

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

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

Petition No.89/2004

In the matter of

Levy of transmission charges and applying Regional transmission losses to NLC Mines.

And in the matter of

Neyveli Lignite Corporation Limited

.... Petitioner

Vs

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

.....Respondents

The following were present:

1. Shri K. Sekar, GM, NLC Ltd.
2. Shri R. Suresh, DGM, NLC Ltd.
3. Shri Ratna Chowdhury, NLC Ltd.
4. Shri P.C. Pankaj, AGM (Comm), PGCIL
5. Shri U.K. Tyagi, DGM, PGCIL
6. Shri C. Kannan, CM (Fin), PGCIL
7. Shri Sunil Agrawal, PGCIL
8. Shri Arvind Manglik, PGCIL
9. Shri K. Srinivasa Rao, SREB Bangalore
10. Shri V.K. Agarwal, SRLDC
11. Shri R. Balachandran, KSEB
12. Shri Pankaj Batra, CEA, New Delhi

ORDER
(DATE OF HEARING: 10.2.2005)

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). TPS-I is exclusively dedicated to State of Tamil Nadu and the entire power generated at this generating station is supplied to that State. So far as TPS-II and TPS-I (Expansion) are concerned, the power generated from these two generating stations is supplied to the constituents of Southern Region and thus all of them are the beneficiaries of these generating stations. These generating stations get supply of lignite for generating electricity from the dedicated linked mines, also owned by the petitioner. The power requirements of lignite mines are met from TPS-II Stage-I with capacity of 630 MW and TPS-II Stage-II with capacity of 840 MW.

2. The petitioner had entered into a Bulk Power Supply Agreement (“the agreement”) with the beneficiaries in Southern Region. According to the agreement, the supply of power from the generating stations to the beneficiaries would be after the petitioner met its internal requirements of power in full. Thus, only the surplus electricity available after fulfilling the petitioner’s own needs was sent out, irrespective of the level of generation at the generating stations. The merit of this arrangement, agreed to between the petitioner and the beneficiaries of the generating stations was that it ensured uninterrupted power supply to the lignite mines.

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

accounting of power supply under ABT regime, the Central Government decided that the allocation of power from the central generating stations located in Southern Region needed to be streamlined on percentage basis. This decision of the Central Government was conveyed to Chairman SREB by Ministry of Power under its letter dated 17.12.2002, wherein it was directed that all allocations expressed in MW till then would be converted into fixed percentages, without differentiating between peak hours and off-peak hours. Based on this decision of Ministry of Power, Member Secretary, SREB under its letter dated 31.12.2002 allocated 7.94% of the power generated from TPS-II Stage-I and 5.95% from TPS-II Stage-II for lignite mines. This arrangement came into effect on 1.1.2003. Thus, from that date, the petitioner is one of the beneficiaries of TPS-II.

4. The terms and conditions for determination of tariff applicable with effect from 1.4.2004 have been notified by the Commission under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (“the regulations”). Chapter 2 of these regulations contains the terms and conditions for determination of tariff for supply of power from the thermal power generating stations, whereas Chapter 4 of the regulations deals with the terms and conditions for determination of tariff in respect of inter-state transmission system. Clause (vi) of Regulation 14 (in Chapter 2) defines the term “beneficiary” in relation to a generating station as the person buying power generated at such generating station on payment of annual fixed charges. The methodology for computation of annual fixed charges is defined in other regulations forming part of Chapter 2, with which we are not concerned in the present proceedings and these are, therefore, not being referred to here. Clause (vii) of Regulation 27 in

Chapter 2, which pertains to scheduling of power by the Regional Load Despatch Centres, lays down that for calculating the net drawal schedules of beneficiaries, transmission losses shall be apportioned (in proportion) to their drawal schedule. Based on these provisions of the regulations, the petitioner has been levied the transmission charges for Southern Regional Transmission System in proportion to the capacity allocated from TPS-II and the transmission losses. Feeling aggrieved by this decision, the petitioner has filed the present petition with a prayer for declaration that the lignite mines owned by it are not liable to pay transmission and other charges to Power Grid Corporation of India Limited (PGCIL) and that the regional pool losses should also not be applicable in its case.

5. It has been stated by the petitioner that its mines are availing their share of allocated power through four 230 kV feeders in TPS-II 400 kV/230 kV switchyard which forms part of the generating station owned and operated by it. The petitioner has submitted that no part of the regional transmission system is used by the petitioner for transfer of power from TPS-II to the lignite mines. Accordingly, the petitioner is not liable to pay the transmission charges. It is further submitted that billing meters for the electricity supplied to its mines are at 230 kV bus of TPS-II switchyard and as its off take of power supply is from the generator switchyard bus itself, no transmission losses are incurred in the regional transmission system on account of drawal of power for the lignite mines. Therefore, it is the contention of the petitioner that no pooled regional transmission losses should be appropriated to the lignite mines load.

