

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**

Review Petition No.62/2006

In

Petition No. 3/2005

In the matter of

Review of the order dated 9.5.2006 in Petition No. 3/2005

And in the matter of

Tripura State Electricity Corporation Limited ... **Petitioner**
Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. North Eastern Regional Electricity Board, Shillong
3. North Eastern Electric Power Corporation Ltd., Shillong
4. National Hydro Electric Power Corporation Ltd., Faridabad
5. Assam State Electricity Board, Gauahati
6. Meghalaya State Electricity Board, Shillong
7. Department of Power, Government of Arunachal Pradesh, Itanagar
8. Power & Electricity Deptt., Govt. of Mizoram, Aizwal
9. Electricity Deptt., Govt. of Manipur, Imphal
10. Department of Power, Govt. of Nagaland, Kohima **Respondents**

Review Petition No.72/2006

In

Petition No. 3/2005

In the matter of

Review of the order dated 9.5.2006 in Petition No. 3/2005

And in the matter of

Assam State Electricity Board, Guwahati ... **Petitioner**
Vs
1. Power Grid Corporation of India Limited, Gurgaon
2. North Eastern Regional Electricity Board, Shillong
3. North Eastern Electric Power Corporation Ltd., Shillong
4. National Hydro Electric Power Corporation Ltd., Faridabad
5. Meghalaya State Electricity Board, Shillong
6. Department of Power, Government of Arunachal Pradesh, Itanagar
7. Power & Electricity Deptt., Govt. of Mizoram, Aizwal
8. Electricity Deptt., Govt. of Manipur, Imphal
9. Department of Power, Govt. of Nagaland, Kohima
10. Department of Power, Govt. of Tripura, Agartala **Respondents**

The following were present:

1. Shri. A. Gian Chand, TSECL
2. Shri Sandesh Sharma, NERPC, Shillong
3. Shri C.M Bhogal, NERPC
4. Shri M.M.Mondal, PGCIL
5. Shri P.C. Pankaj, PGCIL
6. Shri R. Prasad, PGCIL
7. Shri S.R.K. Raju, PGCIL
8. Shri U.K. Tyagi, PGCIL
9. Shri Umesh Chandra, PGCIL
10. Shri K. Goswami, ASEB
11. Shri H.M. Sharma, ASEB
12. Shri R. Kapoor, ASEB

**ORDER
(DATE OF HEARING: 31.10.2006)**

The petitioners seek review of the Commission's order dated 9.5.2006 in Petition No. 3/2005 relating to sharing of transmission charges between Power Grid Corporation of India Ltd (PGCIL) and the beneficiaries in North Eastern Region (NER).

2. The transmission charges in NER are charged based on Uniform Common Pool Transmission Tariff (UCPTT) which is in terms of paise per unit, operational in NER since 1992. The present UCPTT rate of 35 paise/unit is effective from 1.4.1998. The transmission charges collected based on UCPTT rate have been apportioned since 1.4.98 in following manner among PGCIL and the State Utilities in NER, whose assets form part of the Common Pool of the transmission assets in the region:

| Constituent | Share (paise/unit) |
|-------------|--------------------|
| POWERGRID | 31.61618 |
| ASEB | 1.91984 |
| MeSEB | 0.30615 |
| Nagaland | 0.23056 |
| Tripura | 0.34263 |
| Manipur | 0.58464 |
| Total | 35.00000 |

3. The Commission by its order dated 1.2.2002 in Petition No.40/2000 had decided to continue the UCPTT rate of 35 paise/unit up to 31.3.2004 as the surplus transmission capacity was not made use of by the State Utilities because of lack of generation.

4. After implementation of ABT in NER from 1.11.2003, PGCIL had filed petition No.13/2004 in February 2004. One of the issues raised in that petition was for review of sharing of UCPTT rate of 35 paise/unit from 1.2.2000. The petition was disposed of by order dated 6.9.2004 with the direction to Member-Secretary, NEREB to expedite determination of revised UCPTT sharing formula since in the course of the proceedings the Commission was informed that

reapportionment of UCPTT was under consideration of a Committee formed by NEREB.

