

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.149/MP/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order : 20th of March, 2017

In the matter of

Petition for seeking approval for revised Lignite Transfer Price of NLC Mines for the period 1.4.2009 to 31.3.2014 on account of truing up additional Capitalization, O&M, Income Tax, Return on Equity and FERV along with the Ministry of Coal guidelines on Fixation of Transfer Price of Lignite.

And

In the matter of

Neyvelli Lignite Corporation (NLC)

Neyveli House,

135, EVR Periyar Road,

Kilpauk, Chennai-600010

....Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
800, Anna Salai, Chennai-600002
2. Power Company of Karnataka Ltd.,
KPTCL building, Kaveri Bhavan,
K.G. Road, Bangalore-560009
3. Bangalore Electricity Supply Company Limited
KR Circle, Bangalore-560001
4. Mangalore Electricity Supply Company Limited
Paradigm Plaza, AB Shetty circle,
Mangalore-575001
5. Gulbarga Electricity Supply Company Limited
Station Main Road, Gulbarga-585102



6. Hubli Electricity Supply Company Limited
Corporate Office, Navanagar, PB Road, Hubli-580025
7. Chamundeshwari Electricity Supply Corporation Limited
Corporate Office, no. 927, LJ Avenue,
New Kantarajaur Road, Saraswathipuram,
Mysore-570009
8. Kerala State Electricity Board Limited
Thiruvananthpuram-695004
9. Puducherry Electricity Department
Puducherry 605001
10. Transmission Corporation of Andhra Pradesh,
Hyderabad-500082
11. Transmission Corporation of Telengana
Hyderabad-500082

. ..Respondents

Parties Present:

Shri M.G. Ramachandran, Advocate, NLC
Ms. Anushree Bardhan, Advocate, NLC
Shri E. Elango , NLC
Shri S. Gnana Prabhakaran, NLC
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The petitioner, Neyveli Lignite Corporation, has filed the present petition for revision of Lignite Transfer Price of NLC Mines for the period from 1.4.2009 to 31.3.2014 on account of truing up additional capital expenditure, O&M expenses, Income Tax, Return on Equity and FERV along with the Ministry of Coal guidelines on Fixation of Transfer Price of Lignite.

Background of the Case:

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 (Expansion) 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 for supply to the respondent. The petitioner determines the lignite transfer price at the beginning of the tariff period based on the Ministry of Coal (MoC) guidelines for fixation of Lignite Transfer Price. The lignite transfer price for the tariff period 2009-14 was computed by the petitioner based on MoC guidelines dated 11.6.2009 which was approved by the Commission while determining of the tariff of the thermal generating stations of the petitioner.

3. As per the guidelines of the Ministry of Coal dated 27.8.2009, the parameters of additional capitalization, O&M Expenses, Income Tax and Return on Equity and Foreign Exchange Rate Variations are required to be trued up at the beginning of the next tariff period (2014-19). Accordingly, NLC has worked out the revised lignite transfer price based on actuals on account of trued-up of additional capital expenditure, O&M expenses, etc. and the same has been submitted for approval of the Commission.

4. The petitioner has submitted the following in support of its contention for revisions of lignite transfer price:

(a) The guidelines for fixation of Transfer price of lignite for NLC`s Mines were issued by the Ministry of Coal (MoC) vide Letter No.43011/2/ 2004-Lig-CA-II dated 11.6.2009. The lignite transfer price for the period of five years (2009-14) has been worked out based on the estimated annual budget/plans in respect of additional capitalization, estimated O&M expenses, Return on Equity (RoE) grossed up tax rate as on 1.4.2009 and upfront loading of the Foreign Exchange Rate Variation.



(b) The Commission, while determining the tariff for the generating stations of the petitioner, approved the energy charges with the following provisional lignite transfer price as under:

(Rs/ Tonne)					
Year/ Mines	2009-10	2010-11	2011-12	2012-13	2013-14
Mine 1 (as per petition)	1101	1173	1262	1359	1466
Pooled Price	1411	1477	1556	1568	1642

- The above rates were exclusive of Clean Energy Cess w.e.f. 1.7.2010 @Rs. 50 per tonne and excise duty on lignite and other taxes and duties.

(c) The Ministry of Coal, Government of India had issued guidelines for preparation of Mine Closure Plan vide letter dated 27.8.2009 in which and specified the Mines Closure Cost at Rs. 6 lakh / Hectare was specified.

(d) The Ministry of Coal vide its letter dated 31.3.2011 approved the Mine Closure Plan incorporating the Annual Mine Closure cost. Based on the guidelines of the Ministry of Coal, the petitioner has worked out the following lignite transfer price duly certified by the cost auditor:

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

- The above rates were exclusive of clean energy cess w.e.f. 1.7.2010 @Rs. 50 per tonne and excise duty on lignite and other taxes and duties. The Commission vide order dated 5.2.2014 in Petition No. 167/MP/2011 approved the above worked out lignite price.