6. The issue is reported to have been discussed in a workshop on open access in inter-state transmission system held on 28.4.2004 whereat it was decided that lignite mines owned by the petitioner be treated as a beneficiary in terms of Clause (vi) of Regulation 14; thus these mines would be subjected to all transmission charges and transmission losses as per the prevalent practice in Southern Region. The issue was also discussed at 199th meeting of Commercial Committee of Southern Regional Electricity Board on 6.5.2004. It was deliberated that in accordance with definition of term “beneficiary”, the lignite mines are being treated as a beneficiary of the generating stations owned and operated by the petitioner like other beneficiaries. Therefore, the petitioner should also bear the transmission charges and fees and charges of SRLDC, though the petitioner is reported to have opposed such a proposal. Subsequently, the issue was also discussed in 202nd meeting of the Commercial Committee. However, the issue could not be resolved and the matter was referred to TCC of SRE Board. The matter was accordingly taken up for consideration in 113th meeting of TCC of SRE Board held on 9.8.2004 and 135th meeting of SRE Board held on 10.8.2004. At these meetings, the beneficiaries in Southern Region, other than the petitioner resolved that as one of the beneficiaries, the lignite mines belonging to the petitioner are liable to share the regional transmission charges and in case the petitioner had any grievance on this account, it could approach the Commission for appropriate relief and redressal. The present petition has been filed against this background.

7. The respondents, other than Respondent No.9, namely, Central Electricity Authority, in their responses before the Commission have generally supported the

decision arrived at in the TCC and SREB meetings. Thus, the respondents have reiterated that as a beneficiary of TPS-II with effect from 1.4.2004, the petitioner is liable to pay the transmission charges, pooled transmission losses and SRLDC charges and fees. The respondents have contested the petitioner's claim that it is not using the regional transmission system. It has been pointed out that the petitioner entered into a bilateral agreement with Union Territory of Pondicherry for sale of 15-20 MW of power and for conveyance of this power, the transactions took place through Southern Regional Transmission System. This arrangement continued up to 16.9.2003 and thereafter it has been terminated. It is submitted that the petitioner as a beneficiary, is entitled to claim or liable to pay UI charges depending upon underdrawal or overdrawal from the Southern Regional Grid. In case of overdrawal by the petitioner, its requirements are met from the regional grid and in case of underdrawal by the petitioner, the excess is injected into the regional grid. In either case, the Regional Transmission System is used by or on behalf of the petitioner. It is submitted that the scheduling procedure as applicable to other beneficiaries in the Southern Region is applicable in the case of the petitioner and since other beneficiaries are bearing the transmission losses in accordance with methodology decided at SREB forum, the petitioner is also liable to pay the transmission losses and, according to respondents, geographical and physical location of points of drawal and injection of power are of no consequence. Similarly, it has been argued that the petitioner should also share the SRLDC fees and charges because of the involvement of SRLDC in scheduling the petitioner's requirement of power. One of the respondents, namely, Kerala State Electricity Board has further submitted that the regional transmission lines and main feeder are connected to 230 kV bus at Neyveli and thus

TPS-II bus at Neyveli is a part of Southern Regional Transmission System. Accordingly, the petitioner has liability to pay the transmission charges since the lignite mines owned by the petitioner are neither part of the power system nor the consumer. The respondents have in particular referred to the observations of the Commission in its order dated 29.5.2004 in petition No.90/2003 (Neyveli Lignite Corporation Limited Vs Southern Regional Electricity Board and others) wherein the Commission held that “the petitioner as one of the beneficiaries of TPS-II is to be treated at par with other beneficiaries in Southern Region” and payment of UI charges to or by the petitioner shall be governed by the provisions of the Commission’s notifications governing the subject.

8. CEA in its letter dated 8.2.2005 has supported the petitioner’s claim as regards the payment of the transmission charges and apportionment of the transmission losses. CEA has further stated that since SRLDC does the scheduling process for NLC mines and NLC mines are subjected to UI charges, the fees and charges of SRLDC should be payable by the petitioner.

