003, October 2003 and from February 2004 to April 2004, as a result of which the principal amount has increased from Rs. 2.46 crore to Rs.2.708 crore i.e. by Rs 24.8 lakh and thus total amount payable has been worked out as under:

Principal amount	:	Rs 2.708 crore
D.P.S. (@2% per month)	:	Rs 2.363 crore
Total	:	Rs 5.071 crore

9. As per the affidavit filed by GRIDCO whereby it has placed on record minutes of a meeting held on 11.4.2005, the principal amount and D.P.S amount till 31.3.2005 have increased to Rs. 2.708 crore and Rs. 2.418 crore

respectively. Thus, the total amount payable as claimed by GRIDCO is as under:

Principal amount	: Rs.2.708 crore
D.P.S. (@2% per month)	: Rs.2.418 crore (upto 31.3.2005)
Total	: Rs.5.126 crore

10. GRIDCO filed another affidavit on 12.7.2005 placing on record minutes of meetings held on 6.6.2005 and 4.7.2005. The minutes of these meetings reveal that APTRANSCO settled the dues payable on account of wheeling charges amounting to Rs.2.46 crore for the period from January 2001 to July 2001 through adjustment of Rs. 30 crore payable to Andhra Pradesh Generation Corporation Ltd (APGENCO) which is acceptable to GRIDCO, provided Orissa Hydro Power Corporation Ltd (OHPC) confirms its liability. APTRANSCO did not agree to pay any D.P.S on the GRIDCO's claims. No further progress was reported in the mutual reconciliation of the dispute.

Proceedings before the Bench

11. The first hearing before me was held on 26.5.2006 wherein both the parties reiterated their respective positions described in preceding paragraphs. The representative of APTRANSCO stated that the issue of settlement of dues in respect of Machhkund HE Project was being raised since 1980's. It was stated that since payment was not forthcoming, in 2002 the then Chief Minister of Andhra Pradesh wrote a letter to his counter-part in Orissa for adjustment of these dues against dues payable by Orissa in respect of Machhkund HE Project. This, however, did not materialize. The

representatives of APTRANSCO claimed that an amount of about Rs 34 crore was payable to APGENCO in respect of Machhkund HE Project. In view of the long past legacy, I allowed some more time to the parties for the discussion at the Governmental level. I also directed APTRANSCO to submit details (including all relevant records and correspondence) of the dues claimed by APGENCO in respect of Machhkund HE Project and gave opportunity to GRIDCO to respond to it. For a proper view on the dispute, I directed that APGENCO and OHPC be impleaded as respondents. In response to the above direction, APTRANSCO, vide its affidavit dated 19.7.2006 submitted statement of dues payable by OHPC/OSEB to APGENCO/APSEB. APTRANSCO claimed that balance outstanding as on 31.3.2002 was Rs.36.27 crore. APTRANSCO has expressed that as the parties involved in the dispute are Government Companies, GRIDCO ought not to insist for D.P.S. It is stated that if D.P.S is charged by APSEB/APGENCO on dues payable by OSEB/OHPC/GRIDCO, D.P.S amount would add up to about Rs.192 crore.

12. The second hearing of the case was held on 6.9.2006. During this hearing, none was present on behalf of APGENCO and OHPC. In view of the late submission of information by APTRANSCO pursuant to the order dated 26.5.2006, GRIDCO sought time for filing its reply. The learned counsel for GRIDCO also pointed out that APTRANSCO had not submitted relevant documents in support of its claim. He also sought some more time for a joint meeting between Principal Secretaries of the two States to carry forward the process of mutual reconciliation. By my order dated 12.9.2006, I granted

additional time to GRIDCO to reply to APTRANSCO's affidavit dated 6.9.2006. In the same order, I directed APTRANSCO to furnish copies of previous records/correspondence to GRIDCO claiming dues from OSEB or its successor entity. I also directed and APTRANSCO to file following information:

(a) Details of the dues admitted by OHPC and GRIDCO which are payable to APGENCO for O&M charges and energy charges and the entity responsible for payment of dues for the period prior to re-organization of OSEB;

(b) Dues, if any, payable by GRIDCO to OHPC for supply of energy.

13. Meanwhile, an application was moved for substitution of Orissa Power Transmission Corporation Ltd (OPTC) as petitioner in place of GRIDCO in view of the transfer of transmission undertaking to OPTC in accordance with Orissa Electricity Reforms (Transfer of Transmission and Related Activities) Scheme, 2005 notified by the Government of Orissa under notification dated 9.6.2005. This has been allowed.

