

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

**Shri Ashok Basu, Chairperson
Shri K.N. Sinha, Member
Shri Bhanu Bhushan, Member
Shri A.H. Jung, Member**

**Petition No. 67/2003
(Suo motu)**

In the matter of

Bringing Generating Stations of Central Public Sector Undertakings (CPSUs) supplying power to a single-beneficiary State in which situated, under the purview of Availability Based Tariff (ABT) – Simhadri STPS.

The following were present:

1. Shri V.B.K. Jain, NTPC
2. Shri I.J. Kapoor, NTPC
3. Shri S.K. Mandal, NTPC
4. Shri Y.M. Murali, NTPC
5. Smt Rachna Mehta, NTPC
6. Shri Balaji Dubey, NTPC
7. Shri S.K. Aggarwal, NTPC
8. Shri A.K. Juneja, NTPC
9. Shri Sanjay Sen, Advocate, CPDPCL (APTRANSCO)

**ORDER
(DATE OF HEARING : 31.1.2006)**

The Commission by its order dated 4.7.2005 had decided to implement ABT on single-beneficiary generating stations, which included Simhadri STPS, owned by National Thermal Power Corporation Limited (NTPC), a generating company owned or controlled by the Central Government, with effect from 1.12.2005. For this purpose, an action plan was prepared jointly by NTPC and Andhra Pradesh State Load Despatch Centre (APSLDC). According to this action plan, special energy meters had been installed at the identified locations based on ongoing feeders and joint calibration

of these meters was to be programmed by 15.10.2005. Under the joint action plan, trial run of UI accounting was proposed to be taken up with effect from 1.11.2005.

2. Meanwhile, Transmission Corporation of Andhra Pradesh Ltd, which was undertaking distribution of electricity in the State was unbundled and four distribution companies, namely, Central Power Distribution Company of Andhra Pradesh Limited, Southern Power Distribution Company of Andhra Pradesh Ltd, Northern Power Distribution Company of Andhra Pradesh Ltd. and Eastern Power Distribution Company of Andhra Pradesh Limited, were assigned the task of distribution of electricity in the State. These distribution companies filed an appeal being Appeal No.152/2005 before the Appellate Tribunal for Electricity (the Tribunal) against the order dated 4.7.2005, mainly on the ground that the Commission did not have jurisdiction to introduce ABT on Simhadri STPS supplying power within the State of Andhra Pradesh and that no opportunity of hearing was provided before making the order dated 4.7.2005. The appeal has been dismissed by the Tribunal by its order dated 3.1.2006 holding that by virtue of clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act), the Commission had jurisdiction to introduce ABT for Simhadri STPS. The Tribunal has further found that no prejudice was caused to the appellants by the mere fact that an opportunity of hearing was not provided before passing the order dated 4.7.2005.

3. Despite rejection of appeal, ABT has so far not been implemented on Simhadri STPS. The Commission by its order dated 3.1.2006 issued notice for hearing on the issue.

4. We heard Shri V.B.K. Jain for NTPC and Shri Sanjay Sen, Advocate for the distribution companies. Shri Jain has produced copy of a fax message dated 24.1.2006 from Chief Engineer, Andhra Pradesh Power Coordination Committee (APPCC) stating that it had decided to file an appeal under Section 125 of the Act before the Hon'ble Supreme Court against the order of the Tribunal, further stating that the distribution companies shall continue to make payment for energy bills for the power supplied from Simhadri STPS based on actual energy drawn. We may note that under ABT, the capacity charge (fixed cost) is charged on the capacity allocation and since Simhadri STPS has been created to cater to the needs of Andhra Pradesh, the fixed cost is to be borne by the distribution companies as per their share in the capacity created. Further, energy charges have to be billed and paid as per scheduled energy and UI charges have to be paid or received for deviations from schedule.

5. Learned counsel for the distribution companies submitted that under Section 125 of the Act, an appeal could be filed before the Hon'ble Supreme Court within 60 days from the date of communication of the order of the Tribunal dated 3.1.2006. He submitted that since there was enough time for filing the appeal, the operation of the order dated 4.7.2005 should be stayed. This was opposed by the representative of NTPC.

6. We have considered the submission. The order dated 4.7.2005 has merged into the Appellate order dated 3.1.2006 in appeal No.152/2005. Therefore, stay of the order dated 4.7.2005 will be against the spirit of the Tribunal's order. Under these circumstances the question of stay of the order does not arise. Nevertheless, we tried

to ascertain from the learned counsel the objections of the distribution companies to introduction of ABT on merits. The learned counsel stated that he did not have any instructions to state the objections on merits, but his instructions were to inform the Commission that the distribution companies intended to file the appeal under Section 125 of the Act. The Commission was party to the appeal filed before the Tribunal. We have perused the memorandum of appeal filed there. In the memorandum of appeal no objection to the introduction of ABT has been raised on merits. Accordingly, we presume that on merits, the distribution companies have nothing to urge against the proposal to implement ABT.

7. Shri V.B.K. Jain informed that necessary data for billing charges in accordance with ABT scheme was available since 1.12.2005. We direct that the bills shall be raised by NTPC with effect from 1.12.2005 as applicable to other stations under ABT regime.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 13th February 2006