5. PGCIL later on filed another petition (No. 3/2005) wherein it was submitted that the Committee constituted by NEREB had discussed revision of UCPTT sharing formula but could not arrive at any decision. PGCIL further submitted that since revision of UCPTT from 1.4.1998, its investment in NER had increased by Rs.1158.55 crore due to commissioning of additional lines and sub-stations during the period 1998-2003 and its network was singly adequate for evacuation of central sector power in the region. Accordingly, PGCIL contended that it was entitled to claim the entire UCPTT of 35 paise/unit. The Commission by order dated 28.6.2005 directed NEREB to file details of the transmission assets forming part of ISTS with their respective dates of commissioning. As NEREB's submission in this regard lacked details, it was further directed vide order dated 1.9.2005 to compile complete information and submit a fresh report.

6. Member-Secretary, NEREB/NERPC after interaction with the constituents of the region, submitted his report to the Commission on 23.9.2005. Starting date in respect of the information furnished in the above report was not clear. Accordingly, Member-Secretary was directed to clarify the issue. The details of apportioning of UCPTT for different periods indicated by the Member-Secretary NERPC in the report dated 23.9.2005, as clarified subsequently by his letter dated 21.4.2006 is as under:

(Paise/unit)

| Constituent | 2/2000-12/2000 | 1/2001-9/2001 | 10/2001-12/2002 | 1/2003-3/2004 | 4/2004-5/2004 | 6/2004-12/2004 | 1/2005-7/2005 |
|-------------|----------------|---------------|-----------------|---------------|---------------|----------------|---------------|
| POWERGRID | 33.877564 | 33.894439 | 33.900301 | 33.995626 | 34.006728 | 33.864863 | 33.668547 |
| ASEB | 0.734394 | 0.723353 | 0.719517 | 0.657148 | 0.649884 | 0.784769 | 0.768377 |
| MeSEB | 0.110869 | 0.109202 | 0.108623 | 0.099207 | 0.098111 | 0.099207 | 0.097135 |
| Nagaland | 0.077787 | 0.076617 | 0.076211 | 0.069605 | 0.068836 | 0.069605 | 0.271047 |
| Tripura | 0.116269 | 0.114521 | 0.113913 | 0.104039 | 0.102889 | 0.124676 | 0.122072 |
| Manipur | 0.083117 | 0.081868 | 0.081434 | 0.074375 | 0.073553 | 0.074375 | 0.072821 |
| Total | 35.000000 | 35.000000 | 35.000000 | 35.000000 | 35.000001 | 35.017496 | 35.000000 |

7. The Commission after considering the report simplified UCPTT apportionment formula as under:

(Paise/unit)

| Constituent | 2/2000-12/2002 | 1/2003-5/2004 | 6/2004-12/2004 | 1/2005-onwards |
|-------------|----------------|---------------|----------------|----------------|
| POWERGRID | 33.877564 | 33.995626 | 33.864863 | 33.668547 |
| ASEB | 0.734394 | 0.657148 | 0.784769 | 0.768377 |
| MeSEB | 0.110869 | 0.099207 | 0.099207 | 0.097135 |
| Nagaland | 0.077787 | 0.069605 | 0.069605 | 0.271047 |
| Tripura | 0.116269 | 0.104039 | 0.124676 | 0.122072 |
| Manipur | 0.083117 | 0.074375 | 0.074375 | 0.072821 |
| Total | 35.000000 | 35.000000 | 35.017495 | 35.000000 |

8. The Commission in its order dated 9.5.2006, presently sought to be reviewed, directed Member-Secretary, NEREB to issue details of net amount payable/receivable by different agencies based on the revised sharing formula. We have been informed that the revised formula has not been implemented so far in view of filing of the present applications for review.

9. We proceed to discuss the issues raised by the petitioners, reply of the respondents and our findings thereon.

10. The petitioners seek review of the order dated 9.5.2006 on the ground that the Commission has revised the formula for sharing of UCPTT retrospectively as a consequence of which they would be required to refund huge amounts to PGCIL, which they will not be able to realize from the consumers. By referring to order dated 1.2.2002 in Petition No. 40/2000, the petitioners have pointed out that in the said order, the Commission had allowed to continue UCPTT rate of 35 paise up to 31.3.2004. It has also been pointed out that they objected to the approach adopted by the Member- Secretary, NERPC to arrive at the revised UCPTT sharing formula. Assam State Electricity Board, in particular, has pointed out that the Commission's observations in Para 12 of the order dated 9.5.2006, to the effect that it had agreed with the report and its recommendations as indicated by the Member-Secretary, NERPC is not correct. It has been submitted that ASEB was asked to give comments on cost data of the State sector lines and it did not comment on the date of implementation of the revised formula for sharing of UCPTT.

