Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 118 of 2005

Dated the 10th July, 2006

Present: - Hon'ble Mr. Justice Anil Dev Singh – Chairperson
Hon'ble Mr. A.A. Khan – Technical Member

Neyveli Lignite Corporation Ltd. .....Appellant

Versus

1. Southern Regional Electricity Board & Ors.
2. Southern Regional Load Despatch Centre
3. Tamil Nadu Electricity Board
4. Karnataka Power Transmission Corpn. Ltd.
5. Kerala State Electricity Board.
6. Pondicherry Electricity Department
7. Transmission Corpn of Andhra Pradesh ..... Respondents

For the appellant: Mr. R. Sasi Prabhu & Mr. K.K. Singh
Mr. R. Suresh & Mr. S. Ramachandran

For the Respondents: Mr. Vinod Kumar for SREB – Resp-1
Mr. Ramji Srinivasan for KPTCL – Resp-4
Mr. S. Sowmyanarayanana for TNEB – Resp-3.

JUDGEMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson.

This appeal is directed against the Order of the Central Electricity Regulatory Commission (CERC) dated May 25, 2005. The facts giving rise to this appeal are as follows:-

2. The appellant is a power generating company under the control of the Central Government. It has three Thermal Power Stations as per the following details:-

Sl. No.	**Capacity**
Thermal Power Station –I	600 MW
Thermal Power Station-II	1470 MW
and Thermal Power Station I – Expansion of capacity	420 MW

3. In this appeal, we are concerned with Thermal Power Station-II (for short TPS-II). TPS-II consists of Stage-I and Stage-II. Stage-I has three units with a capacity of 630 MW and Stage-II has four units with a capacity of 840 MW.

TPS-II is linked with captive mine-II for its lignite supply. In order to cater for the power requirement of Mine-II, 50 MW was allocated to it from TPS-II. It also needs to be pointed out that 50 MW was also allocated from TPS-II for Mine-I expansion.

4. Before the introduction of the Availability Based Tariff (ABT) regime, power was being exported by NLC TPS 1 and TPS II, after meeting the auxiliary power consumption of individual stations and that of the linked Mines on first charge basis. The Bulk Power Supply Agreements (BPSA) were also signed with the beneficiaries keeping in view the requirement of meeting the auxiliary power consumption of the individual stations.

5. By order dated December 21, 2000, the CERC finalized the schedule for the Thermal Power belonging to the appellant. While fixing the schedule, the Commission was of the view that it was necessary to provide some incentive to motivate NLC to reach higher level of performance in the Southern Region, where there is shortage of energy (both of MW and

MWh). The Commission having regard to the relevant factors, including the available lignite capacity and its utilization, was of the opinion that availability of power for recovery of full fixed charges should be 72%. The Commission also laid down that the incentive for the utilities shall start from 72% PLF. In Clause-4 of the schedule to the order, it is provided that NLC shall not be entitled to charge UI rates for deviations from their schedule for their own allocation. Clause-4 being relevant needs to be set out. This clause reads as follows:-

"Clause 4. Unscheduled Interchange (UI)

Variation in actual generation/drawal and scheduled generation/drawal shall be accounted for through Unscheduled Interchange (UI). UI for generating station shall be equal to its actual generation minus its scheduled generation. UI for beneficiary shall be equal to its total actual drawal minus its total scheduled drawal. UI shall be worked out for each 15 minute time block. Charges for all UI transactions shall be based on average frequency of the time block and the following rates shall apply:

Average Frequency of time block	*UI rate (Paise per kwh)*
50.5 Hz and above	*0.0*
Below 50.5 Hz and up to 50.48 Hz	*5.6*
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*

The above average frequency range and UI rates are subject to change through a separate notification from time to time.

NLC shall not be entitled to charge UI rates for deviations from their schedule for their own allocation. Till such time, the capacity allocation for norms is revised the surplus energy shall be traded by NLC with the original beneficiaries.

6. As a follow up of the order dated December 21, 2000, the Commission on March 26, 2001, issued the Notification for setting out the terms and conditions for determination of tariff.

7. The Availability Based Tariff was implemented in the Southern Region w.e.f. January 1, 2003. Earlier, the Government of India by its letter dated Dec.,17, 2002 had informed the Chairman, SREB and Chief Engineer, CEA, Katwaria Sarai, New Delhi that consequent to the decision to implement Availability Based Tariff in Southern Region w.e.f. January 01, 2003, all allocations from Central Generating Stations need to be streamlined in percentages fixed for the

day. Accordingly, the Chairman, SREB and Chief Engineer, CEA were asked to convert the allocations expressed in MW in some cases and on-peak and off-peak basis into fixed percentages. Consequently, CEA, on December 31, 2002 converted the allocation of electricity to the appellant, including its linked mines to percentage basis. It allocated 8% and 6% from Stage-I and Stage-II of TPS-II to the linked Mine-I, Mine-II and Mine-I expansion. Thus, export of power to the beneficiaries from the station of the appellant is no longer dependent upon the fulfillment of its internal requirements.

