

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Miscellaneous Petition No.172/2011**

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

**Date of Hearing: 14.2.2012**

**Date of order: 15.6.2012**

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**In the matter of**

Petition under Regulation 44 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for waiver of interest portion against payable arrears/dues by APDISCOMs/APTRANSCO to NLC TPS-II (Stage-I & Stage-II) for the period from 1.4.2009 to 31.5.2011 as per Commission's order dated 27.6.2011 in Petition No. 231/2009 filed by NLC.

**And**

**In the matter of**

1. Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
2. AP Eastern Power Distribution Company Ltd, Visakhapatnam
3. AP Southern Power Distribution Company Ltd, Tirupati
4. AP Northern Power Distribution Company Ltd, Warangal
5. AP Central Power Distribution Company Ltd, Hyderabad

**...Petitioners**

Vs

Neyveli Lignite Corporation, Chennai

**...Respondent**

**Parties Present:**

1. Shri C.Mohan Chander, AP Transco/AP Discoms
2. Shri R.Suresh, NLC

## ORDER

The petitioners have filed this petition under Regulations 44 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for waiver of interest portion against the payable of arrears/dues by the distribution companies of Andhra Pradesh and the Transmission Corporation of Andhra Pradesh to Neyveli Lignite Power Corporation in respect of the tariff of NLC TPS-II (Stage-I and Stage-II) for the period from 1.4.2009 to 31.5.2011, in pursuance of the Commission's order dated 27.6.2011 in Petition No. 31/2009.

2. The petitioners have submitted that due to non-finalization of tariff of NLC TSP-II (Stage-I and Stage-II), the respondent has been claiming fixed charges and variable charges as per Regulation 5 of the 2009 Tariff Regulations. The petitioners have further submitted that the Commission has determined the tariff of NLC TSP-II (Stage-I and Stage-II) by its order dated 27.6.2011 in Petition No. 231/2009. In accordance with the Regulation 5 of the 2009 Regulations, any excess or shortfall in payment shall be refunded /paid by the beneficiaries with interest, at the prevailing SBI rate. Based on the order of the Commission in petition No. 231/2009, the petitioners have a liability to pay arrears/dues amounting to about ₹ 300 crore to the respondent due to upward revision in the fixed charges as well as variable charges for the period of 1.4.2009 to 31.5.2011, within a period of 6 months with applicable interest.

3. The petitioners have submitted that as per the tariff order of Commission in Petition No. 231/2009, the respondent has got the ROE at the rate of 15.5% per annum excluding tax which works out to about ₹58.61 crore per annum for the financial year 2009-2010 from all Southern Region beneficiaries. However, the respondent has tentatively got the total returns/profits of ₹ 442 crore for financial year 2009-2010 which

is computed based on IT claims on petitioner Nos. 1 to 3. The petitioners have further submitted that the respondent has got enormous profit in every financial year whereas as per the tariff order of the Commission, it is only entitled to ROE at the rate of 15.5% per annum which works out to ₹59 crore for the year 2009-10. Therefore, the respondent would not suffer any financial loss on account of waiver of interest on the arrears or on account of any commitment to be made to financial institutions from these arrears/dues from the petitioners. Accordingly, the petitioners have sought a direction to the respondent for not charging interest on arrears and have also sought a direction that payable arrears/dues by the petitioner to the respondent should be recovered in 12 equal bi-monthly installments.

4. The above petition was admitted on 29.11.2011 and accordingly notice was issued to the respondent. The respondent has filed its reply vide affidavit dated 13.12.2011 and the petitioners have filed their rejoinder by affidavit dated 22.12.2011.

5. During the hearing, the petitioners' representative reiterated the submissions made in the petition and prayed that since the Commission had allowed the payment of arrears by six installments within six months by order dated 26.8.2011 in Petition No. 175/2011 (*suo motu*), the interest on such payments may be waived. He also submitted that the Commission may consider the prayer of the petitioner keeping in view the heavy financial burden on the utilities and difficulty in the recovery of the same from the consumers of the petitioner.

6. The respondent, NLC in its reply to the said petition has submitted that in respect of the generating station, the beneficiaries including the respondents were provisionally billed at the rates determined by the Commission for the previous tariff period till the tariff of the generating station for 2009-14 was determined by order dated 27.6.2011 in

Petition No.231/2009 in accordance with 2009 Tariff Regulations. After receipt of the said order, revised bills were raised on the petitioners, along with arrears in line with the proviso to Regulation 5(3) of the 2009 Tariff Regulations. The respondent has also submitted that prayer for waiver of interest on the amounts payable as arrears is not sustainable as the petitioners are aware of the claims filed by the respondent before this Commission and that the petitioners should have included the procurement cost of power in the annual appraisal cost submitted to the State Regulatory Commission for approval. The respondent has submitted that the petitioners' prayer for waiver of interest would amount to deviation of the Regulations. The respondent has prayed that the petitioners' request for waiver of interest be rejected and the petitioners be allowed to make any installment payment along with interest in line with the Regulations.

