

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Shri D.P. Sinha, Member
2. Shri G.S. Rajamani, Member
3. Shri K.N. Sinha, Member

IA No. 27/2001 & 32/2001
in
Review Petition No.18/2000
in
Petition No.2/1999

In the matter of

Review/ Stay of ABT order

And In the Matter of

Transmission Corporation of Andhra Pradesh

.....Petitioner

Vs

1. Power Grid Corporation of India Limited
2. Union of India
3. National Thermal Power Corporation Ltd.
4. Neyvelli Lignite Corporation Ltd.
5. Tamil Nadu Electricity Board
6. Madhya Pradesh State Electricity Board
7. Gujarat Electricity Board
8. Electricity Deptt, Admn. Of Daman & Diu
9. Electricity Deptt., Admn of Dadar & Haveli.
10. Kerala State Electricity Board
11. Karnataka Power Transmission Corp. Ltd.

12. Maharashtra State Electricity Board
13. Deptt. Of Power, Govt. of Sikkim.
14. Goa Electricity Department
15. Engineering Dept., Chandigarh Admn.
16. Assam State Electricity Board
17. Bihar State Electricity Board
18. Damodar Valley Corporation
19. West Bengal State Electricity Board
20. Rajasthan State Electricity Board
21. Himachal Pradesh State Electricity Board
22. Uttar Pradesh Power Corpn. Ltd.
23. Grid Corporation of Orissa
24. Delhi Vidyut Board
25. Haryana Vidyut Prasaran Nigam Ltd.
26. Electricity Deptt., Govt. of Pondicherry
27. Punjab State Electricity Board
28. Electricity Deptt., Govt. of J&K
29. Nuclear Power Corporation Ltd. **.....Respondents**

The following were present on the date of hearing:

1. Shri Amit Kapur, Advocate, APTRANSCO
2. Shri M.S. Ramachandra Rao, Advocate, APTRANSCO
3. Shri Abijit Maitra, Advocate, APTRANSCO
4. Shri V. Sivaprasada Rao, Chief GM, APTRANSCO
5. Shri Bhanu Bhushan, Dir. (Opn.) Powergrid
6. Shri Sunil Agarwal, Chief Manager, Powergrid
7. Shri K. Ramakrishna, CM (Comm.), SRLDC, Powergrid
8. Shir Asok Kumar M. DGM (Comm.), NPCIL
9. Shri R.Y. Singh, AGM (Economics & Comm.), NPCIL
10. Shri Md. S. Mondal, CE (Comm.), DVC
11. Shri T.K. Ghosh, SE (Comm.), DVC
12. Shri R.K. Jain, Dir. (Tech.), HVPN
13. Shri R.K. Arora, XEN/Tariff, HVPN
14. Shri V.K. Kanjalia, ED (Comm.) NHPC
15. Shri S.K. Agarwal, CE (Comm.), NHPC
16. Shri R.K. Mehta, Advocate for GRIDCO
17. Shri K.K. Garg, GM (Comm.), NTPC

ORDER
(DATE OF HEARING : 7th JUNE, 2001)

Transmission Corporation of Andhra Pradesh (APTRANSCO) had filed the petition (No.18/2000) seeking review of the Commission's order dated 4.1.2000 in Petition No.2/99. During pendency of the review petition, the petitioner has filed Interlocutory Applications No.27/2001 and No.32/2001, which are proposed to be considered presently.

2. The Commission in its order dated 4.1.2000 in petition 2/99 had decided the principles for implementing Availability Based Tariff (ABT) and the dates of its implementation. ABT was to be implemented in Southern Region w.e.f. 1.4.2000. The directions contained in the order dated 4.1.2000, *inter alia*, provide that the deviations in actual generation/drawal and scheduled generation/drawal are to be accounted for through Unscheduled Interchange (UI) Charges. UI charge is a penal charge to discourage any deviation from the schedule. These deviations are injurious to proper Grid Management. UI is to be worked out for each 15-minute time block. Each generating station is required to make advance declaration of its capacity for generation in terms of MWh delivery ex-bus for each time block of 15 minutes of the next day. This constitutes the basis of generation schedule. UI for the beneficiaries is equal to its actual drawal minus its scheduled drawal during the time block of 15 minutes. The charges for UI transactions are to

be based on average frequency of the time block and the following rates are applicable:

