

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

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

Petition No. 194/2004

In the matter of

Non-compliance of the Commission's order dated 31.8.2004 by TNEB in respect of fixation of tariff for Thermal Power Station-I (600 MW) for the period from 1.4.2002 to 31.3.2004.

And in the matter of

Neyveli Lignite Corporation Ltd

... **Petitioner**

Vs

Tamil Nadu Electricity Board

.... **Respondent**

The following were present:

1. Shri K. Sekar, GM, NLC
2. Shri R. Suresh, DGM, NLC
3. Shri Rama Choudhry, NLC
4. Shri S. Sowmyanarayanan, Consultant, TNEB

ORDER

(Date of Hearing: 27.1.2005)

In the present petition, the petitioner has sought a direction to the respondent to pay the revised tariff of Rs.185.54 paise/kWh worked out by the petitioner, stated to be in accordance with the directions contained in the Commission's order dated 31.8.2004 in Petition No. 33/2004.

2. The petitioner had filed petition No. 33/2004 for approval of tariff for TPS-I generating station for the period 1.4.2002 to 31.3.2004. For the earlier period, the

petitioner had entered into a Bulk Power Supply Agreement (BPSA) dated 9.3.2001 with the respondent which was valid from 1.4.1997 to 31.3.2002. After hearing the parties, the Commission in its order dated 31.8.2004 had directed that tariff for the period 1.4.2002 to 31.3.2004 would be determined based on the norms including the operational norms contained in the BPSA, except that auxiliary energy consumption shall be taken @ 12% instead of 12.5% provided for in the BPSA. In all other respects, the terms contained in the BPSA are to govern the determination of tariff.

3. In the present petition, the petitioner had alleged that it had worked out the revised tariff of 185.54 paise/kWh (net) based on the directions contained in the Commission's order dated 31.8.2004. It is stated that return on equity @ 16% has been claimed while computing tariff of 185.54 paise/kWh. However, the respondent has limited the payments at 174.74 paise/kWh.

4. The respondent has contested the petitioner's claim for ROE @ 16%. According to the respondent, the petitioner is entitled to ROE @ 12% as was agreed to under the BPSA. The respondent has further submitted that the generating station has the total installed capacity of 600 MW. However, the petitioner has made available capacity of 560 MW. Thus, according to the respondent, the petitioner is not entitled to claim tariff @ 185.54 paise/kWh and its entitlement after making adjustments on account of capacity and ROE, is 174.74 paise/kWh, which the respondent is paying without demur.

5. We have heard Shri K. Sekar, GM for the petitioner and Shri S. Sowmyanarayan, Consultant for the respondent.

RATE OF RETURN

6. The petitioner's case is that under the BPSA, tariff was calculated by considering ROE @ 12%. However, Clause 10.3 of BPSA provided that the rates of tariff as per the BPSA were subject to further revision based on the directive/notification, if any, that may be issued by the Central or State Governments or any other Central/State Regulatory Authorities, competent to issue guidelines in regard to depreciation, return on investment or any other parameter. The representative of the petitioner further explained that though BPSA was signed on 9.3.2001, it was effective from 1.4.1997 and therefore, the provision for adjustment was made in Clause 10.3 of the BPSA as noticed above. According to the petitioner, ROE was revised upwardly by the Central Government from 12% to 16% with effect from 1.11.1998. The respondent has paid tariff from 1.11.1998 to August 2004 based on claim of ROE @ 16%. The representative of the respondent submitted that these payments have been made under protest, since the petitioner is entitled to ROE @ 12% only as provided for in the BPSA. The representative of the respondent further submitted that in case ROE is increased from 12%, other norms notified by the Commission should also be applicable in the present case.

7. We have considered the rival contentions. There is no dispute that the actual tariff worked out in the BPSA effective from 1.4.1997 was by considering ROE @ 12%. However, the Central Government in Ministry of Coal by its letter No. 43011/2/98-Lig. dated 3.12.1998 had decided to revise the power tariff for the generating stations belonging to the petitioner, with effect from 1.11.1998 to ensure ROE of 16% which has been paid by the respondent up to August 2004. The revision has been carried out based on a similar upward revision of ROE by Ministry of Power, in its notification dated 15.10.1998. Nothing has been placed before us to show that these payments were under protest though a submission to that effect was made by the representative of the respondent at the hearing. On perusal of the material available on record, we are satisfied that in terms of the BPSA dated 9.3.2001, Clause 10(c) thereof in particular, the petitioner is entitled to claim ROE @ 16%. As regards the revision of tariff by extending other norms decided by the Commission to TPS-I generating station, we refrain from expressing any definite opinion. The respondent is at liberty to make an appropriate application with proper justification in accordance with law.

CAPACITY

8. The capacity adopted by the petitioner for working out tariff is 560 MW instead of station capacity of 600 MW which has been restored to this level after completion of life extension programme for Unit IV. According to the respondent, it is liable to pay tariff by considering capacity of 600 MW. We find merit in the contention raised on behalf of the respondent. Though the BPSA provides that the

tariff is to be claimed by considering the capacity of 560 MW, yet during the period of validity of the BPSA, extensive renovation of Unit IV of TPS-I were undertaken by the petitioner. This has resulted in restoration of the full capacity of 600 MW. Therefore, in our considered opinion, the respondent is liable to pay tariff based on the full capacity of 600 MW of the generating station.

9. In the light of the foregoing discussion, the tariff for the period from 1.4.2002 to 31.3.2004 shall be worked out afresh. With these directions, the petition stands disposed of.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 1st February 2005