CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Petition No: 31/MP/2018

Coram:

Shri P.K. Pujari, Chairperson Shri A.K. Singhal, Member Shri A.S. Bakshi, Member Dr. M.K. Iyer, Member

Date of Order: 18th of July, 2018

In the matter of

Increase in Operation and Maintenance expenses incurred by NLCIL's Thermal Power Stations on account of Wage Revision and other pay hikes with effect from 01-01-2012 to Employees (Non-Executives & workmen) posted to NLCIL's Power Stations namely NLCIL TPS I (600 MW), NLCIL TPSII - Stage I (3X210 MW), NLCIL-TPS-II Stage-II (4X210 MW), NLCIL TPS I Expn (2 x 210 MW) and NLCIL Barsingsar Thermal Power Station (2x125 MW) and to allow the recovery of the same from the beneficiaries of NLCIL Power Stations for the period 1.1.2012 to 31.3.2014

And In the matter of

NLC India Limited First Floor, No.8, Mayor Sathyamurthy Road, FSD, Egmore Complex of Food Corporation of India, Chetpet, Chennai-600031, Tamil Nadu. India

...... Petitioner

Vs

- The Chief Engineer/Mechanical/Regulatory Cell Tamil Nadu Generation and Distribution Corporation Ltd. NPKRR Maaligai, 144, Anna Salai, Chennai-600 002
- The Chief Engineer (Commercial), APPCC APTRANSCO, Vidyut Soudha, Khairatabad, Hyderabad-500082.
- 3. The Managing Director, Southern Power Distribution Company of A.P. Ltd. (APSPDCL)



D.NO:19-13-65/A Srinivasapuram, Tiruchanoor Road Tirupathi(AP)-517501.

4. The Managing Director,

Eastern Power Distribution Company of A.P. Ltd. (APEPDCL) P&TColony, Seetammadhara, Vishakapatnam (AP)- 503013

5. The Chief Engineer (Commercial), TSPCC

TSTRANSCO,

Vidyut Soudha,

Khairatabad, Hyderabad-500082.

6. The Managing Director,

Northern Power Distribution Company of Telangana Ltd. (TS NPDCL)

H.No. 1 -1-504, Opp. NIT petrol Pump,

Chaityanayapuri colony, Hanmkonda,

Warangal (Telangana) - 506 004.

7. The Managing Director,

Southern Power Distribution Company of Telangana Ltd. (TS SPDCL)

2nd Floor, H.No.6-1-50, Mint Compound,

Hyderabad-500063.

8. The Director(Commercial)

Power Company of Karnataka Ltd,

KPTCL Complex, Kaveri Bhavan,

Bangalore -560009.

9. The Managing Director,

Bangalore Electricity Supply Company Ltd.(BESCOM)

Krishna Rajendra Circle

Bangalore - 560 001.

10. The Managing Director,

Mangalore Electricity Supply Company Limited (MESCOM)

Corporate Office, MESCOM Bhavana, Bejai, Kavoor Cross Road,

Mangalore 575 004.

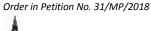
11. The Managing Director,

CESC Mysore (Chamundeshwari Electricity Supply Co. Ltd.)

Corporate Office No CA 29,

Vijayanagar 2nd Stage

Hinakal, Mysore -570017



12. The Managing Director, GESCOM (Gulbarga Electricity Supply Company Ltd.) Main road, Gulbarga, Gulbarga -585 102 Karnataka.

13. The Managing Director,
HESCOM (Hubli Electricity Supply Company Ltd.) Corporate office
P.B.Road, Navanagar, Hubli - 580 025.

14. The Chief Engineer (Commercial and Tariff) Kerala State Electricity Board Ltd., Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram-695004.

15. The Superintending Engineer I (HOD),Puducherry Electricity Department,137, NSC Bose Salai, Puducherry – 605 001.

16. The Managing Director, Jodhpur Vidyut Vitaran Nigam Ltd., New Power House, Heavy Industrial Area, Jodhpur, Rajasthan 342 003

17. The Managing Director,
Jaipur Vidyut Vitaran Nigam Ltd.,
Vidyut Bhavan, I Floor, Janpath,
Jaipur, Rajasthan-302 005

18. The Managing Director,Ajmer Vidyut Vitaran Nigam Ltd.,Old Power House Hathi Bhata,Jaipur Road, Ajmer, Rajasthan 305 001

19. The Chief Executive Officer, Rajasthan Urja Vihas Nigam Ltd, Shed no.5/5, Vidyut Bhawan, Janpath, Jaipur, Rajasthan – 302 005

.... Respondents

Parties present:

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

A.