Average Frequency of time block	UI Rate (Paise per kWh)
50.5 Hz and above	0.00
Below 50.5 Hz and up to 50.48 Hz	5.60
Below 49.04 Hz and up to 49.02 Hz	414.40
Below 49.02 Hz	420.00
Between 50.5 Hz and 49.02 Hz	linear in 0.02 Hz step

(Each 0.02 Hz step is equivalent to 5.6 paise /kWh within the above range)

3. The Commission on 7.3.2000 stayed implementation of the order dated 4.1.2000 in the review petition (No.13/2000) filed by NTPC, because the issues raised therein were under detailed consideration of the Commission and the present review petition (No.18/2000) was kept pending. The review petition No.13/2000 was finally disposed of vide the Commission's order dated 15.12.2000 when the stay on implementation of ABT ordered on 7.3.2000 was also vacated. In accordance with the schedule for implementation of ABT laid down in the order dated 15.12.2000, ABT was to be implemented in Southern Region w.e.f. 1.4.2001.

4. The petitioner, APTRANSCO, in its review petition (No.18/2000) had prayed for deferment of the implementation of ABT in Southern Region till 1.4.2001 because of the inability of the constituents of the Southern Region to raise the operating frequency to 50.00 Hz from the existing level of 48.4 Hz, in view of the general shortages of power in the region. It also prayed for the

increase of time blocks of 15 minutes to at least 60 minutes. On the question of pricing of UI, it prayed that the rate of Rs. 3/kWh may be fixed as UI tariff for deviation below 48.5 Hz. In IA No.27/2001 it has sought directions to NLC, Madras Atomic Power Station and Kaiga Power Station to notify two-part tariff before implementation of ABT and to PGCIL (Respondent No.1), to establish to the satisfaction of the petitioner a suitable energy accounting and load monitoring & control mechanism. It also prayed for stay of the operation of ABT till such time the directions sought are complied with by the concerned agencies. In the other IA No.32/2000, it has made additional prayers for reconsideration and review of the Commission's ABT related orders including the orders dated 4.1.2000, 15.12.2000 and 21.12.2000 and also for adjudication of the pending review petition No.18/2000.

5. The notices were issued on IA 32/2001. However, with the consent of the parties, we have taken up the review petition as well as IAs for hearing. In the first instance, we propose to consider issues raised in the review petition.

Review Petition No.18/2000

6. The first prayer in the review petition relates to deferment of ABT in Southern Region from 1.4.2000 to 1.4.2001. As we have already noted, in accordance with our order dated 15.12.2000 on review petition No.13/2000, ABT is now to be implemented in Southern Region w.e.f. 1.4.2001. Therefore, the

prayer made by the petitioner is already met. The learned counsel appearing for the petitioner argued before us that the shortage of power in the region still continues as there is no significant improvement in power situation and thus the ground on which deferment of implementation of ABT was earlier sought, still subsists. He, therefore, prayed for further deferment of ABT till such time the supply position improved. We are unable to accept the contention raised by the learned counsel. We cannot foresee an early end to the power shortage situation in the region. The implementation of ABT, which aims at improving grid discipline either over-frequency (excess generation) or under-frequency (overload) cannot be deferred for an indefinite period, on the ground of general power shortage. In fact, the very purpose of ABT is to curb over-drawal in the face of general shortages of power and to address the situation of shortage of power. The Commission note with satisfaction that application of ABT in the Eastern Region led to grid discipline for a period of about three weeks during May, 2001 where grid indiscipline was rampant due to opposite reason i.e. over-generation, under-drawal, high frequency and overall surplus, after which the position deteriorated as ABT was not followed by the constituents any more. The Commission is conscious of the fact that a period of three weeks cannot lead to any conclusion. To facilitate a view on the impact of ABT on grid discipline and resultant effect on machine, etc. can be made only after watching its application at least for a year or two. The Commission, therefore, urges an early decision of the Hon'ble High Court in the matter.