8. The appellant not being satisfied with the system of allocation of power to the mines on percentage basis took up the matter with the CEA and SREB but to no avail. Even the Govt. of India was approached by the appellant on April 26, 2004 and in this regard a meeting was also taken by the Secretary, Ministry of Power. After discussion, the following decisions were taken:-

i) NLC will be treated at par with other beneficiaries of Southern Region.

ii) The allocation made on percentage basis under ABT regime will continue.

iii) In the event of shortfall in availability of power from NLC Thermal Stations due to forced outage of generating units or due to other emergent reasons, shortfall may be met from NLC-TS-I, dedicated to TNEB.

iv) In the event of planned outage of generating units of TS-II for longer period, allocation from unallocated quota will be made for which NLC will approach CEA/Ministry of Power in advance.

9. Thus, it is clear that as per the outcome of the meeting, the NLC is to be treated at par with other beneficiaries and the allocation made on percentage basis under the ABT regime is to continue. As a consequence the allocation of power made to the mines linked with the generating stations will depend upon the level of generation. The fixed supply of 100 MW is no longer available to the appellant. In the event of dipping of the generation level, the appellant's share will also fall. Earlier the appellant was assured of 100 MW of power irrespective of the level of generation.

10. Subsequent to the order of December 31, 2002, the appellant entered into an arrangement with Pondicherry

Electricity Board for supply of surplus available dormant capacity, which may arise from time to time out of the power allocation to the linked mines on percentage basis.

11. Under the ABT regime the generators and the beneficiaries are entitled or liable to Unscheduled Interchange charges. In the case of the appellant, Unscheduled Interchange charges fixed by the Commission were not levied on the appellant till November 2, 2003. This was in spite of the fact that the appellant drew power from the grid beyond its allocated share. The Southern Regional Electricity Board w.e.f. November 3, 2003 resorted to levy of UI charges fixed by the Commission.

12. The appellant not being satisfied with the action of the Southern Regional Electricity Board filed a petition before CERC, challenging the methodology adopted by Southern Regional Electricity Board for calculating the UI charges from November 3, 2003 for TPS-II. The appellant requested the Commission that UI accounting procedure followed up to

November 2, 2003 should be restored. The Commission by its order dated May 29, 2004 rejected the prayer of the appellant and considered the appellant as one of the beneficiaries of TPS-II. The Commission was of the view that the appellant is to be treated at par with the other beneficiaries in the Southern Region and the payment of UI charges to or by the appellant is to be governed by the provisions of notifications dated March 26, 2001 of the Commission, whereby the terms and conditions of tariff were set out. The Commission was also of the view that the order dated December 21, 2000 was prelude to the notification dated March 26, 2001 but the observations in the schedule to the order dated December 21, 2000 were not incorporated in the notification dated March 26, 2001. The Commission was also of the view that the UI mechanism has been implemented for power drawn by the appellant for mining operation w.e.f. November 3, 2003. But as the ABT is applicable in Southern Region from January 1, 2003, the provisions of the notification dated March 26, 2001 shall apply from that date, that is, the date of implementation of the ABT in the region.

13. The appellant being aggrieved by the order of the Commission filed a review petition before the Commission. However, the review was rejected by the Commission on May 25, 2005. Since the review petition has been rejected by the Commission, the appellant has approached this Tribunal through the present appeal for setting aside the impugned order of the Commission and for a direction to the Commission and Southern Regional Electricity Board for application of the revised UI accounting procedure prospectively w.e.f. November 3, 2003.

14. We have heard the arguments on behalf of the parties. The Commission did not find any error apparent on the face of the record for review of its order dated May 25, 2005. In M/s. Pudumjee Pulp & Paper Mills Ltd. Vs Maharashtra State Electricity Board & Anr. (Appeal No. 197/2005 before this Tribunal), we have already taken a view that appeal from an

order passed in review would be entertained only if there is error apparent on the face of record. The appellant has not been able to show any error apparent on the record.

15. It was argued on behalf of the appellant that the Commission by its order dated May 29, 2004 has virtually changed the method of calculating the UI with retrospective effect in as much as the Southern Regional Electricity Board has asked to re-calculate UI charges w.e.f. January 1, 2003, that is from the date the ABT regime was implemented in the Southern Region. According to the appellant this was a mistake apparent on the face of the record. The Commission however, has pointed out that the appellant was the beneficiary of TPS-II in view of the fact that the linked mines were allocated 100 MW power from Stage-I and Stage-II and subsequently the allocation was converted to percentage basis. From the date of implementation of the ABT, the beneficiaries are bound by the schedule of drawal. In the event of deviation, the beneficiaries are subject to UI charges. This method came into force on 1.1.2003 and it was required to be

implemented from that date. All the beneficiaries were put on notice that the deviation from the schedule will be subject to UI charges. In case any computation ignores the aforesaid methodology, correction can always be carried out for calculating the UI charges on the basis of the deviation from the schedule. Correction of the error does not mean that implementation of the ABT regime is being carried out from a retrospective date. In case someone is asked to pay UI charges before 1.1.2003 that may amount to retrospective change of methodology. But from 1.1.2003 itself, the deviation from the schedule are subject to UI charges. The appellant was, therefore, liable to pay penalty for the over-drawal of power from the grid beyond its allocation under the ABT regime. The appellant cannot be allowed to benefit at the cost of other beneficiaries who had to suffer for the over-drawal of power by the appellant. The Commission was right in its view that the situation needed to be rectified. Therefore, the direction of the Commission to re-calculate UI charges from January 1, 2003 cannot be faulted.

16. In view of the aforesaid discussion, we do not find any merit in the appeal. Accordingly, the **appeal is dismissed**.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member