(e) Revision of Pooled Lignite Price on account of inclusion of Mine II Expansion:

(i) The pooled lignite prices for the period from 2010-11 to 2013-14 had undergone further revision, due to commissioning of Mine-II expansion on 12.3.2010 and inclusion of Mine II Expansion lignite cost in the existing lignite



price of Mine I Expansion, Mine IA and Mine II which were approved by the Commission vide order dated 7.5.2015 in Petition No. 68/MP/2013.

(ii) The details of approved pooled lignite price of the mines including NLC Mine-II (Expansion) are as under:

(Rs/ Tonne)

Year/Mines	2010-11*	2011-12	2012-13	2013-14
Pooled Price including NLC Mines-II Expansion	1444	1569	1588/1604**	1610

*The above rates are exclusive of clean energy cess w.e.f. 1.7.2010 @ Rs 50/T and excise duty on lignite and other taxes and duties.

** Based on the royalty revision from 10.5.2012.

(iii) As per the Ministry of Coal's guidelines, the parameters of additional capitalization, O&M expenses, Return on Equity, Foreign Exchange Rate Variations and Income Tax as adopted for determination of lignite transfer price for the period 2009-14 are required to be trued up at the beginning of the next tariff period (2014-19). Accordingly, NLC has worked out the following lignite transfer prices including royalty revision w.e.f 10.5.2012 which has been certified by the Chartered Accountants:

(Rs/ Tonne)

Year/Mines	2009-10	2010-11	2011-12	2012-13 (from 1.4.2012 to 9.5.2012)	2012-13 (from 10.5.2012 to 31.3.2013)	2013-14
Mine-I	1168	1245	1329	1443	1453	1535
Pooled Price including NLC Mines-II Expansion	1383	1432	1543	1518	1530	1673

- *The above rates are exclusive of Clean Energy Cess w.e.f. 1.7.2010 @ Rs 50 per tonne and excise duty on lignite and other taxes and duties.*



(f) Due to non-quantification of the wage revision for non-executives and labours of NLC with effect from 1.1.2012, and the said expenditure has not been included in the trued up O&M expenditure, NLC be permitted to claim the expenditure on wage revision at actual from the beneficiaries directly without approaching the Commission.

5. In the light of the above submissions, the petitioner has made the following prayers.

“ (a) To take on record the petition towards the revision of transfer price of lignite for the period 2009-14 as per MoC guidelines on account of truing up of Additional capitalization, O&M Expenses, Income Tax and Return on Equity and Foreign Exchange Rate variations.

(b) Approve the adoption of revised lignite transfer price in the computation of energy charges specified in the tariff order for NLC TPS-I 600 MW, NLC TPS-I Expansion and NLC TPS II (Stage I and Stage II) in Petition No 20/2010, Petition 230/2009 and 231/2009 respectively for 2009-14.

(c) Adopt the revised lignite transfer price in the computation of interest on Working capital specified in the tariff petition of NLC TPS I 600 MW, NLC TPS I Expansion and NLC TPS II (Stage I and Stage II) for 2014-19 filed before CERC.

(d) Permit the petitioner to make adjustment, if any, on the Lignite Transfer price that may arise due to the outcome of Petition no.65/MP/2013 (O&M expenses of Mines) & 68/MP/2013(Pooling of Lignite price) without making any further application before the commission.

(e) Permit the petitioner to claim the impact of wage revision for Non-executives and labours of NLC with effect from 01.01.2012 at actuals from the beneficiaries directly without approaching Hon'ble CERC again.

(f) Permit the petitioner to recover/ adjust the difference in tariff from beneficiaries on account of all above with interest.

(g) Pass any other order(s) deemed to be fit.”

6. The petition was heard on 23.7.2015 and notices were issued to the respondents to file their replies.



7. TANGEDCO, in its reply dated 7.8.2015, has submitted as under:

(a) The petitioner's claim is not in line with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and 2014 Tariff Regulations and is therefore, liable to be rejected.

(b) The lignite transfer price furnished by NLC in respect of Mine-I has been considerably increased for the period 2009-14 as compared to earlier claim of the petitioner in Petition No.167/MP/2011. However, in the present petition, the petitioner has stated that O&M cost of Mine-I Expansion has been segregated from Mine-I as per the installed capacity of the respective Mines. Moreover, the petitioner has not furnished the details of O&M expenses incurred in respect of Mine-I.

(c) Mine-I having a capacity of Rs. 6.5 lakh MTPA is linked to TPS-I (600 MW) generating station in which TANGEDCO being the sole beneficiary is having a share of 100%. The Ministry of Coal in its guidelines for transfer price of lignite has allowed an escalation of 11.5% towards the Operation and Maintenance (O & M) expenses for the period 2009-14 which is on a higher side.

(d) The following O&M claims in respect of Mine-IA for the period 2009-14 are abnormal as compared to the escalation rate of 11.5% year over year allowed in the Ministry of Coal's guidelines. However, NLC has not provided any justification for higher O&M expenses deviating the norms prescribed by the Ministry of Coal.