7. So far as the grievance relating to fixation of time blocks is concerned, it is stated that in the draft proposal for implementation of ABT, 15-minute time block was proposed. The Commission has exhaustively dealt with this issue in its order dated 4.1.2000. The time block of 15 minutes has been selected to prevent gaming. Any elongation of period may cause an undesirable response from the constituents and can lead to unstable grid operation. We, therefore, are not inclined to agree with the contention raised on behalf of the petitioner for review of the order as it amounts to reconsideration of the issue on merits.

8. On the question of pricing of UI, the grounds urged are the hardship likely to be caused by its implementation and that linking of UI charges with diesel price is not relevant. This aspect has been considered at length and very elaborately in the Commission's order dated 4.1.2000. The Commission has given its detailed reasons for prescribing the UI charges at the rates mentioned. The petitioner seeks review of the UI charges on the ground that it does not have the resources to pay these charges at the prescribed rates. The attempt on the part of the petitioner amounts to seeking review of the directions of the Commission on merits and not on the grounds prescribed under Order XLVII Rule 1 of the Civil Procedure Code. Such a course is not available to the petitioner in a review petition.

9. The imposition of UI charges that may prove deterrent is central to the scheme of ABT. ABT without deterrent UI charges is like "Hamlet without Prince

of Denmark". The Commission feels that the penalties are imposed not on the basis of paying capacity of defaulter, but on the basis of some equivalence to the damage caused as well as to act as a deterrent. In this case, the equivalence being the cost of costlier power in the system. The Commission has already noted in its order of 4.1.2000 that the rate for UI was initially pegged at Rs. 6/kWh at 48 Hz. which was subsequently revised to Rs. 4.5/kWh. This was, however, subsequently reduced to Rs.3.6/kWh. Since beginning, the UI charges were linked to cost of generation of power through diesel. The Commission took note of the upward revision of cost of diesel in meantime by 33% and prescribed the UI charges at the rate of Rs.4.2/kWh at frequency below 49.02 Hz. The UI charges are to be levied at higher rates in exceptional circumstances when the beneficiaries draw power over and above their entitled capacity at a low frequency. The levy of these charges is to discourage such over-drawals by the beneficiaries. On these considerations, we do not find any merit in the submission made by the petitioner for reduction of rate of UI charges. In our considered view the review petition should fail on this ground as well.

10. When confronted with the situation noted above, the learned counsel for the petitioner sought that the review petition may be treated as an independent petition and considered accordingly. The learned counsel cited a number of judgments before us in support of his submission for treating the review petition as an independent petition. We do not propose to refer to the judgments relied upon by the learned counsel in detail. We are satisfied that the case-law cited is

not applicable to the facts and circumstances of the present case. In those cases remedy was provided under the law but the parties had approached the courts under a different provision. No specific provision of law has been brought to our notice under which a decision already rendered could be re-opened on merits. The limited grounds on which the matter can be reconsidered are those prescribed under Order XLVII Rule 1 of the Civil Procedure Code and as we have already discussed, the issues raised do not fall within the scope of review of order/judgment. The learned counsel drew our attention to clause (h) of Section 13 of the Electricity Regulatory Commissions Act, 1998, according to which, arbitration/adjudication of disputes arising out of clauses (a), (b) and (c) of the said Section is assigned to the Commission. We are satisfied that the disputes raised in the review petition are not covered under clause (h) as these issues already stand settled by the Commission's order of 4.1.2000 read with order dated 15.12.2000. The law accords finality to such orders, subject to the remedies of review/appeal.

IAs No.27/2001 & 32/2001

11. We now propose to look into the two IAs filed by the petitioner. These IAs have been filed in review petition No. 18/2000. We have already recorded a finding that the review petition is not maintainable. Accordingly, the IAs should also fail. However, we propose to deal with the issues raised in these IAs briefly, instead of summarily rejecting them.

