

**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 H.L. Bajaj, Member (EO)**

Petition No. 90/2003

In the matter of

Revised UI accounting procedure followed by the SREB Secretariat in respect of Neyveli Thermal Power Station II starting from the week from 3.11.2003 to 9.11.2003.

And in the matter of

Neyveli Lignite Corporation Ltd. ... **Petitioner**

Vs

1. Southern Regional Electricity Board, Bangalore
2. Southern Regional Load Despatch Centre, Bangalore
3. Tamil Nadu Electricity Board, Chennai
4. Transmission Corporation of Andhra Pradesh, Hyderabad
5. Karnataka Power Transmission Corporation Ltd, Bangalore
6. Kerala State Electricity Board, Thiruvananthapuram
7. Pondicherry Electricity Department, Pondicherry
8. Central Electricity Authority, New Delhi ... **Respondents**

The following were present:

1. Shri K. Sekhar, GM/ Commercial, NLC
2. Shri R. Suresh, DGM, NLC
3. Shri S.Sivan, MS, SREB
4. Shri P. Patel, SREB
5. Shri D.K. Saxena, Director, CEA

**ORDER
(DATE OF HEARING: 22.4.2004)**

The petitioner owns three thermal power stations, namely, Thermal Power Station-I (TPS I), Thermal Power Station II (TPS II) and Thermal Power Station-I Expansion (TPS I Expansion). The power generated from Thermal Power Station-I is supplied exclusively to the State of Tamil Nadu whereas the power generated

from other two generating stations is supplied to all the constituents of Southern Region. The thermal power stations get supply of lignite for generation of electricity from the dedicated linked mines which are also owned by NLC. TPS II supplies power to the lignite mines dedicated to itself and TPS I Expansion.

2. TPS II has three units in Stage I with a capacity of 630 MW and four units in Stage II with a capacity of 840 MW, each unit with a capacity of 210 MW.

3. It has been stated by the petitioner that the Bulk Power Supply Agreement entered by the petitioner with beneficiaries of Southern Region provides that the supply of power from its stations would be after meeting its internal requirements in full. In other words, only the surplus electricity after fulfilling the petitioner's own needs is sent out, irrespective of the level of generation at the generating stations. The arrangement is said to be aiming to ensure uninterrupted power supply to the lignite mines.

4. It is further averred that the petitioner was allocated 50 MW of power each from TPS II Stage I and TPS II Stage II for the dedicated lignite mines. Therefore, the beneficiaries of Southern Region were allowed the balance supply of power after adjusting 100 MW of power.

5. The Availability Based Tariff (ABT) was implemented in the Southern Region with effect from 1.1.2003. In order to facilitate scheduling and consequent

commercial accounting of power supply under the ABT regime, the Central Government decided that allocation of power from the central generating stations located in the Southern Region shall be streamlined on percentage basis. The decision of the Central Government was conveyed to the Chairman, SREB by Ministry of Power under its letter dated 17.12.2002, wherein the Central Government directed that all allocations expressed in MW till then be converted into fixed percentages, without differentiating between peak hours and off-peak hours. In view of this decision of the Central Government, Member Secretary, SREB, Respondent No.1 under its letter dated 31.12.2002, allocated 8% of the power generated from TPS II Stage I and 6% from TPS II Stage II, for the mines. These percentages approximately correspond to 50 MW of the total installed capacity of TPS II Stage I (630 MW) and TPS II Stage II (840 MW) respectively.

6. The natural corollary of the allocation made by SREB is that allocation of power to the mines owned by the petitioner depends upon the level of generating unit availability at TPS II and it does not get the fixed supply of 100 MW as before. When the generation falls, the petitioner's share also falls, though earlier the petitioner was getting 100 MW of power, whatever the level of generation. In the opinion of the petitioner, the lignite mines supplying fuel to its generating stations must get constant supply of power up to certain limit, irrespective of level of generation at TPS II. Therefore, the petitioner made efforts with the Respondents 1 and 8 for reconsideration of allocation of power contained in letter dated 31.12.2002. However, despite these efforts, the decision contained in the said

letter dated 31.12.2002 was implemented. The petitioner, however, continued to draw power according to its needs, maybe, at times more than its allocated share, as stated in the petition. Under the ABT regime the generators and the beneficiaries become entitled or liable to Unscheduled Interchange (UI) charges under certain circumstances. However, Unscheduled Interchange (UI) charges fixed by the Commission were not levied on the petitioner till 2.11.2003 despite it drawing power over and above its allocated share. With effect from 3.11.2003, Respondent No.1 has proposed to levy UI charges fixed by the Commission. The petitioner feels aggrieved on that account and has filed the present petition with the prayer to stay the new methodology of UI accounting introduced from 3.11.2003 for TPS II by Respondent No.1. The petitioner has further prayed that UI accounting procedure followed up to 2.11.2003 should be restored.

