

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.167/MP/2011**

**Coram:  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of hearing: 10.9.2013  
Date of Order: 5.2.2014**

**In the matter of**

Approval for revision of Lignite transfer price of NLC mines for the period from 1.4.2004 to 31.3.2014 based on guidelines issued by Ministry of Coal, Govt. of India on Mine Closure Expenses

**And**

**In the matter of**

Neyveli Lignite Corporation Limited,  
Neyveli House,  
135, EVR Periyar Road,  
Kilpauk, Chennai -600010

**.....Petitioner**

**Vs**

1. Tamil Nadu Generation and Distribution Corporation Ltd,  
144, Anna Salai,  
Chennai-600002

2. Power Company of Karnataka Ltd,  
State Power Purchase Co-ordination Centre,  
Kavery Bhavan,  
Bangalore-560009

3. Kerala State Electricity Board,  
Vydyuthi Bhavan, Pattom  
Thiruvananthapuram-695004

4. Electricity Department, Puducherry  
137, NS.C. Bose Salai  
Puducherry-605001

5. Transmission Corporation of Andhra Pradesh (APTRANSCO)  
Vidhyuthi Soudha,  
Hyderabad-500049

**.....Respondents**



**Present:**

For Petitioner: Shri M.G.Ramachandaran, Advocate, NLC  
Shri K. Nambirajan, NLC

For Respondent: Shri S Vallinayagam, Advocate, TANGEDCO

**ORDER**

In the present petition, the petitioner has sought revision of the lignite transfer price and has made the following specific prayers, namely –

- “(a) To revise the Lignite transfer price specified in para 9 of this petition for 2004-09 for computation of Fuel Price Adjustment in respect of the tariff for the petitioner plants NLC TPS-I 600 MW, NLC STPS-II (3 x 210 MW) + 4 x 210 MW) and NLC TPS-I Expansion (2 x 210 MW).*
- (b) To approve the adoption of revised lignite transfer price in the computation of energy charges specified in the tariff order for NLC TPS-I Expansion and NLC TPS-II (Stage –I and Stage – II) in petition 230/2009 and 231/2009 respectively for 2009-14.*
- (c) To approve the adoption of energy charges after issue of NLC TPS-I tariff order for the amended tariff petition (20/2010) for the period 2009-14 for computation of differential energy charges.*
- (d) To permit the petitioner to adjust the difference in tariff to be payable to beneficiaries against the outstanding dues.*
- (e) To pass any other order (s) deemed to be fit.”*

2. The petitioner is a generating company owned and controlled by the Central Government. The tariff for sale of electricity generated at the petitioner’s generating stations, namely TPS-I, TPS-II (Stage I and Stage II) and TPS-I (Expansio) is regulated by the Commission in terms of clause (a) of sub-section (1) of Section 79 of the Electricity Act,2003. Lignite extracted from the mines maintained and operated by the petitioner is used for generation of electricity. In the past, for arriving at energy charge component of tariff, the lignite transfer price was computed in accordance with the guidelines of Ministry of Coal, Govt. of India based on the estimated mine closure cost indicated by the petitioner as per its internal estimates. The lignite transfer price considered was provisional and was to be firmed up after

approval of Mine Closure Cost by Ministry of Coal. The lignite transfer price, considered for the purposes of computing tariff is tabulated below:

#### 2004-09

| Year /Mines                                       | 2004-05 | 2005-06 | 2006-07 | 2007-08    | 2008-09 |
|---|---------|---------|---------|------------|---------|
| Mine –I (₹/Tonne)                                 | 614     | 631     | 839     | 809/819*   | 873     |
| Pooled Price of Mines other than Mine-I (₹/Tonne) | 929     | 960     | 992     | 1042/1057* | 1064    |

\*Consequent to revision of royalty with effect from 1.8.2007

#### 2009-14

| Year /Mines                                       | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|---------|---------|---------|---------|---------|
| Mine –I (₹/Tonne)                                 | 1101    | 1173    | 1262    | 1359    | 1466    |
| Pooled Price of Mines other than Mine-I (₹/Tonne) | 1411    | 1477    | 1556    | 1568    | 1642    |