11. In this regard PGCIL has submitted that in terms of the Commission's orders dated 1.2.2002 and 6.9.2004, the transmission tariff in NER has been pegged at 35 paise/unit but these orders do not stipulate that new transmission lines constructed and commissioned by it should not be considered for tariff

apportionment. According to PGCIL, sharing of UCPTT rate of 35 paise/unit is based on investments made by different utilities and therefore, sharing formula is subject to variation on commissioning of new lines and sub-stations. On the contention of the petitioners that UCPTT should be based on annual transmission charges of Rs.91.18 crore and normative flow of energy of 2780 MUs, PGCIL has stated that annual transmission charge is a derivative of capital cost and, therefore, apportioning of UCPTT rate based on investment is a rational and logical method. PGCIL has contended that continuation of the annual transmission charge of Rs 91.18 crore, calculated in 1998 has become redundant because between 1998 and 2003 many new lines have been commissioned by PGCIL. Further, it has been contended by PGCIL that logic of consideration of normative flow of energy of 2780 MUs is no longer appropriate because actual flow of energy during 2005-06 had been to the extent of 6139 MUs.

12. PGCIL has submitted that the contention that report of Member-Secretary, NERPC is not as per directions of Commission, cannot be agreed to as this aspect has been considered in paras 7 and 8 of the Commission's order dated 9.5.2006. UCPTT mechanism before order dated 9.5.2006 considered only a few of the total lines of PGCIL commissioned in NER by allowing a part of UCPTT charge of 35 paise/unit to them. The beneficiary States also used to get some part of UCPTT in the form of de-pooling charges and this amount was more than the proportion of their investment in the assets falling to common pool.

PGCIL has submitted that with implementation of the Commission's order dated 9.5.2006, the beneficiary States will not have to pay any additional amount. The order will only result in refund of the excess amount received earlier by the State utilities over a period of time to which they were not entitled and, therefore, the contention that order dated 9.5.2006 has affected the beneficiary States financially is not correct.

13. PGCIL has stated that the petitioners have sought waiver of arrears and revision with prospective effect although they have earned substantial amount through UI since November 2003 by utilization of its network. PGCIL has requested to approve reapportioning of UCPTT rate of 35 paise/unit as recommended by Member-Secretary, NERPC vide his letter dated 6.8.2006 based on a representation made by PGCIL and to implement the apportionment from 1.2.2000. According to PGCIL, the revised data submitted vide its letter dated 21.7.2006 was consequent to reduction of capital cost based on audited figures.

14. Member-Secretary, NERPC has submitted that after issue of the Commission's order dated 9.5.2006, he vide his letter dated 5.6.2006 informed the Commission that some error had occurred in sharing of UCPTT for the period June to December 2004. He, therefore, furnished the revised sharing formula for that period. Soon thereafter, Member-Secretary, NERPC vide his letter dated 15.6.2006 submitted revised tables for various periods, based on revised

cost of NER intimated under PGCIL's letter dated 7.6.2006. Subsequently, Member Secretary, NERPC vide his letter dated 6.8.2006 further revised the tables for various periods due to revised cost of NER assets intimated again by PGCIL, now vide its letter dated 24.7.2006. The revised sharing formula finally intimated by Member-Secretary, NERPC is given below:

| | | | | | | | (Paise/unit) |
|-------------|----------------|---------------|-----------------|---------------|---------------|----------------|---------------|
| Constituent | 2/2000-12/2000 | 1/2001-9/2001 | 10/2001-12/2002 | 1/2003-3/2004 | 4/2004-5/2004 | 6/2004-12/2004 | 1/2005-7/2005 |
| PGCIL | 33.680532 | 33.704037 | 33.712086 | 33.841119 | 33.853696 | 33.690816 | 33.465764 |
| ASEB | 0.863309 | 0.847930 | 0.842664 | 0.758240 | 0.750010 | 0.891357 | 0.885403 |
| Manipur | 0.097708 | 0.095967 | 0.095371 | 0.085816 | 0.084885 | 0.084476 | 0.083912 |
| MeSEB | 0.130331 | 0.128009 | 0.127214 | 0.114469 | 0.113227 | 0.112682 | 0.111929 |
| Nagaland | 0.091441 | 0.089812 | 0.089255 | 0.080313 | 0.079441 | 0.079059 | 0.312328 |
| Tripura | 0.136679 | 0.134244 | 0.133410 | 0.120044 | 0.118741 | 0.141610 | 0.140664 |
| Total | 35.000000 | 35.000000 | 35.000000 | 35.000000 | 35.000000 | 35.000000 | 35.000000 |