(Rs. in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Expenses	22256	25793	33355	39288	45856
11.5% escalation as per norms issued by Ministry of Coal.	--	24815	27669	30851	34399
Excess claim	--	978	5686	8437	11457



(%) increase		3.79	17.04	21.47	24.98
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(e) Since, the petitioner has considered a higher percentage of escalation for the period 2009-14, NLC is not entitled for excess claim and O&M expenses in respect of Mine-IA should be restricted to 11.5% as per the Ministry of Coal's Guidelines.

(f) NLC has not furnished the break-up details of the O&M expenses in respect of its Mines for the period 2009-14, split up details of the O&M expenses, Cost of Mine Closure, Depreciation and Amortization, etc. in respect of TPS-I. The petitioner may be directed to furnish the details of breakup of the O&M expenses of each individual mines for the period 2009-14.

(g) Since, the Mine Closure cost furnished by NLC in respect of Mine-I Expansion and Mine-II for the period 2009-14 are not in line with the petitioner's earlier claim in Petition No.167/MP/2011, the same needs scrutiny by the Commission.

8. The petitioner, in its rejoinder dated 27.8.2015, has submitted as under:

(a) The petitioner has placed on record the details of O&M expenses of Mine-I under affidavit dated 27.8.2015. The escalation rate of 11.5% per annum reckoned for comparison of the O&M expenses specified in clause 4.5 of the MoC guidelines is for determining the normative pricing of lignite only. On incurring expenditure, the same needs to be trued up at actual at the beginning of the next tariff period as per clause 4.5 of the MoC guidelines. Therefore, the O&M expenditure projected for comparison by escalation is not in line with the MoC guidelines.

(b) As per the MoC guidelines, O&M expenses need to be trued up at the beginning of the next tariff period.



(c) Mine Closure cost is worked out as per the Mine Closure cost guidelines of the Ministry of Coal. Earlier, the Mine Closure cost was worked out for the leasehold area of Mines. Based on MoC's revised guidelines, it is now calculated for the project area of the Mines.

9. The petitioner, vide affidavit dated 2.9.2015, has placed on record the details of the O & M expenses of Mine I, O & M expenses of each individual Mines, copy of guidelines for preparation of Mine Closure Plan issued by the Ministry of Coal and copy of the working sheets for total Annual Mine Closure cost.

10. TANGEDCO, vide its additional affidavit dated 18.9.2015, has submitted as under:

(a) With regard to the petitioner's contention that the claim of wage revision at actual with effect from 2012 is in accordance with para 4.5 of the Ministry of Coal's guidelines dated 6.1.2015 and seeking permission of the Commission for claiming the O&M expenses at actual in the truing up without approaching the Commission, TANGEDCO has requested to negate the claim of the petitioner for including the wage revision expenses from 2012 in the O & M expenses.

(b) As per the Ministry of Coal guidelines dated 15.6.2009 for the period 2009-14, the O&M expenses would be trued up at the beginning of the next tariff period and there is no specific provision for the period 2009-14 and 2014-19 to claim the O&M expenses over and above the escalated norms of 11.5%. The petitioner has considered higher O&M expenses for the period 2009-14 which are beyond the norms prescribed by the Ministry of Coal. The O&M escalation provided in the Ministry of Coal's guidelines dated 15.6.2009 is higher (11.5%) as compared to the O&M Norms prescribed by the Commission (5.75%) in the 2014 Tariff Regulations



for the period 2009-14. NLC, even after getting the higher escalation norms (11.5%) for O&M in respect of its Mines, has claimed more than the prescribed norms which is abnormal and cannot be passed on to the beneficiaries.

(c) The petitioner's contention to allow it to claim the O&M expenses at actual without approaching the Commission is not acceptable as the Commission is the competent authority to determine the tariff of the Central Generating Stations. No additional O&M expenses should be allowed unless approved by the Commission.

(d) The O & M claimed by the petitioner is on much higher side and the petitioner has abnormally increased the O&M claim for the period 2009-14 as under:

(Rs. in lakh)

2008-09 Base year O&M after giving effect to wage revision	2009-10 Escalation @ 11.5% from base year as per MOC guidelines	2010-11 Escalation @ 11.5% from previous year as per MOC guidelines	2011-12 Escalation @ 11.5% from previous year as per MOC guidelines	2012-13 Escalation @ 11.5% from previous year as per MOC guidelines	2013-14 Escalation @ 11.5% from previous year as per MOC guidelines
36704	40924.96	45631.33	50878.93	56730.01	63253.96
Claim of NLC in the present trueing up petition	44011.00	48491.00	53350.00	58338.00	64357.00
Excess claim above the norms	3086.04	2859.67	2471.06	1607.98	1103.03

(e) Mine-I is integrated to TPS-I generating station which has served its life and is in the process of phasing out for which lesser resources are required for generation. Therefore, the petitioner can very well manage its expenditure in the normative O&M escalation allowed by the Ministry of Coal. The petitioner has made an excess O&M claim of Rs.11127.78 lakh in respect of Mine-I for the period 2009-14 which is unreasonable and beyond the norms prescribed by the Ministry of Coal in Para 4.5 of its guidelines dated 15.6.2009.



