

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 65/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Date of Hearing: 13.5.2014

Date of Order : 12.5.2015

In the matter of:

Petition for increase in Operation and Maintenance expenses incurred by NLC`s Mines on account of wage revision with effect from 1.1.2007 to 31.3.2009 and other pay hikes to employees (Executives and Workmen), linked to NLC's Power Stations, namely NLC TPS –I (600 MW), NLC TPS-II, Stage-I (3x210 MW), NLC TPS II-Stage-II (4x210 MW) NLC TPS-I Expansion (2x210 MW) and Pay revision of CISF personnel posted in NLC Mines with effect from 1.1.2006 to 31.3.2009.

And

In the matter of

Allowing the recovery of the increased O & M from the beneficiaries of respective NLC thermal power stations linked to NLC Mines.

And

In the matter of:

Neyveli Lignite Corporation Limited
Neyveli House, 135, EVR Periyar Road,
Kilpauk, Chennai-600 010

....Petitioner

Vs

1. The Chief Engineer/Planning
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002

2. The Superintending Engineer (Electrical)
State Power Purchase Co-ordinate Centre,
4th Floor, Kavery Bhawan, Bangalore-560 009



3. The Deputy Chief Engineer
Tariff and Regulatory Affairs Cell,
Kerala State Electricity Board,
Vydyuthi Bhawan, Pattom,
Thiruvananthapuram-695 004

4. The Superintending Engineer
Puducherry Electricity Department,
Beach Road, Puducherry-605 001

5. The Chief Engineer (Commercial)
Transmission Corporation of Andhra Pradesh,
Vidhyuthi Soudha,
Hyderabad-500 082

.....Respondents

The following were present:

Ms. Anushree Bardhan, Advocate, NLC
Ms. Swagatika Sahoo, Advocate, NLC
Shri K. Nambirajan, NLC
Shri R. Mohan, NLC
Shri Ravi Shankar, NLC
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri N. Sivanandan, TNEB

ORDER

The petitioner, Neyveli Lignite Corporation Limited, has filed this petition seeking directions of the Commission to allow the petitioner to increase and recover O & M expenses of NLC Mines linked to NLC's generating stations due to increase in employee cost on account of wage revision of employees (Executives and Workmen) from 1.1.2007 to 31.3.2009 and pay revision of the employees of the Central Industrial Security Forces (CISF) deployed at NLC Mines from 1.1.2006 to 31.3.2009. The petitioner has made the following prayers:

“(a)To take on record the present petition being filed by NLC in respect of the increase in the O&M expenses on account of Wage Revision and other pay hikes of employees (Executives & workmen) of NLC mines during the period from 01.01.2007 to 31.03.2009 and Pay revision of CISF personnel posted at NLC Mines from 01.01.2006 to 31.03.2009.

(b) To allow the recovery of increase in O&M Expenses on account of Wage revision and other pay hikes to Employees of NLC Mines & pay revision to CISF personnel posted at NLC Mines in line with the Hon'ble Commission's order dated 11.12.2012 in petitions 201, 202 and 203/2011.

(c) To allow the recovery of increase in O&M Expenses of NLC Mines linked to NLC's Thermal Power Station namely NLC TPS-I (600 MW), NLC TPS-II Stage-I (3x210 MW), NLC-TPS-II Stage-II (4x210 MW) and NLC TPS-I Expn., from the beneficiaries of respective NLC Thermal Power Stations.

(d) To pass such order (s) as deemed fit by the Hon'ble Commission.”

Submission of the petitioner

2. The petitioner has submitted that lignite transfer price for the period 2004-09 were computed as per the Ministry of Coal guidelines dated 30.1.2006 and the O&M expenses in the computation of lignite transfer price was considered as per clause 4.6 of the said guidelines. The petitioner has submitted that while fixing O&M escalation norms of 8% for the tariff period 2004-09 for fixation of the lignite transfer price, the Ministry of Coal has not considered the increase in salary and wage revision due from 1.1.2006/1.1.2007.