9. We now consider the issues in detail.

Transmission Charges

10. As we have noted above, the terms and conditions for determination of transmission charges and sharing thereof are governed by the provisions contained in Chapter 4 of the regulations. Regulation 58 deals with sharing of charges for intra-regional assets. For the sake of reference, the relevant provision is reproduced below:

“58. **Sharing of charges for intra-regional assets:** In case of more than one long-term transmission customer of the regional transmission system, the transmission charges leviable on each long-term transmission customer shall be computed as per the following formula:

Transmission Charges for intra-regional system payable for a month by a long-term transmission customer of that transmission system

$$= \left(\sum_{i=1}^n \left(\frac{TC_i}{12} \right) - TRSC \right) \times \frac{CL}{SCL}$$

Where TC_i = Annual Transmission Charges for the i^{th} project in the region computed in accordance with regulation 56

n = Number of projects in the region

$TRSC$ = Total recovery of transmission charges for the month from Short-term transmission customers for the regional transmission system in accordance with the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004.

CL = Allotted Transmission Capacity to the long-term transmission customer

SCL = Sum of the Allotted Transmission Capacities to all the long-term transmission customers of the regional transmission system.”

11. It is to be noted that sharing of transmission charges for intra-regional assets, the issue being considered presently, is a function of allotted transmission capacity to the long-term transmission customer. The term allotted transmission capacity is defined in Clause (iii) of Regulation 49 of the regulations to mean as the power transfer in MW between the specified points of injection and points of drawal allowed to long-term customer on inter-state transmission system under the normal circumstances and the expression “allotment of transmission capacity” used in the regulations is to be construed

accordingly. Thus the allotment of transmission capacity is always to a long-term transmission customer. The term “long-term transmission customer” is defined in Clause (xiii) of Regulation 49 ibid to mean as a person availing or intending to avail access to the inter-state transmission system for a period of 25 years or more.

12. From the facts narrated above, it is seen that the petitioner is neither presently availing access to the inter-state (intra-regional) transmission system nor has it expressed any intention to do so for a period of 25 years or more. Therefore, the petitioner is not a long-term transmission customer within the meaning of Chapter 4 of the regulations and thus the allotment of transmission capacity does not exist in its favour.

13. The respondents have pointed out that the petitioner has been utilising the Regional Transmission System for transfer of its surplus power to the Union Territory of Pondicherry up to 16.9.2003. The petitioner is accordingly a beneficiary of the Regional Transmission System and in that capacity it should share the transmission charges. We do not find any merit in the submission. Under the regulations, the petitioner has been treated as a beneficiary with effect from 1.4.2004. Its arrangement for sale of power with Union Territory of Pondicherry was terminated in September 2003. Therefore, the transactions that took place prior to 1.4.2004 need not be looked into for the purpose of considering the petitioner’s status. Also, for the kind of transaction the petitioner undertook with Union Territory of Pondicherry, the petitioner can at best be treated as a short-term transmission customer and be liable to pay the short-term transmission charges. For these transactions, the petitioner cannot be made to share the transmission

charges applicable to a long-term customer. Similar will be the position in cases where UI charges are applicable. It is to be noted further that UI charges have been levied as one “single charge” without any further break up and no separate transmission charges are leviable in case of any beneficiary becoming liable to pay UI charges. We do not find any merit in the submission of Kerala State Electricity Board that since regional transmission lines are connected to 230 kV TPS-II bus at Neyveli, the latter has become part of the Regional Transmission System. As stated by CEA, an independent expert body, the feeders from 230 kV bus at TPS-II 400 kV/230 kV switchyard are part of the generation assets and not of the Regional Transmission System.

14. Now we consider the argument of the respondents made in the context of Commission’s order dated 29.5.2004 in petition No.90/2003, a reference to which has been made above. Petition No.90/2003 was filed by the petitioner to seek exemption from payment of UI charges, consequent to allocation of power from TPS-II with effect from 1.1.2003. The Commission noted that under ABT regime, the generators and beneficiaries become entitled or liable to pay or claim unscheduled interchange charges under the specified circumstances. In that context, the Commission decided that since the petitioner was considered as one of the beneficiaries of TPS-II, it was to be treated at par with other beneficiaries in Southern Region and payment of UI charges to or by the petitioner is to be governed by the regulations notified by the Commission. The decision of the Commission is to be considered in the context of issue raised in petition No.90/2003. It is settled position of law that a decision is an authority for what it decides. Any observation made by a judicial or quasi-judicial authority while considering the

dispute raised in a particular case cannot be torn out of context and applied to other cases. In view of this settled legal position, the Commission's observations made in the order dated 29.5.2004 cannot be pressed into service by the respondents to urge that the petitioner is liable to pay the transmission charges as a beneficiary of TPS-II.

