

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**
- 3. Shri H.L. Bajaj, Member**

**Petition No.95/2004**

**In the matter of**

Prayer for issue of direction to Bihar State Electricity Board for sharing the transmission charges of inter-regional assets.

**And in the matter of**

Power Grid Corporation of India Limited, Gurgaon .....**Petitioner**

Vs

Bihar State Electricity Board, Patna .....**Respondent**

**The following were present:**

1. Shri U.K. Tyagi, DGM (Comml), PGCIL
2. Shri Dilip Rozekar, PGCIL
3. Shri Prashant Sharma, PGCIL
4. Shri A. Manglik, PGCIL
5. Shri M.M. Patnaik, PGCIL
6. Shri R.P. Padhi, PGCIL
7. Shri Sachin Datta, BSEB
8. Shri S. Atique Ullah, Chief Engineer, BSEB

**ORDER  
(DATE OF HEARING : 28.12.2004)**

The petitioner in the present petition has made the following substantive prayers:

- “(a) Direct the respondent to pay the transmission charges for Raipur-Rourkela inter-regional link to the petitioner in accordance with the order of Hon’ble Commission dated 2.4.2003.
- (b) Direct respondent for signing of BPTA with petitioner for Raipur-Rourkela line, Gazuwaka-II and Tala transmission system (including inter-regional link).

- (c) Direct the respondent to consider sharing of future inter-regional links to be made by the petitioner as agreed in standing committee or similar forums.”

2. The petitioner is assigned the responsibility of constructing and operating the regional and inter-regional transmission assets. In discharge of the functions assigned to the petitioner, it has constructed Raipur-Rourkela transmission line under Eastern-Western regional link, declared under commercial operation on 1.4.2003. The petitioner had filed petition No.121/2002 for approval of tariff for these assets. The Commission, by its order dated 2.4.2003 in IA No.67/2002 in Petition No.121/2002 approved the annual transmission charges @ Rs.2321.42 lakh on provisional basis. On the question of sharing of these transmission charges by the different regions involved, the Commission directed as under:

“7. We have considered the matter. We direct that the transmission charges, provisional or otherwise shall be shared between the constituents of Eastern and Western Regions in equal proportion, that is, in the ratio of 50:50. However, in the event of beneficiaries of Southern Region using the above inter-regional line they would be liable to pay wheeling charges according to use and the balance transmission charges for this inter-regional line shall be shared by the beneficiaries of the Eastern and Western Regions on 50:50 basis as per notification dated 26.3.2001 of the Commission.”

3. The respondent, a beneficiary in the Eastern Region has declined to share the transmission charges approved by the Commission. Accordingly, a direction has been sought to the respondent for payment of transmission charges for Raipur-Rourkela transmission line in accordance with the said order dated 2.4.2003.

4. In addition to Raipur-Rourkela transmission line, the petitioner has undertaken construction of some other inter-regional assets, which include HVDC Gazuwaka-II and Tala Transmission System. The latter assets are likely to be declared under commercial operation during 2005. It has been alleged by the petitioner that the

respondent has declined to sign the Bulk Power Transmission Agreement (BPTA) and accordingly the petitioner has sought a direction to the respondent for signing of BPTA for Raipur-Rourkela transmission line, HVDC Gazuwaka-II and Tala Transmission System. The petitioner has also sought direction that the respondent should consider sharing of future inter-regional links to be constructed by the petitioner as agreed in the Standing Committee or any other forum.

### **Preliminary Objection**

5. Before we consider the contentions of the parties on merits, we propose to deal with a preliminary objection raised on behalf of the respondent.