(f) As per the financial performance of NLC for the last 10 years (2005-06 to 2014-15), NLC is making huge profit and as per the physical performance for the last 10 years, the production in respect of Mine-I is more than the capacity utilisation. Since, the petitioner is making profit and attaining the production levels more than the norms prescribed, claiming of excess O&M above than the escalated norms of 11.5% is not justifiable.

(g) NLC has furnished the details of O&M cost for the Mines other than Mine-I for the period 2009-14. The escalated claim made by NLC above the 11.5% escalation norms prescribed by the Ministry of Coal and the excess difference is as under:

Mine-I Expansion

(Rs. in lakh)

2008-09 Base year O&M after giving effect to wage revision	2009-10 Escalation @ 11.5% from base year as per MOC guidelines	2010-11 Escalation @ 11.5% from previous year as per MOC guidelines	2011-12 Escalation @ 11.5% from previous year as per MOC guidelines	2012-13 Escalation @ 11.5% from previous year as per MOC guidelines	2013-14 Escalation @ 11.5% from previous year as per MOC guidelines
22350.61	24920.93	27786.84	30982.32	34545.29	38518.00
Claimed by NLC in present truing up petition	26898.00	29640.00	32606.00	35588.00	39454.00
Difference (Excess claim)	1977.07	1853.16	1623.67	1042.70	936.00

Mine-IA

(Rs. in lakh)

2008-09 Base year O&M after giving effect to wage revision	2009-10 Escalation @ 11.5% from base year as per MOC guidelines	2010-11 Escalation @ 11.5% from previous year as per MOC guidelines	2011-12 Escalation @ 11.5% from previous year as per MOC guidelines	2012-13 Escalation @ 11.5% from previous year as per MOC guidelines	2013-14 Escalation @ 11.5% from previous year as per MOC guidelines
13243.50	14766.50	16464.65	18358.09	20469.26	22823.23
Claimed by NLC in present truing up petition	22256	25793	33355	39288	45856
Difference (Excess claim)	7489.49	9328.35	14996.91	18818.74	23032.77



Mine-II**(Rs. in lakh)**

2008-09 Base year O&M after giving effect to wage revision	2009-10 Escalation @ 11.5% from base year As per MOC guidelines	2010-11 Escalation @ 11.5% from previous year As per MOC guidelines	2011-12 Escalation @ 11.5% from previous year As per MOC guidelines	2012-13 Escalation @ 11.5% from previous year As per MOC guidelines	2013-14 Escalation @ 11.5% from previous year As per MOC guidelines
61472.69	68542.05	76424.39	85213.19	95012.71	105939.20
Claimed by NLC in present truing up petition	75694	65361	71433	73224	89888
Difference (Excess claim)	7151.95	(11063.40)	(13780.20)	(21788.70)	(16051.20)

Mine-II Expansion**(Rs. in lakh)**

	2009-10	2010-11 Escalation @ 11.5% from previous year as per MOC guidelines	2011-12 Escalation @ 11.5% from previous year as per MOC guidelines	2012-13 Escalation from previous year as per MOC guidelines	2013-14 Escalation @ 11.5% from previous year as per MOC guidelines
As per norms	0	19063.59	21255.90	23700.33	26425.87
Claimed in Petition No. 68/MP/2013	0	19063.59	25503.45	28436.34	31706.52
Claim now made	0	28012.00	30614.00	31382.00	38523.00
Difference (excess claim above the norms)	0	8948.41	9358.09	7681.66	12097.13
Excess claim (above than claimed in Petition No. 68/MP/2013)	0	8948.41	5110.55	2945.66	6816.48

(h) As per the above tables, NLC has claimed escalated O&M expenses above than the norms prescribed for Mine-I Expansion, Mine-IA, Mine-II and Mine-II Expansion. NLC has also included the Mine-II Expansion cost in the pooled transfer price from the year 2010-11 even though the integrated project TPS-II Expansion commissioned only during the year 2015.



(i) As per the Tariff Policy, the tariff of the generating station can be fixed in such a manner that it provides a reasonable return to the generator and the consumer is not burdened with higher tariff. The financial and physical performance of the petitioner for the past ten years clearly exhibits increase in profit year over year.

(j) Since, allowing the O&M at actual would unjustly enrich the generator at the cost of the beneficiaries and end consumers, the O&M expenses as per the norms determined by the Ministry of Coal should be restricted.

11. The petitioner in its rejoinder dated 6.10.2015 to the additional submissions filed by TANGEDCO has submitted as under:

(a) The truing up of Lignite Price for the period 2009-14 is carried out in terms of the Ministry of Coal guidelines dated 11.6.2009, wherein it had been categorically stipulated under Para 4.5 that O & M expenses would be trued up at the beginning of the next tariff period. The wages to the employees are integral part of the O & M expenses, which needs to be necessarily trued up. Since, the wage revision due for the non-executives for the period 1.1.2012 to 31.3.2014 is under negotiation, the same could not be trued up at this stage. MOC in its guidelines dated 2.1.2015 has clarified that “as the impact of Wage revision of workers from 1.1.2012 cannot be quantified and included in the tariff at this point of time. Therefore, as and when the same is finalized, NLC shall claim at actuals”.

