

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairperson**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhusan, Member**
4. **Shri A.H. Jung, Member**

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**

The following were present:

1. Shri R.K. Mehta, Advocate, GRIDCO
2. Shri M.K. Das, GRIDCO
3. Shri B.M. Das, Sr. General Manager, GRIDCO
4. Shri N. Sree Ramachandramurty, APTRANSCO
5. Shri G.V. Narayanarao, APTRANSCO
6. Shri V.A. Kishore, APTRANSCO

**ORDER
(DATE OF HEARING: 10.1.2006)**

The petitioner, in these petitions has prayed for direction to the respondent for payment of certain dues of bilateral sale of power to the respondent, along with interest at the rate of 24% from the date of filing of these petitions.

Petition No.11/2003

2. A bilateral bulk supply agreement for sale of power by the petitioner to the respondent at Rs.2.05/unit was signed on 6.10.1999, effective from 10.10.1999 for a period of one year. After expiry of the agreed period, the petitioner approached the respondent to extend the agreement by another year, that is, up to 9.10.2001 on the terms and conditions as originally agreed to, except that the sale of electricity was proposed to be undertaken at the rate of Rs.2.75/kWh. The respondent, however, insisted that the rate should continue to be Rs.2.05/unit. After exchange of some correspondence between the petitioner and the respondent, purchase of power at the rate of Rs.2.28/kWh was agreed to. In pursuance of the revised agreement, the petitioner supplied power to the respondent during the period October 2000 to December 2000. However, the respondent made payments at the rate of Rs.2.05/unit. In this manner, the petitioner has claimed that an amount of Rs.4.245 crore was payable by the respondent as the differential amount. Subsequently, however, the amount due was reduced by GRIDCO to Rs.3.54 crore.

3. The agreement was further extended up to 31.3.2002, and the respondent was supplied power during March-April 2002 based on the extended agreement at the rate of Rs.2.28/kWh. It is stated that the respondent was to pay another amount of Rs.23.83 crore for sale of power during the period March-April 2002 at the rate of Rs.2.28/kWh.

4. The petitioner has through a subsequent affidavit sought to levy delayed payment surcharge @ 2% per month on the differential amount of Rs.3.54 crore of the energy charges for the period October 2000-December 2000 and the whole sum of

Rs.23.83 crore for sale of power undertaken during March-April 2002, stated to be outstanding.

Petition No.12/2003

5. In this petition, the petitioner seeks a direction to the respondent to pay a sum of Rs.21.64 crore for the power purchased from Muchkund Hydro Project (OHPC) during the period 16.9.2001 to 20.12.2001, falling to the petitioner's share, along with interest at the rate of 24% per annum from the date of filing of the petition. Through a subsequent affidavit the petitioner also claimed the delayed payment surcharge @ 2% per month up to the date of filing.

6. In both these petitions, the respondent generally has not denied that it had purchased power from the petitioner. However, it has sought to adjust certain dues which according to the respondent, were payable by OHPC. Therefore, the respondent has denied its liability to pay delayed payment surcharge.

7. These petitions have been filed under clause (c) read with clause (h) of Section 13 of the Electricity Regulatory Commissions Act, 1998, for short, "the 1998 Act".

8. During pendency of these petitions, the parties had expressed their desire to negotiate the matter and arrive at some agreement mutually to resolve the dispute. The Commission granted time to the parties for amicable settlement. Nevertheless, the Commission had left open the question of jurisdiction in the matter. After several rounds of discussion and meetings for nearly two and a half years, it has not been

possible for the parties to resolve the dispute. Therefore, we decided to proceed further in the matter, but only after satisfying ourselves on the question of jurisdiction.

9. We heard Shri R.K. Mehta, Advocate for the petitioner on the question of jurisdiction and the representative of the respondent.

10. Learned Counsel for the petitioner has submitted that the power of adjudication of the claim raised in the petition is incidental to the discharge of the function under clause (c) of Section 13 of the 1998 Act, to regulate the inter-state transmission of energy including tariff of the transmission utilities. To buttress his argument, the learned counsel has relied upon certain decisions of the Hon'ble Supreme Court. It is not necessary to refer to the ratio of these decisions, since the proposition of law on exercise of incidental power by any authority is well settled. However, for the purpose of jurisdiction we propose to examine whether regulation of sale of power by the petitioner to the respondent was covered under the functions assigned to the Commission under Section 13 of the 1998 Act.

11. The relevant extracts of Section 13 of the 1998 Act are placed below:

“**13.** The Central Commission shall discharge all or any of the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies, other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of energy including tariff of the transmission utilities;

(h) to arbitrate or adjudicate upon disputes involving generating companies or transmission utilities in regard to matters connected with clauses (a) to (c) above;”

12. In our considered opinion, the issue raised does not fall under clause (c) of Section 13 of the 1998 Act. The dues claimed are for bilateral sale of power by the petitioner to the respondent, and not for inter-state transmission tariff. The next question is whether the dispute is relatable to regulation of tariff under clauses (a) or (b) of Section 13. The tariff for sale of power was to be regulated in terms of clause (a) and (b) of Section 13 of the 1998 Act. Under clause (a), the Commission was to regulate tariff of the generating companies owned or controlled by the Central Government. Similarly, under clause (b) of Section 13, the Commission was to discharge the function of regulation of tariff of the generating companies other than those owned or controlled by the Central Government, if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. Thus, for exercise of power under clauses (a) and (b), it is necessary that the utility undertaking sale of electricity must be a generating company. It is an admitted fact that the petitioner is not a generating company but is a transmission company. Therefore, the tariff for sale of power by the petitioner to the respondent was not to be regulated by the Commission under clause (a) or clause (b) of Section 13 of the 1998 Act. The sale of power by the petitioner to the respondent was undertaken during the years 2000 and 2002, when the Commission was in existence and functional. However, the petitioner did not seek the Commission’s approval for the sale price (tariff) of electricity sold, probably under the belief that the sale by it was not falling under Section 13. We have already held that the issue raised in these petitions does not involve regulation of inter-state transmission of energy or

tariff of the transmission utilities. Under these circumstances, clause (h) of Section 13 of the 1998 Act cannot be invoked.

13. In view of the above discussion, the petitions are dismissed as beyond the purview of clause (h) of Section 13 of the 1998 Act. The parties to bear their own cost.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 25th January 2006