

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

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

**Petition No. 24/2003**

**In the matter of**

Treatment of actual generation over the declared capacity by generator under the ABT regime.

**And in the matter of**

Neyveli Lignite Corporation Ltd .. **Petitioner**

**Vs**

1. Southern Regional Electricity Board,
  2. Southern Regional Load Despatch Centre
  3. Tamil Nadu Electricity Board
  4. Transmission Corporation of Andhra Pradesh
  5. Karnataka Power Transmission Corporation Ltd
  6. Kerala State Electricity Board
  7. Pondicherry Electricity Department
  8. National Thermal Power Corporation
- ... **Respondents**

**Petition No.43/2003**

**In the matter of**

Removing difficulties in implementation of ABT order

**And in the matter**

National Thermal Power Corporation Ltd .....**Petitioner**

**Vs**

1. Central Electricity Authority
2. Power Grid Corporation of India Ltd.,
3. Transmission Corp. of Andhra Pradesh Ltd
4. Grid Corporation of Orissa Ltd
5. Damodar Valley Corporation
6. Bihar State Electricity Board
7. Jharkand State Electricity Board
8. West Bengal State Electricity Board
9. Rajasthan Rajya Vidyut Prasaran Nigam Ltd
10. Delhi Transco Ltd

11. Uttar Pradesh Power Corporation Ltd.
12. Uttaranchal Power Corporation Ltd
13. Punjab state Electricity Board
14. Madhya Pradesh State Electricity Board
15. Chattisgarh State Electricity Board
16. Haryana Vidyut Prasaran Nigam Ltd
17. Maharashtra State Electricity Board
18. National Hydroelectric Power Corporation Ltd
19. Neyveli Lignite Corporation Ltd.
20. Karnataka Power Trans. Corp. Ltd
21. Tamil Nadu Electricity Board
22. Assam State Electricity Board
23. Gujarat Electricity Board,
24. Himachal Pradesh State Electricity Board
25. Power Development Department, J&K
26. Power Department, Chandigarh
27. Kerala State Electricity Board
28. Electricity Department, Govt. of Pondicherry
29. Dept. of Power, Govt. of Sikkim, Gangtok
30. Electricity Department, Govt. of Goa
31. Electricity Department, Admn of Daman & Diu
32. Electricity Department, Admn of Dadra Nagar Haveli
33. Western Regional Electricity Board
34. Southern Regional Electricity Board
35. Eastern Regional Electricity Board
36. Northern Regional Electricity Board
37. North Eastern Regional Electricity Board

.... Respondents

The following were present:

1. Shri K. Srinivasa Rao, SE, SREB
2. Shri M.K. Adhikary, EE (Comm.), ASEB
3. Shri B.S. Chandrasekar, KPTCL
4. Dr. S.C.Bhattacharyya, WBSEB
5. Shri P.C. Saha, WBSEB
6. Shri Prashant Kaul, CE, NHPC
7. Shri Rajeev Hustu, NHPC
8. Shri A.K. Srivastava, DM (M), NHPC
9. Shri T.K. Srivastava, EE, UPPCL
10. Shri Jayant Varma, AE, UPPCL
11. Shri K. Sekar, GM, NLC
12. Shri R. Suresh, DGM, NLC
13. Shri D.P. Chirania, CE(Comm.), RVPNL
14. Shri K.K. Mittal, XEN (ISP), RVPNL
15. Shri M.P. Aggarwal, DGM (Comm.), DTL
16. Shri Pankaj Kumar Singh, Advocate, NEEPCO
17. Shri A. Velayutham, WREB

18. Er. V.A. Kumar, UPPCL
19. Shri K.K. Gar, GM(Comml.), NTPC
20. Shri R. Day, NTPC
21. Shri M.S. Chawla, AGM, NTPC
22. Shri S.S. Mendiratta, NTPC
23. Shri M.K.V. Rama Rao, NTPC
24. Shri M.D. Roy, NEEPCO
25. Shri D. Khandelwal, MPSEB
26. Shri Akhtar Hussain, NEEPCO
27. Shri V. Venkanna, NEEPCO
28. Shri V.K. Gupta, PSEB
29. Shri R.S. Sharma, NTPC
30. Shri S.N. Goel, NTPC
31. Shri K. Gopalakrishnan, KSEB
32. Shri R. Balachandran, KSEB
33. Shri M. Saxena, NTPC
34. Shri M.K. Mitra, CEA
35. Shri Ranjana Gupta, NTPC
36. Shri V.K. Agarwal, NRLDC
37. Shri P.K. Agrawal, NRLDC
38. Shri S.R. Narasimhan, NRLDC
39. Shri S.K. Samui, NTPC
40. Shri S.K. Johar, NTPC
41. Shri T.R. Sohal, NTPC
42. Shri A. Dua, NTPC
43. Shri S. K. Aggarwal, NTPC
44. Shri C.K. Sahajeevani, HVPN
45. Shri D.K. Salpeku, NTPC
46. Shri E. Surendra, NTPC
47. Shri K.V. Balakrishnan, Advocate, NTPC
48. Shri M.G. Ramachandran, NTPC
49. Shri H.H. Sharma, ASEB
50. Shri R.K. Arora, HVPN
51. Shri R.G. Yadav, PGCIL
52. Shri V. Mittal, PGCIL
53. Shri C.K. Mandol, NTPC
54. Shri D.D. Chopra, Advocate, UPPCL
55. Shri S.K. Sharma, NTPC

**ORDER**  
**(DATE OF HEARING: 22.10.2003)**

The Commission had notified the terms and conditions for determination of tariff on 26.3.2001 under CERC (Terms & Conditions of Tariff) Regulations, 2001.

