

CENTRAL ELECTRICITY REGULATORY COMMISSION

Coram

1. **Shri D.P. Sinha, Member**
2. **Shri. G.S. Rajamani, Member**
3. **Shri. D.V. Khera, Member (EO)**

In the matter of:

Review of Commission's order dated 21-12-2000 in Petitions No. 4/2000, 31/2000, 32/2000, 34/2000, 85/2000, 86/2000 & 88/2000.

Review Petition No.9/2001

In the matter of

Neyveli Lignite Corporation Limited VS

Petitioner

1. Tamil Nadu Electricity Board
2. Transmission Corporation of Andhra Pradesh
3. Karnataka Power Transmission Corporation Ltd.
4. Kerala State Electricity Board
5. Pondichery Electricity Department
6. National Thermal Power Corporation
7. Powergrid Corporation of India Ltd.

Respondents

Review Petition No.10/2001

In the matter of

National Thermal Power Corporation Ltd.

Petitioner

VS

1. Union of India through Secretary, Ministry of Power
2. Power Grid Corporation of India Ltd.,
3. Transmission Corporation of India Ltd.
4. Grid Corporation of Orissa
5. Damodar Valley Corporation
6. Bihar State Electricity Board
7. West Bengal State Electricity Board
8. Rajasthan Rajya Vidyut Prasaran Nigam Ltd
9. Delhi Vidyut Board
10. Uttar Pradesh Power Corporation Ltd
11. Punjab State Electricity Board
12. Madhya Pradesh Electricity Board
13. Haryana Vidyut Prasaran Nigam Ltd
14. Maharashtra State Electricity Board
15. National Hydroelectric Power Corporation

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16. Nuclear Power Corporation of India Ltd
17. Karnataka Power Transmission Corporation Ltd
18. Neyveli Lignite Corporation Ltd
19. Tamil Nadu Electricity Board
20. Assam State Electricity Board
21. Gujarat State Electricity Board
22. Himachal Pradesh State Electricity Board
23. Power Development Department
24. The Chief Engineer cum Secretary, Engineering Department,
Chandigarh Administration
25. Kerala State Electricity Board
26. Government of Pondicherry
27. Government of Sikkim
28. Government of Goa
29. Administration of Daman and Diu
30. Administration of Dadra Nagar Haveli

Respondents

Review Petition No.11/2001

In the matter of:

Rajasthan Vidyut Prasaran Nigam Limited

Petitioner

VS

1. Union of India through Secretary, Ministry of Power
2. Central Electricity Authority
3. National Thermal Power Corporation Ltd
4. Punjab State Electricity Board
5. Haryana Vidyut Prasaran Nigam Ltd
6. Delhi Vidyut Board
7. U.P. Power Corporation Ltd
8. Himachal Pradesh Electricity Board

Respondents

Review Petition No,12/2001

In the matter of

Powergrid Corporation of India Ltd.

Petitioner

VS

Rajasthan Rajya Vidyut Prasaran Nigam Ltd,
Himachal Pradesh State Electricity Board
Punjab State Electricity Board
Haryana Vidyut Prasaran Nigam Ltd.
Power Development Dept.
Uttar Pradesh Power Corporation Ltd
Delhi Vidyut Board
Chandigarh Administration
Bihar State Electricity Board
West Bengai State Electricity Board
Grid Corporation of Onssa Ltd

12. Damodar Valley Corporation
13. Power Department
14. Karnataka Power Transmission Corporation Ltd,
15. Transmission Corporation of Andhra Pradesh
16. Kerala State Electricity Board
17. Tamil Nadu Electricity Board
18. Electricity Department of Pondicherry
19. Electricity Department (Goa)
20. Madhya Pradesh Electricity Board
21. Maharashtra State Electricity Board
22. Gujarat Electricity Board
23. Electricity Department, Administration of Daman & Diu
24. Electricity Department, Administration of Dadra Nagar Haveli
25. Assam State Electricity Board
26. Meghalaya State Electricity Board
27. Government of Arunachal Pradesh
28. Power & Electricity Department, Govt, of Mizoram
29. Electricity Department, Govt, of Manipur
30. Department of Power, Govt, of Nagaland
31. Department of Power, Govt, of Tripura