ORDER

The Petitioner, Neyveli Lignite Corporation India Limited (hereinafter referred to as NLCIL), has filed the present petition seeking directions of the Commission to allow the Petitioner to increase and recover O & M Expenses of NLCIL generating stations due to increase in employee cost on account of wage revision of employees (non-executives and workmen) deployed in NLCIL's Power Stations, namely NLCIL TPS I (6x50+3x100 MW), NLCIL TPS-II, Stage I (3X210 MW), NLCIL TPS-II Stage-II (4X210 MW), NLCIL TPS I Expn (2 x 210 MW) and NLCIL Barsingsar Thermal Power Station (2X125 MW) and to allow appropriate adjustment of money due from/payable to beneficiaries of the Petitioner's generating stations for the period 1.1.2012 to 31.3.2014 under Regulation 44 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the '2009 Tariff Regulations). The Petitioner has made the following prayers:

- "(a) To take on record the present petition being filed by NLCIL in respect of the increase in the O&M expenses on account of Wage Revision and other pay hikes of employees of NLCIL Thermal Power Stations during the period 1.1.2012 to 31.3.2014.
- (b) To allow the recovery of increase in O&M Expenses considering Wage revision and other pay hikes to employees (for non-executives and workmen) of NLCIL's Power Stations, namely NLCIL TPS-I (600 MW) NLCIL TPS-II Stage I (3X210 MW), NLCIL TPS-II Stage-II (4X210 MW), NLCIL TPS-I Expn and NLCIL BTPS (2 X 125 MW) from the beneficiaries of NLCIL Stations for the period 1.1.2012 to 31.3.2014.

Submission of the Petitioner

2. The Petitioner has submitted that the Commission in its various orders revised the tariff of NLCIL's generating stations, namely NLCIL TPS-I (6x50+3x100 MW), NLCIL TPS-II, Stage I (3X210 MW), NLCIL TPS-II Stage-II (4X210 MW), NLCIL

TPS-I Expansion (2 x 210 MW) and NLCIL Barsingsar Thermal Power Station (2X125 MW) for the tariff period 2009-14. The Petitioner has submitted that during the proceedings in the truing up Petitions, the Petitioner had sought the permission of the Commission for claiming the impact of wage revision for non-executives and workmen w.e.f. 1.1.2012 on actual basis, as the same could not be quantified at the time of filing of the truing up Petitions.

3. The Petitioner has submitted that the salary/wage revision of the Petitioner's employees was due from 1.1.2012. Wage revision to employees (for non-executives/workmen) was implemented as per the guidelines of Department of Public Enterprise and Ministry of Coal. On 3.11.2015, the Petitioner issued the order in this regard which substantially increased the employee cost. The Petitioner has placed on record the details of pay revision impact for the period 2012-14 along with Auditor Certificate. The Petitioner has submitted the details of station-wise pay revision impact for the period 2011-12 to 2013-14 as under:

(Rs. in lakh)

				(1101 III Idilii)
Generating Stations	2011-12 (1.1.2012- 31.3.2012)	2012-13	2013-14	TOTAL
TPS I	151.51	699.70	773.19	1624.40
TPS I EXP	36.76	176.17	194.32	407.25
TPS II ST I	108.80	513.72	565.81	1188.34
TPS II ST II	145.06	684.97	754.42	1584.45
BTPP	8.07	39.64	45.44	93.14
Total	450.20	2114.20	2333.18	4897.58

4. The Petitioner has prayed to allow the recovery of additional O & M Expenses considering wage revisions and other benefits to employees (for non- executives and workmen) of NLCIL TPS-I, TPS-II Stage I and Stage II, TPS-I Expansion and BTPP from the beneficiaries of NLCIL generating stations for the period from 1.1.2012 to 31.3.2014 by invoking the provisions of Regulation 44 (Power to Relax) of 2009 Tariff Regulations.

A.

- 5. The Petition was heard after notice to the Respondents. Reply to the Petition has been filed by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and the Petitioner has filed rejoinder thereof.
- Tamil Nadu Generation and Distribution Corporation Limited in its reply dated 6. 2.5.2018 has submitted that the Commission, while determining the norms for the O&M Expenses for 2009-14 tariff period, has considered the impact of wage revision in respect of the Central Generating Station and accordingly factored the same in the escalation factor of 5.72% per annum. Therefore, there is no merit in the present petition for revision of O&M expenses due to implementation of wage revision for the period from 1.1.2014 to 31.3.2014. Petition No. 472/GT/2014 (NLC TPS-I), Petition No. 474/GT/2014 (NLC TPS-I Expansion) and Petition No. 473/GT/2014 (NLC TPS-II) were heard on 5.1.2016 whereas wage revision took place vide order dated 3.11.2015 i.e. the wage revision order was issued well within the date of hearing of the tariff petitions. NLC should have filed the affidavits containing the details which it has now sought approval of the Commission to include the wage revision expenditure for the period 2012-14 under power to relax provisions of the 2009 Tariff Regulations. Since the Commission while determining the norms for the O & M Expenses for the period 2009-14 has already given weightage for the expenditure towards wage revision, there is no necessity to include the same once again. TANGEDCO has submitted that the Petitioner has not furnished the station-wise details of expenditure incurred out of O & M Expenses allowed under the 2009 Tariff Regulations. TANGEDCO has submitted that the present petition is not maintainable as the Petitioner, in order to justify its claim, has not stated that the normative O & M Expenses allowed under the 2009 Tariff Regulations have been exhausted.

