

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

**Review Petition No.45/2007
in
Petition No.69/2004**

In the matter of

Review of the order dated 16.3.2006 - Approval of transmission charges for Korba-Budhipadar transmission system in Eastern and Western Regions for the period from 1.4.2004 to 31.3.2009.

And in the matter of

Madhya Pradesh Power Trading Company Ltd., Jabalpur **Petitioner**
Vs

1. Power Grid Corporation of India Limited, New Delhi
2. Bihar State Electricity Board, Patna
3. West Bengal State Electricity Board, Kolkata
4. Grid Corporation of Orissa Ltd. Bhubaneshwar
5. Damodar Valley Corporation, Kolkata
6. Power Deptt., Govt. of Sikkim, Gangtok
7. Jharkhand State Electricity Board, Ranchi
8. Gujarat Electricity Board, Baroda
9. Chhattisgarh State Electricity Board, Raipur
10. Maharashtra State Electricity Board, Mumbai
11. Electricity Department, Govt. of Goa, Panaji, Goa
12. Electricity Department, Admn of Daman & Diu, Daman
13. Electricity Department, Admn of Dadra Nagar Haveli, Silvassa
14. Karnataka Power Transmission Corp. Ltd., Bangalore.... **Respondents**

The following were present:

1. Shri Sakesh Kumar, Advocate, MPPTCL
2. Shri D. Khandelwal, ED, MPPTCL
3. Ms Rita Kumar, MPPTCL
4. Shri Dinesh Kumar, MPPTCL
5. Shri Prashant Sharma, PGCIL

ORDER
(DATE OF HEARING: 24.7.2007)

The application is made for review and consequently revision of methodology for sharing of transmission charges for 220 kV S/C Korba-Budhipadar Transmission Line (the transmission line) between Eastern and Western Regions for the period from 1.4.2004 to 31.3.2009 approved by order dated 16.3.2006 in Petition No.69/2004, based on the directions of the Appellate Tribunal for Electricity as contained in its judgement dated 14.11.2006 in Appeal No. 19/2006 with a further direction to the first respondent for revision of billing.

2. The Commission by its said order dated 16.3.2006 had approved transmission charges for the transmission line for the period 1.4.2004 to 31.3.2009. The Commission directed that the transmission charges would be shared in the ratio of 1/3rd:2/3rd between the long-term customers in Eastern and Western Regions respectively. It was further directed that within the region the long-term customers would share the transmission charges in the ratio of their allotted transmission capacity. The applicant seeks review of the methodology for sharing of the transmission charges, on the contention that the transmission charges are to be shared between the beneficiaries of Eastern and Western Regions in the ratio of 50:50 in accordance with the Appellate Tribunal's order dated 14.11.2006 in Appeal No.19/2006 read with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (the 2004 regulations).

3. For proper adjudication of the issue raised it is necessary to have a look at the historical background.

4. The transmission line was constructed by the first respondent for transfer of surplus power from Eastern Region to Western Region. In a meeting held at 14.10.1998 at WREB forum, the applicant had agreed to bear 50% of the transmission charges for the transmission line. Similarly, before its construction, the constituents of Eastern Region also agreed to share 1/3rd of the transmission charges payable for the transmission line. The transmission line was declared under commercial operation with effect from 1.9.1999. The Commission while approving the transmission charges for the period 1.9.1999 to 31.3.2001, in its order dated 19.6.2002 in Petition No.9/2000 directed that 50% of the transmission charges would be borne by the then Madhya Pradesh Electricity Board (MPEB) for the period 1.9.1999 and up to the date of constitution of the State of Chattisgarh, and thereafter, for the period up to 31.3.2001, the transmission charges were to be shared by the newly created Madhya Pradesh State Electricity Board (MPSEB) and Chattisgarh State Electricity Board (CSEB) in proportion of the energy transmitted. The Commission further ordered that 1/6th of the transmission charges were to be borne by Gujarat Electricity Board (GEB) since it was also found to be using the transmission line for conveyance of energy from Eastern Region. Accordingly, the remaining 1/3rd of the transmission charges approved were ordered to be shared by the beneficiaries in the Eastern Region jointly.