- Respondents

Review Petition No.13/2001

in the matter of:

UP Power Corporation Limited

- Petitioner

VS

1. Union of India through Secretary, Ministry of Power
2. Central Electricity Authority
3. National Thermal Power Corporation Ltd.
4. Punjab State Electricity Board
5. Haryana Vidyut Prasaran Nigam Ltd
6. Delhi Vidyut Board
7. Rajasthan Vidyut Prasaran Nigam Ltd.,
8. Himachal Pradesh Electricity Board

- Respondents

Review Petition No.14/2001

In the matter of:

Kerala State Electricity Board

- Petitioner

VS

1. National Thermal Power Corporation Ltd.
2. Power Grid Corporation of India Ltd
3. Neyveli Lignite Corporation Ltd.

- Respondents

In the matter of:

Haryana Vidyut Prasaran Nigam Ltd.

Petitioner

VS

1. Union of India through Secretary, Ministry of Power
2. Central Electricity Authority
3. National Thermal Power Corporation Ltd.
4. Punjab State Electricity Board
5. Rajasthan Vidyut Prasaran Nigam Ltd.
6. Delhi Vidyut Board
7. UP. Power Corporation Ltd
8. Himachal Pradesh Electricity Board

Respondents

I.A. NO, 31/2001

AND

Review Petition No. 27/2001

In the matter of:

Punjab State Electricity Board -

Petitioner

VS

1. Union of India through Secretary, Ministry of Power
2. Central Electricity Authority
3. National Thermal Power Corporation Ltd.
4. Rajasthan Vidyut Prasaran Nigam Ltd.
5. Haryana Vidyut Prasaran Nigam Ltd.,
6. Delhi Vidyut Board
7. U.P. Power Corporation Ltd
8. Himachal Pradesh Electricity Board

Respondents

The following were present:

1. Shr R.S. Prabhu, Advocate, for NLC Petitioner in Review Petition No.9/2000
2. Shr R. Suresh, Chief Engineer, NLC
3. Shr M.G. Ramachandran, Advocate for NTPC, Petitioner in Review Petition No. 10/2001
4. Shri Shyam Wadhea, GM(Comml.), NTPC
5. Shri S.N. Goel, DGM(Comml), NPTC
6. Shri Aditya Madan, Advocate, for RVPNL, Petitioner in Review Petition No, 11/2001 V.K. Gupta,
7. Shr SE(ISP), RVPNL Surat Singh, Advocate, PGCIL - Petitioner in Review Petition No. 12/2001
8. Dr. S.D. Duwakanath, Advocate, PGCIL
9. Shr Suresh Sachdev, GM(Comml), PGCIL
- 10 Shri S.S, Sharma, AGM(Comml), PGCIL
- 11 Shri K.K. Das, GM(SO), PGCIL
- 12 Shri T.S.P. Rao, DGM(Law), PGCIL
- 13 Shri Sunil Agarwal, Chief Manager, PGCIL
- 14 Shn Ashwam Jam, DGM(CP), PGCIL
- 15 Shri Pradeep Mishra. Advocate, for UPPCL, Petitioner in Review Petition No. 13/2001 G.C. Jain.
- 16 Shn EE. UPPCL
- 17 Shn B.K. Saxena. Sr AE. UPPCL
- 18 Shn

19. Shn . M. Sivathanu Pillai, Dy. CE, KSEB . A.
20. Shn Muraleedharan, EE, KSEB
21. Shn Ravi, Advocate for HVPNL, Petitioner in Review Petition No.21/2001. . R.K.
22. Shri Arora, XEN (Tariff), HVPN
23. Shn . Sarup Singh, Advovate for PSEB Petitioner in Review Petition No. 27/2001 . A.K.
24. Shri Gupta, Dy. Director, PSEB

ORDER (DATE OF HEARING
17-04-2001)