(b) The lignite prices have been determined in accordance with the MoC guidelines at the normative stipulations. The MoC guidelines *inter-alia* stipulated that the O&M expenses shall be trued up at the beginning of next tariff period. NLC has claimed the O&M expenses on normative basis in accordance with the MoC



guidelines and trued up figures have been placed on record. The details of increase in O&M trued up in Mine-I stand alone and Pooled Mines (as compared with the previous year trued up figure) are as under:

(Rs. in crore)

Mine-I	2009-10	2010-11	2011-12	2012-13	2013-14
O&M	440.11	48,4.91	533.50	583.38	643.57
%	-	10.18%	10.02%	9.35%	10.32%
Pooled Mines					
O&M	1248.48	1488.06	1680.08	1794.82	2137.21
%		19.19%	12.90%	6.83%	19.08%

(c) As per the above table, trued up escalation for Mine I stand alone is less than 11.50%. In respect of Pooled Price, the escalation of 19.19% in 2010-11 over 2009-10 is on account of inclusion of Mine II Expansion (4.5 MTPA) for pooling. It would not be fair and equitable to compare the O&M expenses for Mining Industry with the Power Industry. The nature of operations, machinery requirements and manpower requirements are entirely different for open cast lignite mining. Higher escalation for the O&M expenses in Mines is not only to cover inflation but also due to factors such as increase in the depth of Mines, increase in length of conveyors on account of movement of Mines, draining out of large quantum of water and carrying out reclamation programmes as per guidelines of the Ministry of Environment and Forest. The OB lignite ratio in each Mine is not uniform and varies from year to year which causes additional expenses towards OB removal through outsourcing.

(d) The petitioner has claimed O & M expenses in accordance with the MOC guidelines and data duly certified by the Auditors. The claim is not abnormal and the increase is around 10% in each year. The stand alone Mine-I is linked to TPS I. The entire power of TPS-I is dedicated to TANGEDCO. TANGEDCO's contention that



lesser resources are required for generation is not correct. Due to vintage of the Plant, it requires more Repairs and Maintenance and further needs to handle higher amount of lignite than other plants, as its Station Heat Rate is higher.

(e) NLC's lignite price is fixed as per the MoC guidelines and power tariff is regulated by the Central Commission. TANGEDCO has computed the O&M expenses for all the Mines other than Mine II Expansion for the period 2009-10 to 2013-14 by considering the 2008-09, O&M after giving effect for wage revision as the base and escalated it at 11.5% p.a. For Mine II expansion, TANGEDCO has considered the claim of NLC in Petition No. 68/ MP/2013 as the base and estimated the O&M for the other years by escalating it at 11.5% p.a. By comparing the above estimates with the actual O&M expenses claimed in the truing up petition, TANGEDCO has stated that there is an excess claim. The overall excess claim as per TANGEDCO is Rs.747.80 crore. There is an apparent error in the estimate of O&M expenses by TANGEDCO i.e. the base O&M considered by it for 2008-09 is the O&M estimated for 2008-09 in the 2004-09 pricing period and not the actual. Since, NLC restricted its wage revision claim for the period 1.1.2007 to 31.3.2009 to 50% of the Basic plus DA as on 31.12.2006, the wage revision adjustment made by TANGEDCO is not correct. NLC, for lignite price for 2009-14, had estimated the O &M for 2009-10 to 2013-14 taking into the consideration the actual of 2008-09 as the base and escalated it at 11.5% p.a. The details of the O&M expenses already claimed by NLC and the present claim are as under:

(Rs. in lakh)

Year	O&M already claimed	Claim in Truing up	Difference
2009-10	164519.35	168859	4339.65
2010-11	202502.67	197297	-5205.67



2011-12	230038.02	221358	-8680.02
2012-13	256492.40	237820	-18672.40
2013-14	285989.02	278078	-7911.02
Total	1139541.46	1103412	-36129.46

Therefore, the truing up exercise results in a benefit of reduction on the O&M expenses to the tune of Rs.361.29 crore to the beneficiaries.

(f) With regard to higher pooled cost of lignite, it is clarified that since, the trued up claim is in accordance with the MoC guidelines and the same is duly certified by Auditors, the figures provided by the TANGEDCO are not correct. O&M details as per tariff and trued up are as under:

(Rs in crore)

	Tariff	Trued up	Difference
Standalone	2,497.46	2,685.47	188.01
Pooled	8,897.96	8,348.64	-549.32
Total	11,395.42	11,034.11	-361.31

(g) As and when a new mine is commissioned, pooling of lignite cost is strictly in accordance with the Govt. of India guidelines. As per the table above, O&M cost is not abnormal and the same is well within the norms. NLC is passing the benefit of reduction in overall O&M expenses for the tariff period 2009-14 to the extent of Rs. 361.31 crore on account of truing up of O&M expenses for all the Mines.