15. Member-Secretary, NERPC vide its letter dated 5.10.2006 has submitted that the issue of UCPTT was discussed in TCC and NERPC meetings held on 12th and 13th September 2006 and it was resolved that up to 8.5.2006, the earlier sharing as per the Commission's order dated 1.2.2002 in Petition No. 40/2000 should be applicable and w.e.f. 9.5.2006, the sharing of UCPTT as per the revised sharing formula calculated by Member-Secretary, NERPC vide letter dated 6.8.2006 should be applicable. We find from the minutes of above meetings that PGCIL had not agreed to the resolution.

16. Basically there are two issues to be resolved. The first issue is the basis for computation of the revised formula. The petitioners have questioned the

computation based on capital cost of transmission assets as adopted by Member-Secretary, NERPC. They have insisted that earlier practice of annual transmission charges for apportionment of 35 paise/unit should be continued. It has been pointed out by the petitioners that under the Electricity Act, 2003 and regulatory regime, the State power utilities have to deal with prospective buyers for implementation of consumers' tariff and they do not have any scope or commitment to bind the existing or previous consumers with any past liability. However, from the copy of the resolution forwarded by Member-Secretary, NERPC under his letter dated 5.10.2006, it is noted that North Eastern States including the petitioners have reconciled to the computation based on capital cost as adopted by Member-Secretary NERPC. The representatives of the petitioners confirmed this at the hearing. Accordingly, this issue does not survive.

17. The only other issue now left for adjudication is whether the revised sharing as suggested by NERPC could be implemented prospectively or retrospectively. According to the petitioners, the consumers' tariffs are fixed by State Commissions on the basis of Annual Revenue Requirements (ARRs) of the State's Power Utilities for the prospective period. The consumers' tariff is already very high in NER, tariff in the State of Assam being the highest in the country. It is submitted by the petitioners that loading of 5-6 years arrears would further escalate the consumer's tariff, giving tariff shock to them. This is the sole surviving ground for review.

18. Under the existing UCPTT rate of 35 paise/unit, PGCIL has been getting 31.61618 paise/unit. Revision in apportionment of 35 paise/unit increases PGCIL's entitlement putting State utilities into further financial hardships.

19. The transmission tariff in NER is being charged at UCPTT rate, which is in terms of paise per unit, operational since 1992. The present UCPTT rate of 35 paise/kWh is effective from 1.4.1998. The petitions were filed by PGCIL for approval of tariff for certain newly commissioned assets in NER. In one such case (Petition No. 40/2000), the Commission decided to continue the UCPTT rate of 35 paise/kWh up to 31.3.2004 in view of the surplus transmission capacity not being made use of by the State Utilities in NER. The relevant excerpts of the Commission's order dated 1.2.2002 in petition No 40/2000 are given hereunder:

“12. The transmission schemes in respect of which tariff approval has been sought were approved by the Central Government to match with the future generation of power by NEEPCO. It is on record that except Kathalguri gas plant, no other generating plant connected with these transmission schemes had been put to commercial operation by 1.2.2000, the date from which tariff has been claimed by the petitioner. There is thus an excess of transmission capacity and the respondents are not deriving any benefit out of such excess capacity. Under these circumstances, the respondents cannot be made liable to pay the transmission charges for the excess capacity. In fact, from the petition itself we find that PIB, while approving the revised cost estimates for Kathalguri transmission system, advised the petitioner to enter into a back-to-back commercial agreement with the generating utility and seek grant/compensation in case of delay or non-commissioning of the unit as per schedule. It becomes evident that even PIB did not intend the respondents to be burdened with extra tariff because of non-availability of generation commensurate with the transmission capacity. Therefore, tariff of these transmission schemes cannot be fixed under the notification dated 16.12.97.

