**CENTRAL ELECTRICITY REGULATORY COMMISSION**
**NEW DELHI**

**Coram:**

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

**Review Petition No.82/2003 in**
**Petition No. 15/2003**

**In the matter of**

Review of Commission's order dated 3.9.2003 in Petition No.15/2003

**And in the matter of**

Grid Corporation of Orissa Ltd …. **Petitioner**

**Vs**

1. Tamil Nadu Electricity Board, Chennai
2. Power Grid Corporation of India Ltd, New Delhi
3. Andhra Pradesh Transmission Corporation Ltd, Hyderabad
4. Karnataka Power Transmission Corporation Ltd, Bangalore
5. Kerala State Electricity Board, Trivandrum
6. Government of Pondicherry, Pondicherry
7. Bihar State Electricity Board, Patna
8. West Bengal State Electricity Board, Kolkata
9. Damodar Valley Corporation, Kolkata
10. Jharkhand State Electricity Board, Ranchi
11. Government of Sikkim, Gangtok
12. Himachal Pradesh State Electricity Board, Shimla
13. Haryana Vidyut Prasaran Nigam Ltd, Chandigarh
14. Power Dev. Department, Srinagar
15. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
16. Delhi Transco Ltd., Delhi
17. Punjab State Electricity Board, Chandigarh
18. Uttar Pradesh Power Corporation Ltd., Lucknow
19. Uttaranchal State Electricity Board,
20. Chandigarh Electricity Department, Chandigarh
21. Assam State Electricity Board, Guwahati
22. Meghalaya State Electricity Board, Shillong
23. Gujarat State Electricity Board, Ahmedabad
24. Maharashtra State Electricity Board, Bombay
25. M.P. State Electricity Board, Bhopal
26. Chhatisgarh State Electricity Board,
27. Goa Electricity Department, Goa
28. Administration of Daman & Diu,
29. Eastern Regional Electricity Board, Kolkata

30. Western Regional Electricity Board, Bombay
31. Southern Regional Electricity Board, Bangalore
32. North-Eastern Regional Electricity Board, Shillong
33. Northern Regional Electricity Board, Delhi …. **Respondents**

The following were present:

1. Shri R.K. Mehta, Advocate, GRIDCO
2. Shri M. Sarada, GRIDCO
3. Shri N.N. Mahapatra, SE(PP), GRIDCO
4. Shri S.S. Nayak, AEE (Elect) GRIDCO
5. Shri S. Sowmyanarayanan, TNEB
6. Shri U.K. Tyagi, DGM, PGCIL
7. Shri C. Kannan, CM, PGCIL
8. Shri P.C. Pankaj, AGM, PGCIL
9. Shri J.K. Mishra, GMDG
10. Shri S.A. Ullah, BSEB
11. Shri M.K. Ray, Member (Comml.), WBSEB
12. Shri P.C. Saha, SE(Comml.), WBSEB
13. Shri B.S. Chandrashekar, EE, KPTCL
14. Shri R.B. Sharma, MS, EREB
15. Shri B.K. Misra, NREB
16. Shri R.K. Arora, XEN, HVPN
17. Shri Subir Ghosh, SE(Comml.), DVC
18. Shri S. Chattopadhyay, SDE (Comml.), DVC

**ORDER**
**(DATE OF HEARING 27.1.2004)**

This application was filed for clarification/modification/review of the order dated 3.9.2003 in Petition No. 15/2003. It has been regisered as a review petition and heard accordingly.

2. The Commission in its order dated 8.12.2000 in Petition No. 86/2000 which, *inter alia*, dealt with the issue of sharing of transmission charges for inter-regional assets, had directed that the transmission charges “shall be recovered

