

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 472/GT/2014

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A. S. Bakshi, Member
Dr. M. K. Iyer, Member**

Date of Hearing: 05.01.2016

Date of Order : 26.05.2016

In the matter of

Truing-up of capital expenditure and tariff for the period 2009-14 for 600 MW, NLC TPS I

AND

Neyveli Lignite Corporation Ltd, ChennaiPetitioner

Vs

Tamil Nadu Generation and Distribution Company Ltd... Respondent

Parties Present:

Ms. Anushree Bardhan, Advocate, NLC
Ms. Poorva Saigal, Advocate, NLC
Shri. J Dhanasekaran, NLC
Shri S Vallinayagam, Advocate, TANGEDCO
Shri. R.Jayaprakash, TANGEDCO

ORDER

This petition has been filed by the petitioner, NLC, for truing up of tariff in respect of NLC, TPS-I (6 x 50 MW + 3 x 100 MW) (hereinafter referred to as “the generating station”) for the period from 2009-14, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”).



2. The generating station with a total capacity of 600 MW comprises of 6 units of 50 MW each and 3 units of 100 MW each. The date of commercial operation of the different units of the generating station is as under:

Units	Capacity (MW)	Date of commercial operation (COD)
Unit-I	50	23.05.1962
Unit-II	50	23.01.1963
Unit-III	50	11.06.1963
Unit-IV	50	27.10.1963
Unit-V	50	29.04.1964
Unit-VI	50	24.08.1965
Unit-VII	100	28.03.1967
Unit-VIII	100	12.02.1969
Unit-IX	100	21.02.1970

3. The Commission vide order dated 09.04.2012 in Petition No. 20/2010 had approved tariff for NLC-TPS-I (600 MW) for the period from 1.4.2009 to 31.3.2014, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. In the above order, while disallowing the claim of additional capital expenditure for the period 2009-14 under Regulation 9(2) of the Tariff Regulations, 2009, the Commission had observed as under:-

“Quote

15. On a query by the Commission during the hearing on 26.10.2010, as to whether the assets proposed for capitalization was absolutely necessary for running the generating station, the petitioner has clarified that the generating station could run for the next five years smoothly, provided certain additional inputs in the form of assets/works as proposed, are undertaken.

16. We have considered the submissions of the petitioner and objections of the respondent. All the units of the generating station have completed the useful life and have undergone R&M activities. These units are in a depleted condition and have been proposed to be phased out. However, considering the acute power shortage in the State of Tamil Nadu and persistent demand by the State to run the generating station till the year 2014, the petitioner has decided to operate the generating station till 2014, subject to approval by the Commission of the expenditure required to keep the generating station in running condition. The petitioner is not entitled for 'Special Allowance' under the provision to Clause (1) of Regulation 10 of the 2009 Tariff Regulations nor does the generating station have any plan to go for another R&M. The petitioner has claimed certain additional capital expenditure considered necessary for the operation of the generating station without categorizing the expenditure under different heads of Regulation 9(2) of the 2009 Tariff Regulations. The claim of the petitioner for additional capital expenditure for 2009-14 is as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Direct Assets	887.00	941.55	1117.20	95.50	0.00
Common Assets	643.00	705.00	747.00	790.00	837.00
Total additional capital expenditure	1530.00	1646.55	1864.20	885.50	837.00



17. Some of the assets for which major expenditure has been claimed by the petitioner under 'direct assets' are as under:

2009-10

₹6.00 lakh claimed is towards Split Casing Fire Pump and Static Excitation system at a cost of ₹106.00 lakh from M/s BHEL, ₹180.00 lakh towards 220 kV & 110 kV Bus bar Protection and ₹17.50 lakh for computerization of ABT, ₹458.16 lakh for renewal of water proofing for PH roof, major overhauling of Unit-1 & Unit-9 for RLA studies etc, ₹74.46 lakh towards RLA Study of Units-1 & Unit-9 and expenditure of ₹31.55 lakh towards RLA study on civil structure.

