

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

**Review Petition No. 79/2007
In
Petition No. 5/2002**

In the matter of

Review of the order dated 23.3.2007 in Petition No. 5/2002 – determination of tariff of TPS-II of NLC for the period from 1.4.2001 to 31.3.2004.

And in the matter of

Tamil Nadu Electricity Board, Chennai

....Review Applicant

Vs.

1. Neyveli Lignite Corporation Limited, Chennai
2. Karnataka Power Transmission Corporation Ltd., Bangalore.
3. Kerala State Electricity Board, Thiruvananthapuram.
4. Pondicherry Electricity Department, Pondicherry.
5. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad. **...Respondents**

The following were present:

1. Shri. S. Sowmyanarayanan, TNEB
2. Ms. Axilium Jayamary, TNEB
3. Shri R. Krishnaswami, TNEB
4. Shri R. Suresh, NLC
5. Shri A. Ganesan, NLC
6. Ms Ratna Chowdhury, NLC

**ORDER
(DATE OF HEARING : 22.11.2007)**

The application has been made seeking review of the Commission's order dated 23.3.2007 in Petition No 5/2002 vide which tariff in respect of NLC Thermal Power Station Stage II for the period 2001-04 was fixed. Among the various grounds

urged for review, the Commission vide order dated 28.9.2007 admitted the application for review on the following two grounds, namely-

- (i) Award of reimbursement of FERV based on actuals in addition to capitalization in respective year; and
- (ii) Station Heat Rate.

2. Briefly, the case of the applicant with reference to the above two grounds on which the review application has been admitted is as under:

- (a) While there is no loan (either foreign currency or domestic) outstanding in respect of NLC TPS Stage – II mines, the Commission, vide the order dated 23.3.2007, has allowed capitalization of Rs.7.51 lakh, and this is an error apparent on the face of the records, which needs to be corrected.
- (b) The Commission, vide the said order dated 23.3.2007, has allowed tariff on account of FERV twice in respect of Mine – II, Stage – I, first by way of capitalization of Rs. 6.09 lakh and secondly by way of reimbursement of Rs.45 lakh through tariff. As per the applicant, only one course out of the two is permissible.
- (c) In respect of Mine – I (Expansion) and Mine-IA, the Commission had allowed capitalization of FERV to the extent of Rs. 10519 lakh and Rs 199 lakh from the respective date of commercial operation to 31.3.2004. In addition to the above, the Commission has awarded Rs. 1305 lakh and Rs 66 lakh as yearly reimbursement of FERV during 2003-04.

- (d) The said order dated 23.3.2007 is based on Station Heat Rate of 2960 kCal/kWh presumably arrived at considering 1.24 kg as specific consumption of lignite and 2635.33 kCal/kg as GCV of lignite. It has been stated that PPA signed by the applicant with the first respondent for the period upto 31.3.2001 was based on specific consumption of lignite irrespective of its GCV or moisture content. However, even if the moisture content is taken to be 50% and above, station heat rate works out to 2750 kCal/kWh only. Award of station heat rate of 2960 kCal/kWh is erroneous in the opinion of the applicant.
- (e) According to the applicant, fuel price adjustment charges based on weighted average GCV of lignite and moisture content from all mines duly supported with documentary evidence had to be considered for the year 2003-04, instead of GCV of 2635.33 kCal/kg actually considered by the Commission.

3. Per contra, the first respondent has made the following submissions:

- (a) There is no double claim on account of FERV. In foreign exchange variation accounting there are two terminologies viz. translation difference and transaction difference.
- (b) Translation difference is the additional liability provided in the books of accounts by way of translating the outstanding loan liability on the Balance Sheet date at the exchange rate prevailing as on that date. On the other hand, transaction difference is the differential claim of FERV in respect of repayment of principal and payment of interest amount at the

exchange rate on payment date and the exchange rate considered as on the date of previous balance sheet.

- (c) FERV for the period 2001-02 to 2003-04 was capitalised on year to year basis. Hence FERV of Rs. 199 lakh, Rs.13.6 lakh and Rs.10519.46 lakh were capitalized in respect of Min IA, Mine II and Mine I Expansion upto 31.3.2004.
- (d) Transaction difference claimed in the lignite price was Rs. 45 lakh for Mine II, Rs. 1305 lakh for Mine I Expansion and Rs. 66 lakh for Mine IA. The claims are in line with the Accounting Standards and are duly certified by the Chartered Accountant.
- (e) As per clause 2.3 (b) of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations 2001 (hereinafter referred to as “the 2001 regulations”), operational norms except those relating to target availability and Plant Load Factor for the existing and the new stations of NTPC and NLC for which no tariff notification was issued by the Central Government but PPAs and BPSAs existed on the date of issue of the 2001 regulations shall be governed by the respective PPA/BPSA signed between the parties.
- (f) In accordance with the 2001 regulations, station heat rate of 2960 kCal/kWh corresponding to the specific lignite consumption of 1.24 kg/kWh adopted in the period ending 31.3.2001 as per BPSA for the period 1.4.1996 to 31.3.2001 has been continued for the period upto 31.3.2004. Adopting station heat rate of 2960 kCal/kWh as per the BPSA is, therefore, in tune with the 2001 regulations and is in order.

4. Besides, the fourth respondent has also filed its reply which is practically a reiteration of the grounds raised by the applicant.

5. During the pendency of the application, the applicant, filed IA No. 42/2007 containing the following additional submissions and grounds:

- (a) While computing tariff, lignite price per MT may be rounded off to the nearest paisa instead of nearest rupee.
- (b) Depreciation collected beyond 85% capacity utilization is not being adjusted in the asset to arrive at the net block. This results in double claim of depreciation for the excavation of lignite beyond 85% capacity.
- (c) Clarification may be provided as to whether FPA is to be considered for the tariff period 2001-04 as the order does not provide for the same.