3. The petitioner has submitted that wage revision to employees (for non-executives/ workmen of NLC) and pay revision to employees of NLC were implemented as per the guidelines of Department of Enterprises and Ministry of Coal which has increased the employee cost substantially during the years 2006-07, 2007-08 and 2008-09. However, it had not been factored in the lignite transfer price of 2006-09. The petitioner has submitted the details of impact of wage revision of employees of Mines for the period 2006-07, 2007-08 and 2008-09 as under:

(₹ in lakh)				
Years	Mines- I	Mine-I Expn.	Mines IA	Mine-II
2006-07	1164.08	716.35	397.00	1784.91
2007-08	5242.97	3226.45	1943.19	8137.21
2008-09	5414.43	3331.96	2322.24	8866.72
Total	11821.48	7274.76	4662.44	18788.86
Grand Total				42547.54

4. The petitioner has further submitted the impact of Pay revision of CISF personnel deployed to NLC Mines as under:

(₹ in lakh)					
1.1.2006 to 31.3.2009	Mines –I	Mine-I Expansion	Mines IA	Mine-II	Total
CISF pay Arrears	405.79	249.72	178.77	655.50	1489.78

5. The petitioner has submitted that the Commission vide order dated 11.12.2012 in Petition Nos. 201, 202 and 203/2012 had considered the impact of wage revision of employees of NLC thermal generating stations and security/ CISF personal deployed therein. Accordingly, the petitioner has requested to consider the following increased O&M expenses of the NLC Mines due to wage revision of employees and CISF personnel in line with the Commission's order dated 11.12.2012. Relevant portion of the order is extracted as under:

"Actual increase in employee cost for the period from 01.01.2007 to 31.03.2009 on account of wage revision which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006 are given below along with Pay revision particulars of CISF personnel from 1.1.2006 to 31.3.2009:

(₹ in lakh)

Particulars	Mines –I	Mine-I Expn	Mines IA	Mine-II	Total
Employees	7808.03	4804.94	2508.18	11612.81	26163.62
CISF	405.79	249.72	178.77	655.50	1489.78
Total	8213.82	5054.66	2686.95	12268.31	28223.74

6. Accordingly, the petitioner has prayed to allow the recovery of increase in O & M expenses considering wage revisions and other pay hikes to employees (Executive and Workmen) of NLC Mines linked to TPS-I, TPS-II Stage - I and Stage-II and TPS-I Expansion, pay revision to CISF personnel deployed in NLC Mines from the beneficiaries of respective NLC thermal power generating stations.

7. The petition was heard on 21.5.2013 after notice to the respondents. The Commission vide Record of Proceedings for the hearing dated 21.5.2013 directed the petitioner to take up the matter with the Ministry of Coal, Government of India for a final decision in the matter. In response, the representative of the petitioner sought liberty to approach the Commission after a final decision was taken by the Ministry of Coal, Government of India in respect of the relief prayed for by the petitioner. The prayer was allowed by the Commission and the petition was kept pending.

8. The petitioner in its affidavit dated 6.8.2013 has submitted that Ministry of Coal (MoC), vide its order dated 4.7.2013, had accorded approval for increase in O&M expenses of Mines due to wage revision of employees in Mines and wage revision of CISF deployed in NLC Mines. In the said order dated 4.7.2013, the Ministry of Coal directed that the increase in O&M cost for Mines would be similar to what CERC approved in respect of NLC thermal generating stations. Increase in cost due to wage revision of employees and CISF deployed in NLC Mines was not recovered by NLC through lignite price since it was not considered while determining the norms for O & M expenses of Mines. Therefore, the proposal of NLC regarding claiming the increase in O & M expenses on account of wage revision of employees in Mines and CISF deployed

in NLC Mines appears to be reasonable. Accordingly, Ministry of Coal directed NLC to recast the transfer price of lignite and inform CERC and other beneficiaries after obtaining the approval of the Board. Accordingly, the petitioner has submitted the details of re-casted lignite transfer price of Mine-1 (stand alone) and pooled cost of other Mines considering the expenditure indicated in para 5 above as approved by Board of NLC as under:

Mine I (Stand alone) ₹/Ton

Description	2006-07	2007-08*	2008-09
Existing Price	809	779/789	844
Incremental rate due to wage revision (Including Royalty)	66	66/67	67
Re-casted Lignite Transfer Price	875	845/856	911

*Consequent to revision of Royalty from 1.8.2007.

Pooled Price ₹/ Ton

Description	2006-07	2007-08*	2008-09
Existing Price	960	1009/1023	1031
Incremental rate due to wage revision (Including Royalty)	60	60/61	61
Re-casted Lignite Transfer Price	1020	1069/1084	1092

*Consequent to revision of Royalty from 1.8.2007

9. During the course of hearing on 13.5.2014, learned counsel for the petitioner submitted that Ministry of Coal needs to be approached only in the first instance. However, for determining the energy charges, the Commission only has the jurisdiction. Learned counsel for the petitioner further submitted that Ministry of Coal, while allowing 8% escalation for O & M expenses of mines, considered that the nature of mines is such that the equipments and the kind of the work undertaken, the escalation factor is more than what is allowed for thermal power plants. Further, while deciding the escalation factor, the wage revision was not taken into consideration.