2010-11

₹78.70 lakh has been claimed for vertical raising of 'H' pond, in order to increase the holding capacity of the 'H' pond for safe disposal of ash slurry, ₹625.25 lakh claimed for renovation of chimneys, strengthening of ash line inspection road, renewal of water proofing for PH roof, 145 KV CT, circulating water pump, major overhauling of Unit-7 for RLA studies etc, ₹82.00 lakh towards 220 kV & 110 kV feeder Numerical Protection Relays, ₹29.45 lakh for RLA Study of Unit-7.

2011-12

₹48.00 lakh for On-line Hydrogen Purity analyzer, ₹75.00 lakh has been claimed towards 5 nos. of 1000 KVA Transformers, ₹62.2 lakh towards Ash Handling Systems Vertical, ₹110.00 lakh for SCADA system for MCR, ₹100.00 lakh for Bus bar Protection & Feeder Protection with numerical relays, ₹275.20 lakh towards the strengthening & widening of lake line Inspection road, laying of bitumen roads outside TPS-I, laying WBM & black topping or road along ACD bund of H Pond, ₹144.55 lakh for assets like 750 KVA Transformers etc.

2012-13

₹18.50 lakh towards Ash Pond, ₹71.50 lakh towards laying WBM & BT, providing drainage arrangements for the road from Silo to Lake Road, re-carpeting of Reservoir Bund Road etc.

18. The claims of the petitioner for additional capitalization has been considered against the provisions of Regulation 9(2) and it is found that the expenditure cannot be allowed under any of the provisions of Regulation 9(2) of the 2009 Tariff Regulations. These expenditures are required for the successful operation of the generating station. In the 2004 Tariff Regulations applicable for the period 2004-09, Regulation 18(2)(iv) provided for the consideration of capital expenditure in respect of any additional works/services which have become necessary for efficient operation of the generating station, but not included in the original project cost. This provision was however not continued under the 2009 Tariff Regulations. However, in order to meet the expenses on new assets of capital nature including in the nature of minor assets, the Commission under Regulation 19(e) of the 2009 Tariff Regulations has provided for a separate compensation allowance following the year of completion of 10, 15 or 20 years of useful life of the generating station.

19. As stated, the claim of the petitioner for capitalization of expenditure for 2009-14 in respect of assets/works do not fall under any of the provisions of Regulation 9(2) of the 2009 Tariff Regulations. Regulation 19(e) of the 2009 Tariff Regulations, provide for a normative compensation allowance for generating stations which have completed 10, 15 or 20 years of useful life. Admittedly, the generating station has completed useful life of 25 years and had also undergone R&M for life extension and is to be phased out by the year 2014. The expenditure claimed by the petitioner in respect of the assets is considered necessary for compliance with statutory obligations and for sustenance of generation up to the year 2014 as per requirement of the respondent, TANGEDCO. Hence, keeping in view the absence of a provision for consideration of such expenditure under



Regulation 9(2) of the 2009 Tariff Regulations and considering the need to maintain a balance between the bare minimum requirement for the generating station and at the same time minimize the financial burden on the respondent, we are of the view that the said expenditure should be allowed by relaxing the provisions of Regulation 19(e) of the 2009 Tariff Regulations, particularly, the allowance meant for the generating station between 21 to 25 years of operation, to be made applicable for this generating station beyond 25 years of operation. Accordingly, in exercise of power under Regulation 44 of the 2009 Tariff Regulations, we relax the provisions of Regulation 19(e) of the 2009 Tariff Regulations to allow compensation allowance @0.65 lakh/MW/year for this generating station for the period 2009-14, in lieu of additional capitalization. In view of this, the compensation allowance allowed for the generating station for 2009-14 is worked out as under:

₹ in Lakh

Year	Capacity (MW)	Compensation Allowance
2009-10	600	390.00
2010-11		390.00
2011-12		390.00
2012-13		390.00
2013-14		390.00
Total		1950.00

4. Aggrieved by order dated 09.04.2012, the petitioner had sought review in the Petition No. 13/RP/2012. The petitioner in the review petition has submitted that the additional capital expenditure for assets which are required for successful operation of the generating station which has been rejected by the Commission on the ground that there is no provision under Regulation 9(2) of the 2009 Tariff Regulations is an error apparent on the face of the order. As per directions of the Commission in its record of proceedings dated 26.10.2010 to submit minimum additional expenditure essentially required to run the generating station. It has submitted that the claims made by the petitioner was not under Regulation 9(2) but after excluding the Special Allowance and Compensation Allowance The petitioner submitted that under the circumstances, disallowing the minimum additional expenditure essentially required to run the generating station claimed as per directive of the Commission and subjecting them to Regulation 9(2) is an error apparent on the face of the order.