15. On the above considerations, the petitioner is not a long-term transmission customer utilising the Regional Transmission System and should not be liable to share the transmission charges for the intra-regional assets within Southern Region, in terms of Regulation 58 *ibid*. The regional transmission charges shall be shared by the long-term customers of the Transmission System.

Transmission Losses

16. Next comes the question of apportionment of pooled transmission losses. The respondents, in order to defeat the petitioner's claim have referred to Clause (vii) of Regulation 27 which states that for calculating the net drawal schedules of beneficiaries, the transmission losses shall be apportioned to their drawal schedule. According to the respondents, since the petitioner is one of the beneficiaries of TPS-II and its drawal schedules are being regulated by SRLDC, the transmission losses have to be apportioned to its drawal schedule.

17. There is no gainsaying the fact that transmission losses occur in the process of transfer of power on the transmission system. As a corollary of this, a utility using the transmission system becomes liable to bear the transmission losses suffered for

conveyance of power on the transmission system. We have already concluded that the petitioner is not using the Southern Regional Transmission System and is not liable to share the transmission charges applicable to the regional transmission system. Accordingly, the petitioner cannot be saddled with the liability to share the transmission losses occurring in the inter-state transmission system of Southern Region.

18. In his submission before the Commission, Shri V.K. Agrawal, AGM, SRLDC, quoted certain provisions in the Indian Electricity Grid Code (IEGC), the Commission's order dated 3.1.2001 in petition No.109/2000 and the Open access order dated 30.1.2004, to support his contention that the petitioner is liable to pay the transmission charges, share the transmission losses and also share the RLDC fees and charges in proportion to capacity allocation for its mines.

19. The relevant part of clause 7.5.6 of IEGC reads as follows:

“By 5 p.m. each day, the RLDC shall convey:

(i) x x x x

(ii) The net drawal schedule to each beneficiary, in MW for different hours, for the next day. The summation of the station-wise ex-power plant drawal schedules for all ISGS, after deducting the apportioned transmission losses (estimated), shall constitute the State-wise drawal schedule.”

20. While stipulating that apportioned transmission losses are to be deducted, this clause does not specify as to how the losses are to be apportioned. The formula for apportioning of transmission losses is specified in clause (vii) of Regulation 27 referred to earlier, which reads as follows:

“For calculating the net drawal schedules of beneficiaries, the transmission losses shall be apportioned to their drawal schedules for the time being.

Provided that a refinement may be specified by the Commission in future depending on the preparedness of the respective Regional Load Despatch Centre.”

21. It is apparent that SRLDC has literally gone by the above provisions, and treating NLC mines as a beneficiary similar to others, has determined their drawal schedules for the past months after deducting the “apportioned” transmission losses in a proportionate manner. We have to accept that when the above quoted provisions were specified by the Commission (originally in its order of 4.1.2000 in petition No.2/1999), the only beneficiaries were the State Utilities, and the cases like that of the lignite mines owned by the petitioner were perhaps not foreseen. Therefore, the provision in the IEGC and clause (vii) of Regulation 27 cannot be construed to authorise levy of transmission losses on the petitioner in the background facts noted above. CEA also has concluded that no transmission losses occur in the process of use of power by the petitioner as the off take of power is from the generating station bus itself.

22. It is also recognised that any retrospective change in respect of transmission losses apportionment shall necessarily cause a post-facto revision of net drawal schedules and a total re-working of 15 minute-wise regional energy accounts for all constituents for all these months, leading to changes in all UI bills. In order not to unsettle the settled position and taking a practical view despite merits of the petitioner’s case, we propose to apply this part of relief prospectively only. We, therefore, direct that in the case of lignite mines owned by the petitioner, and any other identical cases, the net

drawal schedules shall be worked out without any deduction on account of transmission losses, with effect from 1.3.2005.

RLDC Fees and Charges

23. This leaves the question of sharing of RLDC fees and charges by the petitioner. Though the issue is not raised in the present petition, it has been raised by some of the respondents in their pleadings and also by CEA. The issue was also argued at the time of hearing. Para 18 of the Commission's order dated 3.1.2001 in petition No.109/2000 was also referred to by AGM, SRLDC, wherein it is stipulated that the RLDC charges should be shared on entitlement (capacity allocation) basis. At that time, the representative of the petitioner had fairly accepted that it is reconciled to share RLDC fees and charges. In view of this, we do not propose to examine the issue in detail. The petitioner shall honour the bills on account of RLDC fees and charges already decided or to be decided by the Commission in future.

24. With the above, the petition stands disposed of.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 24th February, 2005