These regulations are applicable for the period from 1.4.2001 to 31.3.2004. Chapter 2 of these regulations relates to thermal power generating stations.

2. Clause 2.18 of these regulations, on the question of demonstration of declared capability by the generating company provides that the generating company may be required to demonstrate the declared capability of its generating station as and when asked by the Regional Load Despatch Centre of the region in which the generating station is situated. In the event of generator failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days' fixed charges. For the second mis-declaration, the penalty prescribed is equivalent to fixed charges for four days and for subsequent mis-declaration the penalty shall be in the geometrical progression as per the order of the Commission. Note below Clause 2.18 further provides that in case it is observed that the declaration of its capability by the generator is on lower side and the actual generation is more than the declared capability, UI charges due to the generator on account of such extra generation shall be reduced to zero and amount shall be credited towards UI account of beneficiaries in the ratio of their capacity share in the station.

3. The petitions have been filed by Neyveli Lignite Corporation (NLC) and National Thermal Power Corporation Ltd. (NTPC) for relaxation of the provisions of note below Clause 2.18. In view of the commonality of the issues raised in

these two petitions, these were heard together and are being disposed of through this composite order.

4. It is stated by NTPC that in view of the provisions of note below Clause 2.18, the generator is denied UI charges when it helps the grid and increases generation above its declared capability during low frequency. It is stated that due to inherent factors like variation in quality of coal, coal flow, control system deviation, etc., it is not possible to maintain constant generation as scheduled. NTPC has demonstrated through the data annexed to the petition that its scheduled generation was constant. However, there were variations in actual generation, attributable to operating conditions and were beyond its control. It has been submitted that such variations should be treated as normal and should not be categorised as “mis-declaration” or “game” to deny UI charges to the generator. It is further stated that to avoid any negative UI, that is, UI charges payable by the generator in case generation falls below the schedule, generators have to maintain actual generation higher than the scheduled generation. It is argued that in view of the note below Clause 2.18, neither energy charges nor UI charges are admissible to the generator for generation above schedule, which is more of the nature of penalty. According to NTPC, due to inherent design margin and/or favourable operating conditions, the machines are capable of delivering higher output than the rated capacity, at least for short periods. In view of NTPC, it is in the interest of grid to exploit this extra capability and there should not be any restrictive provision to prohibit generators from generating higher than the

declared capability during low frequency conditions. NTPC has, therefore, prayed that the note below Clause 2.18 should be substituted as under:

”In case it is observed that the declaration of its capability by the generator is on lower side and the actual generation is more than 102% of DC, then UI charges due to the generator on account of generation up to 102% of DC shall be paid and UI charges for generation beyond 102% of DC shall be reduced to zero and the amount shall be credited towards UI account of beneficiaries in the ratio of their capacity share in the station. “

5. The prayer made by NTPC in substance means that the generator should be entitled to UI charges for generation up to 102% of the declared capability.

6. NLC in its petition has also pointed out the practical difficulties in application of note below Clause 2.18 and has prayed the Commission to issue necessary orders to treat the normal variations of load above declared capability as UI receivable by the generator. In other words, the prayer of NLC is that there should be no upper limit for generation.

7. We heard the representatives of NTPC and NLC in support of their respective applications. The representatives of the respondents present at the hearing were also heard.

8. We do not propose to go into the merits of the rival contentions since we propose to dispose of these petitions on a short technical ground. As we have noticed above, the terms and conditions of tariff notified on 26.3.2001 are applicable for a period up to 31.3.2004. The period of validity of these regulations

is almost over since only about one month is left. Therefore, it may not be desirable to make any changes or amendments in the provisions of the notification at this stage. The Commission has already circulated draft regulations on terms and conditions of tariff to be applicable from 1.4.2004. The issue raised on behalf of NTPC and NLC will be addressed while finalising the terms and conditions for the period from 1.4.2004 and onwards. We may point out that hearing on the draft terms and conditions of tariff is fixed for 9<sup>th</sup> and 10<sup>th</sup> March 2004. The central power generating utilities, SEBs, etc. may respond to the issue and final view will be taken after due deliberations.

9. NTPC in its petition has raised an additional issue. It has prayed for a permission to NTPC and/or its wholly owned subsidiary company, NTPC Vidyut Vyapar Nigam Ltd (NVVNL) to trade in power not requisitioned by the beneficiaries, at a rate agreed with other buyers. NTPC has also suggested the methodology for sharing of charges on account of sale of unrequisitioned power to other utilities.

10. The prayer made does not directly flow out of the substantive issue raised in the petition and thus the petition is an instance of misjoinder of causes of action. Accordingly, we direct that NPTC may, if so advised, file a separate petition duly supported by necessary details. However, before parting with this case, we make certain observations in brief. In accordance with Section 10 of the Act, a generating company may supply electricity to any licensee and may, subject to regulations made under sub-section (2) of Section 42, supply electricity

to any consumer. It has been separately held by the Commission that NRVNL is not a deemed licensee and in order to undertake trading in electricity, NRVNL is required to obtain a licence for trading.

11. With the above observations, Petition No. 24/2003 and 43/2003 stand disposed of.

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

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

New Delhi dated the 5<sup>th</sup> March, 2004