6. The first respondent has raised a preliminary objection with regard to the maintainability of these additional submissions at the last stage of the proceedings, being time barred. Without prejudice to the above, it has also contended that rounding off may be favourable to either of the parties and the benefits accruing to either of the parties will even out over a period of time. As regards adjustment of depreciation in the assets for capacity charges beyond 85%, the first respondent has stated that the same is in accordance with Ministry of Coal guidelines which prescribe adoption of 85% capacity utilization and suitable reward in case the mines' performance is beyond 85%.

7. Based on the above submissions in the pleadings and the verbal submissions made during the hearing on 22.11.2007, we proceed to consider the application.

Reimbursement of FERV

8. As regards the allegation that Rs. 7.51 lakh has been capitalized in respect of Mine – II despite there not being any outstanding loan, the first respondent has clarified that the loan has been allocated proportionately to Mine - II, Stage – I and Mine – II, Stage –II on the basis of the capacity of the mines. It is evident that the applicant has not been overcharged. If Rs. 7.51 lakh were not shown as capitalized in respect of Mine – II, Stage – II, it would have been reflected as additional capitalization in respect of Mine – II, Stage – I. The tariff computed by the Commission vide order dated 23.3.2007 does not, therefore, require any modification on this account.

9. We are unable to agree with the applicant on its submission that there is double claim on account of FERV. As clarified by the first respondent, a part of the FERV is capitalized as translation difference (arising on account of outstanding loan liability) and the rest is booked in the revenue account as transaction difference arising on account of repayment and interest payment. As such the allegation of double recovery of FERV is not sustainable.

Station Heat Rate

10. As regards station heat rate of 2960 kCal/kWh, we reiterate that the same is in accordance with clause 2.3(b) of the 2001 regulations which prescribes that the operational norms, except those relating to “Target Availability” and “Plant Load

Factor” for the existing and new generating stations of NLC for which no tariff notification had been issued by the Central Government but PPA/ BPSA existed on the date these regulations came into force, shall be governed by the respective PPA/BPSA signed by the generating company with the beneficiaries. Station heat rate, a part of the operational norm, of 2960 kcal/kWh was agreed to between the parties as per the BPSA valid up to 31.3.2001 and has been considered in the said order dated 23.3.2007 and the same does not warrant any revision.

Additional grounds

11. The applicant has raised the following additional grounds through the additional affidavit on 7.9.2007, and are being dealt with in the paras that follow, even though the first two grounds are not the subject matter of the application for review, are outside its scope, and could be simply ignored:

- (a) Rounding off the lignite price /MT to nearest paisa instead of nearest rupee.
- (b) Allowing single part tariff to Mines to avoid double recovery of depreciation.
- (c) Clarification on whether fuel price adjustment is to be considered for the tariff period 2001-04.

Rounding off the lignite price /MT to nearest paisa instead of nearest rupee

12. The first respondent has clarified that the very basis of contention itself is erroneous and misleading as the amount of loss due to rounding off is only Rs. 2.72 crore and not Rs. 272 .04 crore as stated by the applicant. Irrespective of it, we are of the opinion that the contention of the applicant on this issue is frivolous - to say the

least. It is too well known to need any recapitulation that rounding off different numerical figures is a common phenomenon. In Rupee- paisa combination, if the paise are more than 50, these are rounded up and if they are less than 50, these are rounded down. This is the normal practice. The advantage arising out of this may accrue to either of the parties and it is expected that in the long run, the net result will be nil or negligible as they finally even up. We do not find any need for deviation from the common commercial practice which is followed in all other cases of tariff determination as well.

Allowing single part tariff to Mines to avoid double recovery of depreciation

13. The applicant has submitted that the Commission has awarded transfer price of lignite at 85% capacity utilization and, therefore, depreciation collected beyond 85% capacity utilization is not getting adjusted in the asset to arrive at the net block. According to the applicant, this results in double claim of depreciation for the excavation of lignite beyond 85% capacity and there is a case for reducing the depreciation collected beyond 85% capacity utilization for arriving at the net block.

14. In this regard, Ministry of Coal considered the issue and formulated certain principles for determination of lignite transfer price. Its report was placed before the Commission. As the disagreement over the lignite transfer price persisted even after the petitioner worked out the lignite transfer price based on the principles decided by Ministry of Coal, the Commission by its order dated 25.4.2006 constituted a One-member Bench with Shri A.H.Jung, Member as the Presiding Member (hereinafter referred to as "Bench") to consider the question of lignite transfer price and make appropriate recommendations to the Commission for its consideration. The Bench

submitted his recommendations vide order dated 8.1.2007. The recommendations of the Bench on computation of lignite transfer price was adopted vide the said order dated 23.3.2007.

15. Ministry of Coal had recommended adoption of 85% capacity utilization factor which implies that the first respondent should be able to recover its cost including return corresponding to 85% capacity utilization. Ministry of Coal had further observed that the company should be suitably rewarded for performing efficiently. It should also be prepared to suffer loss if it fails to do so. In view of the above, we do not find any reason for disturbing the status quo.

Clarification on whether Fuel price adjustment is to be considered

16. It is clarified that fuel price is to be adjusted on month-to-month basis, based on the gross calorific value of lignite and price and GCV of secondary fuel oil (SFO) actually received and burnt. Lignite price has been determined by the Commission on year-to-year basis and as such there shall not be any change in the lignite price in a particular year for the tariff period 2001-04.

17. With the above, the application stands disposed of.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi dated the 11th January, 2008