Analysis and Decision

12. We have considered the submissions of the petitioner and the respondents and perused the documents on record. The petitioner has filed the present petition for approval of revised lignite prices of NLC Mines for the period from 1.4.2009 to 31.3.2014 on account of truing up additional capital expenditure, O & M expenses, income tax, Return on Equity and FERV.



13. Lignite transfer price for the period 2009-14 computed by NLC, based on MoC guidelines dated 11.6.2009 and on estimated Mine Closure cost allowed by the Commission in various tariff orders of the generating stations of NLC are as under:

(Rs/ Tonne)

Year/Mines	2009-10	2010-11	2011-12	2012-13	2013-14
Mine I	1101	1173	1262	1359	1466
Pooled Price	1411	1477	1556	1568	1642

* The above rates were exclusive of Clean Cess Energy w.e.f. 1.7.2010 @Rs. 50 per tonne and Excise duty on Lignite and other taxes and duties.

14. The Ministry of Coal, Government of India, vide its letter No. 55011-01-2009-CPAM dated 27.8.2009, issued guidelines for preparation of Mine Closure Plan and specified the Mines Closure Cost at Rs 6 lakh/Hectare. The Commission vide order dated 5.2.2014 in Petition No. 167/MP/2011 revised the lignite transfer price based on the actual Mine closure cost as under:

(Rs/ Tonne)

Year/Mines	2009-10	2010-11	2011-12	2012-13	2013-14
Mine I	1067	1140	1229	1326	1434
Pooled Price	1376	1443	1522	1535	1610

The above rates were exclusive of clean energy cess w.e.f. 1.7.2010 @Rs. 50 per tonne and excise duty on lignite and other taxes and duties.

15. The Commission vide order dated 7.5.2015 in Petition No. 68/MP/2013 revised the Pooled lignite transfer price for NLC Mines for the period 2010-11 to 2013-14 including Mine-II (Expansion.) from March, 2010 as per under:

(Rs/ Tonne)

Year/Mines	2010-11*	2011-12	2012-13	2013-14
Pooled Price including NLC	1444	1569	1588/1604**	1610
Mines-II Expansion				

* The above rates are exclusive of clean energy cess w.e.f. 1.7.2010 @ Rs 50/T and excise duty on lignite and other taxes and duties.

** Based on the royalty revision from 10.5.2012.



16. The petitioner has submitted that the Commission vide order dated 12.5.2015 in Petition No. 65/MP/2013 had allowed the increase in the O&M expenses of Mines due to wage revision with effect from 1.1.2006 and 1.1.2007 which would have implication on lignite transfer price during 2009-14. The petitioner has determined the lignite transfer price as per the MoC guidelines dated 11.6.2009 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 were taken into consideration for calculation of lignite transfer price duly audited by the auditor. The Commission adopted the lignite transfer price as determined by NLC for the period 2009-14 while approving tariff for NLC generating stations. The petitioner has approached the Commission for approval of duly audited lignite transfer price as revised/ trued-up at the end of tariff period 2009-14 on the basis of MoC guidelines dated 11.6.2009 as under:

Year	(Rs/ Tonne)					
	2009-10	2010-11	2011-12	2012-13 (up to 9.5.2012)	2012-13 (from 10.5.2012)	2013-14
Mine-I (stand alone price)	1168	1245	1329	1443	1453	1535
Pooled Price including NLC Mines-II Expansion	1383	1432	1543	1518	1530	1673

- *The above rates are exclusive of clean energy cess w.e.f. 1.7.2010 @ Rs 50/Tonne and excise duty on lignite and other taxes and duties.*

17. TANGEDCO has contended that in the truing up petition, there is an excess claim towards O&M expenses by the petitioner. TANGEDCO has also furnished a detailed calculation to that effect. The petitioner has submitted the excess claim as per the calculation of TANGEDCO is Rs. 747.80 crore. The petitioner has submitted that the lignite transfer price has been determined in accordance with the MoC guidelines and has reiterated that the trued up escalation of Mine-I standalone is less than 11.5%. The



petitioner in its justification of increase in O&M expenses has stated that higher escalation for O&M expenses in Mines is not only to cover inflation but also due to factors such as increase in depth of Mine, increase in length of conveyors, draining out of large quantum of water and carrying out reclamation programs as per guidelines of the Ministry of Environment and Forest. The petitioner has further stated that there is an apparent error in the estimate of O&M expenses by TANGEDCO i.e. the base O & M considered by TANGEDCO for 2008-09 is the estimated O & M for 2008-09 and not the actual O & M expenses. The petitioner has submitted that the wage revision adjustment made by TANGEDCO is also not correct as the petitioner restricted its wage revision claim for the period 1.1.2007 to 31.3.2009 to 50% of the basic plus DA as on 31.12.2016. According to the petitioner, TANGEDCO has computed the O & M expenses for all mines other than Mine-II (Expansion) for the period 2009-14 by considering the 2008-09 O & M expenses after giving effect for wage revision as the base and escalated @ 11.5% for Mine-II (Expansion), TANGEDCO has considered the claim of NLC in Petition No. 68/MP/2013 as the base and estimated the O & M for the other years by escalating @ 11.5%. The petitioner has submitted that in the truing up exercise, the petitioner had estimated the O&M for the period 2009-14 by taking into consideration the actual of 2008-09 as the base and escalated @ 11.5% per annum resulting in a benefit of reduction of O&M expenses to the tune of Rs. 361.29 crore to the beneficiaries.