from the beneficiaries by pooling 50% of the transmission charges for such inter-regional transmission lines with the transmission charges for the transmission system of respective regions for facilitating further recovery from various beneficiaries within the region". However, while notifying the terms and conditions of tariff on 26.3.2001 based on, among others, the directions of the Commission in the order dated 8.12.2000, the words "for facilitating further recovery from various beneficiaries within the region" were inadvertently omitted. This resulted in some ambiguity in interpretation of the relevant provisions of the notification issued on 26.3.2001. One of the interpretations given by Power Grid Corporation of India Ltd, (PGCIL), was that the relevant provisions of the notification dated 26.3.2001 implied that 50% of the transmission charges for the inter-regional assets were to be pooled with the transmission charges for the transmission system for the region and the pooled transmission charges were to be shared by all the beneficiaries of the regions, including those located outside the region. This question was raised in review petition No. 117/2002 filed by PGCIL. The exact scope of the provision of the notification dated 26.3.2001, was clarified in the order dated 4.4.2003, based on the decision contained in order dated 8.12.2000, that 50% of the transmission charges for inter-regional assets were not to be pooled with the transmission charges of other regional assets for the purpose of sharing by those outside the region. Further, in order to bring the provisions of the notification dated 26.3.2001 at par with those of the order dated 8.12.2000, the relevant provisions of the notification dated 26.3.2001 were amended by a further notification issued on 23.5.2003, by inserting the words "for facilitating further

recovery from various beneficiaries within the region" which were earlier left out or omitted. The amended provision as it stands now after the amendment reads as under:

> "The Transmission Charges of the inter-regional assets including HVDC shall be shared in the ratio of 50:50 by the two contiguous regions. These Transmission Charges shall be recovered from the beneficiaries by pooling 50% of the Transmission Charges for such inter-regional assets with the Transmission Charges for transmission system of the respective regions for facilitating further recovery from various beneficiaries within the region".

3. Despite the clarification given in the order dated 4.4.2003, the constituents of Southern Region were billed by PGCIL to share the transmission charges for inter-regional assets and also the balance of 50% of the charges along with the beneficiaries of the Eastern Region. Therefore, an application (Petition No. 15/2003) was filed by Tamil Nadu Electricity Board disowning its liability to further share 50% of the charges allocated to Eastern Region on account of 500 MW HVDC back to back station at Gazuwaka between Southern and Eastern Region and other similar inter-regional assets. The present applicant was a party to the said application along with other constituents of Southern and Eastern Regions. A reply to the application was filed on behalf of the present applicant. However, none appeared on its behalf when the application was heard. Upon hearing, the Commission in its order dated 3.9.2003, after adverting to the provisions of the order dated 8.12.2000 in Petition No. 86/2000 and subsequent amendment to notification dated 23.5.2003, further clarified the position as under:

> "15. In order to avoid any ambiguity, we sum up the conclusions arrived at by way of clarification as under:

(a) 50% of the transmission charges for the inter-regional assets shall be shared by the constituents of the exporting region and the balance 50% of these charges shall be shared, by the constituents of the importing region. This will, however, not apply in the case of constituents of North Eastern Region, who are liable to transmission charges @ 35 paise per unit of the energy transmitted in terms of the UCPTT scheme.

(b) The transmission charges on account of inter-regional assets shall not be shared by the constituents of the region not utilising the particular inter-state transmission asset

(c) The transmission charges for the regional transmission assets shall be pooled and shared by the constituents of the exporting as we as the importing regions in the ratio of allocation of power from the generating stations in the exporting region."

4. The applicant seeks review of the order dated 3.9.2003. The beneficiaries in the Eastern Region have supported the claim of the applicant while the beneficiaries in the Southern Region have opposed the application for review and have supported the conclusions arrived at by the Commission in the order dated 3.9.2003.

5. It is first contended by the applicant that it had not been given notice of the amendment of the notification dated 26.3.2001 by the further notification dated 23.5.2003. We take note of the fact that the amendment was carried out in order to bring the notification dated 26.3.2001 at par with the Commission's decision contained in its order dated 8.12.2000 which is duly explained in the explanatory memorandum attached to the amendment notification dated 23.5.2003. The order dated 8.12.2000 was passed through the consultative process of hearing and the applicant was duly involved with the process. Therefore, in our opinion, no fresh notice needed before effecting the amendment. No provision of law was brought

to our notice that the amendment to the terms and conditions of tariff contained in the notification dated 26.3.2001 could be carried out only after notice to the applicant. It is further noted that the applicant was a party to Review Petition No. 117/2002 filed by PGCIL, based on which the position was clarified earlier in the order dated 4.4.2003. The applicant had, however, not raised any objection to the clarification given in the order dated 4.4.2003. In our opinion, the applicant cannot be permitted at this stage to raise the dispute on the same issue.

