

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No. 14/2003

In the matter of

Non-payment of UI charges by MPSEB

And in the matter of

Western Regional Load Despatch Centre

....**Petitioner**

Vs

1. Madhya Pradesh State Electricity Board, Jabalpur
2. Gujarat Electricity Board, Vadodara
3. Chhattisgarh State Electricity Board, Raipur
4. Maharashtra State Electricity Board, Mumbai
5. National Thermal Power Corporation, New Delhi
6. Goa Electricity Department, Panjim, Goa
7. Union Territory of Dadra and Nagar Haveli, Silvassa
8. Electricity Department, Admn. Of Daman & Diu, Daman
9. Member Secretary WREB, Mumbai

....**Respondents**

The following were present

1. Shri Anjan Roy, GM, WRLDC
2. Shri Sunil Agarwal, DGM, PGCIL
3. Shri Rohit Kumar Singh, Advocate, MPSEB
4. Shri A.P. Bhairve, Addl Se, MPSEB
5. Shri S.N. Chauhan, SE (Comm.), CSEB
6. Shri D.K. Salpekar, NTPC
7. Shri M.S. Chawla, AGM(C), NTPC
8. Shri R. Datt, GM(C), NTPC
9. Shri V.B.K. Jain, GM(C), NTPC
10. Shri A.K. Juneja, DGM(C), NTPC
11. Ms. Rachna Mehta, Mgr (C), NTPC

ORDER
(DATE OF HEARING : 30.10.2003)

The petitioner, Western Regional Load Despatch Centre seeks a direction to Respondent No.1 to clear all the dues of Unscheduled Inter-change (UI) charges as on 5.3.2001, within the next fifteen days and in future to make payments of UI charges within the stipulated period of ten days of issue of UI account, along with interest for late payment as provided in Clause 13 of Annexure I to IEGC. The petitioner has also sought appropriate directions under Section 44 and 45 of the Electricity Regulatory Commissions Act, 1998 against Respondent No.1, for its not making payments of UI charges in accordance with the Commission's directions and the IEGC approved by the Commission.

2. In accordance with para 2.14 of the Commission's notification dated 26.3.2001, variations in actual generation/drawal and scheduled generation/drawal are to be accounted for through UI charges. UI charges are to be worked out for each 15 minute block. Charges for all UI transactions are put on average frequency of the time block and the following rates are applicable:

Average Frequency of time block	UI Rate (Paise per kWh)
50.5 Hz and above	0.00
Below 50.5 Hz and up to 50.48 Hz	5.60
Below 49.04 Hz and up to 49.02	414.40
Below 49.02 Hz	420.00
Between 50.5 Hz and 49.02 Hz	Linear in 0.02 Hz step

(Each 0.02 Hz step is equivalent to 5.6 paise/kWh within the above range)

3. The weekly UI accounts are being issued by Respondent No.9 based on data furnished by the petitioner. The further payments of UI charges are governed by

Clauses 12(a) and 13 of Annexure I to IEGC, which are reproduced below for facility of reference:

"12(a) Weekly bills shall be issued to the constituents for UI charges, as per the UI settlement system. These bills shall have a higher payment priority and the concerned constituents shall pay the billed amounts within 10 (ten) days of the billing date.

13. If payments against the above bills are delayed beyond ten (10) days, the defaulting constituent shall have to pay simple interest @ 0.05% for each day of delay. The interest so collected shall be paid to the constituents/agency who had to receive the amount, payment of which got delayed."

4. ABT has been introduced in the Western Region with effect from 1.7.2002. The constituents of the Region, which include the central generator and the state utilities, become entitled to or liable for payment of UI charges depending upon the circumstances of over-drawal/under-drawal or over-generation/under-generation at the relevant time. All UI payments are being routed through a UI pool account operated by the petitioner. The constituents whenever liable to make payment on account of UI charges are depositing these charges to the UI pool account, which are disbursed by the petitioner to those who are entitled to receive them. The UI mechanism became operative consequent to implementation of ABT in the Region with effect from 1.7.2002.