3. Ministry of Coal, Govt. of India had issued guidelines for preparation of Mine Closure Plan vide letter dated 27.8.2009 and specified the Mines Closure Cost at ₹6 lakh/Hectare. The petitioner has stated that Ministry of Coal vide letter dated 31.3.2011 has approved the Mine Closure Plan incorporating the annual Mine Closure Cost. The petitioner has further stated that based on approval by Ministry of Coal it has worked out the lignite transfer price, exclusive of Clean Cess Energy w.e.f. 1.7.2010 at the rate of ₹50 per tonne and Excise Duty on lignite and other taxes and duties, as tabulated below:

#### 2004-09

| Year /Mines                                       | 2004-05 | 2005-06 | 2006-07 | 2007-08    | 2008-09 |
|---|---------|---------|---------|------------|---------|
| Mine –I (₹/Tonne)                                 | 584     | 601     | 809     | 779/789*   | 844     |
| Pooled Price of Mines other than Mine-I (₹/Tonne) | 897     | 927     | 960     | 1009/1023* | 1031    |

\*Consequent to revision of royalty from 1.8.2007

#### 2009-14

| Year /Mines                                       | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|---------|---------|---------|---------|---------|
| Mine –I (₹/Tonne)                                 | 1067    | 1140    | 1229    | 1326    | 1434    |
| Pooled Price of Mines other than Mine-I (₹/Tonne) | 1376    | 1443    | 1522    | 1535    | 1610    |

4. The petitioner in the present petition has sought the Commission's approval to the revised

lignite transfer price computed on the basis of annual Mine Closure Cost approved by Ministry of Coal as tabulated above. The petitioner intends to pass on the benefit of downward revision of lignite transfer price to the beneficiaries through Fuel Price Adjustment for the period 2004-09 and through energy charge rate revision for the period 2009-14.

5. TANGEDCO, the successor-in-interest of Tamil Nadu Electricity Board, the Respondent No 1, has filed its reply vide affidavit dated 21.9.2011. TANGEDCO has called for certain information such as the extent of mine area, area already closed and the remaining area to be closed. The petitioner has placed on record the information relating to the area proposed to be closed. TANGEDCO has sought a direction to the petitioner for deletion of the unwritten off amount of Deferred Revenue Expenditure from the capital cost of Mine-I for the periods 2002-04 and 2004-09. The petitioner in its rejoinder has confirmed that there was no Deferred Revenue Expenditure. TANGEDCO has sought confirmation from the petitioner that it has opened the Escrow Account in accordance with the guidelines of Ministry of Coal. This confirmation too has been given by the petitioner in its rejoinder. TANGEDCO has further sought a direction to the petitioner to furnish the details of FERV for KFW loan from the year 2004-05 onwards. The petitioner in the rejoinder has stated that these details have already been furnished to Tamil Nadu Electricity Board in the earlier proceedings before the Commission in Petition Nos 118/2007 and 125/2007 filed before this Commission for approval of tariff. Therefore, the requirement of TANGEDCO has been met. TANGEDCO has not raised any further dispute in regard to any of these issues and as such they are deemed to have been settled.

6. TANGEDCO has pointed out that the guidelines for preparation of the Mine Closure Plan issued by Ministry of Coal under its letter dated 27.8.2009 are not specific as regards the date on which they have come into force and it only states that the owner etc of the mines would submit the Mine Closure Plan within six months. Therefore, TANGEDCO has urged that the

guidelines are to be applied prospectively and not with effect from 1.4.2004, as claimed by the petitioner. TANGEDCO has further urged that since Ministry of Coal has approved the Mine Closure Plan of the petitioner under letter dated 31.3.2011, the Plan should be applied only with effect from 1.4.2011, more so when the guidelines issued by Ministry of Coal on 30.1.2006 did not include the mine closure expenditure as a component for working out the lignite transfer price and the petitioner submitted the Mine Closure Plan in July 2010, which was subsequently approved by Ministry of Coal under letter dated 31.3.2011. In view of this, TANGEDCO has sought the implementation of the revised lignite transfer price prospectively from 1.4.2011.

7. The petitioner in its rejoinder affidavit has clarified that it has made provisions for the mine closure expenditure since 1.4.2004 as the audit team from C&AG which audited the petitioner's financial accounts for the year 2006-07, had raised an issue that the profits should be worked out after making a provision for the mine closure expenditure in view of enactment of Rules 23A to 23F of the Mineral Conservation and Development Rules, 1988 vide GSR No 330 (E) dated 10.4.2003. The petitioner has stated that the provision for the mine closure expenditure was made in the accounts for the year 2007-08 with retrospective effect from 1.4.2004 and accordingly the petitioner started recovery from the respondents based on the provision made for mine closure expenditure. The petitioner has further stated that the Mine Closure Plan which incorporated the mine closure cost was approved by the Standing Committee of Ministry of Coal with effect from 1.4.2004 after the Committee satisfied itself on all the relevant issues, including the date of effect.