10. Reply to the petition has been filed by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). TANGEDCO in its reply dated 26.9.2013 has submitted that the decision of Ministry of Coal permitting the petitioner to recast the transfer price of lignite without consulting the beneficiaries is against public interest. TANGEDCO has further submitted as under:

(a) The petitioner has claimed the wage revision arrears from 1.1.2007 to 31.3.2009 based on the wages as on 31.12.2006 and the pay hike to CISF from 1.1.2006 to 31.3.2009 on the pay as on 31.12.2005. TANGEDCO has submitted the details of mine-wise and year-wise as claimed by the petitioner as under:

(i) Excess O&M due to wage revision based on the pay as on 31.12.2006 and CISF pay as on 31.12.2005

(₹ in lakh)

Year / details	Mine 1	Mine 1 A	Mine 1 E	Mine 2	Total
2005-06	31.21	13.75	19.21	50.46	114.60
2006-07	992.42	333.69	610.72	1492.01	3428.83
2007-08	3595.10	1169.75	2212.37	5362.94	12340.16
2008-09	3595.10	1169.75	2212.37	5362.94	12340.16
Total	8213.82	2686.95	5054.66	12268.31	28223.74

(ii) The escalation/additional normative O&M expenses allowed during 2006-07 to 2008-09 when comparing the normative of 2005-06 as follows:

(₹ in lakh)

Year / details	Mine 1	Mine 1A	Mine 1E	Mine 2	Total
2005-06	0.00	0.00	0.00	0.00	0.00
2006-07	8715.64	3148.69	-2563.30	5862.30	15163.33
2007-08	7341.86	2943.78	2648.36	11218.05	24152.05
2008-09	9690.92	3804.05	4095.79	15227.22	32817.98
Total					72133.36

Escalation allowed (on normative basis) : ₹ 721.33 crore

Claim due to wage revision etc : ₹ 280.23 crore
 Excess escalation allowed : ₹ 441.10 crore

Therefore, escalation allowed on the normative O&M expenses itself were more than sufficient for the wage revision and the pay hike.

(b) The percentage of escalation allowed in the normative O&M expenses for the years 2005-06 to 2008-09 on taking 2004-05 as base year were as under:

(In %age)

Year / details	Mine 1	Mine 1 A	Mine 1 E	Mine 2	Total
2005-06	1.68	25.45	27.27	5.98	13.52
2006-07	39.52	73.22	6.93	21.18	39.76
2007-08	33.56	70.11	48.28	35.06	55.32
2008-09	43.76	83.16	59.76	45.45	70.37

(c) The Ministry of Coal has directed for the 8% escalation for the normative O&M expenses for the period 2003-04 to 2008-09. However, the petitioner has claimed and allowed at higher percentage as under:

(In %age)

Year/details	Mine1	Mine 1A	Mine 1E	Mine 2	MOC directed %age
2005-06	1.68	25.45	27.27	5.98	8.00
2006-07	37.22	38.08	-15.98	14.34	8.00
2007-08	-4.28	-1.79	38.66	11.46	8.00
2008-09	7.64	7.67	7.74	7.70	8.00
2009-10	191.91	66.55	51.09	32.38	11.50

(d) The Operation and Maintenance expenses of the Mines of the NLC were recovered from the SEB's on normative basis approved by the Ministry of Coal. Since, MOC has provided an escalation factor of 8% per annum for the O&M expenses of the Mines during the period 2004-05 to 2008-09, O&M expenses cannot be claimed on actual basis.

(e) The payment to staff and CISF are one of the components of O&M expenses. The other components are repair and maintenance of machineries and office equipment, payment to contractors, overtime wages, staff welfare expenses, canteen expenses, vehicle expenses, etc. and the escalation for one component may be lesser and other may higher. Since MOC has provided the overall 8% escalation after taking all the factors into consideration, making the claim based on one of the component of O&M expenses may not be correct. The overall actual O&M expenses should be considered and compared by the Commission to allow O & M expenses.

(f) Since the Commission`s regulations are not applicable to Mines and the O&M escalation (8%) factors are determined by MOC, the Commission has no jurisdiction to determine the O&M expenses of the Mines on actual basis.

(g) As the payment were accrued during the actual tax reimbursement period of 2005-06 to 2008-09 and accounted and paid in the post tax with ROE for the period of 2010-11, the benefit of income tax of ₹ 215.92 crore should be passed on to the beneficiaries.

