

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. **Shri Ashok Basu, Chairperson**
2. **Shri. Bhanu Bhushan, Member**
3. **Shri A.H. Jung, Member**

**Petition No.13/2006**

**In the matter of**

Application of Formula/Methodology dated 11.5.2004 evolved by Ministry of Power, Government of India to adjust UI charges payable by Madhya Pradesh viz-a-viz UI gain of Chhattisgarh.

**And in the matter of**

U.P. Power Corporation Ltd., Lucknow

**.... Petitioner**

Vs

1. Ministry of Power, Government of India, New Delhi
2. Uttaranchal Power Corporation Ltd., Dehradun

**..Respondents**

**The following were present**

1. Shri D.D. Chopra, Advocate, UPPCL
2. Shri T.K. Srivastava, UPPCL
3. Shri S.P. Srivastava, UPPCL
4. Shri M.G. Ramachandran, UPPCL
5. Ms Taruna S. Baghel, UPPCL
6. Shri S.P. Arya, UPCL

**ORDER  
(DATE OF HEARING: 18.4.2006)**

In this petition, the petitioner has prayed the Commission to advise the Central Government in Ministry of Power to apply the formula/methodology dated 11.5.2004 evolved and applied by that Government in case of States of Chhattisgarh and Madhya Pradesh. A further prayer is made to adjust the UI gain made by Uttaranchal Power Corporation Ltd against the UI charges paid or payable by the petitioner.

2. Allocation of power from the central generating stations to various States is made by the Central Government. Accordingly, allocation of power from the central generating stations to the unified State of Uttar Pradesh was roughly of the order of 3000 MW. The generation in undivided UP was about 4000 MW, which included about 1500 MW from hydro generating stations located within the State. After creation of State of Uttaranchal in November 2000 in pursuance of the Uttar Pradesh Re-organisation Act, 2000, the Central Government by its order dated 5.11.2001 ordered division of assets between the power sector utilities in the States of Uttar Pradesh and Uttaranchal. The petitioner has averred that the Central Government ordered transfer of about 1000 MW hydro generation capacity to the State of Uttaranchal, without considering relative requirement of power in the States of Uttar Pradesh and Uttaranchal and also allocated about 300 MW (roughly 10% of the share of undivided UP) to the State of Uttaranchal. At that point of time, total power requirement of the State of Uttaranchal was about 500 to 600 MW. It is alleged, due to inequitable allocation, its availability became 1300 MW. The power availability of the State of Uttaranchal is about 25% of availability to the State of Uttar Pradesh whereas population of Uttaranchal is just 10% of the total population of undivided Uttar Pradesh.

3. In accordance with order dated 5.11.2001 *ibid*, the State of Uttar Pradesh will have first right to purchase surplus power of the State of Uttaranchal, on mutually agreed price failing which at the price determined by CEA. According to the petitioner, during the last 4-5 years, the State of Uttaranchal has sold its surplus power to other states either through bilateral contracts or through UI mechanism and has earned huge profits therefrom. The State Government of Uttar Pradesh has reportedly been writing

to the Central Government about the alleged anomaly in allocation of power and also non-adherence of the direction of the Central Govt. by Uttaranchal regarding sale of surplus of power to the State of Uttar Pradesh, but has not drawn any positive response.

4. The petitioner has averred that the erstwhile State of Madhya Pradesh was also re-organized in the year 2000, and the State of Chhattisgarh was carved out. Consequent to re-organization of the erstwhile State of Madhya Pradesh, a number of power stations were transferred to the State of Chhattisgarh thereby making the State of Madhya Pradesh a power deficient State. The Central Government in Ministry considering the power shortages faced by the State of Madhya Pradesh evolved a methodology to arrive at the liability of the States of Madhya Pradesh and Chhattisgarh to pay UI charges, vide its letter dated 11.5.2004. The State Government of Uttar Pradesh had made request to Ministry of Power for application of the methodology and principles evolved by letter dated 11.5.2004 in case of UI payment by the States of Uttaranchal and Uttar Pradesh. According to the petitioner, no decision has been taken by the Central Government on the request made by the State Government of Uttar Pradesh.

5. The petitioner has stated that it has paid over Rs.930 crore towards UI charges against the total liability of Rs.1329 crore up to 2005-06 whereas the second respondent has earned Rs.265 crore during the same period. The petitioner has alleged that had the allocation of power from central generating stations been more realistic, the petitioner would have saved the money paid by it towards UI charges. Accordingly, the petitioner has made the present application.

6. The petitioner has impleaded Ministry of Power and Uttaranchal Power Corporation Ltd as respondents. Neither of them has filed its reply. However, the second respondent was duly represented at the hearing.

7. We heard Shri D.D. Chopra, Advocate for the petitioner and Shri M.G. Ramachandran, Advocate for the second respondent.

8. Learned Counsel for the petitioner argued that the petition has been filed under clause (ii) of sub-section (2) of Section 79 of the Electricity Act, 2003 (the Act, for short). Section 79 of the Act describes the functions of the Central Commission. Sub-section (2) of Section 79 relates to advisory functions of the Central Commission and is reproduced below:

(2) The Central Commission shall advise the Central Government on all or any of the following matters, namely:-

(i) .....

(ii) promotion of competition, efficiency and economy in activities of the electricity industry;

(iii) .....

(iv) Any other matter referred to the Central Commission by that Government.

9. In our considered view, the prayer made by the petitioner does not fall within the ambit of clause (ii) of sub-section (2) of Section 79 of the Act. It was next contended that because of the discriminatory approach adopted by the Central Government, the consumers in the State of Uttar Pradesh have to bear the additional burden on account of UI charges and, this defeats the provisions of clause (d) of Section 61 of the Act. The petitioner, therefore, sought to invoke clause (d) of Section 61 of the Act in support

of the prayers made. Section 61 of the Act empowers the Appropriate Commission to specify the terms and conditions for determination of tariff and in doing so, the Commission is to consider safeguarding of consumers' interest and at the same time ensuring recovery of the cost of electricity in a reasonable manner. The present petition does not relate to specifying the terms and conditions for determination of tariff and, therefore, is outside the scope of Section 61 of the Act. Learned Counsel for the petitioner heavily relied upon the clarification issued by the Central Government in Ministry of Power dated 11.5.2004 laying down the methodology for sharing of UI charges between the States of Madhya Pradesh and Chhattisgarh. He pleaded that similar treatment needs to be extended to the petitioner on the question of payment of UI charges by the States of Uttar Pradesh and Uttaranchal. The learned counsel argued that the petitioner is to be treated at par with other similarly situated State utilities, otherwise it would amount to discrimination against the petitioner. The orders issued by the Central Government regarding apportionment of assets and liabilities between UP and Uttaranchal derive strength from the provisions of the UP Reorganisation Act, 2000. Further, the allocation of power to different States is within the purview of the Central Government in Ministry of Power. Exercise of power by the Central Government does not brook any advice from this Commission considering the functions of the Commission as given under sub-section (2) of Section 79 of the Act. The allocation and re-allocation of power to the States is the prerogative of the Central Government. However, so long as the allocation is not revised, the petitioner shall be liable to pay UI charges in accordance with the present allocation.

10. In view of the above discussion, the present petition is not maintainable and is accordingly dismissed.

**Sd/-  
(A.H. JUNG)  
MEMBER**

**Sd/-  
(BHANU BHUSHAN)  
MEMBER**

**Sd/-  
(ASHOK BASU)  
CHAIRPERSON**

**New Delhi dated the 9<sup>th</sup> May, 2006**