18. The Ministry of Coal, vide its order No. 43001/2/2014-Lig-CA-II dated 11.6.2009, prescribed the escalation O&M expenses of 11.5% per annum as under:

"4.5 Though NLC submitted that an escalation @ 13% per annum on previous years actual should be reckoned, SEBs pleaded that 5.75% per annum should be adopted, as per CERC Regulations 2009. After detailed deliberations it was agreed that O&M expenses shall be charged at 11.50% per annum by NLC for the period 2009-14. It was also agreed that the O&M expenses would be trued up at the beginning of the



next tariff period.”

19. The Commission vide order dated 12.5.2015 in Petition No. 65/MP/2013 allowed the following actual O&M expenses including the impact due to wage revision for the period 2008-09:

(Rs in lakh)

Year	O&M allowed for the Period 2008-09
Mine-I	39063.36
Mine-I (Expansion)	24038.99
Mine-IA	18310.10
Mine-II	66576.12

20. Considering the base O&M of 2008-09 as allowed above by the Commission including wage revision, the projected O&M expenses for the period from 2009-10 to 2013-14 of individual Mines @11.5% escalation as per the MoC guidelines is worked out as under:

(Rs in lakh)

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	Total (2009-14)
MINE-I*	39063	43556	48565	54149	60377	67320	273967
MINE-I EXP.	24039	26803	29886	33323	37155	41428	168595
MINE-IA	18310	20416	22764	25381	28300	31555	128416
MINE-II	66576	74232	82769	92288	102901	114734	466924

* Stand alone price

21. The petitioner in the present petition has claimed the following O&M expenses for the period 2009-10 to 2013-14.

(Rs in lakh)

O&M Cost	2009-10	2010-11	2011-12	2012-13	2013-14	Total (2009-14)
Mine-I Standalone price	44011	48491	53350	58338	64357	268547
Mine-I Expansion	26898	29640	32606	35588	39454	164186
Mine-I A	22256	25793	33355	39288	45856	166548
Mine-II	75694	65361	71433	73224	89888	375600
Mine-II Expansion	--	28012	30614	31382	38523	128531



22. It is noted from the above two tables that the mine-wise O&M claimed on actual for truing-up of lignite price is less in case of Mine-I (stand alone), Mine-I (Expansion) and Mine-II and is more in case of Mine IA during 2009-14 as compared to the O&M cost during 2009-14 based on 11.5% escalation every year of the base O&M (2008-09) as allowed by the Commission after inclusion of wage revision. In view of above, the actual O&M claimed for the year 2009-10 in case of Mine-I (standalone), Mine-I (Expansion), Mine-II and Mine-II (Expansion) has been considered for allowing O&M with escalation of 11.5% for subsequent years up to 2013-14. In case of Mine-IA, O&M worked out in Table at Para 20 above with base O & M of 2008-09 and escalation of 11.5% is allowed for the period 2009-14.

23. The percentage increase of the O&M cost for individual Mines, namely Mine-I, Mine-I (Expansion), Mine-II and Mine-II (Expansion) for the period from 2009-10 to 2013-14 is worked out as under:

(Rs. in lakh)

Mine-I Standalone price	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Cost	44011	48491	53350	58338	64357
% increase		10.18	10.02	9.35	10.32

(Rs. in lakh)

Mine-II	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Cost	75694	65361	71433	73224	89888
% increase		-15.81	9.29	2.51	22.76

(Rs. in lakh)

Mine-I Expansion	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Cost	26898	29640	32606	35588	39454
% increase	-	10.19	10.00	9.15	10.86

(Rs. in lakh)

Mine-II Expansion	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Cost	-	28012	30614	31382	38523



%increase			9.29	2.51	22.76
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24. From the above, it is inferred that the O&M cost of Mine-I standalone and Mine-I (Expansion) for the period 2009-14 is within the escalation rate of 11.5% during 2009-14 on previous year actuals. However, the year-wise escalation on previous years actual is more than 11.5% in case of Mine-II and Mine-II (Expansion) for the year 2013-14.

25. The Ministry of Coal vide its guidelines dated 11.6.2009 has specified 11.5% as ceiling for escalation. Accordingly, in case, the actual O&M expenses are more than 11.5%, they shall be restricted to 11.5% and in case, O&M expenses are less than 11.5%, they shall be considered on actual for truing up purpose. Therefore, we are of the considered view that the escalation of the O&M expenses exceeding the ceiling of 11.5% on actual shall be restricted to 11.5% as per the MOC guidelines dated 11.6.2009.