- 7. The Petitioner in its rejoinder dated 11.5.2018 has submitted that the Commission had not factored the wage revision impact of workers and nonexecutives of NLCIL in the SOR and the same comes under the ambit of the Ministry of Coal. Therefore, the wage revision for workmen and non-executives is in accordance with the Department of Public Enterprises. Government of India (DPE) guidelines. With regard to non-submission of the details of wage revision in the truing up Petitions, the Petitioner has submitted that since the order with regard to wage revision for non-executives and workmen of NLCIL was issued on 3.11.2015, the quantum of arrears could not be ascertained at that time. With regard to power to relax, the Petitioner has submitted that the power to relax of the Commission is not an absolute discretionary power but a power to exercise with judicial discretion and the Commission may consider the circumstances under which such power is sought to be invoked by the utility. In this regard, the Petitioner has relied upon the Hon'ble Supreme Court judgment in Premium Granties and Another Vs. State of Tamil Nadu and Others [(1944) 2 SCC 691]. The Petitioner has submitted that it has already submitted the details of station-wise actual O & M Expenses for the period 2009-14 which are to be recovered from the beneficiaries.
- 8. The Commission vide Record of Proceedings for the hearing dated 29.5.2018 directed the Petitioner to submit the following information/clarification:
 - (a) Copy of the guidelines of Department of Public Enterprise and Ministry of Coal based on which the wage revision order dated 3.11.2015 has been passed by the Petitioner
 - (b) The Petitioner has claimed an amount of Rs 4.5 crore, Rs 21.14 crore, and Rs 23.33 crore for the years 2011-12, 2012-13, and 2013-14 respectively as wage revision impact due to revision of pay of unionized category of

workmen/non-executives of NLC. Furnish station-wise data of the actual O&M expenditure vis-à-vis O&M expenditure allowed in tariff for the years 2011-12, 2012-13 and 2013-14.

- (c) Station-wise audited statement indicating wage before revision and after revision of the employees (non-executives and workmen) for the years 2011-12, 2012-13 and 2013-14.
- 9. The Petitioner vide affidavit dated 18.6.2018 has submitted the information called for and has submitted the audited due-drawn statement as under:

	(Valu	ıe in Rs.)	
012-13	2013-14		
Drawn	Due	Drawn	
on Before revision	n (After revision)	(Before revision)	
554726690	695833229	618514142	
135634942	172802580	153370760	
399972693	503932069	447350718	
533296924	671909425	596467624	
30784797	40089413	35545777	
1654416046	2084566716	1851249021	
39	1654416046	39 1654416046 2084566716	

The above audited statement is in line with the claim of the Petitioner in the petition.

Analysis and Decision:

10. We have considered the submissions of the Petitioner and TANGEDCO and perused documents on record. 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 is regulated by the Commission in terms of clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The Petitioner

has approached for approval of the expenditure in wage revision for workmen and non-executives of NLC with effect from 1.1.2012. According to the Petitioner, the details of actual impact of wage revision was not available at the time of filing of true-up petitions for the tariff period 2009-14 and accordingly, the Petitioner could not submit the same. The Petitioner has submitted that the wage revision which was due from 1.1.2012 in accordance with the guideline of Department of Public Enterprises and Ministry of Coal, was implemented through the order dated 3.11.2015. After the details of actual expenses were available, the Petitioner has filed the present petition for allowing the impact of wage revision for the period from 1.1.2012 to 31.3.2014. The Petitioner has submitted that the impact of wage revision be allowed by the Commission in exercise of power of relaxation under Regulation 44 of the 2009 Tariff Regulations.

- 11. TANGEDCO has submitted that the present petition is not maintainable on two main points:
 - (a) The Commission while determining the norms for O & M Expenses, has already considered the impact of wage revision in respect of the Central Generating stations and accordingly, factored the same in the escalation factor determined for the period 2009-14. Therefore, there is no rationale for the Petitioner to seek revision of O&M Expenses for the period from 1.1.2012 to 31.3.2014.
 - (b) The wage revision was implemented vide NLC order dated 3.11.2015 whereas the true up petitions (474/GT/2014, 473/GT/2014 and 474/GT/2014 were heard on 5.1.2016 and orders were passed on 26.5.2016, 10.2.2017 and 27.7.2016 respectively. Despite the Petitioner being aware of the quantum of expenditure incurred during 2012-14, the Petitioner failed to submit the required

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information at the time of filing of the true up petitions. Therefore, the Petitioner's prayer for grant of relief by exercising the Power to relax may be rejected.