These review petitions have been filed by the Central Utilities namely, Neyveli Lignite Corporation Ltd (NLC), National Thermal Power Corporation Ltd (NTPC) and Power Grid Corporation of India Ltd. (PGCIL) and the State Electricity Boards and other beneficiaries, namely, Rajasthan Rajya Vidyut Prasaran Nigam Ltd (RVPNL), Uttar Pradesh Power Corporation Ltd. (UPPCL) Kerala State Electricity Board (KSEB), Haryana Vidyut Parasaran Nigam Ltd (HVPNL) and Punjab State Electricity Board (PSEB) seeking review of the Commission's Order dated 21-12-2000 in Petitions No.4/200, 31/2000, 32/2000, , 34/2000, 85/2000, 86/2000 and 88/2000. As these petitions involve common questions, these have been heard together and are being disposed of through this common order.

2. The Commission vide its order dated 21-12-2000 in the above noted *suo motu* petitions had laid down the terms and conditions for determination of tariff in respect of the companies referred to in clauses (a), (b) and (c) of Section 13 of the Electgricity Regulatory Commissions Act 1998 It was directed that the terms and conditions prescribed in the said order dated 21-12-2000 shall apply for a

period of 3 years w.e.f. 1-4-2001. It was further directed that in all cases where the tariff was determined earlier under the notifications issued by the Central Government or it was determined provisionally under the order of the Commission, the same shall continue to apply till the revised terms and conditions as directed by the Commission came into force. In a number of petitions filed by the utilities, this Commission had ordered provisional payment of partial tariff, as an interim measure. The provisional tariffs determined with partial payment was confirmed by this Commission by its order dated 21-12-2000. It was further directed that where partial payment was being made while awaiting final determination, full payment shall be made on demand by the utilities. This Commission, however, clarified that if the order created any unfairness or hardship, the party may approach the Commission for redressal within 60 days of issue of this order "in accordance with provisions for review" as contained in Regulation 103 of CERC (Conduct of Business) Regulations 1999.

3. Shri R.S. Prabhu, learned Counsel appearing for NLC submitted that the NLC has already filed an appeal before the High Court of Delhi against order dated 21-12-2000, which is also the subject matter of the present review petition. He prayed that a decision on the petition may be kept pending since the High Court is already seized of the matter, though he requested for issue of notice to the respondents so that the pleadings are completed. On the other hand, Shri R.Suresh, Chief Engineer, NLC pointed out that the petitioner has been denied the level playing field qua other players in the electricity sector. He further

submitted that NLC is also aggrieved on account of norms for O&M charges and the escalation factor provided in terms of the Commission's order dated 21-12-2000. He further pointed out that NLC is required to switchover from single-part tariff to two-part tariff for implementation of the order for which it may face the some problems.

4. Shri M.G. Ramachandran, Advocate appearing for NTPC submitted that an appeal has been filed by NTPC also against the order dated 21-12-2000 on 19-2-2001 in order to save limitation. It had also sought stay of the order as order was to be implemented w.e.f. 31-3-2001. The learned Counsel informed us that Delhi High Court has already passed an interim order based on the application filed by NTPC. The present review petition was filed by NTPC on 16-2-2001. He submitted that there was no bar to review the order by the Commission during pendency of the appeal where only an interim order has been made. In view of the interim order made by the High Court, the learned Counsel appearing for NTPC did not press for the stay of the Order. NTPC in its review petition has alleged that it has been denied the level playing field qua IPPs so far as the applicability of terms and conditions of tariff is concerned. However, at the hearing before us the learned Counsel stated that he was not pressing this as a ground for review of the order. According to the learned Counsel, NTPC shall face undue hardship since the Commission has not issued any directions to SEBs and other purchasers of power for payment of the outstanding amounts to NTPC. He also stated that the NTPC was aggrieved on

account of the terms and conditions prescribed by the Commission on depreciation, incentive, development surcharge and O&M charges.