5. It has been reported that Respondent No.1 has not been making payments on account of UI charges to the pool account since the week concluding on 21.10.2002, as a consequence of which total dues, as on 5.3.2003, amounted to Rs.90,06,57,040/- which included arrears of UI charges of Rs.90,06,53,635/- on that date and Rs.59,21,405/- on account of interest till 31.12.2002 for non-payment. It has been stated that up to the week ending 15.9.2002, Respondent No.1 has received

payments from UI pool account amounting to Rs.13.08 crore, but has defaulted in making payments it became liable to pay UI charges for continuous over-drawal from the Western regional grid. The efforts made by the petitioner to persuade Respondent No.1 to settle its liability on account of UI charges have reportedly failed.

6. The petitioner has also submitted that the Respondent No.1 is also liable to pay sum of Rs.67,59,431/- on account reactive energy charges payable for VAR interchanges with ISTS. It is stated that against the total sum of Rs.80,91,073/-, a sum of Rs.13,31,642/- only was paid. Respondent No.1 has paid all dues on account of Reactive Energy Charges during pendency of the present proceedings and as such we are confining our decision on the claims and counter-claims of the parties on account of UI charges only.

7. An affidavit in reply to the petition has been filed on behalf of Respondent No.1. It is stated that Ministry of Power, Government of India, in its order dated 17.6.2002 issued under Section 75 (2) of Madhya Pradesh Reorganisation Act, 2000 had made allocation of power to Madhya Pradesh and Chhattisgarh, the states created as a result of reorganisation of the undivided State of Madhya Pradesh. Respondent No.1 has placed reliance on para 4 of the said order dated 17.6.2002 which is reproduced below:

"In terms of Section 75(2) of Madhya Pradesh Reorganization Act, 2000, the above allocation is subject to the condition that any allocation out of the central sector stations, which Chhattisgarh is unable to consume, will be allocated to Madhya Pradesh. Similarly, any allocation, which Madhya Pradesh is unable to consume, will be allocated to Chhattisgarh."

8. According to Respondent No.1, in view of the above noted provisions of the order dated 17.6.2002, it was entitled to draw unutilised share allocated to State of Chhattisgarh. It has been contended that Respondent No.1 will not be liable to pay UI charges once the unutilised share of Chhattisgarh State is adjusted to its account. Respondent No.1 is reported to have taken up the matter at WREB level with this plea. However, it has not been able to persuade the concerned authorities to its view point. Respondent No.1 has also pursued the matter with the Central Government and is still pursuing it, but without any positive results.

9. A reply has also been filed on behalf of Respondent No.3, Chhattisgarh State Electricity Board, the contents of which may be referred to at appropriate places in the present order. In general, Respondent No.3 has supported the case of the petitioner.

10. Before entering upon the substantive issue raised by the parties, we deem it appropriate to advert to an incidental issue that has cropped up. The petition was earlier heard on 23.9.2003. At para 4 of our order 23.9.2003, we had recorded that:

"4. After arguing the matter for some time, Shri Rohit Kumar Singh, Advocate, appearing for Respondent No.1 submitted that the outstanding amount would be paid immediately. He prayed for time up to 29.9.2003 to file on affidavit the payment schedule for clearing the outstanding dues, since according to him, Shri A.P. Bhairve, the officer dealing with the subject matter was sick and not available immediately for instructions. On his request, we allow time as prayed for. Let an affidavit be filed on behalf of Respondent No.1 indicating a definite and short time schedule for clearing the outstanding dues on account of UI charges, by 29.9.2003. No further time would be allowed on this account. In case the Respondent No.1 fails to submit the schedule as undertaken, suitable action would be initiated under law.

11. An affidavit in accordance with the above was filed by Respondent No.1 on 29.9.2003 stating that in view of its financial position, it will be able to pay Rs.2 crore

per month from November 2003 only. However, Shri Rohit K. Singh, Advocate, who appeared on behalf Respondent No.1, filed an affidavit requesting for deletion of the first sentence of para 4 reproduced above. According to learned counsel, he did not make the statement attributed to him that Respondent No.1 would deposit the "alleged" outstanding UI charges immediately and that the undertaking for filing of the affidavit was given on the basis of observations made by the Commission.