26. With regard to the O&M cost of the Mine-I (standalone) and Mine-I (Expansion), there will be no change in the O&M cost of the Mine-I and Mine-I (Expansion) as the increase in the O&M cost for the period 2009-14 is within the escalation rate of 11.5% on previous years actuals O&M expenses of Mine-II for the years 2009-10 and 2010-11 are Rs. 75694 lakh and Rs 65361 lakh respectively. Since, there is a substantial reduction in the O&M expenses of Mine-II during 2010-11 from previous year 2009-10 which has been justified, the O&M cost of Mine-II for the year 2009-10 has been back calculated and restricted to Rs 58619.73 lakh. Accordingly, the increase in the O&M expenditure for Mine-II and Mine-II(Expansion) for the year 2013-14 on actual is restricted to @11.5% as under:

(Rs in lakh)					
O&M Cost	2009-10	2010-11	2011-12	2012-13	2013-14
Mine-II	58619.73	65361	71433	73224	81644.76
Mine-II Expansion	-	28012	30614	31382	34990.93



27. Accordingly, the petitioner is directed to revise/true-up the pooled lignite transfer price based on O&M cost of Mines allowed as under:

(Rs in lakh)

O&M Cost	2009-10	2010-11	2011-12	2012-13	2013-14
Standalone Mine					
Mine-I	44011	48491	53350	58338	64357
Pooled Mines					
Mine-I (Expansion)	26898	29640	32606	35588	39454
Mine-IA	20415.76	22763.57	25381.38	28300.24	31554.77
Mine-II	58619.73	65361	71433	73224	81644.76
Mine-II (Expansion)	-	28012	30614	31382	34990.93

28. The petitioner has not provided actual capacity utilization in respect of different mines. Para 4.1 of MOC Guidelines dated 11-06-2009 states as follows:

4.1 Capacity Utilization

"The existing guidelines of 85% capacity utilization are to be retained, as this is a basis on which projects are formulated and economic evaluation of the project is done. Also capacity utilization is heavily dependent on various mining operational conditions, land availability, space constraints and availability of main mining equipments etc. SEBs had suggested adoption of marginal costing norms for pricing of lignite produced at 85% of capacity utilization, while NLC insisted on retained existing guidelines of 85% capacity utilization. Since inception, mines have achieved mine capacity utilization of less than 85% cumulatively. The performance of mines over its entire life has to be taken into consideration while fixing parameters and should not be based on sporadic performance. The said norms were also the basis on which earlier agreements with SEBs were settled and agreed to by SEBs. Therefore, the extant guidelines shall be retained, as this would also act as an incentive to NLC to achieve higher capacity utilization, which would be in the interest of all stakeholders."

As per para 4.1 of the guidelines, 100% O & M cost shall be recovered at 85% capacity utilization. In case the mines have achieved lower capacity utilization, the O & M cost shall be proportionately reduced based on actual capacity utilization and lignite transfer price shall be worked out accordingly. In line with MOC guidelines, we have not gone into the detailed prudence of numbers/values as given in the auditor's certificate. Therefore, the



petitioner shall ensure that proportionate reduction in the O & M cost is done in case the capacity utilization is less than 85%.

29. The petitioner is directed to calculate the impact on variable charge for the tariff period 2009-14 and in capacity charge during 2014-19 for its different generating stations within three months and adjust the same in the tariff accordingly.

30. Next, we consider the petitioner's request to claim from the beneficiaries the impact of wage revision for non-executives and labours of NLC with effect from 1.1.2012 at actual. The petitioner has submitted that in the absence of quantification of wage revision for non-executives and labours with effect from 1.1.2012, it is not calming the impact of wage revision and has sought permission, to claim the same from the beneficiaries directly without approaching the Commission after its finalization. TANGEDCO has submitted that since, the Commission is the competent authority to determine the generation tariff in respect of the Central Generating Stations, no additional O & M expenses should be allowed without being approved by the Commission.

31. The Ministry of Coal in para 8 (v) of the guidelines dated 2.1.2015 has clearly stipulated that in the absence of truing up claim of lignite by NLC for the period 2009-14, the petitioner's proposal regarding the impact of wage revision to enhance escalation is not agreeable. Relevant portion of the MOC guidelines dated 2.1.2015 is extracted as under:

“8.(v) Considering the impact of wage revision which cannot be quantified at this stage and adverse stripping ratios of OB beyond the normative level as considered in FR necessitating outsourcing, these factors shall not be part of normal O & M expenditure. Moreover, in the absence of truing up claim of lignite by NLC for 2009-19, the proposal of NLC to enhance escalation from 11.55 to 13% is not agreeable. Therefore, the prevailing rate of 11.55 shall continue.”

32. The wage revision for non-executives and labours has not been quantified and



therefore, in the absence of complete details with regard to impact of wage revision, the claim cannot be decided in this order. However, the petitioner is granted liberty to approach the Commission with all relevant details in accordance with law.

33. The petition 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

