

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri ASHOK BASU, CHAIRMAN**
- 2. Shri G.S. RAJAMANI, MEMBER**

Petition No. 9/2003

In the matter of

Payment of outstanding dues by APTRANSCO to GRIDCO for the period from January 2001 to July 2001.

Petition No 11/2003

And in the matter of

Payment of outstanding dues by APTRANSCO to GRIDCO for the period from October to December 2000 and March-April 2002

Petition No.12/2003

And in the matter of

Payment of outstanding dues by APTRANSCO to GRIDCO for the period from September to December 2001

And in the matter of

GRID Corporation of Orissa Ltd.

.... **Petitioner**

Vs

Transmission Corporation of Andhra Pradesh

.... **Respondent**

Petition No. 10/2003

And in the matter of

Payment of outstanding dues by APTRANSCO to GRIDCO for the period from December 1994 to September 1996

And in the matter of

GRID Corporation of Orissa Ltd.

.... **Petitioner**

Vs

1. Transmission Corporation of Andhra Pradesh Ltd.,

2. Power Grid Corporation of India Ltd.

3. Member Secretary, EREB

4. West Bengal State Electricity Board

... **Respondents**

The following were present:

1. Shri R.K. Mehta, Advocate, GRIDCO
2. Shri N.N. Mohapatra, SE (PP), GRIDCO
3. Shri Manas Kumar Das, AM, GRIDCO
4. Shri K. Ramakrishnan, APTRANSCO,
5. Shri G.V. Narayana Rai, APTRANSCO
6. Shri M.V. Muralidharan, APTRANSCO
7. Shri S.S. Sharma, AGM, PGCIL
8. Shri S. Prasad., PGCIL
9. Shri B.K. Misra, MS, EREB

ORDER
(DATE OF HEARING: 15.07.2003)

Petition No.9/2003

The petitioner has sought direction to the respondent for payment of a sum of Rs.3.41 crore towards outstanding dues on account of wheeling of power through the petitioner's system 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. The amount claimed includes a principal of Rs.2.45 crore and late payment surcharge of Rs.0.96 crore.

2. It has been stated that the respondent was allocated 220 MW of power out of unallocated power from NTPC stations in Eastern Region. The power was imported from Eastern Region via Western Region using the petitioner's transmission system at Budhipadar. The respondent has accepted the claim of the petitioner for Rs.2.45 crore. It has stated that no late payment surcharge was payable. The respondent has further submitted that the sum of Rs.2.45 crore has been adjusted against the dues payable by the petitioner from Machhkund HEP.

3. The petitioner has denied its liability to pay any dues on account of Machhkund HEP. According to the petitioner this liability was transferred to Orissa Hydro Power Corporation (OHPC), established after reorganisation of erstwhile Orissa State Electricity Board (OSEB).

Petition No. 11/2003

4. In this petition, a direction has been sought to the respondent for payment of a sum of Rs.27.37 crore, along with interest @ 24% per annum from the date of filing

of the petition till the date of payment. The sum includes Rs.3.54 crore towards differential energy charges for the period from October 2000 to December 2000 and the dues amounting to Rs. 23.83 crore for bilateral sale of power during the period March 2002 to April 2002.

5. The petitioner has stated that a bilateral bulk supply agreement for supply of 100 MW power to the respondent was signed on 10.6.1999, valid for a period of one year with effect from 10.10.1999. The power was sold @ Rs.2.05 per unit. The agreement for sale of power was extended for a further period of one year with effect from 10.10.2000. It was agreed that during the extended period the petitioner would charge the respondent @ Rs.2.28 per unit. It is stated that an amount of Rs.3.54 crore on account of differential tariff for the period from 10.10.2000 to 31.12.2000 is outstanding as the petitioner was paid @ Rs.2.05 per unit though the agreed rate applicable for this period was Rs.2.28 per unit. The respondent has admitted the claim of the petitioner, but has adjusted an amount of Rs.3.01 crore towards dues of OHPC for power from Machhkund HEP.

6 In addition, the petitioner has claimed a sum of Rs.23.83 crore as dues on account of bilateral sale of power for the period March and April 2002. Out of this sum, an amount of Rs.4.61 crore has also been adjusted by the respondent towards the amount payable by OHPC to APGENCO. The respondent has already paid an amount of Rs.19.22 crore to the petitioner by way of demand draft after the petition was filed.

Petition No. 12/2003

7 The petitioner has sought a direction to the respondent for payment of a sum of Rs.21.64 crore for its share of power purchased by the respondent from Machhkund HEP for the period from 16.9.2001 to 20.12.2001, along with interest @ 24% per annum from the date of filing of the petition.

8. The petitioner is stated to have agreed to sell its share of power from Machhkund HEP to the respondent @ Rs.2.28 per unit. The amount due on account of sale of power is stated to be Rs.21.64 crore. The respondent has clarified that the amount payable to the petitioner is Rs.19.92 crore, against the claim of Rs.21.64 crore by the petitioner. The respondent is stated to have adjusted this amount against the receivables from the petitioner towards Machhkund HEP liability.

Petition No.10/2003

9. In this petition, the petitioner has sought direction to Respondents 1 and 2 for payment of a sum of Rs.38.61 crore towards the arrears due on account of its share in the Eastern Region power exported to the erstwhile Andhra Pradesh State Electricity Board (APSEB), the predecessor of Respondent No.1 by OSEB, the predecessor of the petitioner, during December 1994 to September 1996 along with interest @ 24% per annum on the said amount of Rs.38.61 crore from 1.2.2003 till the date of payment. This amount of Rs.38.61 crore claimed includes late payment surcharge of Rs.23.17 crore.