14. In compliance with the directions contained in the order dated 12.9.2006, the petitioner, OPTC vide affidavit dated 16.10.2006 submitted a reconciliation statement on the claim made by APGENCO in respect of Machhkund HE Project. This statement was prepared and submitted to Govt of Orissa based on the meeting held between GRIDCO and OHPC on 30.9.2003 on the direction of Govt of Orissa. Based on this reconciliation

statement, OPTC has furnished details of various claims accepted by Orissa authorities for the period prior to reorganization of OSEB i.e. from 1979-80 to 1996-97 and subsequent period i.e. from 1997-98 to 2001-02. These details can be summarised as under:

◆ Outstanding dues payable to APGENCO

upto 1996-97 = Rs 10.38 crore

(Annex P-2 of the affidavit dated 16.10.2006 of OPTC)

◆ Outstanding dues payable to APGENCO from 1997-98 = Nil

(Annex P-3 of the affidavit dated 16.10.2006 of OPTC, wherein it is mentioned that no amount is outstanding against OHPC for this period)

◆ Claim of Orissa on APGENCO = Rs 6.09 crore
(Annex P-3 of the affidavit dated 16.10.06 of OPTC)

Net amount payable by Orissa = Rs 4.29 crore

15. As already noted, after second hearing I had directed that OHPC and APGENCO to be impleaded as respondents and accordingly they were issued notices. The hearing scheduled for 20.12.2006 was adjourned at the request of counsel for APTRANSCO but none was present on behalf of OHPC. At the next hearing held on 24.1.2007 also no representative was present from OHPC side. In view of the submission of counsel of APGENCO that he could not take instructions from his client, I allowed time up to 3.2.2007 for him to file written submissions. It was made clear that no further time would be allowed for this purpose. However, counsel for APGENCO filed a memo on its behalf on 2.2.2007 stating that further time may be allowed to file written submissions. I have not accepted this request for many reasons. I have the

benefit of views of petitioner, OPTC and the respondent, APTRANSCO and material submitted by them. I had given enough opportunities to OHPC and APGENCO to submit their views but they did not avail of these opportunities. I am of the opinion that on the basis of material available on record, I am in a position to make my recommendations to the Commission who is to take a final view on the dispute. Also, I am relinquishing office on 6.2.2007 and no further time is available at my disposal.

Findings and recommendations

16. The first point that needs to be ascertained is as to which agency in the State of Orissa is responsible for payment of charges in respect of Machhkund HE Project. I have noted that OPTC in its affidavit dated 16.10.2006, has enclosed letter dated 7.8.2002 from Joint Secretary, Department of Energy, Govt of Orissa addressed to the Director (Operations), OHPC to the effect that OHPC is liable to pay dues of APGENCO for the period from 1979-80 to 1996-97.

17. On the question of setting off the dues, OPTC has contended that after reorganization of OSEB and APSEB, the successor entities are separate companies and hence it will not be just and fair to set off dues of APTRANSCO to OPTC against dues of OHPC to APGENCO. In this context, I take note of the meeting held on 4.7.2005, minutes of which were submitted by GRIDCO vide affidavit dated 12.7.2005. It is noted that in the aforesaid meeting, GRIDCO was agreeable to adjust dues claimed in the petition against dues payable by OHPC to APGENCO provided OHPC confirmed its

liability. As mentioned earlier, it is clear from the affidavit dated 16.10.2006 submitted by OPTC that the net amount payable by OHPC is Rs.4.29 crore. Since this net liability is based on the meeting held between GRIDCO and OHPC, it is clear that this liability has been confirmed by OHPC. Even though this amount is much lower than what is claimed by APTRANSCO as dues payable by OHPC to APGENCO, it is sufficient for disposal of OPTC's present claim as this amount is more than the principal amount claimed in the petition. It is also clear from the letter dated 7.8.2002 from Govt. of Orissa that from Orissa side, OHPC is liable to pay dues of APGENCO for the period from 1979-80 to 1996-97. Coming to Andhra Pradesh side, an issue may arise as to whether APGENCO is agreeable to adjust receivables from OHPC against dues payable by APTRANSCO to OPTC. This question is answered by letter dated 1.5.2002 from the then Chief Minister of Andhra Pradesh to his counterpart in Orissa, wherein it was proposed that dues for power supplied to Orissa from Machhkund HEP may be adjusted against dues payable by APTRANSCO to GRIDCO. It is clear from this letter that Government of Andhra Pradesh, which is owner of APGENCO as well as APTRANSCO considered that such adjustment of dues should take place. Thus, having found that the State Govt. of Orissa was agreeable to proposal from the State Govt. of Andhra Pradesh, I am inclined to reject contention of OPTC that adjustment sought to be made by APTRANSCO cannot take place as players involved are separate entities. I, therefore, recommend that contention of APTRANSCO for adjustment of principal amount of the dues claimed in the instant petition with dues payable by OHPC to APGENCO may be accepted.

18. Since I am recommending that one set of dues should be set off against another set of dues, I am of the opinion that application of D.P.S. is not warranted. In this context, I note that amount of dues payable by OHPC to APGENCO is much higher and is pending for longer duration as compared to the amount and pendency of dues claimed by OPTC from APTRANSCO in the instant petition.

Recommendations

19. Considering all the facts and circumstances, I recommend that as prayed by APTRANSCO principal amount of dues payable by APTRANSCO to OPTC may be set off against dues payable by OHPC to APGENCO. OPTC is at liberty to claim the amount from OHPC, through the good offices of the State Govt of Orissa, as both the companies are owned by the said Government. I am also recommending that no Delayed Payment Surcharge should be levied on APTRANSCO for delay in payment.

Sd/-
(A.H. Jung)
Member

New Delhi, dated the 6th February 2007