

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**

**Review Petition No. 78/2004
in
Petition No. 90/2003**

And in the matter of

Review of order of CERC dated 29.5.2004 in respect of Petition No. 90/2003 on Revised UI accounting methodology by SREB

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. Karnataka Power Transmission Corporation Ltd., Bangalore
5. Kerala State Electricity Department, Thiruvananthapuram
6. Pondicherry Electricity Department, Pondicherry
7. Transmission Corporation of Andhra Pradesh, Hyderabad
8. Central Electricity Authority, New Delhi

.....**Respondents**

The following were present:

1. Shri R.Suresh, DGM (Comml.), NLC
2. Shri S. Ramachandran, DGM, NLC
3. Shri D.K. Saxena, Director, CEA
4. Shri P.P. Patel, SE, SREB

**ORDER
(DATE OF HEARING: 2.11.2004)**

The petitioner seeks review of the order dated 29.5.2004 in Petition No.90/2003.

2. The petitioner is engaged in generation of electricity and for this purpose uses lignite extracted from its own mines. The petitioner was allocated 50 MW of

power each from Stage I and Stage II of its generating station, named Thermal Power Station-II (TPS-II) for use of its mines. The other beneficiaries in Southern Region (SR) were allowed supply of power generated from this generating station after adjustment of 100 MW of power allocated to the petitioner.

3. In anticipation of implementation of the Availability Based Tariff (ABT) in Southern Region with effect from 1.1.2003, the Central Government by its letter dated 17.12.2002 allocated power from the central generating stations in the region on "percentage" basis. Based on this decision of the Central Government, Member Secretary, Southern Regional Electricity Board (SREB) by his letter dated 31.12.2002 effective from 1.1.2003, allocated 8% of the power generated from Stage I of TPS-II and 6% from Stage II of TPS-II for the lignite mines. The allocations made added up to 100 MW approximately. Thus, in absolute terms, the allocation of power for use by the lignite mines remained unchanged.

4. Under the ABT regime, the beneficiaries become entitled to claim or liable for payment of Unscheduled Inter-change (UI) charges in case of underdrawal/overdrawal of power under the circumstances notified by the Commission on 26.3.2001. Thus, with effect from 1.1.2003, the date of implementation of ABT in Southern Region, the petitioner (for its mining part) became entitled to UI charges when it underdrew power. However, it also became liable to pay UI charges in case of overdrawals, that is, drawals beyond the allocated share. The petitioner was also selling power to the Union Territory of Pondicherry, maybe at times by overdrawing from the regional grid. In this

manner, the petitioner was earning revenue from sale of power to Pondicherry Government. For any overdrawals from the regional grid, the petitioner became liable to pay UI charges from 1.1.2003. However, the petitioner was not levied UI charges till 2.11.2003 despite the overdrawals. It was only with effect from 3.11.2003 that it was decided to levy UI charges on the petitioner.

5. Aggrieved by the above decision for levy of UI charges with effect from 3.11.2003, the petitioner made an application (Petition No. 90/2003) before the Commission with a prayer for stay of the methodology of UI accounting for its mining part introduced from that date, with a further prayer that UI accounting procedure followed up to 2.11.2003 should continue to be followed in future. The petition was disposed of by order dated 29.5.2004. The Commission noted that as a beneficiary of TPS-II, the petitioner was to be treated at par with other beneficiaries and governed by provisions of the Commission's notification dated 26.3.2001 in regard to implementation of ABT. On that account, the petitioner became liable or entitled to UI charges depending upon the circumstances under which overdrawal or underdrawal was undertaken, like other State beneficiaries, since the petitioner could not be treated differently from such other beneficiaries having firm allocation of power from TPS II. The Commission further noticed that UI mechanism was implemented in case of the petitioner with effect from 3.11.2003 only, though in fact ABT was in vogue in Southern Region from 1.1.2003. Therefore, the Commission concluded that the petitioner's entitlement to claim or liability to pay UI charges arose with effect from 1.1.2003. The concerned authority (Respondent No.1) were directed to recalculate the

petitioner's liability/entitlement to UI charges with effect from 1.1.2003. In the present proceedings, the petitioner seeks review of this direction on the grounds discussed hereinafter.

Observations in the order dated 21.12.2000

6. In support of its plea for review, the petitioner has referred to certain observations made by the Commission in its order dated 21.12.2000 in Petition No. 2/1999 in regard to implementation of ABT for NLC mines. It has been urged by the petitioner that the Commission has deviated from these observations while directing re-calculation of UI charges with effect from 1.1.2003.