6. The application has been filed by the petitioner under the CERC (Conduct of Business) Regulations, 1999 notified by the Commission. The respondent has submitted that these regulations notified by the Commission under the Electricity Regulatory Commissions Act, 1998 have, with the repeal of the 1998 Act consequent to enactment of the Electricity Act, 2003, ceased to apply and accordingly the application is not maintainable. The submission of the respondent is without basis. All regulations/notifications issued under the repealed laws, including the 1998 Act continue to be in force to the extent they are not inconsistent with the provisions of Electricity Act, 2003 in view Section 185 (2) (a) thereof. The respondent has not pointed any inconsistency between the Conduct of Business Regulations and the 2003 Act. Therefore, the objection raised is dismissed.

### **On merits**

7. Now we consider the issues on merits.

**Re sharing of transmission charges for Raipur-Rourkela inter-regional link**

8. According to the petitioner, construction of Raipur-Rourkela transmission line under Eastern-Western inter-regional link was agreed in the Standing Committee meeting on Power System Planning in Eastern Region held on 8.12.2000. The matter was again discussed in the 98<sup>th</sup> meeting of EREB held on 26.11.2000 whereat construction of transmission line was approved by the Board. Therefore, the respondent, as a constituent of Eastern Region, is bound to pay the transmission charges approved by the Commission.

9. The respondent in its reply has stated that the direction as contained in the said order dated 2.4.2003 for sharing of 50% of the transmission charges by the constituents of Eastern Region was against the decision of the Standing Committee on Power System Planning in Southern Region whereat it was decided that the transmission charges for Raipur-Rourkela transmission line were to be shared in the ratio of 1/3:1/3:1/3 between the Eastern Region, Western Region and Southern Region. According to the respondent, Raipur-Rourkela transmission line has been constructed as back up transmission system for Talcher Stager-II STPS, dedicated to Southern Region. Accordingly, the beneficiaries of Southern Region should bear 1/3<sup>rd</sup> of the transmission charges approved by the Commission by its order dated 2.4.2003 and the remaining 2/3<sup>rd</sup> should be shared by the beneficiaries in Eastern and Western Regions in equal proportion. It is stated that the matter of signing of BPTA was placed before the Board, but the Board did not agree to give approval on the ground that the transmission line is not beneficial for the respondent.

10. At the hearing, learned counsel for the respondent submitted that under the Electricity Act, 2003, the Commission has power to only determine tariff for inter-state

transmission of electricity. He argued that the liability to pay the tariff determined by the Commission would arise only in the event of there being in existence BPTA between the transmission utility (the petitioner) and concerned SEB and in the absence of such BPTA, the respondent is not entitled to use the transmission line in question nor is it liable to pay any transmission charges. He submitted that the question of payment of tariff would arise only in the event of respondent using or availing of the transmission line for exporting its surplus power to other regions. Since no surplus power is available with the respondent for exporting to other regions, the demand raised by the petitioner for payment of transmission charges is not in the nature of tariff.

11. The Commission was constituted under Section 3 of the Electricity Regulatory Commissions Act, 1998 (the 1998 Act). One of the functions assigned to the Commission under Section 13 of the 1998 Act was to regulate inter-state transmission of electricity including tariff of transmission utilities. Further, under Section 28 of the 1998 Act read with Section 55 thereof, the Commission had on 26.3.2001 notified the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 (hereinafter referred to as the 2001 regulations) applicable from 1.4.2001 to 31.3.2004. In terms of Clause 4.8 of the 2001 regulations, the Commission had decided that the transmission charges for the inter-regional assets including HVDC System shall be shared in the ratio of 50:50 by the two contiguous regions. The respondent has never raised any dispute on the correctness of the provisions made in Clause 4.8 *ibid*. Therefore, the respondent is considered bound by the principle of sharing of transmission charges for the inter-regional assets specified by the Commission in the 2001 regulations. There is no dispute that the Commission had power to regulate tariff for inter-state transmission of electricity, which includes tariff for inter-regional assets. This leaves the question of sharing of transmission charges for

inter-regional assets approved by the Commission. In our opinion, the question of sharing of transmission charges for inter-regional assets is incidental to the effective exercise of power of regulation of tariff by the Commission. Without a power to lay down the methodology of sharing of transmission charges for inter-region assets, the Commission shall not be able to effectively discharge the function of regulation of tariff for inter-regional assets.