5. The first respondent raised certain doubts as regards the methodology for recovery of the transmission charges stipulated in the said order dated 19.6.2002. The position was clarified by order dated 4.4.2003 in Review Petition No.117/2003, without changing the substantive scheme for sharing of the transmission charges, as given in the said order dated 19.6.2002. It is not necessary for us to refer to the details of the clarifications as it is not relevant for the purpose of disposal of this application.

6. Subsequently, the first respondent made an application for approval of transmission charges for the transmission line for the period 1.4.2001 to 31.3.2004 in Petition No.49/2002 in accordance with the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 (the 2001 regulations). The tariff was approved by order dated 18.7.2003. On the question of sharing methodology, the Commission reiterated its earlier decision as contained in the order dated 19.6.2002 and clarified vide order dated 4.4.2003.

7. The applicant made an application (Petition No.82/2005) seeking clarification of the order dated 18.7.2003 and to seek revision of methodology for sharing of the transmission charges in accordance with clause 4.8 of the 2001 regulations, which provided that the transmission charges for the inter-regional assets were to be shared in the ratio of 50:50 by the two contiguous regions. This application was dismissed by order dated 22.9.2005. It was noted by the

Commission that the methodology for sharing of the transmission charges for the transmission line was considered in slight deviation of the provisions of clause 4.8 of the 2001 regulations for the reasons given in that order.

8. The applicant filed an appeal before the Appellate Tribunal, being Appeal No.19/2006, which was allowed by the Appellate Tribunal by its order dated 14.11.2006. The Appellate Tribunal observed that the terms and conditions notified by the Commission under the 2001 regulations had statutory flavour and therefore, after 1.4.2001, the transmission charges were to be shared as per clause 4.8 thereof. The Appellate Tribunal further observed that the agreement of the applicant (the appellant therein) could not supersede the statutory regulations and the applicant could not be said to have contracted out of the regulations as they did not exist then. According to the Appellate Tribunal, the applicant's agreement to share 50% of the transmission charges could not be pressed into service after the 2001 regulations notified by the Commission came into force and the sharing of the transmission charges was to be governed by the regulations and not by the agreement of the applicant, since the terms and conditions contained in the 2001 regulations must be given primacy over the agreement. The Appellate Tribunal directed the Commission to revise the sharing methodology of the transmission charges for the transmission line in accordance with clause 4.8 of the 2001 regulations applicable during the period 1.4.2001 to 31.3.2004. Consequent to the above decision of the Appellate Tribunal, the Commission by its order dated 26.12.2006 has issued a revised order for sharing

of the transmission charges. Therefore, as regards the period 1.4.2001 to 31.3.2004, the matter rests there.

9. As noted above, the Commission by its order dated 16.3.2006 approved the transmission charges for the transmission line for the period 1.4.2004 to 31.3.2009 based on the 2004 regulations. The Commission further ordered that the transmission charges would be shared by the long-term customers in Eastern Region and Western Region in the ratio of 1/3:2/3 respectively. This sharing formula is sought to be revised.

10. The applicant has sought revision of the methodology for sharing of the transmission charges based on the Appellate Tribunal order dated 14.11.2006 read with the 2004 regulations.

11. We heard Shri Sakesh Kumar, Advocate for the applicant and the representatives of Power Grid Corporation of India Ltd (the first respondent). None was present on behalf of the other respondents.

12. Delay in making the present application for review is condoned. IA No. 17/2007 stands disposed of.

13. Regulation 59 of the 2004 regulations as originally enacted provided for sharing of transmission charges for inter-regional assets, as given hereunder:

“59. **Sharing of charges for inter-regional assets:** The transmission charges of the inter-regional assets, including HVDC system , after deducting the recovery from the short-term customers, shall be shared in the ratio of 50:50 by the long-term transmission customers of the regional transmission system of two contiguous regions in accordance with the following formula:

Transmission Charges payable for a month by a long term-customer within the region for the inter-regional assets connected to that region

$$= 0.5x \left\{ \frac{TC_j - RSC_j}{12} \right\} \times \frac{CL}{SCL}$$

Where

TC_j = Annual Transmission Charges for the particular inter-regional asset connected to the region computed in accordance with regulation 56,

RSC_j = Recovery of Transmission Charges for the month from the short-term customers for the particular inter-regional asset connected to the region in accordance with the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004,

CL = Allotted Transmission Capacity to the long-term transmission customer in the regional transmission system in which it is located,

SCL = Sum of the Allotted Transmission Capacities to all the long-term transmission customers of the regional transmission system in the regional transmission system in which it is located.”