8. Both the parties in support of their respective contentions have placed reliance on the Mineral Conservation and Development Rules, 1988, as amended vide GSR dated 10.4.2003. At the outset, it may be pointed out that these rules do not apply to the lignite mines as laid down under Rule 2 thereof. It was for this reason that Ministry of Coal felt the need to formulate its own guidelines on the Mine Closure Plan, applicable to coal and lignite mines.

9. We have carefully considered the rival contentions on the issue of effective date. The provisional lignite transfer price was approved by the Commission with effect from 1.4.2004 based on the draft guidelines of Ministry of Coal while approving the tariff for the period 2004-09. The beneficiaries of the generating stations owned by the petitioner, including Tamil Nadu Electricity Board, the predecessor-in-interest of TANGEDCO, have been paying the tariff calculated on the basis of provisional lignite transfer price. The lignite transfer price is now proposed to be firmed up in keeping with the Commission's earlier direction after approval of the mine closure cost by Ministry of Coal under its letter dated 31.3.2011. Therefore, it is not the case where the lignite transfer price is sought to be imposed retrospectively, first time after the Ministry's approval to mine closure cost. It is the case of revision of the lignite transfer price. It is also noted that there is reduction in the lignite transfer price which lessens the burden of the beneficiaries/respondents. The petitioner has proposed to refund to the beneficiaries the excess amount already recovered or adjust the amount against their future dues. The objection by TANGEDCO does not take into account the crucial aspect of retrospective reduction in tariff. We do not find any merit in TANGEDCO's contention for prospective application of the revised lignite transfer price claimed by the petitioner. We, therefore, accept the petitioner's proposal for retrospective revision of the lignite transfer price with effect from 1.4.2004.

10. Respondent, TANGEDCO vide its affidavit dated 15.12.2011 has raised the following issues:

(i) NLC made huge capital additions to their Mines during 1991-2001. TANGEDCO requests CERC to direct the Petitioner to produce the copy of the sanction accorded by the Ministry of Coal (MoC) for the capital addition made during the above period.

(ii) In the present case, NLC has proposed capital additions during the tariff period 2009-14 in respect of their Mines, besides adding the Mine Closure expenditure to determine the transfer price of lignite. TANGEDCO requests CERC for giving direction to the petitioner to submit proof towards the investment approvals by the competent authority.

(iii) Any abnormal expenses under O&M expenses claimed by NLC may be pruned down to expenditure necessary for the normal operation.

(iv) The petitioner has stated the reasons for increase in O&M expenses due to wage revision. It is to point out that NLC has filed a separate petition before CERC with regard to increase in staff cost due to wage revision. NLC in the present petition tries to obtain the benefit of double claim

11. The petitioner vide its rejoinder dated 23.7.2013 and during the hearing on 10.9.2013, has clarified as under:

(i) The guidelines for lignite pricing for the period 2004-09 was issued by Ministry of Coal on 30.1.2006. The lignite period for the period 2004-09 were finalized along with the tariff petitions during 2007-08 and filed before the Commission. The petitioner has created provisions from the year 2004 representing the estimated liability on account of Mine closure expenses. The Commission allowed the Mine closure cost in the lignite price on provisional basis considering the same as a statutory obligation.

(ii) The working of lignite price calculation was certified by the Auditor after verifying all related documents.

(iii) Four Escrow accounts for each mine were opened and the amount for Mine closure cost for the period from 2004-05 to 2010-11 were deposited in the Escrow accounts and the balance available in the escrow account as on 31.3.2013 including interest is Rs.158.3 Crores. The details of the same would be provided to the respondent TANGEDCO in due course.

(iv) The petitioner has only claimed the downward revision of lignite price based on approved Mine closure cost as the impact of the same has already been passed on to the beneficiaries.

