

M.A.No. 150/06, 156/06, 159/06, 185/06, 197/06, 199/06 & 200/06  
in  
Case No. 28/06

Present for: HPSEB: Sh.Rakesh Thakur, Advocate  
Sh.Manmohan Singh,CE(SO)  
Sh.Rattan Singh Thakur,  
Director (PR&CORC)  
Sh.R.N.Kaul, Dir. (I/S)

UJVNL: Sh. C.P. Madan, DGM(Com)

Consumer Representative: Sh.P.N.Bhardwaj  
(under section 94(3) of the  
Electricity Act, 2003).

### ORDER

M.A.Nos. 150/06, 156/06, 185/06, 159/06, 197/06, 199/06 & 200/06 have arisen out of the ex-parte order dated 17.6.2006 passed in the Case No. 28/06, and therefore heard together.

M.A.No. 150/06 is the reply on behalf of the HPSEB to the main petition No.28/06 moved by UJVNL and decided ex-parte on 17.6.2006; M.A.No. 156/06 is the application moved on behalf of the HPSEB, for recalling the said ex-parte order dated 17.6.2006. M.A.No. 159/06 is the undertaking given by the UJVNL in pursuance to order dated 17.6.2006; M.A. NO. 185/06 is the clarificatory petition moved by the HPSEB. M.A.NO. 197/06, 199/06 and 200/06 have been filed on behalf of the UJVNL in rebuttal to HPSEB's MA No. 150/06, 156/06 & review petition No. 164/06, respectively

On the question of jurisdiction of this Court for fixation of distribution tariff the attention of Sh. Rakesh Thakur, Advocate, appearing on behalf of the HPSEB Board was invited to the provisions of section 64(5) of the Electricity Act, 2003, which in equivocal terms states that the tariff for inter State supply, involving the territories of two States, is to be determined by the State Commission having jurisdiction in respect of the Licensee who intends to distribute electricity and make payment therefor. On this the said learned counsel conceded that this Commission has the jurisdiction in the matter.

During the pendency of the five tariff petitions moved by the UJVNL under sections 64, 62 and 86 of the Electricity Act, 2003, in relation to hydro generating stations at Dhakrani, Dhalipur, Chibro, Khodri and Kulhal hydel stations for the financial year 2004-05, this Commission, after affording ample opportunity to the HPSEB, and on their default in appearance and in filing the reply, had to make the ex-parte order on 17.6.2006; as under:-

“ This Commission, after affording ample time to the respondent Board which failed to file reply and on consideration of the pleadings made and arguments advanced by the petitioner, concludes that the petition moved by the UJVNL merits to be allowed and the HPSEB respondent, therefore,

is ordered to release payment of Rs.1,32,52,395/- to the petitioner being the arrear amount on the basis of 35 paise/ per unit tariff for the period from 1.4.2004 to 15.12.2004 in line with the tariff order of this Commission on the ARR of the HPSEB for the financial year 2004-05, on the undertaking to be given by the UJVNL that it will pay the difference of the amount, if any, which would be payable on the determination of tariff in relation to the hydro-generating stations at Dhakrani, Dhalipur, Chibro, Khodri and Kulhal.”

After passing the said ex-parte order, the Board has filed the reply to the main petition No. 28/06 moved by the UJVNL and in pursuance of the aforesaid order the UJVNL have furnished the undertaking vide M.A.No. 159/06, that they will pay the difference of the amount, if any, which would be payable on the determination of the tariff.

The HPSEB, aggrieved by the said order have moved the petition for recalling the ex-parte order on the ground that the official, more specifically, the Director, HPSEB, got struck in a tariff jam and due to which he could not appear in time before the Commission; and though the petition was posted for hearing on 17.6.2006, the reply was to be submitted on 20.6.2006. On rechecking the records, it is found that 20.5.2006 was fixed for submission of status report by UJVNL and it was due to typing error/mistake 20.6.2006 was mentioned for 20.5.2006 in the order dated 22.4.2006 and on that date the Advocate and the representative of the Board were present. In fact the UJVNL were asked to provide status report supported by an affidavit on the case pending in the Appellate Tribunal, alongwith its nexus with the present petition to HPSEB and to the Commission by that date i.e. 20.5.2006 and matter was listed for further hearing on 17.6.2006. The said affidavit was filed by the UJVNL before 20.5.2006 vide their letter dated 15.5.2006 received in this Commission on 18.5.2006. Moreover, especially when the order dated 17.6.2006 is just an provisional order and the decision on the merits on the tariff petitions is yet to be taken, and the reply given on behalf of the Board, though at belated stage, can be taken into consideration at the time of final disposal and therefore, no purpose is likely to be served by interfering with the order dated 17.6.2006. However the reply submitted on behalf of the HPSEB by way of M.A.NO. 150/06 is taken on record. The UJVNL are directed to keep this Commission informed of the decision taken in appeal within a period of two weeks from the date of pronouncement of the said decision.

M.A.No. 185/06, seeking clarification, is admitted and notices are directed to be served on the respondent and other interested parties for reply in opposition or support of it.

Announced in open court. List this matter for hearing on 28.10.2006 at 3PM.

Dated: 16.09.2006.

(Yogesh Khanna)  
Chairman.