14. By notification dated 1.6.2006, Regulation 59 of the 2004 regulations was substituted as under:

15. **Amendment to Regulation 59:** For Regulation 59 of the principal regulations the following shall be substituted, namely:

"59. Sharing of charges for inter-regional assets: The transmission charges of the inter-regional assets shall be shared as under, except as specifically decided otherwise by the Commission,-

(a) The monthly transmission charges for an inter-regional asset payable by a customer having allocation from the Central Generating Station located in the other region and/or having long-term contract for power in the other region shall be:

$$TL = (TSC/12) \times (CC/CIR)$$

Where

TSC = Annual Transmission Charges for the inter-regional asset,

CC = Capacity in MW of the inter-regional asset required for transferring allocated and/or contracted power,

CIR = Capacity of the inter-regional asset in MW;

(b) Out of the balance capacity of the inter-regional asset, Regional Load Despatch Centres may decide to keep certain capacity as a reserve margin. The capacity of the inter-regional link after accounting for allocation from Central Generating Stations, long-term contracts and reserve margin shall be made available for short-term open access. The short-term transmission customers shall pay transmission charges as per Central Electricity Regulatory Commission (Open access in inter-State Transmission) Regulations, 2004 as amended from time to time;

(c) The transmission charges for reliability support payable by long-term customers of the regional transmission system of the two regions connected by the inter-regional assets shall be as under:

$$T_r = 0.5 \times \{ (TSC/12) - \sum TL - ARSC \} \times (CL/SCL)$$

Where

T_r = Reliability support charges payable for the month for inter-regional asset by a long-term customer of regional transmission system connected to the inter-regional asset;

TSC = Annual transmission charges for the inter-regional asset;

$\sum TL$ = Total transmission charges payable for the month for use of the interregional asset for transfer of allocated power from Central Generating Station or power available consequent to a long-term agreement;

ARSC = Adjustable part of the revenue recovery for the month from short-term transmission customers, which is used for reduction in transmission charges payable by long-term transmission customers in accordance with Central Electricity regulatory Commission (Open access in inter-State Transmission) Regulations, 2004 as amended from time to time;

CL = Allotted Transmission capacity to the long-term customer in the regional transmission system in which it is located; and

SCL = Sum of the Allotted Transmission Capacities of all long-term transmission customers of the regional transmission system in which it is located."

15. A reading of the Appellate Tribunal's order dated 14.11.2006 would indicate that the Appellate Tribunal allowed the applicant's appeal on the ground that the 2001 regulations, which had statutory force were to be given primacy in all respects, including in respect of the methodology for sharing of the transmission charges stipulated. It was held by Appellate Tribunal that since the methodology adopted by the Commission for the period 1.4.2001 to 31.3.2004 was in deviation of clause 4.8 of the 2001 regulations, the methodology could not be sustained. Thus, the ratio of the Appellate Tribunal's judgement allowing the applicant's appeal is the binding nature of the statutory regulations notified by the Commission. The applicant's prayer in the present application is to be considered in the light of the 2004 regulations, by applying the ratio of the judgement of the Appellate Tribunal.

16. We first consider the position obtaining prior to coming into force of the amended Regulation 59. The Commission in its order dated 16.3.2006 considered in an elaborate manner various alternatives available before it on the question of methodology for sharing of charges. After discussing these alternatives, the Commission decided that the transmission charges would be shared in the ratio of 1/3:2/3 between the long-term customers in Eastern and

Western Regions respectively. Relevant extracts from the Commission's order dated 16.3.2006 are placed below.

“Sharing of charges

38. MPSEB in its reply has stated that from the year 2003 onwards, all the constituents of Western Region except Goa are importing power from Eastern Region. Therefore, MPSEB has contended that since other states in Western Region are also using the transmission system, sharing of charges for the transmission system should be as in cases of other inter-regional assets, i.e. in the ratio of 50:50 by Western and Eastern Regions. Gujarat Electricity Board (GEB) vide affidavit dated 28.8.2004, has also made a similar submission.

