

**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.28/2006

In the matter of

Non-payment of dues of GRIDCO by BSEB and JSEB towards drawal of power from ER Regional Pool during October 1999, November 1999, August 2001 and September 2001.

And in the matter of

Grid Corporation of Orissa Ltd., Bhubaneswar

..Petitioner

Vs

1. Bihar State Electricity Board, Patna
2. Jharkhand State Electricity Board, Ranchi
3. Eastern Regional Electricity Board, Kolkata

...Respondents

The following were present:

1. Shri Srikanta Kumar Sab, GRIDCO
2. Shri A.K. Satpathy, SE(PP), GRIDCO
3. Shri R.B. Sharma, Advocate, BSEB
4. Shri Samir Kumar Ghosh, BSEB
5. Shri Sakya Singha Chaudhuri, Advocate, JSEB
6. Shri Mohandha, ERPC
7. Shri J.K. Khatri, ERPC

ORDER

(DATE OF HEARING : 10.8.2006)

The petitioner has filed the present petition to claim an amount of Rs.21,55,32,254 from Respondent No.1 , Bihar State Electricity Board (BSEB) and Rs.2,76,05,730 from Respondent No.2, Jharkhand State Electricity Board (JSEB) for the power supplied to them during October and November 1999 and August and September 2001 from Eastern Region Pool falling to the petitioner's share. The amount claimed includes the Delayed Payment Surcharge.

2. The details of the claim of the principal amount are given as under:

BSEB

Month	Quantum of energy (in kWh) drawn by BSEB	Rate per kWh (Rs./kWh)	Total amount payable (Rs.)
October 1999	33,347,731	1.88	6,26,93,734.28
November 1999	4,709,197	1.88	88,53,290.36
August 2001	6,049,482	1.88	1,13,73,027
September 2001	6,023,770	1.88	1,13,24,688
Total amount due	50,130,180		9,42,44,740

JSEB

Month	Quantum of energy (in kWh) drawn by BSEB	Rate per kWh (Rs./kWh)	Total amount payable (Rs.)
August 2001	6,115,172	1.88	1,14,96,523
September 2001	6,089,180	1.88	1,14,47,658
Total amount due	12,204,352		2,29,44,181
Less: amount paid			1,14,10,477
Total amount due			1,15,33,704

3. It has been confirmed by Member-Secretary, ERPC in his letter dated 26.7.2006 that during the months of October and November 1999, the petitioner had injected into Eastern Regional Pool 59649.266 MWH and 7621.117 MWH of energy respectively from its own sources. As per the Global Energy Accounts issued by Respondent No.3, Eastern Regional Electricity Board, 33347.731 MWH and 4709.197 MWH of energy was booked to BSEB. Further, during the months of August and September 2001, the petitioner injected into Eastern Regional Pool 24320.540 MWH and 19197.320 MWH of energy respectively from its own sources. According to the revised Global Energy Accounts for these months, issued by Respondent No.3, 9858.617 MWH and 11126.024 MWH were booked to BSEB, which also included share of JSEB. The petitioner did not receive payments for the energy supplied, and has claimed charges @ Rs.1.88/kWh, the provisionally agreed Regional Pool cost/rate (R.P. cost) for 1999-2000 indicated in EREB fax dated 3.12.1999.

4. Meanwhile, the Central Government in Ministry of Power issued a notification dated 4.11.2004 under sub-section (3) of Section 62 of Bihar Reorganisation Act, 2000 under which the Central Government appointed the first day of April 2001 as the date on which Bihar State Electricity Board (common to the States of Bihar and Jharkhand) ceased to function and stood dissolved. Thereafter, BSEB became functional within the territory of the successor State of Bihar. The Central Government made further orders for apportionment of assets, rights and liabilities of the erstwhile Bihar State Electricity Board between the successor Electricity Boards of Bihar (BSEB) and Jharkhand (JSEB) as under:

- “(i) Assets: The fixed assets are divided on the basis of geographical nexus
- (ii) Liabilities: Long term liabilities are divided in the ratio of fixed assets i.e. 67:33 (Bihar:Jharkhand)
- (iii) Current assets and current liabilities: The apportionment of current assets and current liabilities shall be in the ratio of consumption of power i.e. 49.73:50.27 (Bihar:Jharkhand)”

5. In keeping with the above notification dated 4.11.2004, the petitioner has claimed charges for the period August and September 2001 from Respondent No.1 and respondent No.2 in the ratio of 49.73 : 50.27. The charges for the months of October and November 1999 have been claimed from BSEB only.

6. It transpires that issue of finalization Regional Pool cost/rate (R.P. cost), for the years 1996-97 to 2002-03 was discussed in the 1st Commercial Committee meeting of Eastern Regional Power Committee, the successor of EREB, held on 7.7.2006 when it was agreed to adopt R.P. cost of Rs.1.41/kWh for the years 1996-97 to 2000-01 (subject to ratification by ERPC). It was also agreed that for the subsequent years, R.P. cost would be calculated by considering escalation @ 10% per annum.

Accordingly the agreed R.P. cost for the year 2001-02 was Rs.1.55/kWh again subject to ratification by ERPC.

7. It has been observed from the replies placed on file and also the submissions made at the hearing, that a meeting called by Member-Secretary, ERPC was held on 21.7.2006 wherein both BSEB and JSEB agreed to pay the outstanding amounts but without Delayed Payment Surcharge. The petitioner is stated to have agreed to consider any proposal for waiver of DPS from BSEB and JSEB. The representatives of BSEB and JSEB reiterated their submissions at the hearing.

8. JSEB in its reply has submitted that the State of Jharkhand and JSEB have filed a petition before the Hon'ble Supreme Court of India (Petition No.1/2005) challenging the ratio for apportionment of assets and liabilities decided by the Central Government by its notification dated 4.11.2004. It has been stated that the petitioners therein have taken a stand that ratio between two Boards should be fixed on population ratio of 3:1 (Bihar:Jharkhand). JSEB is, therefore, agreeable to pay the charges in the ratio of 75:25 (BSEB:JSEB) @ Rs.1.55/kWh for the months of August and September 2001, less the amount already paid and subject to outcome of the petition before the Hon'ble Supreme Court. At the hearing, learned counsel for JSEB clarified that there was no stay on operation of the notification dated 4.11.2004 in the proceedings pending before the Hon'ble Supreme Court.

9. In the circumstances, we direct the petitioner to raise fresh bills for payment of outstanding amounts @ Rs.1.41/kWh for the months of October and November 1999 and @ Rs.1.55/kWh for the months of August and September 2001, subject to

ratification of the rates by ERPC, based on the Global Energy Accounts issued by EREB. The charges for the months of August and September 2001 shall be provisionally shared between BSEB and JSEB in the ratio of 49.73:50.27 and shall be subject to the outcome of the petition jointly filed by the State of Jharkhand and JSEB before the Hon'ble Supreme Court. The full payment of the outstanding amount shall be released by BSEB and JSEB within three months of receipt of the bills from the petitioner.

10. We note from submissions of the respondents that the energy supply under discussion in this order was not covered by any requisition or contractual arrangement. There was no requirement/compulsion for the petitioner to supply the energy, nor was there any commitment by the recipient to pay for the energy within a time frame (except for informal and reciprocal understanding in EREB forum). We, therefore, do not consider it appropriate to award Late Payment Surcharge to the petitioner, as long as payments are released by BSEB and JSEB as per this order.

11. With the above, the present petition stands disposed of.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 23rd August 2006