11. The petitioner in its rejoinder dated 23.6.2014 has submitted as under:

(a) The Ministry of Coal issued guidelines on 30.1.2006 for the period from 1.4.2001 to 31.3.2009 whereas wage revision was due from 1.1.2007. Since MOC has given escalation only at 8% every year cumulative, therefore, no wage revision was considered from 1.1.2007.

(b) With regard of applicability of the Commission`s regulations, the petitioner has submitted that the Commission vide order dated 2.11.2005 in Petition No. 5/2002 had directed the petitioner to approach MOC for issues relating to fixation of lignite transfer price. Accordingly, guidelines on lignite transfer price were issued by MOC and based on the guidelines, lignite transfer price is worked out and submitted to the Commission for approval of energy charges.

(c) Income tax is claimed based on actual taxable profit calculated as per the provisions of the Income Tax Act, 1956 which is duly certified by the Auditors. The claim from the beneficiaries is supported by audit certificate only which is standard industrial practice.

Analysis and Decision:

12. We have considered the submissions of the petitioner and the respondent and perused documents on record. Before we proceed to the merit of the case of the petitioner, it is considered appropriate to deal with the objection of the respondent with regard to jurisdiction of the Commission.

13. NLC is operating integrated Mining cum Power Projects under the administrative control of Ministry of Coal, Govt. of India. The Commission as a Central Regulator is only regulating the tariff of lignite based thermal generating stations of NLC and has no role in deciding the lignite transfer price which is linked to mining projects. The Commission, while determining the tariff for the period 2001-04, vide order dated 14.1.2004 in Petition No. 105/2002 had observed as under:

"6. In view of the differences between the parties on the question of fixation of transfer price, the representative of petitioner prayed that the matter be referred to Department of Coal for its decision. We are not inclined to accept to the prayer made by the representative of the petitioner, since it will be outside the scope of functions of the Commission to give any direction in this regard to Central Government. The petitioner as a company of the Central Government may take necessary steps to persuade the owner to fix the transfer price for lignite and file the proposals for approval of tariff based on transfer price so fixed. The Commission will thereafter look into the proposal for fixation of tariff. "

14. Lignite transfer price is calculated by NLC based on the guidelines issued by the Ministry of Coal based on the components such as Capacity Utilization, Debt-Equity Ratio, Return on Equity, Additional Capitalization, Depreciation, O&M expenses, Spares under Working Capital, Income Tax, etc. which are taken into consideration for calculation of Lignite transfer price apart from Opening Gross Block of Mines in a financial year as audited by the auditor. Ministry of Coal issued guidelines on 30.1.2006 for computation of lignite price for the period from 2004-09 and the lignite transfer price as computed by NLC based on the said guidelines and certified by the auditor were considered by the Commission while issuing various tariff orders for the period 2004-2009. Accordingly, the Commission during the process of the petition, directed the petitioner to take up the present matter with the Ministry of Coal, Government of India for a final decision in the matter.

15. Since the O&M expenses, which is one of the components for fixing lignite transfer price, are decided based on the guidelines issued by the Ministry of Coal, the objection of TANGEDCO that the Commission has no jurisdiction to determine the O&M expenses of the Mines on actual basis cannot be sustained.

16. Next we consider the claim of the petitioner on account of pay revision/wage revision. It is observed that the Ministry of Coal in its order dated 4.7.2013 recognised

the fact that the norms for O&M expenses in the MoC guidelines dated 31.1.2006 for lignite pricing for the period 2004-09 did not consider increase in cost due to wage revision of employees and CISF personnel of Mines and therefore, NLC has been allowed to recover the increase in cost due to wage revision of employees of NLC Mines and CISF personnel deployed in NLC Mines, similar to the increase allowed by the Commission for NLC thermal generating Stations i.e. recovery of increase in cost due to wage revision shall be limited to 50% of the salaries and wages (Basic + DA) of the employees of Mines as on 31.12.2006 and actual increase in cost in respect of CISF personnel deployed in NLC Mines.