39. Member Secretary, WREB has given following details of the energy scheduled by Western Region constituents from the generating stations owned by National Thermal Power Corporation in Eastern Region.

Year : 2004-05

| (in MUs) | | | | | | | | |
|----------|--------|---------|-------|--------|------|--------|--------|---------|
| Month | GEB | MPSEB | CSEB | MSEB | GOA | DD | DNH | Total |
| April-04 | 41.47 | 157.24 | 0.00 | 41.47 | 0.00 | 13.48 | 12.95 | 266.61 |
| May-04 | 41.41 | 153.11 | 0.00 | 46.96 | 0.00 | 13.46 | 12.93 | 267.86 |
| June-04 | 38.13 | 128.60 | 0.00 | 57.49 | 0.00 | 12.39 | 11.91 | 248.51 |
| July-04 | 38.88 | 160.51 | 0.00 | 46.32 | 0.00 | 12.64 | 12.14 | 270.49 |
| Aug-04 | 28.78 | 125.91 | 0.00 | 75.53 | 0.00 | 9.35 | 8.99 | 248.56 |
| Sep-04 | 39.20 | 157.24 | 0.00 | 102.86 | 0.00 | 12.74 | 12.25 | 324.27 |
| Oct-04 | 31.66 | 139.97 | 0.00 | 50.13 | 0.00 | 13.72 | 13.19 | 248.67 |
| Nov-04 | 30.96 | 127.25 | 0.00 | 48.95 | 0.00 | 12.34 | 13.38 | 232.87 |
| Dec-04 | 31.75 | 112.49 | 17.97 | 50.19 | 0.00 | 13.63 | 13.29 | 239.32 |
| Jan-05 | 31.28 | 96.38 | 24.44 | 49.46 | 0.00 | 13.51 | 13.02 | 228.09 |
| Feb-05 | 31.16 | 103.83 | 24.35 | 49.27 | 0.00 | 13.46 | 12.97 | 235.03 |
| Mar-05 | 34.14 | 85.89 | 26.68 | 53.97 | 0.00 | 14.74 | 14.21 | 229.62 |
| Total | 418.81 | 1548.41 | 93.44 | 672.58 | 0.00 | 155.46 | 151.23 | 3039.92 |

Year: 2005-06 (Upto Sept. 2005)

| (in MUs) | | | | | | | | |
|----------|--------|--------|--------|--------|------|-------|-------|----------|
| Month | GEB | MPSEB | CSEB | MSEB | GOA | DD | DNH | Total |
| April-05 | 29.81 | 75.55 | 23.31 | 47.14 | 0.00 | 12.88 | 12.42 | 201.11 |
| May-05 | 37.98 | 86.45 | 2.31 | 61.45 | 0.00 | 13.07 | 12.60 | 213.85 |
| June-05 | 38.34 | 82.37 | 27.14 | 62.16 | 0.00 | 12.77 | 12.44 | 235.22 |
| July-05 | 37.34 | 62.66 | 28.38 | 60.55 | 0.00 | 12.58 | 12.12 | 213.63 |
| Aug-05 | 42.80 | 62.78 | 31.87 | 69.18 | 0.00 | 14.41 | 13.89 | 234.93 |
| Sep-05 | 41.42 | 58.77 | 34.10 | 70.17 | 0.00 | 14.65 | 14.11 | 233.21 |
| Total | 227.69 | 428.57 | 147.11 | 370.65 | 0.00 | 80.35 | 77.58 | 1331.951 |

40. Member Secretary, WREB has submitted that the present allocation of power to Western Region constituents from NTPC stations in Eastern Region is as under:

| Constituent | in MW |
|-------------|-------|
| GUVNL | 77 |
| MPSEB | 175 |
| CSEB | 60 |
| MSEB | 125 |
| Goa | 0 |
| DD | 26 |
| DNH | 25 |
| Total | 488 |

41. Member Secretary, WREB has stated that in view of the fact that other constituents of Western Region (except Goa) other than MPSEB and GEB are drawing power from Eastern Region, they have to pay wheeling charges to MPSEB and GEB for utilizing the transmission system. Therefore, Member Secretary, WREB has suggested that 2/3d of the charges for the transmission system should be pooled in the total transmission charges of Western Region.