5. Dr. Surat Singh, assisted by Shri T.S.P. Rao, Dy. G.M. (Law), PGCIL submitted that an appeal has been filed by PGCIL against the Commission's Order dated 21-12-2000 and the High Court has already passed an interim order in favour of PGCIL. He stated that the present review petition has been filed in view of the liberty granted by the Commission in its above noted order. The grievances listed in the review petition are on account of apportionment of common costs, interest on loan, interest on working capital, depreciation, O&M costs, Foreign Exchange Rate Variation, treatment of corporate tax in tariff, incentive and the development surcharge.

6. The grounds on which review has been sought by SEBs, etc. are common in all the petitions. These grounds are that the terms and conditions prescribed should have been applied retrospectively from the date of expiry of earlier tariff notifications issued by the Central Govt, and not from 1-4-2001. It is submitted that the recommendations of the Expert Committee constituted by the Commission on operational norms for thermal stations should have been accepted by the Commission since this would have benefited the State Electricity Boards and other purchasers of power. They have also pointed out that they have been overcharged by NTPC even as per the earlier norms and therefore, this Commission should re-fix the tariff retrospectively. Some of the SEBs feel aggrieved on account of the Commission's directions regarding

confirmation of provisional tariff determined by the Commission and for full payment of charges where partial payment was being made earlier. The review petition filed by PSEB is barred by limitation. It has filed an application for condonation of delay though the grounds taken by it in support of review of the order are similar to those taken by other SEBs. The main arguments in support of the review have been addressed by Shri Aditya Madan, Advocate appearing on behalf of the RVPNL and the counsel/representatives of other SEBs have generally adopted those arguments.

7. The delay in filing of the Review Petition by PSEB is condoned.

8. By virtue of clause (f) of Section 12 of the Electricity Regulatory Commissions Act 1998, the Commission has same powers as are vested in a Civil Court under the Code of Civil Procedure to review its decisions, directions and orders. In accordance with Rule 1 Order 47 of the Code of Civil Procedure, any person who considers himself aggrieved by a decree or order can seek review of the decree or order under the following circumstances:-

- a) By the discovery of new and important material or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when decree was passed or order made, or
- b) On account of some mistake or error apparent on the face of record, or
- c) For any other sufficient reason.

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9. We have given our thought to the grounds urged on behalf of the petitioners. The directions for payment of outstanding dues have not been issued as a part of terms and conditions of tariff as this aspect forms subject matter of separate petitions filed by NTPC. Commission has, however, provided for late payment surcharge for delay in payment by SEBs in the notification issued on 26-3-2001. Commission brought this to the notice of the Counsel for NTPC. The Commission has to be satisfied that such a direction can be issued in exercise of its regulatory power. All other issues raised on behalf of the review petitioners have been elaborately dealt by this Commission through a well-reasoned order in support of the directions. We, therefore, desired the parties to specify the provisions of the Civil Procedure Code which cover the present review petitions. All of them were unanimous in their submission that these review petitions have been filed by virtue of liberty granted to them by the Commission under para 1.4.3 of the order dated 21-12-2000. Shri M.G. Ramachandaran further submitted that the hardship to the petitioner is the "sufficient reason" for seeking review of Li;3 order.

10. The extracts of para 1.4.3 and the preceding para i.e. para 1.4.2 are reproduced below for facility of reference:-

"1.4.2 . The terms and conditions covered by this and other orders of the Commission could have been applied from 15th May 1999. The Commission has already granted either provisional tariff or continuation of existing tariff for stations/lines pending finalisation by it of its tariff norms, terms and conditions. These stations/lines include those:

- a) for which the earlier notifications have expired, and are awaiting new notifications;

- b) for which the earlier, notifications continue to apply for some more time;
- c) established on or after 15th May 1999 and have mutual agreements with beneficiary SEB's for charging tariff; and
- d) established on or after 15th May 1999 other than (c) above.