17. The petitioner vide its affidavit dated 10.10.2014 has provided mine-wise and year-wise actual O&M expenses including impact due to wage revision for the period 2004-09 and reconciled with the books of account audited by the statutory auditor as under :

(₹ in lakh)

	O&M including pay revision and CISF					
	2004-05	2005-06	2006-07	2007-08	2008-09	Total
Mine I	22352.26	25772.48	28559.74	33396.25	39063.36	149144.10
Mine I Expn	13755.23	15859.99	17575.22	20551.54	24038.99	91780.97
Mine IA	7614.48	10411.21	10409.01	13453.60	18310.10	60198.40
Mine II	37633.96	42666.54	48388.46	57151.05	66576.12	252416.13
Total	81355.93	94710.22	104932.43	124552.44	147988.58	553539.59

18. The petitioner has further provided the details of O&M considered in tariff determined by the Commission and certified by the auditor as under:

(₹ in lakh)

	O&M Considered in Tariff					
	2004-05	2005-06	2006-07	2007-08	2008-09	Total
Mine I	2303139	23418.43	32134.07	30760.29	33109.35	142453.53

Mine I Expn	12605.19	16042.46	13479.16	18690.82	20138.25	80955.88
Mine IA	6591.82	8269.70	11418.39	11213.48	12073.75	49567.14
Mine II	38575.58	40882.54	46744.84	52100.59	56109.76	234413.31
Total	80803.98	88613.13	103776.46	112765.18	121431.11	507389.86
Increase in O&M expenses over the O&M expenses considered in tariff						(553539.59-507389.86) = 46149.73 lakh

19. From the above tables it is noted that O&M allowed by the Commission while determining the tariff was less than the actual O&M expenses including pay revision. Actual expenditure due to pay revision and CISF pay revision shown in the reconciliation is ₹44037.32 lakh. The petitioner has also furnished the details of ₹ 44037.32 lakh in the petition as actual impact due to wage revision of NLC employees (₹42547.54 lakh) and pay revision of CISF personnel (₹1489.78 lakh) deployed in NLC Mines.

20. Ministry of Coal vide its order dated 4.7.2013 has allowed recovery of increase in cost due to wage revision limited to 50% of the salaries and wages (Basic+ DA) of the Employees of Mines as on 31.12.2006 and actual increase in case of CISF personnel deployed in NLC Mines. Accordingly, we direct that for the period 1.1.2007 to 31.3.2009, the actual increase in NLC employees cost on account of wage revision is allowed which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006. In so far as increase in the salary of the CISF personnel deployed in NLC mines, the increase in salary shall be on actual basis and shall be a pass through to the beneficiaries.

21. Accordingly, the petitioner is directed to calculate the impact on variable charge for the tariff period 2006-09 and capacity charge and variable charge in 2009-14 for its

different generating stations due to increase in wage revision for Mines and accordingly, adjust tariff as approved by the Commission for NLC TPS-I, NLC TPS-II (Stage-I and Stage-II) and NLC TPS-I (Expansion).

22. Arising out of the main prayer of the petitioner i.e. increase in O&M charges in the lignite transfer price, an incidental issue on income tax has been raised by TANGEDCO at para 11 of its submission dated 19.5.2014 which is extracted as under:

"As the payment accrued during the actual tax reimbursement period of 2005-06 to 2008-09 and accounted and paid in the post tax with ROE period of 2010-11, the income tax benefit of ₹215.92 crore to be passed on to the beneficiaries."

In reply to the above submission of TANGEDCO, the petitioner NLC vide its rejoinder dated 23.06.2014 has submitted as below:

"Lignite transfer price is determined on normative basis. Pricing is based on Net Fixed Asset (NFA) method for all Mines in the tariff period 2004-09. Return on Equity (ROE) is allowed on equity content considered in the lignite transfer price. Similarly, actual Income Tax (IT) reimbursement for the mining segment is claimed from the beneficiaries. There is no direct link between ROE considered in the lignite transfer price and IT reimbursement.

IT reimbursement is claimed based on actual taxable profit calculated as per the provision of income tax act and same is duly certified by the auditors. Claim from the beneficiary is supported by audit certificate only which is a standard industrial practice. The provision for wage hike was made in the respective financial years (from 1.1.2007) and the same has been claimed as expenditure in tax assessment in the respective years. Thereby, the actual tax reimbursement only has been claimed in those years. Actual wage hike paid in excess of provision already created in respective years alone accounted in 2010-11.

As per 2009-14 guidelines Income Tax is grossed up on the equity content considered in the lignite price. Actual tax liability is borne by NLC only.

In light of the above, passing on the tax benefit in the instant case does not arise."

23. Neither TANGEDCO nor the petitioner have given any details of ₹215.92 crore in absolutely clear terms on account of income tax benefit. In absence of complete details with regard to income tax benefit amounting to ₹215.92 crore either from the submission of TANGEDCO or the rejoinder of the petitioner, no decision in the present petition is contemplated. However, TANGEDCO may approach the Commission with all relevant details with regard to above claim through a separate petition.

24. The petition is disposed of in terms of the above.

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson