

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**
- 4. Shri A.H. Jung, Member**

**Review Petition No. 28/2005  
in Petition No. 194/2004**

**In the matter of**

Fixation of tariff for Neyveli Thermal Power Station-I (600 MW) for the period 1.4.2002 to 31.3.2004

**And in the matter of**

Review of order dated 1.2.2005 in Petition No. 194/2004

**And in the matter of**

<b>TAMIL NADU ELECTRICITY BOARD</b>	....	<b>PETITIONER</b>
Vs		
<b>NEYVELI LIGNITE CORPORATION LTD.</b>	....	<b>RESPONDENT</b>

**The following were present:**

1. Shri S. Sowmyanarayanan, Consultant, TNEB
2. Shri K. Sekar, NLC
3. Shri A. Ganesan, NLC
4. Shri R. Suresh, NLC
5. Ms. Ratna Choudhury, NLC

**ORDER  
(DATE OF HEARING: 21.4.2005)**

The present petition has been filed for review of order dated 1.2.2005 in Petition No. 194/2004.

2. For the purpose of this order, the petitioner in the present review petition (TNEB) is being referred to as “the respondent” and the respondent in this review petition (NLC) is being referred to as “the petitioner”, in accordance with their status in Petition No. 194/2004.

3. The petitioner had entered into a Bulk Power Supply Agreement (the BPSA) dated 9.3.2001 with the respondent effective from 1.4.1997 to 31.3.2002 for supply of power from its Thermal Power Station-I (TPS-I). Even after expiry of the BPSA on 31.3.2002, the petitioner charged tariff based on the terms of the BPSA.

4. A petition (No. 33/2004) was filed by the petitioner for approval of energy charges and capacity charges in respect of TPS-I for the period 1.4.2002 to 31.3.2004 based on terms and conditions contained in the BPSA. The respondent filed an affidavit wherein it agreed that the tariff be fixed by extending the terms of the BPSA with improved operational parameters in regard to auxiliary energy consumption. The respondent had submitted that though in the BPSA the auxiliary energy consumption of 12.5% was provided for, the petitioner had agreed to auxiliary energy consumption of 12%. This was accepted by the petitioner. In view of this accepted position, the Commission, by order dated 31.8.2004 decided that all the terms contained in the BPSA, except that relating to the auxiliary energy consumption shall govern tariff for the period 1.4.2002 to 31.3.2004 and the auxiliary energy consumption shall be considered @ 12%.

5. In accordance with the above order, the petitioner claimed Return on Equity (ROE) @ 16% while computing tariff for the period 1.4.2002 to 31.3.2004. This was, however, contested by the respondent in whose opinion, ROE could be charged @ 12% as was agreed to under the BPSA. In view of the dispute, the petitioner filed a fresh petition (No. 194/2004) to seek a direction to the respondent to pay the tariff by taking ROE of 16%. After hearing the parties, the Commission by order dated 1.2.2005, clarified that the petitioner was entitled to claim ROE @ 16% in terms of Clause 10.3 of the BPSA. The respondent seeks review of the order dated 1.2.2005

6. The Commission, while upholding the petitioner's claim for ROE @ 16% considered the fact that the Central Government in Ministry of Coal by its order dated 3.12.1998 had decided to revise the power tariff with effect from 1.11.1998 to ensure ROE of 16%, based on a similar revision of ROE by Ministry of Power from 12% to 16% in respect of the generating stations under latter's control. It was noted that the respondent had actually paid ROE at the revised rate of 16% from 1.11.1998 to August 2004 based on the BPSA dated 9.3.2001. In particular, the scope of Clause 10.3 of the BPSA was considered in the said order dated 1.2.2005. At the hearing of Petition No.194/2004, the representative of the respondent had orally argued that ROE was paid @ 16% under protest. However, no evidence to that effect was placed on record and this fact was taken note of in the order.

7. In the present review petition, the respondent has submitted that the BPSA which was signed on 9.3.2001 took into account ROE of 12% even though Ministry of Coal had notified increase of ROE to 16% on 3.12.1998 and thus the petitioner consciously decided to claim ROE @ 12%. It is further submitted that the minutes of meeting held on 22.12.2003 between the petitioner and the respondent clearly show that payments had been made subject to happening of certain events agreed upon during the meeting and were, therefore, under protest. The respondent has now placed on record a copy of the minutes of the meeting which according to it, could not be produced earlier.

8. We have heard Shri S. Sowmyanarayanan in support of admission of the application for review.

9. We are conscious of the fact that review of an order is permissible on following grounds, namely:

- (a) Discovery of new material or evidence which was not within the knowledge of the person seeking review or could not be produced by him despite exercise of due diligence, or
- (b) An error apparent on the face of record, or
- (c) Any other ground, analogous to above two grounds.

10. The Commission in its order dated 1.2.2005 had taken note of the BPSA signed on 9.3.2001, effective from 1.4.1997. The tariff was agreed to be charged by taking into account ROE of 12%. However, Clause 10.3 of the BPSA specifically laid down that the rates agreed to were subject to further revision based on the directives/notifications, if any, that may be issued by the Central Government/State Government or any other Central or State Regulatory authorities competent to issue directives/guidelines in regard to depreciation, rate of investment or any other parameter. As ROE was revised from 12% to 16% with effect from 1.11.1998 under directives of Ministry of Coal and tariff based on the revised ROE was paid by the respondent, the Commission came to the conclusion that ROE for the period 1.4.2002 to 31.3.2004 was payable @ 16% in terms of Clause 10.3 of the BPSA. The order takes notice of the explanation given on behalf of the petitioner that as the BPSA was effective from 1.4.1997, tariff was to be calculated by taking in account ROE of 12% from that date, and was re-adjusted by upward revision to 16% w.e.f. 1.11.1998. The order has been made on consideration of the material on record as also the submissions made at the hearing by the representative of the petitioner the correctness of which is not disputed. Thus, there is no error apparent on the face of record to justify review of the order dated 1.2.2005.

11. According to the respondent, minutes of the meeting held on 22.12.2003, which could not be produced at the time of hearing would justify reopening of the matter as these minutes may go to prove that the payments earlier made were

under protest. In the first instance, the respondent has not explained the reasons as to why these minutes could not be produced at the hearing of the main petition. A perusal of these minutes now produced reveals that a meeting was held on 22.12.2003 to discuss and sort out the issue of outstanding payments from the respondent. In the said meeting, the petitioner had furnished the details of payments due, calculated on the basis of ROE of 16%. The minutes do not reveal that the respondent at any stage objected to the petitioner's claim for ROE of 16% or that any condition was put so far as the claim on this account is concerned. In fact, the minutes show that the respondent also indicated a figure of outstanding dues very close to that claimed by the petitioner. Therefore, the second ground taken by the representative for review is equally untenable.

12. We also take notice of the fact that the Commission in the norms notified on 26.3.2001 had also specified ROE of 16%, applicable for the period up to 31.3.2004.

13. In the light of the foregoing discussion, the review petition is not maintainable and is dismissed at the admission itself.

**Sd/-**  
**(A.H. JUNG)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

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

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

New Delhi dated the 21<sup>st</sup> April, 2005