12. We have considered the submissions of the parties. The Commission vide its order dated 23.3.2007 in Petition No. 5/2002 had determined the pooled Lignite Transfer Price for NLC mines for the year 2003-04 in due consideration of the gross blocks (except standalone Mine-I ) as on 1.4.2001 for Mine-II, Stage-I & Stage-II and as on 1.4.2003 for Mine-I (Expansion) and Mine-IA. In the light of above, the request of TANGEDCO to reopen the capital additions made by NLC to their Mines during 1991-2001 is not acceptable. However, in order to address the concern of TANGEDCO as regards the capital additions during 2009-14 in the NLC mines to the effect that there is no double benefit of wage revision in the O&M, we direct the petitioner to

share the information regarding additional capitalisation of mines during 2009-14 and its approval from competent authority with all the respondents along with the calculations of revision of lignite price.

13. In response to the direction of the Commission to submit detailed justification for the increase in O&M expenses for Mine-I in the year 2006-07, Mine-I (Expansion) for the years 2005-06 and 2007-08, Mine-II during the years 2006-07, 2007-08 and 2008-09 compared to O&M expenses for the previous years, the petitioner vide its affidavit dated 24.10.2011 has submitted the additional information. The petitioner, in order to justify the increase in O&M expenses has stated that the increases are due to increase in consumption of stores & spares, payments made to the contractors, major overhaul of Bucket Wheel Excavators and replacement of conveyor belt. It has been stated that depending on the nature of the mines viz. open cast mine, movement of mine, the expenditure relating to replacement of conveyor and maintenance which is revenue expenditure was essential to sustain lignite production, has been considered under O&M expenses for mines. Further, the petitioner has stated that as per its accounting policy, the treatment of deferred revenue expenditure was discontinued and hence the expenses were booked in the year of incurrence. The petitioner has stated that increase in O&M expenses in 2008-09 is within the normal escalation limits allowed by Ministry of Coal. It has been further stated that for the block period 2004-09, actual O&M expenses incurred on mines are more than O&M expenses claimed through tariff and there had been under-recovery of O&M expenses to the extent of ₹348.83 crore. The petitioner has furnished the justification for increase in O&M expenses during 2009-14 also compared to expenses for 2004-09 period. It has been submitted that rate of escalation was increased from 8% for the block period 2004-09 to 11.5% for the block period 2009-14 by Ministry of Coal considering the under-recovery of O&M expenses in the previous block period. The petitioner has stated that O&M expenses data has been verified and certified by the auditor. The petitioner has submitted that excess of, or



shortfall over, O&M expenses incurred will be regularized during the next tariff period along with the interest.

14. The petitioner has furnished justification for higher O&M during the period 2004-09 with specific reason for increase in certain years, compared to the expenses for the previous years. The petitioner, while computing O&M expenses for the period 2009-14, had considered escalation factor @ 11.5% as per the guidelines of Ministry of Coal to make up for the under-recovery during the previous years. The reasons furnished for higher O&M in the Mines while computing the lignite transfer price have been found justified and in order.

15. The parties have not brought to our notice any discrepancy in computation of the revised lignite transfer price by the petitioner or any other issue. Accordingly, we approve the revised lignite transfer price calculated by the petitioner, given in the tables under para 3 above. It is directed that the petitioner shall revise the energy charge for the period 1.4.2004 and onwards based on the revised lignite transfer price by applying the Fuel Price Adjustment Formula already given in the Commission's regulations/tariff orders applicable at the relevant period of time. We further direct the petitioner to adjust the excess amount recovered against the future bills of the respondents within a period of three months starting from April, 2014.

16. One implication of revision of lignite transfer price on Annual Fixed Charges for the tariff period 2009-14 has not been taken into consideration by the petitioner. Interest on Working Capital is a component of Annual Fixed Charges. The elements of Working Capital *inter alia* include two months of fixed and variable charges for sale of electricity calculated on the target availability and cost of lignite (Fuel Cost) for 1½ months, based on lignite price of 2008-09. With the downward revision of lignite transfer price from 2004-05 onwards, the Interest on Working Capital component of the Annual Fixed Charges for the period 2009-14 would also undergo downward revision and the same needs to be worked out afresh. The petitioner is accordingly

directed to recalculate the Interest on Working Capital component of the Annual Fixed Charges from 1.4.2009 onwards in respect of all of its generating stations and furnish the revised calculations of the Interest on Working Capital to the respondents within three months from the date of this order. The excess Interest on Working Capital recovered in tariff shall be adjusted against the bills for the month of July, 2014. In case of any dispute on this issue, the parties are at liberty to approach the Commission for a decision.

17. With the above directions, the petition stands disposed of.

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

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