10. In a meeting held on 3.12.1994 in CEA, it was reportedly decided to supply surplus Eastern Region power to APSEB by utilising the OSEB Transmission System. The rate for the exported power was fixed at Rs.1.50 per unit, including

service charge of Re.0.015 per unit for Respondent No.2, PGCIL. It was also decided that an irrevocable LC would be opened by APSEB in favour of PGCIL, who would retain service charge of Re.0.015 per unit. It was further decided that the contributing constituents of Eastern Region would be entitled to Rs.1.30 per unit and OSEB would be paid @ Re.0.1125 per unit as involvement charges. The balance amount of Re.0.1125 per unit would be shared by all the beneficiaries in Eastern Region in proportion to their drawal of power from Central Sector Stations on monthly basis as incentive. The petitioner has submitted that a sum of Rs.15.44 crore was due from APSEB which has not been paid so far. According to the petitioner, after adding late payment surcharge of Rs.23.17 crore, the liability of the Respondent No. 1 and 2 works out to Rs.38.61 crore on the date of filing of the petition.

11. Respondent No.1 has submitted that a decision was taken by Central Electricity Authority that bills for payment on account of supply of surplus power from Eastern Region to APSEB would be raised by Respondent No.2, PGCIL and on receipt of amount from LC, PGCIL would retain service charges of 1.5 paise per unit and pass on the remaining amount to contributing constituents based on global accounting prepared by Member Secretary, EREB. It is the contention of Respondent No.1 that the liability to pay to the petitioner as also the other constituents of Eastern Region lies on Respondent No.2. The dues of Respondent No.2 on this account are included for issuance of bonds under securitisation scheme between SEBs and Central Generating Stations. As is obvious, no Letter of Credit was opened in favour of PGCIL, though it was so decided. No reply has been filed on behalf of Respondent No.2 though the representative of this respondent stated during the course of hearing that some amount had already been received by PGCIL

from APTANSCO. We had directed the representative of Respondent No.2 to file its reply within one week of the date of hearing.

12. We have analysed the facts presented before us on behalf of the parties. In certain cases, the respondent has accepted its liability without any dispute. For example, the respondent has agreed to payment of Rs.19.22 crore stated to be due in Petition No. 11/2003. We expect that the amount will be paid by the respondent immediately, if not already paid since there is no dispute raised by the respondent on this account.

13. We further find that certain dues have not been denied by Respondent No.1, but have been adjusted against the dues payable by OHPC to APGENCO for supply of power from Machhkund HEP. The petitioner has denied its liability for payment of such dues on account of Machhkund HEP for the reason that after reorganisation of the erstwhile OSEB, assets and liabilities for Machhkund HEP have been allocated to OHPC. Therefore, according to the petitioner, it owes no liability to pay any amount due to the respondent of APGENCO from OHPC. This is one area of dispute. Another dispute between the parties is regarding the claim of the petitioner for late payment surcharge. The respondent has denied its liability to pay the late payment surcharge since, according to the respondent, no such stipulation was made when decision for sale or supply of power was taken.

14. Another category of dispute is raised in Petition No. 10/2003, wherein Respondent, APTRANSCO has claimed that it owes its liability for payments only to PGCIL. Respondent APTRANSCO has stated that it has paid bonds for securitisation of dues to PGCIL, which include dues on account of supply of surplus

power from Eastern Region during 1994 to 1996. The Respondent, APTRANSCO has, therefore, claimed that it is only PGCIL (Respondent No.2 in Petition No.10/2003) which is liable to pay to the petitioner. Thus, a third party, another Govt company is involved in the dispute.

15. The Supreme Court has time and again emphasised that the Public Sector Undertakings should not involve in litigation and should resolve their disputes by having a resort to mutual discussions. Suffice it to reproduce the observations of the Supreme Court in *Oil and Natural Gas Commission and another Vs Collector of Central Excise* [1992 Supp(2) SCC 432]:

“3. This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness. The letter of October 3, 1998, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.”

16. The utilities involved in the disputes raised in the present petitions are the Public Sector Undertakings belonging to Central/State Governments. After giving our conscious thought to the issues raised and in the light of the above extracted observation of the Supreme Court, we consider that in the first instance, efforts need to be made to resolve the disputes at the level of Government of Orissa and Government of Andhra Pradesh. We, therefore, direct that Secretaries, Department of Energy/Power in the concerned states along with Chief Executives of the petitioner and the respondent shall mutually discuss the issues to arrive at an amicable solution of the disputes raised in these petitions. PGCIL, Respondent No.2

in Petition No. 10/2003 shall also be involved at appropriate level so far as the dispute raised in this petition is concerned. Member Secretary, EREB who was responsible for preparation of global energy accounts during the period 1994-1996 when surplus power from Eastern Region was supplied to Respondent No.1, shall also be involved so far as the dispute in Petition No. 10/2003 is concerned. We direct that a report shall be filed by the parties, the petitioner and the respondent (Respondent No.1 in Petition No. 10/2003) on affidavit, latest by 31.8.2003 placing on record the outcome of the efforts made towards resolution of the disputes. We trust that the disputes would get resolved through intervention of the State Governments.

17. A copy of this order be sent to Secretary, Department of Energy/Power of the concerned State Governments for their necessary action.

18. List these petitions on 11th September 2003

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 22nd July, 2003