Options for consideration of the Commission

42. In the Statement of reasons dated 10.2.2005 in support of the amendments in open access regulations, the Commission has already decided that w.e.f. 1.4.2005, in case of use of inter-regional assets for wheeling of allocated power or power flowing pursuant to long-term contract, transmission charges *pro rata* to the capacity used, shall be payable by the users. The balance charges, after deducting adjustable part (presently 87.5% of inter-regional lines) of the recovery from short-term customers shall be shared by the long-term customers of the two contiguous regions in the ratio of 50:50 as reliability support charges (upto 31.3.2005, charges are to be shared between the long-term customers after deducting revenue from the short-term customers). Since the transmission system is also an inter-regional asset, the same principle may be applied, except as regards the ratio for sharing of the charges. The options on the question of sharing available are as under:

Option I: No change in sharing formula, that is, sharing in the ratio of 1/3:1/2:1/6 between long-term customers in ER, (MPSEB+CSEB) and GEB respectively as per the order dated 18.7.2003, as clarified in subsequent orders on the subject.

Option- II : Sharing in the ratio of 50:50 by the long-term customers of Eastern and Western Regions like other inter-regional lines operating so far.

Option- III : 1/3 of the charges may continue to be shared by the long-term customers in Eastern Region. Remaining 2/3 of the charges to be shared by the long-term customers of Western Region.

43. Drawal of power from Eastern Region by other entities in Western Region only establishes the fact that these entities are using this line but it does not necessarily lead to conclusion that sharing for this line should also be on 50:50 basis like other inter-regional lines in use so far. It may be recalled that the Commission in its statement of reasons dated 10.2.2005 in support of the amendment in open access regulations has already held that the sharing on the basis of 50:50 may not be applied on all future inter-regional lines. The sharing for future inter-regional lines may be decided on case to case basis based on relative benefit to the beneficiaries of the two regions. Therefore, if contention of MPSEB is accepted there will be no alternative but to provide sharing for future lines also on 50:50 basis. Further, since Eastern Region constituents had agreed to share only 1/3 of the charges for this line prior to its construction, it may not be fair to increase their share to 50% now. Therefore, option-II is not favoured.

44. Option-I also does not seem to be fair. The reason for this special sharing formula decided by the Commission at the time of awarding tariff for the first time was that Eastern Region constituents had agreed to share 1/3 of the charges and MPSEB had stated that it was willing to share 50% of the charges when the line was conceived. GEB was drawing power from Eastern Region but all other constituents in Western Region had stated that they shall not be importing power from Eastern Region. Copy of the affidavit dated 6th July 2000 submitted by MSEB in Petition No. 9/2000 stating that it does not wish to import power from Eastern Region and hence would not share cost of this line is enclosed as Annex. Therefore, now that it has come to the notice of the Commission that other constituents of Western Region are also importing power from Eastern Region w.e.f. 23.4.2003, it may be fair to stipulate sharing as per Option-III i.e. in the ratio of 1/3:2/3 between long-term customers of Eastern Region and Western Region respectively. Goa, which is presently not importing power from ER, will also get reliability benefits of this line and should share charges for this line.

45. We direct that charges for the transmission system shall be shared in the ratio of 1/3:2/3 between the long-term customers in Eastern and Western Regions respectively w.e.f. 1.4.2004. Within the region, the long-term customers are to share transmission charges in the ratio of their allotted transmission capacity, as defined in the 2004 regulations. This may not be seen as changing the sharing retrospectively as charges w.e.f. 1.4.2004 are presently being paid on provisional basis only.”

17. It is to be noted that the Commission duly considered the option for sharing of the transmission charges in the ratio of 50:50 by the long-term customers of Eastern and Western Regions like other inter-regional lines, as provided in the unamended Regulation 59 of the 2004 regulations. The Commission noted that since the Eastern Region constituents had agreed to share only 1/3rd charges for the transmission line prior to its construction, it might not be fair to increase their share to 50%. Accordingly, the Commission stipulated that the transmission charges would be shared in the ratio of 1/3 to 2/3, between long-term customers of Eastern and Western Regions respectively.