12. The petitioner in these IAs has pointed out the technical inadequacy of the Special Energy Meters (SEM) to provide telemetry of the recorded data and has prayed for establishment of suitable energy accounting and load monitoring & control mechanism before implementing ABT. According to the petitioner, 24 SEMs are installed at various points in the State of Andhra Pradesh. Against these 24 SEMs, 14 transducers are installed at locations different from those where SEMs are installed and there is no time synchronisation between the SEMs and the transducers. The petitioner does not have a control or access to data available on SEMs, and is, therefore, unable to regulate its drawal of power. It is also argued that SEMs do not record correctly the drawals of energy. Accordingly, it may cast heavy financial burden on the petitioner. According to the petitioner, it is the duty of the Powergrid (as CTU) to provide the accurate on-line data to enable the petitioner to regulate its drawals and PGCIL (Respondent No.2) has failed to provide the same. The petitioner has alleged that the CTU has failed in its responsibility to provide suitable systems and infrastructure for the purpose. The petitioner has further argued that 42% of its total allocation of power from Central Generating Stations is being drawn from NLC, Madras Atomic Power Station and Kaiga Atomic Power Station, which are not subject to ABT regime since two-part tariff is not being followed in respect of these stations. A direction has been sought to these stations for implementing two-part tariff. Powergrid has filed its response.

13. We have carefully considered the submissions made on behalf of the petitioner as also the Powergrid. From the record it is observed that technical specifications on SEMs presently installed in the Southern Region were approved by the SREB in its meeting held on 23.2.1994 and the petitioner was duly represented in the said meeting. The SEMs installed at the various locations in the State are as per the technical specifications approved at the SREB meeting. These SEMs are functional for nearly 7 years now. We take note of the fact that the purpose of SEMs is not to caution the petitioner in case of over-drawals but are to be used for preparation of energy accounts. In case of any discrepancy in the data recorded by SEM, it can be rectified in the meetings of Regional Energy Accounting Committee.

14. The data from transducers is being regularly telemetered at the State Load Dispatch Centre. Para 7.4.1 and 7.4.2 of the IEGC (December, 1999) casts responsibility on the beneficiary States like the petitioner, to maintain their actual drawal close to their scheduled drawal. Therefore, it is the responsibility of the petitioner to ensure that it draws energy in accordance with the schedule finalised. The moment to moment telemetered data available on load & generation at appropriate frequency available at the State Load Dispatch Centre can be used by the petitioner for adjusting its actual generation/ drawals to the scheduled generation/ drawals. It is not proper to correlate the SLDC Control Room telemetry system with the Special Energy Metering system used for the purpose of preparation of energy accounts.

15. The Commission in its order dated 21.12.2000 in petition No.2/99 has already notified that NLC (Stage II) shall be subject to two-part tariff. The regulation of tariff of energy produced by Nuclear Power Stations is outside the purview of the Commission and as such no directions can be given to these stations on tariff related matters. Nuclear Power Corporation Limited (NPC), which controls the Madras Atomic Power Station and Kaiga Atomic Power Station has already undertaken that nuclear power stations shall be brought under two-part tariff regime and that Nuclear Power Stations shall also be covered under the availability tariff regime. It has also been stated by Nuclear Power Corporation in its letter dated 6.6.2001 addressed to the Secretary of the Commission that the constituents of SREB have agreed that till such time the tariff under ABT format is notified, the actual generation of the nuclear power stations could be treated as the scheduled generation with regard to applicability of UI charges. For these reasons, we do not find any merit in the contention raised on behalf of the petitioner that implementation of ABT in the Southern Region should be stayed.

16. We feel that an effort towards implementation of ABT can be made without Madras Atomic Power Station and Kaiga Atomic Power Station being brought under two-part tariff regime. However, in view of the solemn undertaking given on behalf of NPC, we request Government of India, Department of Atomic Energy and NPC to notify the two-part tariff for its nuclear power stations without further

delay to reinforce smooth implementation of ABT and thereby improve the grid discipline in the country.

17. In the light of foregoing discussion, the Review Petition and IAs No. 27/2001 and 32/2001 are dismissed.

18. A copy of this order may also be sent to Department of Atomic Energy, Government of India, for appropriate action.

Sd/-

(K.N. SINHA)
Member

Sd/-

(G.S. RAJAMANI)
Member

Sd/-

(D.P.SINHA)
Member

New Delhi dated the 20th June, 2001.