7. We do not find any merit in this submission of the petitioner for review of the direction contained in the order dated 29.5.2004. A similar contention was raised by the petitioner in Petition No. 90/2003. On this, the Commission noted that the order dated 21.12.2000 was a prelude to the notification dated 26.3.2001 which regulates the terms and conditions for determination of tariff. However, the observations made in the order dated 21.12.2000 were not incorporated in the notification of 26.3.2001. The Commission, therefore, decided that the observations made in order dated 21.12.2000 needed to be kept out of consideration while deciding the question of entitlement or liability of the petitioner for UI charges. Thus, the Commission has already applied its mind to the issue and taken a view on the point agitated by the petitioner in the original proceedings. Therefore, it cannot be said to be a case of error apparent on the face of record, the statutory ground for review of order. The petitioner cannot re-

agitate the point in the present proceedings whose scope is very limited. Therefore, review of the order dated 29.5.2004 on this ground is not maintainable.

8. The petitioner may also note that the above referred observations contained in the Commission's order dated 21.12.2000 were relevant when no percentage-wise allocation had been made for its mines. They are not applicable now, when its mines are being treated at par with other beneficiaries, and are allowed \pm UI charges.

Retrospective change of methodology

9. It has been next urged by the petitioner that the Commission's order dated 29.5.2004 has the effect of changing the methodology with retrospective effect which imposes additional financial liability. In the submission of the petitioner, the direction for re-calculation of UI charges with effect from 1.1.2003 is tantamount "to failure of recognition of the apparent fact on the face of record." According to the petitioner it has acquired the status as a beneficiary only with effect from 1.4.2004 with all attendant consequences.

10. Even this submission of the petitioner lacks merit. The petitioner was a beneficiary of TPS II because of firm allocation of 100 MW power (50 MW each from Stage-I and Stage-II) initially in its favour, and thereafter as percentage of total capacity of TPS-II. Though the petitioner did not limit its draws to the allocated capacity till 31.12.2002, that is, before implementation of ABT, the

overdrawals or underdrawals did not have any financial implications, since the petitioner was billed based on actual drawals of power as per the practice in vogue. However, after implementation of ABT with effect from 1.1.2003, there was a complete change in scenario. From that date, the petitioner as a beneficiary of TPS-II had a schedule for drawal, as an operational and commercial datum. In case of deviations from the schedule, the petitioner's deviations were subject to UI charges. The Commission's direction does not amount to retrospective change of methodology for computation of UI charges. The methodology was already in force on 1.1.2003, but it was not properly implemented in the case of the petitioner (mines part). As a consequence, other State utilities may have been paying for the petitioner's overdrawals, or getting benefited on account of its underdrawal. The situation needed to be rectified. Accordingly, the Commission directed re-calculation of UI charges with effect from 1.1.2003 to do complete justice to the parties. It cannot be said to be a case of the Commission's failure to recognize any apparent fact as alleged. Therefore, the petitioner's plea for review on this ground also fails.

11. Therefore, on preliminary considerations, in the light of settled legal position, the review petition is not maintainable.

12. The Commission, however, had also considered it prudent to examine the financial aspects of the order dated 29.5.2004. For this purpose, the petitioner was directed to file month-wise details of power sold to Pondicherry Government during the period 1.1.2003 to 2.11.2003 and the revenue earned as a result

thereof. SREB was also directed to file month-wise regional energy accounts of all the beneficiaries in Southern Region separately for the periods 1.1.2003 to 2.11.2003 and 3.11.2003 to 31.3.2004 based on the methodology in force up to 2.11.2003. SREB was further directed to file Regional Energy Accounts based on the revised methodology adopted with effect from 3.11.2003. The details have been filed by the petitioner as also SREB. On examination of the information made available, it is seen that in the methodology adopted by SREB with effect from 3.11.2003, UI charges were being levied on the petitioner for mines' overdrawal, but no UI credit was being given for mines' underdrawal. This anomaly has already been addressed in our order dated 29.5.2004.

13. On consideration of the primary grounds urged by the petitioner in support of the review application, we have no hesitation to hold that the present review petition is liable to be dismissed. It is ordered accordingly. No order as to costs.

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

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

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

New Delhi dated the 25th May, 2005