13. *In the light of the foregoing, we direct that the respondents shall be liable to pay the transmission charges @ 35 paise/kwh of the power transmitted in the region. This tariff shall be applicable from 1.2.2000 to a period up to 31.3.2004 or till such time the power generation matching the transmission capacity is available, whichever is earlier. However, we wish to advise the Central Government to finalise an appropriate relief package for the NE region. If the Central Government finalise relief package, then the difference between actual tariff and the tariff of 35 paise/kwh which we have ordered, shall be provided from the relief package to the petitioner. If this does not happen, petitioner would have to bear the difference. We expect that the petitioner, however, would pursue the matter and obtain an early favourable decision from the Central Government. The petitioner may get this petition revived in that eventuality. As a corollary of this direction, the petitioner need not file transmission tariff petitions for any other transmission system in the region since other transmission systems get covered by these directions, which are in the context of the power transmitted and not based on the terms and conditions notified by the Ministry of Power on 16.12.1997”.*

20. From the above, it is observed that the Commission had approved the UCPTT rate of 35 paise/unit, effective from 1.4.1998 in Petition No. 40/2000 without going into the question of sharing of the charges by the different parties. This question was not the subject matter of that petition. The intention behind continuation of 35 paise/unit was to maintain status quo up to 31.3.2004, which should imply status quo on apportionment of 35 paise/unit also. PGCIL did not raise the issue of sharing of UCPTT rate of 35 paise/unit till it filed Petition No. 13/2004 in February 2004, wherein it claimed the entire UCPTT charge of 35 paise/unit by giving some interpretation of the order dated 1.2.2002. However, in this petition also, the Commission did not approve the re-apportionment since the matter was said to be under consideration of the Committee formed by NEREB. These aspects have not been considered by the Commission in its order dated 9.5.2006. Accordingly, the case for review has been made out.

21. Since the only issue to be decided is the date of implementation of the revised formula and the parties have made their submissions on merits, we are deciding this issue in these review proceedings. In view of the discussion in the preceding paras, we consider it appropriate that the revised sharing formula be implemented from 1.4.2004, that is, from the financial year immediately following the filing of Petition No. 13/2004 and from the beginning of the financial year of filing of Petition No. 3/2005 wherein the issue of apportionment was decided. This also takes into consideration the order dated 1.2.2002 in Petition No. 40/2000 wherein it was decided to continue the existing UCPTT rate of 35 paise/unit, up to 31.3.2004. We do not find enough merit and rationale in the contention of the petitioners to implement the revised formula from the date of issue of the order in Petition No. 3/2005 on 9.5.2006.

22. The Commission by its order dated 7.4.2006 in the Review Petition No. 189/2004 decided to take a fresh view on the total issue of transmission charges for the assets owned by PGCIL who has since filed the tariff petitions pertaining to NER. The tariff determination in those petitions will also take care of PGCIL's grievance to some extent.

23. PGCIL has raised the issue of the financial loss to it for non-implementation of the revised sharing formula of 35 paise/unit for the period 1.2.2000 to 31.3.2004. In this context, it is noted that transmission tariff in NER

had never been on the commercial basis in view of the peculiar facts and circumstances applicable to that region and the reasons for the same have been clearly brought out in the Commission's order dated 1.2.2002 in Petition No. 40/2000, wherein it has been stated that the difference between actual tariff and tariff of 35 paise/unit could be recovered from relief package of Central Government for NER. Therefore, the arrear amount on account of the revised sharing of 35 paise/unit for the period 1.2.2000 to 31.3.2004 could also be clubbed with the relief package under consideration of the Central Govt.

24. Based on the finally revised sharing of UCPTT as intimated by Member-Secretary, NERPC vide his letter dated 6.8.2006, we direct that the following UCPTT apportionment shall be effective from 1.4.2004:

| Constituent | (Paise/unit) | | |
|-------------|---------------|----------------|---------------|
| | 4/2004-5/2004 | 6/2004-12/2004 | 1/2005-3/2007 |
| PGCIL | 33.853696 | 33.690816 | 33.465764 |
| ASEB | 0.750010 | 0.891357 | 0.885403 |
| Manipur | 0.084885 | 0.084476 | 0.083912 |
| MeSEB | 0.113227 | 0.112682 | 0.111929 |
| Nagaland | 0.079441 | 0.079059 | 0.312328 |
| Tripura | 0.118741 | 0.141610 | 0.140664 |
| Total | 35.000000 | 35.000000 | 35.000000 |

25. The arrears for the period from 1.4.2004 to 30.11.2006 shall be paid in eight equal quarterly installments commencing on 31.3.2007 and shall be liquidated by 31.12.2008. No interest shall be charged as long as payments are released as per above schedule. Member-Secretary, NERPC shall issue details

of net amounts payable/receivable by different agencies based on sharing formula specified above latest by 15.2.2007.

26. With the above, Review Petitions No. 62/2006 and 72/2006 are disposed of.

Sd/-
(BHANU BHUSHAN)
MEMBRER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated 27th December, 2006