12. The Raipur-Rourkela transmission line is constructed primarily as an inter-regional link between the Eastern and Western Regions. Therefore, the transmission charges are to be borne by the two regions in the ratio of 50:50 in accordance with the principle laid down in Clause 4.8 *ibid*. However, in situations of emergency the transmission line may act as a back up for conveyance of power from Eastern Region to Southern Region through the displacement method. In that case, the beneficiaries in the Southern Region are also liable to pay the transmission charges depending upon actual use. The Commission in the said order dated 2.4.2003 has taken note of this fact and has ordered that in the event of beneficiaries of Southern Region using the Raipur-Rourkela transmission line, they would be liable to pay wheeling charges for this inter-regional transmission line according to use and the balance of the transmission charges, to be shared by the beneficiaries of Eastern and Western Regions. The said order dated 2.4.2003 has also become final by efflux of time. Therefore, the respondent cannot be heard to deny its liability arising under the said order dated 2.4.2003.

13. We also take notice of the fact that the order dated 2.4.2003 was passed after notice to all concerned including the present respondent. The respondent had filed its reply on 17.2.2003. However, in the said reply, the question of sharing of transmission

charges, presently raised in reply to the petition, was not raised. For this reason also, the respondent cannot escape its liability to share the provisional transmission charges approved by the Commission. We do not find any merit in the contention of the respondent that sharing of transmission charges should be in the ratio of 1/3:1/3:1/3 between Eastern, Western and Southern Regions, based on the deliberations of the Standing Committee and EREB meetings for the reason that the decisions arrived at these meetings cannot over-ride the 2001 regulations, which are statutory in nature.

14. The transmission charges falling to the share of Eastern Region are to be shared by the beneficiaries of the Region (including the respondent) in the same ratio as the transmission charges for the regional assets.

**Re Signing of BPTA for Raipur-Rourkela transmission line, HVDC Gazuwaka-II and Tala Transmission System**

15. According to the petitioner, considering the availability of coal in Eastern Region, surplus power is available in this region, whereas the other regions are facing the deficit situations and are importing power from Eastern Region. With further addition of the generation capacity, the quantum of surplus power in Eastern Region is to increase. Therefore, according to the petitioner the inter-regional transmission assets are being created to optimally utilise the generation resources available in the Eastern Region and to meet shortage of power in Northern, Western and Southern Regions. It is the contention of the petitioner that the commissioning of these inter-regional links facilitates transfer of surplus power available with each constituents of Eastern Region out of the power allocated to them from the central sector generating stations and in this manner, the capacity charges component of generation tariff to be paid by these constituents gets considerably reduced. Therefore, in the opinion of the petitioner,

construction of inter-regional assets will be in the overall interest of the beneficiaries in Eastern Region and, therefore, BPTA should be signed by all concerned including the respondent.

16. The respondent has stated that the beneficiaries located outside the Eastern Region and allocated power from central sector generating stations in the Eastern Region should be liable to bear cost of construction and tariff of the inter-regional links. Otherwise, the respondent will suffer heavy losses for sharing of the transmission charges. Accordingly, the respondent has declined to sign any further agreements with the petitioner for any inter-regional assets.

17. It is further submitted by the respondent that it is facing shortage situation in the State. These shortages are likely to continue up to the end of Eleventh Plan period. Therefore, the question of the respondent transferring its surplus power to other regions and sharing the transmission charges for inter-regional assets should not arise. Consequently, it is the respondent's view that there is no point in signing BPTA with the petitioner since otherwise, it will incur liability to pay the transmission charges. Learned counsel for the respondent, at the hearing submitted that direction sought by the petitioner for signing of BPTA does not flow out of the Commission's power to regulate or determine tariff for inter-state transmission.