5. The Commission vide order dated 07.06.2013 in Review Petition No.13/RP/2012 in Petition No. 20/2010 had observed as under:-

“Quote



23.....The petitioner has submitted that since the claims for minimum additional expenditure essentially required to run the generating station was claimed based on the directive of the Commission, subjecting the said claims to Regulation 9(2) and disallowing the same is an error apparent on the face of the order. We do not agree with the said submissions. Directing the petitioner to submit additional information in order to examine the same cannot be construed as a promise by the Commission to allow the same, especially considering the fact that the generating station had already completed useful life of more than 25 years and had undergone R&M and is to be phased out by the year 2014. Taking in to consideration that the expenditure claimed by the petitioner in respect of assets is considered necessary for compliance with statutory obligations and for sustenance of generation up to the year 2014 as per requirement of the respondent, TANGEDCO and keeping in view the absence of a provision for consideration of such expenditure under Regulation 9(2) of the 2009 Tariff Regulations and the need to maintain a balance between the bare minimum requirement for the generating station and at the same time minimize the financial burden on the respondent, the Commission by a conscious decision relaxed the provisions of Regulation 19 (e) of the 2009 Tariff Regulations particularly, the allowance meant for the generating station between 21 to 25 years of operation i.e 0.65 lakh/MW/year, to be made applicable for this generating station beyond 25 years of operation. We are of the considered view that issues which have been decided on merit cannot be reopened by the petitioner in review proceedings. In view of this, there is no error apparent on the face of record and review on this count fails.
Unquote"

6. Accordingly, the tariff of the generating station for the period 2009-14 as determined vide order dated 07.06.2013 in Review Petition No. 13/RP/2012 is as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	2,878	2,430	1,981	1,533	1,085
Interest on Loan	43	42	40	39	37
Depreciation	1,991	1,991	1,991	1,991	1,991
Interest on Working Capital	2,869	2,912	2,963	3,006	3,059
O & M Expenses	16,200	17,124	18,108	19,140	20,238
Cost of secondary fuel oil	2,417	2,417	2,423	2,417	2,417
Separate Compensation Allowance	390	390	390	390	390
Total	26,788	27,306	27,896	28,516	29,217

7. The annual fixed charges claimed in the present petition for the period 2009-14 are as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	1993	2005	2017	1982	1991
Interest on Loan	43	42	40	39	37
Return on Equity	2881	2419	1986	1575	1085
Interest on Working Capital	2811	2854	2906	2949	3001
O & M Expenses	16200	17124	18108	19140	20238
Secondary fuel oil cost	2417	2417	2423	2417	2417
Compensation Allowance	390	390	390	390	390
Total	26735	27251	27870	28493	29159



Capital Cost claimed in the present Petition

8. The petitioner in the present petition has claimed the Opening Capital cost of ₹46867.55 lakh as on 01.04.2009 based on the order dated 07.06.2013 in the Review Petition No. 13/RP/2012 in Petition No. 20/2010. Therefore, the Opening Capital Cost of ₹46867.55 lakh as on 01.04.2009 is in order and has, thus, been considered for truing-up of tariff.