The Commission would like to minimise uncertainty and hardship regarding tariff. It would like also to avoid determining tariff retrospectively. Hence the terms and conditions, and norms, notified in these orders shall be applied uniformly to all stations/lines with effect from 1st April 2001. This time gap is required to enable state level beneficiaries to project their Annual Revenue requirements for the year 2001-2002 onwards. The Commission also anticipates that Tariff petitions would be filed sufficiently in advance of 1st April 2001 so that the state level beneficiaries could estimate their requirements in time. In all cases where the tariff were determined earlier under Government notification or provisionally shall continue to apply till that time. Wherever provisional tariff was determined with partial payment, the same is now confirmed. For instance if 90% provisional payment was allowed, with this order the balance 10% is also confirmed. As such where partial payment was being made while awaiting final determination, full payment shall now be made, on demand by the utilities.

1.4.3 If this order creates any unfairness, or hardship, parties may approach the Commission for redressal, within 60 days of issue in accordance with the provisions for review as contained in Regulation 103 of the Conduct of Business Regulation. "

11. Undoubtedly, the liberty had been granted to the parties to approach the Commission for redressal of grievances "in accordance with the provisions for review". In our view the reliance placed by the parties on para 1.4.3 to seek review of any of the directions of the Commissions is totally misplaced. In fact, para 1.4.3 is to be read with the preceding para wherein this Commission has directed that the utilities shall be entitled to full payment on account of tariff, even where the Commission had earlier ordered partial payment on provisional basis. The mere fact that any of the parties is likely to face hardship on account of the order passed by the Commission cannot in itself be a sufficient ground for seeking review of the order, independent of provisions of the Civil Procedure

Code. The review of the order is possible only if it is sought on any of the grounds provided under the statutory provisions as contained in the Code of Civil Procedure and applicable to the Commission by virtue of Clause (f) of Section 12 of the Electricity Regulatory Commissions Act 1998. A reading of para 1.4.3 makes it further clear that a party can approach the Commission for redressal on grievances "in accordance with the provisions for review". Therefore, we are of the opinion that para 1.4.3 of this Commission's order dated 21-12-2000 by itself is not a sufficient ground for seeking review of the order unless the parties are able to satisfy that the review application is within the bounds of the statutory prescription. The Commission is not conferred with powers to prescribe the additional grounds for review of its order *de hors* the provisions of the Civil Procedure Code. The liberty granted to the parties to seek review of the order is in the context of the direction contained in para 1.4.2, according to which the partial payment of tariff allowed earlier has now been made full payment. The parties affected may seek review limited to this direction. However, the matters wherein partial payment was allowed earlier and confirmed by order dated 21-12-2000 are kept pending and the parties are proposed to be given opportunity of hearing before making a final order. We, therefore, do not consider it appropriate to give any further direction on this aspect. The parties have the liberty to make their submissions when those cases are finally heard. This procedure is not likely to cause any hardship or unfairness to any of the parties to the pending petitions.


12. Some of the SEBs have pleaded that by virtue of the continuation of the norms laid down by the Government they have already made excess payment of tariff to NTPC. The question of payments cannot be the subject matter of this review petition. We, therefore, do not take any cognizance of the averment on behalf of the SEBs in these petitions. In case of excess payment, if any, made by any of the parties it may take appropriate steps for recovery or adjustment of the excess amount paid in the normal course of billing, accounts finalisation etc.

13. We have already noticed that NLC, NTPC and PGCIL have also filed appeals against the order dated 21-12-2000 . The High Court of Delhi is already *in seisin* of the matter and it has issued certain interim directions. The grounds in support of the appeals are identical with those raised by these parties in the present petitions. As a superior court is already seized of the matter, we do not consider it appropriate to conduct the parallel proceedings even though we are satisfied that there is no legal bar to such a course in view of the submissions made by Shri M.G. Ramachandran, learned Counsel iur NTPC.

14. In the light of foregoing discussion we are of the considered opinion that the review applications are not maintainable and are liable to be dismissed at admission stage. We order accordingly.

(D.V. Khara)
Rajamani)
Member(EO)


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(G.S.
(DrFTSinha)
Member


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Member

New Delhi, the 24^m April, 2001.