18. The reluctance on the part of the respondent to sign the BPTA for Raipur-Rourkela line, HVDC Gazuwaka-II and Tala transmission system arises out of its apprehension that by signing BPTA, it will incur liability to share full transmission charges without drawing benefit out of the inter-regional assets. However, the petitioner has placed on record documents such as minutes of the meetings of



Standing Committee on power system planning in Eastern Region, minutes of the meeting of ERE Board and letter written by Member (T&D), BSEB to show that the respondent had given consent for construction of these assets. Based on this commitment, the respondent shall be prima-facie liable to share transmission charges for HVDC Gazuwaka II and Tala transmission system and Raipur-Rourkela line. Further, for Raipur-Rourkela line the Commission has already directed BSEB to pay provisional transmission charges based on the sharing mechanism indicated in the order dated 2.4.2003. At appropriate time, the Commission shall pass orders with regard to determination and sharing of charges for the aforesaid assets taking all the relevant factors into account.

19. Sharing mechanism for transmission charges in general depends on the commitments and relative benefits of the inter-regional assets and the Commission has been and shall continue to be alive to all the factors which warrant change in the sharing mechanism. For examples full transmission charges for HVDC Talcher-Kolar link have been assigned to Southern Region. Presently, the revision of formula for sharing of charges for inter-regional assets is being considered for which a discussion paper has been circulated by the staff of the Commission. The discussion paper proposes the following methodology as regards sharing of transmission charges for the inter-regional assets:

- (i) proportional payment according to usage for conveyance of power available due to allocation from Central generating Stations or pursuant to long-term agreement.
- (ii) Short-term floor rate equal to 50% of the effective rate for long-term customers and no revenue to be retained by the licensee.

20. The suggestions and view of the stakeholders including that of the respondent on the proposals made in the staff discussion paper have been invited. Thereafter, the Commission has proposed to hold an open hearing on 17.1.2005 on the proposals contained in the discussion paper. As the paper circulated is the staff paper, a view on the question raised in the discussion paper, including the question of sharing of transmission charges for inter-regional assets will be taken by the Commission after considering the views of the stakeholders. We expect the respondent to effectively participate in the process to enable the Commission to arrive at a just and fair decision.

21. The parties have placed on record copy of the minutes of the 98<sup>th</sup> EREB meeting held on 26.11.2000 whereat, the respondent is stated to have agreed to surrender its share from Kahalgaon STPS on receipt of power from Tala Hydro-electric project in Bhutan, which, as per the present understanding is allocated to the beneficiaries in Northern Region. Grid Corporation of Orissa is also stated to examine the tariff structure of Tala power and if possible to absorb that power and surrender the thermal power from Kahalgaon STPS or new IPP projects of Orissa. The question of sharing of transmission charges for Tala Transmission System is linked with allocation of power from Tala HEP and the transmission charges, including apportionment thereof will be decided after resolution by the competent authority of the issue of allocation of power and the formulation of revised methodology for sharing of these charges by the Commission, for inter-regional assets. The transmission charges will be determined based on such a decision.

22. Therefore, the respondent will be well advised to sign BPTA with the petitioner for Raipur-Rourkela transmission line, HVDC Gazuwaka-II and Tala Transmission System, leaving the question of tariff open to be decided by the Commission. Even

without signing BPTA, the respondent cannot absolve itself from the liability to pay the transmission charges determined by the Commission in exercise of its statutory powers and functions.

**Re Sharing of Future Inter-Regional Links**

23. The direction sought by the petitioner to the respondent for sharing transmission charges for future inter-regional links cannot be considered at this stage since there is no certainty about the inter-regional assets to be created in future and their scope. Therefore, the prayer is rejected.

24. With the above directions, the petition No.95/2004 stands disposed of.

**Sd/-  
(H.L. BAJAJ)  
MEMBER**

**Sd/-  
(K.N. SINHA)  
MEMBER**

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

**New Delhi dated the 19<sup>th</sup> January, 2005**