7. Regulation 5(3) of the 2009 Tariff Regulations provides as under:

*“5(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the long-term customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance with these regulations:*

*Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the following rates for the period from the date of provisional billing to the date of issue of the final tariff order of the Commission:*

*(i) SBI short-term Prime Lending Rate as on 01.04.2009 for the year 2009-10.*

*(ii) SBI Base Rate as on 01.07.2010 plus 350 basis points for the year 2010-11.*

*(iii) Monthly average SBI Base Rate from 01.07.2010 to 31.3.2011 plus 350 basis points for the year 2011-12.*

*(iv) Monthly average SBI Base Rate during previous year plus 350 basis points for the year 2012-13 and 2013-14.*

*Provided that in cases where tariff has already been determined on the date of issue of this notification, the above provisions, to the extent of change in interest rate, shall be given effect to by the parties themselves and discrepancy, if any, shall be corrected at the time of truing up.”*

8. According to the Regulation 5(3) of 2009 Tariff Regulations, in case of existing projects, the generating company or transmission licensee is allowed to provisionally bill at the rate of tariff applicable as on 31.3.2009 till approval of the tariff by the Commission in accordance with the 2009 Tariff Regulations. Proviso to Regulation 5 (3) provides that the excess and shortfall between the provisionally billed tariff and final tariff shall be refunded or recovered from the beneficiaries within six months with simple interest at the prescribed rate after the final tariff order was issued. In terms of the above provision the respondent has been billing the beneficiaries including the petitioners, on provisional basis as per the tariff applicable as on 31.3.2009 subject to adjustment after the final tariff is determined in accordance with the 2009 Tariff Regulations. In terms of proviso to clause (3) of Regulation 5 of 2009 Tariff Regulations, the petitioners are liable to pay the interest on the arrears arising out of the differences between the provisionally billed tariff and the final tariff.

9. One of the grounds relied upon by the petitioners for seeking the waiver of interest is that the respondent has recovered ₹442 crore as profit for the financial year 2009-10 whereas the respondent is only entitled to ₹ 59 crore for the year 2009-10 as ROE calculated at the rate of 15.5% per annum. The petitioners have not furnished the detailed calculation of ₹442 crore. However, it is gathered from the documents on record that the petitioner has been raising the bills on the basis of tariff applicable as on 31.3.2009. The tariff as on 31.3.2009 was determined in accordance with the 2004 Tariff Regulations. Regulation 7 (1) of the 2004 Tariff Regulations provides that the tax on

income streams of the generating company or the transmission licensee as the case may be from its core business shall be computed as an expense and shall be recovered from the beneficiaries. In accordance with the said provision, the respondent has provisionally recovered the tariff and the income tax on the income of the generating company from the beneficiaries subject to adjustment after the final tariff is determined.

10. In the 2009 Tariff Regulations, the Commission has shifted from post-tax returns to pre-tax returns. Accordingly, the beneficiaries are not liable to pay the income tax liability of the generating company. ROE is grossed up by taking into account the relevant tax rate and it forms a part of the annual fixed cost. Therefore, the tax on income which was provisionally recovered from the beneficiaries in accordance with the 2004 Tariff Regulations shall be adjusted against the annual fixed cost determined as per the 2009 Tariff Regulations. In our view, the submission of the petitioners that the respondent has made undue profit of ₹ 442 crore is without any basis as the same would be adjusted against the annual fixed cost after the tariff has been determined in accordance with the 2009 Tariff Regulations.

11. The petitioner has prayed that the respondent be directed to make arrears/dues claims from the petitioners in 12 equal bi-monthly installments. In this connection, it is noted that the Commission has already provided for the period of 6 months in 2009 Tariff Regulations for recovery of arrears arising out of the difference between the provisionally billed tariff and the final tariff. In our view, prescribing a longer period for recovery of the arrears will not be in the interest of the generating company as well as the beneficiaries as the generating companies will be starved of the cash flow and the beneficiaries will be saddled the interest paid on account of the longer period of repayment. Therefore, the period of 6 months specified in the 2009 Tariff Regulations is

reasonable keeping in view the interest of both the generating companies and the beneficiaries. A similar request from Punjab State Power Corporation Limited as that of the petitioner was considered by the Commission and after due consideration, the Commission by its order dated 26.8.2011 has allowed payment of arrears in 6 monthly installment within a period of 6 months. The relevant portion of the order dated 26.8.2011 in Petition No. 175/2011 (suo motu) is extracted as under:-

*"9. In consideration of the prayer of PSPCL and keeping in view the difficulties faced by the beneficiaries of the central generating stations / transmission licensee, we direct that the arrears arising out of the differences between the tariff provisionally billed and the provisional / final tariff be liquidated by the beneficiaries in six monthly instalments within a period of six months, subject to the payment of interest as per regulations.*

12. In view of the above decision of the Commission, we are unable to accept the prayer of the petitioners to allow payment of arrears in 12 equal bi-monthly instalments. Consequently, no case has been made out for invocation of our power of relaxation under Regulation 44 of the 2009 Tariff Regulations. In accordance with our order dated 26.8.2011 in Petition No. 175/2011 (*suo motu*), the petitioners shall settle the arrears/dues with the respondent in 6 monthly instalments within a period of six months subject to payment of interest as per Regulations.

13. Petition No. 172/2011 is disposed of in terms of the above.

**Sd/-**  
(M.DEENA DAYALAN)  
MEMBER

**Sd/-**  
(V.S.VERMA)  
MEMBER

**Sd/-**  
(S.JAYARAMAN)  
MEMBER

**Sd/-**  
(Dr. PRAMOD DEO)  
CHAIRPERSON