7. The petitioner while seeking exemption from payment of UI charges has relied upon the following observations made in the Commission's order dated 21.12.2000 in Petition No. 2/1999:

“NLC shall not be entitled to charge UI rates for deviations from their schedule for their own allocation. Till such time, the capacity for norms is revised the surplus energy shall be traded by NLC with the original beneficiaries”.

8. According to the petitioner, it would be inequitable to levy UI charges when it is not entitled to claim UI charges from the State beneficiaries in case there is a deviation from the schedule.

9. The respondents have opposed the prayers made by the petitioner. According to them, acceptance of the prayers will be tantamount to deviation from the allocations made under letter dated 31.12.2002 based on the directions and decisions of the Central Government in Ministry of Power. It has been stated that the UI mechanism ought to be enforced from 1.1.2003 itself when ABT was implemented in Southern Region. Thus, according to the respondents, the petitioner cannot escape its liability to pay UI charges in the event of overdrawal by it.

10. The respondents have argued that the petitioner's reliance on the observations made in the order dated 21.12.2000 is misplaced. According to the respondents, the Commission's observation implied that the petitioner shall not be entitled to charge UI rates for deviations from schedule for its own allocation, but it does not absolve the petitioner of its liability to pay UI charges in case it deviates from its drawal schedule.

11. We have considered the rival submissions. The petitioner has been made a firm allocation from TPS II in view of the decision of the Central Government. The Commission cannot interfere with such a decision in exercise of its powers under the Electricity Act, 2003. However, in our opinion, with the firm allocation of power from TPS II, the petitioner is a beneficiary of TPS II like any other beneficiaries in the Southern Region.

12. The Commission's notifications dated 26.3.2001 and 26.3.2004 governing terms and conditions of tariff, *inter alia*, lay down that variation in actual generation/drawal and scheduled generation/drawal is to be accounted for through UI charges. These notifications lay down that UI for generating station shall be equal to its actual generation minus its scheduled generation and UI for beneficiaries is equal to their total actual drawal minus the total scheduled drawal. Under these notifications, UI is worked out for every 15-minute time block. The charges for UI transactions are based on average frequency of the 15-minute time block, the rates for which have been prescribed in the concerned notifications. The notifications have been issued under the delegated statutory powers conferred under the Electricity Regulatory Commissions Act, 1998 (since repealed) and the Electricity Act, 2003, and accordingly have over-riding effect and precedence.

13. In view of the fact that we have considered the petitioner as one of the beneficiaries of TPS II, it has to be treated at par with the other beneficiaries in the Southern Region and the payment of UI charges to or by the petitioner shall be governed by the provisions of notifications dated 26.3.2001 and 26.3.2004 noticed above. Our decision draws further sustenance from the fact that the order dated 21.12.2000 was prelude to the notification dated 26.3.2001, but the observations noted under para 7 above were not incorporated therein. Therefore, these observations have to be kept out of consideration while deciding the question of entitlement or liability of the petitioner in regard to UI charges.

14. We have already noted that UI mechanism has been implemented for power drawn by the petitioner for mining operation with effect from 3.11.2003. However, since the ABT is in vogue in Southern Region from 1.1.2003, the provisions of the notification dated 26.3.2001 shall apply from that date, that is, the date of implementation of ABT in the region. The petitioner's entitlement to claim or liability to pay UI charges shall be reviewed by Respondent No.1 in the light of the above decision. Member Secretary, SREB also pleaded that to avoid mass scale re-calculations and adjustments, transmission losses for the past period, need not be re-calculated. We agree with the contention.

15. This order disposes of Petition No. 90/2003.

Sd/-
(H.L. BAJAJ)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 29th May 2004