18. Against the above background, the question arises whether the methodology stipulated by the Commission was in accordance with the 2004 regulations, since the Commission after considering the peculiar circumstances of the case deviated from the sharing methodology given under Regulation 59 of the 2004 regulations prior to its amendment. For this purpose it is to be noted that in terms of Regulation 13 of the 2004 regulations, the Commission is empowered to vary any of the provisions of these regulations either of its own or based on the application made before it by any person. The relevant provision is extracted hereunder:

“13. **Power to Relax:** The Commission, for reasons to be recorded in writing, may vary any of the provisions of these regulations on its own motion or on an application made before it by an interested person”.

19. The Appellate Tribunal had occasion to consider the scope of Regulation 13 of the 2004 regulations in Appeal No.89/2006. The Appellate Tribunal by its judgement dated 22.1.2007, after referring to Regulation 13 and the judgement of the Hon'ble Supreme Court in Bhinka vs Charan Singh, AIR 1959 SC 960 observed that "the power to relax any provision by the Commission can be invoked by the Commission itself or an application made by interested person".

20. Thus the source of power for the methodology stipulated by the Commission in its order dated 16.3.2006, is traceable to Regulation 13 of 2004 regulations. Even if the Commission in its order dated 16.3.2006 did not specify that the methodology approved was in exercise of power under Regulation 13, it does not in any manner affect the validity of the Commission's order. Through an endless stream of the decisions of the Hon'ble Supreme Court it is established that where a power exists, quoting a wrong provision or not quoting the provision in support of the decision does not invalidate the decision of the authority. The Hon'ble Supreme Court in Commissioner of Commercial Taxes vs Dharmendra Trading Corporation [(1998) 3 SCC 570 (page 574)] held as under:

"Dharmendra Trading Co., (1988) 3 SCC 570 , at page 574 :

.....where the source of power under which it is issued is not stated in an order but can be found on the examination of the relevant Act, the exercise of the power must be attributed to that source".

21. A similar observation was also made by the Constitution Bench of Hon'ble Supreme Court in Union of India Vs. Tulsiram Patel [(1983) 3 SCC 398], the relevant part of which is extracted under:

126. As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in *Challappan case 1* was not drawn to this settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311(2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See *Dr Ram Manohar Lohia v . State of Bihar and Municipal Corporation of the City of Ahmedabad v . Ben Hiraben Manilal*) The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule. It may be mentioned that in none of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so".(Emphasis supplied)

22. We further take note of the fact that a provision analogous to Regulation 13 of the 2004 regulations was not contained in the 2001 regulations on consideration of which the Appellate Tribunal decided that sharing of the transmission charges was to be in accordance with clause 4.8.

23. Regulation 59 of the 2004 regulations on sharing of transmission charges for inter-regional assets, as amended vide notification dated 1.6.2006 lays down the methodology, “except as specifically decided otherwise by the Commission”.. It would thus follow that the sharing methodology specified by the Commission in its order dated 16.3.2006 is covered under the 2004 regulations after the amendment came into force. There cannot be any dispute on this.

24. At the hearing it was pointed out to the learned counsel that the 2004 regulations permit deviations from these regulations, including the sharing ratio of 50:50 between the two regions. In response, the learned counsel submitted that Regulation 59 of the 2004 regulations, as amended, which carves out the exception was not applicable since the tariff in the present case was determined prior to the amendment came into effect.

25. We have given our thought to the submission made by the learned counsel, but are unable to accept. Regulation 13 of the 2004 regulations which authorizes the Commission to relax or vary any of the provisions of these regulations was on the statute book since beginning, that is, 1.4.2004 the date from which the sharing methodology has been applied. Secondly, the law in force at a particular time regulates the rights and liabilities of the parties.

26. In view of the above observations, case for review of the order dated 16.3.2006 in the light of the ratio laid down in the Appellate Tribunal's judgement

dated 14.11.2006 in Appeal No. 19/2006 is not made out since there is no error apparent and the methodology for sharing of transmission charges is stipulated in exercise of powers under the 2004 regulations, governing the terms and conditions of tariff during the relevant period.

27. The application for review is accordingly dismissed. The petitioner is to pay the balance filing fee of Rs.80,000/-. This shall be deposited within three weeks of the date of this order.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi dated the 8th August 2007