

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 47/2010**

**Coram: Dr. Pramod Deo, Chairperson  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**DATE OF HEARING: 11.1.2011**

**DATE OF ORDER: 4.2.2011**

**IN THE MATTER OF**

Non-compliance of Commission's order dated 31.3.2009, 7.1.2010 and 27.1.2010 (Commission's direction to TNEB to clear the income tax dues and excess rebate availed with interest).

**AND IN THE MATTER OF**

Neyveli Lignite Corporation Ltd

...Petitioner

Vs

Tamil Nadu Electricity Board, Chennai

...Respondent

**The following were present**

1. Shri. N.AK.Sarma, Advocate, NLC
2. Shri N.Rathinasabapathy, NLC
3. Shri P.H.Parekh, Sr. Advocate, TNEB
4. Shri E.R.Kumar, Advocate, TNEB
5. Shri Debjyothi Bhattacharya, Advocate TNEB
6. Shri V.Prasad, Advocate, TNEB
7. Ms. Shweta Sharma, Advocate, TNEB
8. Ms. Maheshwari Bai, TNEB
9. Shri Jameel Pasha, TNEB

**ORDER**

This application has been filed by the petitioner, Neyveli Lignite Corporation Ltd (NLC) seeking intervention of the Commission for non-compliance of Commission order's dated 31.3.2009, 7.1.2010 and 27.1.2010 in Petition No.163/2008, with regard to the reimbursement of income-tax dues and refund of excess rebate, by the respondent, TamilNadu Electricity Board (TNEB). The petitioner has made the following specific prayers:



- (a) to take on record the present petition for consideration;
- (b) to direct TNEB to refund the excess rebate availed to the tune of ₹79.52 crore with interest at 1.25% per month from 1.5.2009 till date of payment;
- (c) to direct TNEB to reimburse the IT dues of ₹481.46 crore as on 30.11.2008 paid by NLC in advance with interest @1.25% per month from 7.1.2010 till date of reimbursement;
- (d) to pass any such order as deemed fit by the Hon'ble Commission.

2. Against the order of the Commission dated 7.1.2010, the respondent TNEB filed appeal (Appeal No. 49/2010) before the Appellate Tribunal for Electricity ('the Tribunal') and the Tribunal by its judgment dated 10.9.2010 upheld the order of the Commission with regard to the reimbursement of income-tax dues and remanded the matter for fresh consideration as regards the refund of excess rebate.

**Reimbursement of IT dues**

3. The Commission by its order dated 7.1.2010 in Petition No. 163/2008 directed the respondent to reimburse the income tax-dues of ₹481.46 crore to the petitioner by 15.1.2010. By the same order, the Commission also directed that in case of delay in payment, the respondent would be liable to pay interest @ 1.25% per month from the date of the order till the date of reimbursement. Subsequently, at the request of the respondent, the Commission by its order dated 27.1.2010 extended time till 1.2.2010 for payment of the amounts as stated in order dated 7.1.2010 to the petitioner.

4. Pursuant to the hearing of the petition on 23.9.2010, the Commission by its order dated 7.10.2010 directed as follows:

*"13. Taking into consideration the claim and counter-claim by the parties, we are of the view that the actual amount due on account of reimbursement of income tax needs to be determined by the Commission. Accordingly, we direct the petitioner to submit the following information, for reconciliation, latest by 18.10.2010:*



- (a) Year-wise income-tax (grossed up) amount payable and actually paid to the tax authorities, on the income attributable to its core business for the period from 2001-02 to 2009-10;
- (b) Year-wise income-tax (grossed up) amount for the corresponding years claimed from the respondent;
- (c) Amounts received from the respondent and the balance amount payable by the respondent;
- (e) Any other adjustment made on account of amount payable to the respondent;
- (e) Detailed calculation of the interest claimed.

14. The respondent, TNEB, is also directed to submit by 18.10.2010 the details of the payments made to the petitioner so far and the amount outstanding on account of income tax dues and interest thereon as per its calculation.