Additional Capital Expenditure claimed

9. The year wise actual expenditure towards capital additions for the period from 01.04.2009 to 31.03.2014 as claimed by the petitioner in the instant petition as per Regulation 9(2)(ii) & 9(2)(iii) of Tariff Regulations,2009 for truing up is as under:-

Year	(₹ in lakh)					TOTAL
	2009-10	2010-11	2011-12	2012-13	2013-14	
Direct Asset Addition	22.00	123.00	203.00	51.00	0.00	399.00
Common Asset Addition	0.00	0.00	0.00	0.00	0.00	0.00
Total Additional capital expenditure	22.00	123.00	203.00	51.00	0.00	399.00

10. Clause 2 of Regulations 9 of the Tariff Regulations, 2009 has specified Additional Capitalization as follows:-

9. Additional Capitalisation.

(2) The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;
- (ii) Change in law;
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work;

11. As the petitioner was allowed compensation allowance of ₹1950 lakh for the period 2009-14 vide order dated 09.04.2012 in Petition No. 20/2010 and after invoking power to relax in lieu of additional expenditure and in view of the conscious decision for not allowing any additional Capital



Expenditure for the period 2009-14 vide order dated 07.06.2013 in Review Petition No.13/RP/2012, we do not find any merit in the claim of the petitioner for add-cap in this true-up petition.

12. In respect of the prayer of the petitioner to allow separate compensation allowance for TPS-I @0.65 lakh/MW for the period 2009-14, the prayer of the petitioner has already been taken care of .

13. The Respondent TANGEDCO vide affidavit dated 24-12-2014 inter alia stated that in view of special compensation allowance, the claim of the petitioner for additional capitalization should not be allowed as it amounts to double claim for the same expenditure by the petitioner.

14. In light of the above, the claim of Additional Capitalization during 2009-14 amounting to ₹399.00 lakh has not been found admissible.

15. Foreign Exchange Rate Variation on guarantee fee, interest and loan repayment as claimed by the petitioner shall be recoverable from the respondent in accordance with Regulation 40 of Tariff Regulation, 2009. In case of any dispute, the matter may be referred to this Commission for redressal.

Fuel component in working capital

16. As per Commission's order dated 17.11.2008 in Petition No. 125/2007 the lignite transfer price allowed for the year 2008-09 is Rs 873/MT. This lignite price of Rs 873/MT for the year 2008-09 was considered for computing fuel component and two months energy charges in working capital while determined tariff for the station. Subsequently in Petition No. 167/MP/2011, the Commission vide order dated 05.02.2014 approved revised lignite transfer price of Rs 844/MT for the year 2008-09 based on Mine Closure Cost as per guidelines of Ministry of Coal. Accordingly, the lignite transfer price of Rs.844/ton has been considered for the purpose of calculation of interest on working capital.



Interest on working Capital

17. The Interest on working capital has been revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M expense	1350	1427	1509	1595	1687
Receivables	12169	12251	12367	12451	12574
Maintenance Spare	3240	3425	3622	3828	4048
Secondary Fuel oil cost	403	403	404	403	403
Fuel Stock	5786	5786	5801	5786	5786
Total Working Capital	22948	23291	23703	24063	24496
Interest Rate	12.25%	12.25%	12.25%	12.25%	12.25%
Interest on Working Capital	2811	2853	2904	2948	3001

Annual Fixed Charges for 2009-14

18. The Annual Fixed Charges allowed for the period 2009-14 in respect of the generating station is summarized as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	2,878	2,402	1,936	1,498	1,085
Interest on Loan	43	42	40	39	37
Depreciation	1,991	1,991	1,991	1,991	1,991
Interest on Working Capital	2,811	2,853	2,904	2,948	3,001
O & M Expenses	16,200	17,124	18,108	19,140	20,238
Cost of secondary fuel oil	2,417	2,417	2,423	2,417	2,417
Separate Compensation Allowance	390	390	390	390	390
Total	26,731	27,219	27,793	28,422	29,159

Energy Charge Rate (ECR)

19. The petitioner has filed a separate petition for revision of lignite transfer price for all the stations, which is under consideration of the Commission. The ECR will undergo revision once the such revision of lignite transfer price is approved by the Commission.



20. Petition No. 472-GT-2014 is disposed of in terms of the above.

Sd/-

(Dr. M.K.Iyer)
Member

Sd/-

(A.S Bakshi)
Member

Sd/-

(A.K.Singhal)
Member

Sd/-

(Gireesh B Pradhan)
Chairperson