12. At the hearing on 30.10.2003, Shri Rohit Kumar Singh, Advocate, pressed for deletion of the impugned sentence, without arguing anything further. However, submissions on merits were made by Shri A.P. Bhairve, Addl SE, MPSEB.

13. We have considered this issue in the first instance. It has not been disputed that an undertaking was given by learned counsel to file an affidavit to place on record the payment schedule. In our opinion, the question of filing an affidavit, giving the schedule for payment of outstanding dues could arise only when a liability to pay the dues was conceded on behalf of Respondent No.1. In case Respondent No.1 was not liable to pay the dues on account of UI charges, there would not have been any question of learned counsel giving an undertaking to file an affidavit, specifying the payment schedule. The statement attributable to learned counsel, of which he now seeks deletion, directly flows from his prayer for allowing time up to 29.9.2003 to file an affidavit to place on record payment schedule for clearing the outstanding schedule, the correctness of which is not disputed. We do not intend to say anything further on this issue at this stage since now we ourselves propose to adjudicate the issue.

14. We now proceed to consider the rival contentions on merits. Consequent to bifurcation of the State of Madhya Pradesh and creation of the present States of Madhya Pradesh and Chhattisgarh, Ministry of Power has passed orders allocating the central sector power to these newly created states from time to time. The allocations made, the copies of which have been placed on record either by Respondent No.1 or Respondent No.3 are summarised below:

Date of order	Allocation of Power in (MW)		Period of Allocation	Remarks
	State of Madhya Pradesh	State of Chhattisgarh		
31.1.2001	1116	498		To the extent Chhattisgarh is unable to utilise its allocation, the power would stand temporarily allocated to Madhya Pradesh
8.2.2002	1412	202	Up to 31.3.2002	The temporary allocation shall continue beyond 31.3.2002 till such time there is any other proposal by CEA or Chhattisgarh on allocation of power. Chhattisgarh will be free to utilise the reallocated power. The allocation of 498 MW will continue to be the allocation of Chhattisgarh, who will be free to absorb, at a later stage, against their future requirements or outage of any generating unit.
17.6.2002	1316 1236 1177	298 378 437	1.4.2002 to 30.4.2002 1.5.2002 to 31.5.2002 1.6.2002 to 30.6.2002	The temporary allocation will continue up to 30.6.2002 and from 1.7.2002, the entire share of Chhattisgarh, that is, 498 MW will be restored to Chhattisgarh. The allocation is subject to the condition that any allocation out of central sector stations which Chhattisgarh is unable to consume will be allocated to Madhya Pradesh. Similarly, any allocation which Madhya Pradesh is unable to consume will be allocated to Chhattisgarh.
12.11.2002	1206	408		With effect from 1.7.2002, the entire share of Chhattisgarh, that is, 498 MW was restored to Chhattisgarh
12.12.2002	1206	408	Up to 31.3.2003	--

15. It is seen that in the order dated 31.1.2001, it was specifically provided that to the extent Chhattisgarh was unable to utilise its allocation, the power would stand temporarily allocated to Madhya Pradesh. This stipulation was omitted in the order dated 8.2.2002. It appears that a need for such a stipulation was again felt while issuing the order dated 17.6.2002. However, in subsequent orders dated 12.11.2002 and 12.12.2002, while making re-allocations of power, no such condition was prescribed. The allocation made vide Ministry of Power letter dated 17.6.2002 was valid up to 30.6.2002. Thus, the stipulation contained in para 4 of the letter dated 17.6.2002 lapsed on 30.6.2002. These facts make it clear that the Central Government in Ministry of Power had no intention that with effect from 1.7.2002 the unutilised power of Chhattisgarh should also stand automatically allocated to Madhya Pradesh and vice versa. The reasons for not continuing the stipulation contained in Ministry of Power order dated 17.6.2002 are, to an extent, discernible from the counter-reply filed by Union of India before High Court of Delhi in writ petition No.2200/2002, filed by Respondent No.1, a copy of which has been placed on record by Respondent No.3 along with its additional affidavit dated 7.10.2003. It has been stated that entire 32% allocation of power to the undivided State of Madhya Pradesh out of unallocated quota of central sector power in Western Region was allocated to successor State of Madhya Pradesh. In addition, the allocation of power from NTPC stations in Eastern Region to the undivided State of Madhya Pradesh remained allocated to the successor State of Madhya Pradesh. These facts would indicate that the successor State of Madhya Pradesh was already allocated a large part of quota of the undivided State of Madhya Pradesh and as such temporary allocation of additional power from the unutilised quota of Chhattisgarh State was unnecessary, particularly when 90 MW of power out of originally allocated quota of Chhattisgarh was diverted to

Madhya Pradesh vide orders dated 12.11.2002 and 12.12.2002. It is also observed that re-allocation of power vide order dated 17.6.2002 was done in consultation with CEA, an independent statutory authority.

16. This issue raised by Respondent No.1, was also discussed in 119th WREB Board meeting held on 27.8.2002 when the constituents of Western Region had refused to agree to the proposal of Respondent No.1 of allocation of unutilised share of Chhattisgarh. It was decided that in real time, after introduction of ABT, it was not possible to adjust unutilised share of Chhattisgarh State. It was further decided that any allocations made by Ministry of Power were to be done prospectively based on which day-to-day entitlements for issue of schedules in advance could be confirmed and that the retrospective rescheduling would not be in accordance with the scheme of ABT as this datum level of schedules is used for real time monitoring. WREB also decided that the rescheduling between Madhya Pradesh and Chhattisgarh was not possible on the basis of actual energy consumption of CSEB in real time. We have already noted that there has been no positive response from the Central Government to the efforts made on behalf of State of Madhya Pradesh for additional allocation of power out of the quota of Chhattisgarh State though the Central Government in Ministry of Power has conducted meetings including the one held on 30.5.2003 under the Chairmanship of Special Secretary.

17. On consideration of the above matter, we have not an iota of doubt that with effect from 1.7.2002, the entire share of Chhattisgarh of 498 MW stood restored to that state and there was no reason for Respondent No.1 to share any part of it, till

12.11.2002 when Ministry of Power made reallocation of electricity from central sector generating stations and further reiterated vide its order dated 12.12.2002.

18. The Scheme of ABT has been implemented to ensure the stability of the Grid. The imposition of UI charges is central to the scheme of ABT. The payment of UI charges has been devised to act as a deterrent factor to discourage over-drawal by the state utilities from the regional grid. It provides teeth to the ABT scheme. In fact, the merits of imposition of UI charges have been summed up by saying that ABT without deterrent UI charges will be like "Hamlet without Prince of Denmark".

19. Accordingly, the entitlement/liability of Respondent No.1 for UI charges for the week concluding on 21.10.2002 and thereafter shall be worked out. Respondent No.1 shall also be liable to pay interest in accordance with para 13 of IEGC up to 31.10.2003 in case of delay in making payment. The consolidated liability of Respondent No.1 as on 1.11.2003 shall be worked out by the petitioner and Respondent No.9 jointly and communicated to Respondent No.1 by 15.11.2003. We are not satisfied with the payment schedule filed by Respondent No.1 vide its affidavit dated 29.9.2003. Therefore, we direct that the entire amount communicated shall be settled by Respondent No.1, in three equal monthly installments, which shall be fully paid by 31.1.2004. In case of any default, Respondent No.1 will make itself liable for appropriate action in accordance with law.

20. In view of our directions in the preceding para, we do not propose to invoke penal provisions of Sections 44 and 45 of the Electricity Regulatory Commissions Act, 1998, as prayed for, at this stage.

21. The representative of the petitioner stated at the hearing that with the commencement of Rabi season, Respondent No.1 had started over-drawing power in large quantities. We are not inclined to consider the submission since it is outside the scope of the present petition. However, the petitioner is at liberty to explore appropriate means to ensure observance of grid discipline by Respondent No.1 or any other constituent and approach the Commission for appropriate relief/directions in accordance with law, where considered necessary.

22. With this petition No.14/2003 stands disposed of.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated 6th November, 2003