15. The petitioner has already paid the income tax as per the statutory requirement under the Income Tax Act, 1961. As the income tax is a pass through, the respondent was required to settle the income tax dues on year to year basis. By withholding payment of outstanding income tax dues to the petitioner, the respondent has adversely affected the liquidity position of the petitioner. Even after our order dated 7.1.2010 deciding the issue of grossing up of income tax, the respondent has not cleared the outstanding amount in full. Therefore, we are of the view that a direction needs to be issued to the respondent to make a payment of at least 50% of the outstanding dues claimed. Accordingly, we direct the respondent to make a payment of ₹150 crore to the petitioner by 15.10.2010 which will be adjusted against the final outstanding dues that will be worked out by us based on the details to be filed by the petitioner and respondent in terms of our order."

5. In compliance with the above said directions of the Commission, the respondent vide its letter dated 15.10.2010 has made payment of the amount of ₹150 crore to the petitioner. Both parties have also filed their respective submissions with regard to the actual amount due on account of reimbursement of income tax for reconciliation by the Commission.

6. During the hearing of this petition on 11.1.2011, the learned counsel for the petitioner submitted that the parties have reconciled the principal outstanding dues on account of reimbursement of income-tax by the respondent, after adjustment/set off against the amounts payable by the petitioner to the respondent. The present status of the outstanding dues after adjustment/set off is as under:

- (a) The principal amount on account of reimbursement of income-tax dues by the respondent works out to ₹2,10,03,017/- as on 31.3.2009.



(b) The principal amount on account of reimbursement of income-tax dues by the respondent for the year 2009-10, works out to ₹37,71,16,000/-

(c) The interest amount upto 31.12.2010 on the outstanding income-tax dues has been worked out as ₹38,86,46,688/-

7. In order to substantiate the above, the learned counsel for the petitioner submitted a memorandum of dues containing the following:

Annexure-I: Outstanding principal amount towards reimbursement of income-tax as on 31.12.2010

Annexure-IA: Signed copy of the outstanding dues reconciled as on 16.11.2010 between NLC and TANGEDCO (Distribution licensee consequent upon unbundling of TNEB)

Annexure-II: Calculation of Interest for the outstanding amount towards income-tax

8. The learned counsel for the petitioner submitted that as agreed by the parties, the principal outstanding amount of ₹2,10,03,017/-on account of reimbursement of income-tax as on 31.3.2009 would be adjusted in the future bills payable by the respondent. He also submitted that the principal outstanding amount of ₹3,77,116,000/-on account of reimbursement of income-tax by the respondent for the year 2009-10 would be guided by the regulations specified by the Commission in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for the period 2009-14. As regards payment of interest, the learned counsel referred to Annexure-II of memorandum of dues and submitted that in terms of the order of the Commission dated 7.1.2010 in Petition No.163/2008, the total interest payable by the respondent was ₹38,86,46,688/- upto 31.12.2010 and the same needs to be paid along with the principal amounts, in future bills, as agreed by the respondent. The learned counsel prayed that the Commission may dispose of the petition in terms of the above.



9. The learned counsel for the respondent submitted that the Commission may dispose of the petition pertaining to reimbursement of income-tax dues, in terms of the reconciliation made by the parties as enclosed at Annexure-I of the memorandum of dues submitted by the petitioner.

10. In view of the submission made by the parties, we dispose of this petition in terms of the settlement arrived at by the parties as per Annexure-IA to the memorandum of dues filed by the petitioner. As regard interest, the parties shall take necessary steps to settle the same at the earliest possible in terms of the Commission's order dated 7.1.2010.

**Refund of excess rebate**

11. The prayer of the petitioner for refund of the excess rebate availed by TNEB to the tune of ₹79.52 crore with interest at 1.25% per month from 1.5.2009 is presently under consideration of the Commission in Petition No.163/2008, in terms of the directions contained in the judgment dated 10.9.2010 of the Tribunal in Appeal No. 49/2010 and order would be issued separately.

12. Petition No. 47/2010 is disposed of in terms of the above.

Sd/-  
**[M.DEENA DAYALAN]**  
**MEMBER**

Sd/-  
**[V.S.VERMA]**  
**MEMBER**

Sd/-  
**[Dr. PRAMOD DEO]**  
**CHAIRPERSON**