6. On merits, the applicant has contended that the practice of pooling of 50% of the transmission charges for the inter-regional assets with the regional transmission charges and their sharing by all the beneficiaries including those outside the region was based on Ministry of Power notification dated 16.12.1997. It is, therefore, contended that amendment of the notification dated 26.3.2001 by the notification dated 23.5.2003 was uncalled for. The argument made was that on consideration of the historical background also, the beneficiaries outside the region were liable to share further the transmission charges falling to the share of the beneficiaries in the Eastern Region. We do not find any merit in the contention. Ministry of Power notification dated 16.12.1997 ceased to apply with effect from 1.4.2001 when the Commission's notification dated 26.3.2001 took effect. The changes in the terms and conditions of tariff have been effected by the Commission in exercise of its statutory powers conferred under the Electricity Regulatory Commissions Act, 1998. Therefore, no reliance can be placed by the applicant on Ministry of Power notification dated 16.12.1997 for this purpose. The

Commission in its order dated 8.12.2000 had eloquently decided that the transmission charges for inter-regional assets would be shared by the beneficiaries within the region. As already noted, the order dated 8.12.2000 was translated into the notification dated 26.3.2001, as amended from time to time. Therefore, sharing of transmission charges for the inter-regional assets has to be governed by and in conformity with the notification dated 26.3.2001, which clearly provides that the beneficiaries situated within the region are liable to share 50% of the transmission charges for the inter-regional assets.

7. The applicant has sought review of the order dated 3.9.2003 in Petition No. 15/2003. In fact, the order dated 3.9.2003 is merely a reiteration of the position stated in the Commission's order dated 8.12.2000, against which the applicant has not made any grievance at any stage. Therefore, procedurally also, the application for review is not maintainable and is liable to be dismissed.

8. At the hearing it was suggested that in case the constituents of Eastern Region are to exclusively share 50% of the transmission charges for inter-regional assets, they were unlikely to agree to construction of such assets in future since it did not involve any benefit to them, but rather added to their liability. We do not agree to the submission made. The inter-regional transmission assets have been created for evacuation of surplus central sector power from the Eastern Region to other regions. In case the inter-regional assets are not created, it will not be possible to transmit power from the Eastern Region to other regions.

Consequently, the constituents of the Eastern Region will be liable to pay the capacity charges for the central sector generating stations located in the Eastern Region. With the transfer of such power to other regions their liability to pay capacity charges gets reduced. Therefore, creation of inter-regional assets is of direct benefit to them.

9. Another submission that was made was that the Commission's decision would have long-term effect on the constituents of Eastern Region since in future as well, they would be made to share the transmission charges for inter-regional assets. In order to allay the apprehensions expressed by the applicant and others in the Eastern Region, we point out that if an inter-regional link is crated entirely for beneficiaries outside the region, the entire charges would be borne by such beneficiaries. A case in point is Talchar-Koar HVDC link between Eastern Region and Southern Region, whose charges are borne by Southern Region only.

10. It was further contended that even though TNEB did not specify effective date for relief, the Commission has made the order effective from 1.4.2001. We do not find any merit in the contention. The order dated 3.9.2003 is merely of clarificatory nature, and takes its colour and force from the order dated 8.12.2000 read with the Commission's notification dated 26.3.2001, as amended. Therefore, it is not correct to say that the order dated 3.9.2003 has been applied retrospectively from 1.4.2001.

11. The applicant also brought to our notice the letter dated 18.9.2002 from Member (TH. & G&O), CEA, (page 105 of the paper book) and further contended that its view on the question of sharing of transmission charges is shared by CEA, which is another statutory authority. Without entering into any controversy, we may say that regulation of tariff for inter-state transmission is within the exclusive jurisdiction of this Commission, and, therefore, the terms and conditions of tariff notified by this Commission and the views of the Commission deserve primacy over the views of any other authority.

12. The upshot of the above discussion is that the application for review must fail. Accordingly, the application is dismissed.

**IA No. 63/2003**

13. Along with application for review, the applicant had filed IA No. 63/2003 with a prayer for stay of operation of the order dated 3.9.2003. We have already taken a view that the application for review is not maintainable and have ordered its dismissal. Therefore, no separate order need to be passed on the interlocutory application, which also stands dismissed along with the main application for review.

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

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

New Delhi dated the 19th April, 2004