- 12. As regards the first objection, we have to consider whether the wage revision of the Petitioner's employees was factored while specifying the O&M norms in 2009 Tariff Regulations. The Petitioner in its rejoinder dated 11.5.2018 has submitted that the claim in the present petition pertains to wage revision of the Petitioner's workers and non-executives w.e.f 1.1.2012 (which happens once in five years i.e 2007, 2012, 2017 etc.) unlike the case of other power sector CPSUs such as NTPC, etc. The Petitioner has submitted that in the SOR to 2009 Tariff Regulations, it has been clearly mentioned that only the Pay/Wage revision of 2007 has been factored. Paras 19.2, 19.10 and 20.3 of the SOR to the 2009 Tariff Regulations are extracted as under:
 - **"19.2** The norms were specified after considering actual of thermal generating stations of Central Utilities and some of the generating stations OF State Utilities and IPPs for the period 2004-05 to 2006-07 and factoring in 45% increase (30% increase for transmission system due to inadvertent mistake instead of 45% increase) in employee cost due to pay revision and considering annual escalation factor of 5.17%. The annual escalation factor was based on the average of last five years.
 - **19.10** The CPSUs regulated by us were asked to make their estimation of hike on account of revision of scales of pay. The hike on account of revision of scales of pay estimated by some of the CPSU's are as follows:

NTPC	56%
Power Grid	70%
NLC	73%
NEEPCO	70%

The estimates submitted by NLC and NEEPCO were not supported by the calculations. The estimates of NTPC and Power Grid were however, gone into and it was observed that the increase includes PRP and allowances in excess of 50% of the basic. Further, certain facilities like school; hospital facilities etc. at site were not monetized. On all these consideration, estimates of CPSUs appears to be on higher side. Commission after due consideration of various

aspects covered in the implementation of pay revision has come to a conclusion that a uniform normative increase of 50% in employee cost would be just and reasonable for all CPSUs."

- **20.3** The Operation & Maintenance cost for the purpose of tariff covers expenditure incurred on the employees including gratuity, CPF medical, education allowances etc, repair and maintenance expenses including stores and consumables, consumption of capital spares not part of capital cost, security expenses, administrative expenses etc. of the generating stations, corporate expenses apportioned to each generating stations etc. but exclude the expenditure on fuel i.e. primary fuel as well as secondary and alternate fuels."
- 13. From SOR to the 2009 Tariff Regulations, it emerges that the norms for O&M Expenses for the period 2009-14 were specified by normalizing the actual O&M expenditure for the period 2004-07 of NTPC and NLC generating stations, and the impact of wage revision of workers and non-executives of NLCIL due from 1.1.2012 was not factored in the norms finalized before the start of 2009-14 tariff setting. Therefore, we do not find merit in the objection of TANGEDCO.
- 14. As regard the second objection of TANGEDCO, it is noted that order of wage revision was issued on 3.11.2015 and after obtaining the Auditor's Certificate on 8.12.2017 and completing all payments, the present petition was filed on 22.1.2018. According to the Petitioner, the aspect of wage revision was raised by the Petitioner vide its affidavits dated 6.2.2016 in true up petitions for the period 2009-14 i.e. Petition Nos. 472/GT/2014, 473/GT/2014 and 474/GT/2014. Relevant portion of the said affidavit is extracted as under:

"To permit the petitioner to claim the impact of wage revision for Executives for Non-executives and workers of NLC with effect from 1.1.2012 at actuals from the beneficiaries directly without approaching CERC again."

15. Though the Petitioner in its affidavit dated 6.2.2016 had prayed for approval of wage revision for non-executive workers of NLC, the same was not considered in the absence of the details of expenditure on wage revision. The Petitioner also raised

the issue in truing up of Lignite Transfer Price in Petition No. 149/MP/2017. The Commission in its order dated 20.3.2017 in Petition No. 149/MP/2015 had held as under:

- "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."
- 16. In pursuance of liberty granted, the Petitioner has approached the Commission by way of the present petition for allowing the impact of wage revision of non-executives and workmen of NLCIL generating station after the same has been implemented. The Petitioner has furnished expenditure on actual, duly certified by the Auditor. Though not explicitly mentioned, the Petitioner is seeking relaxation of the regulation since it has approached the Commission for impact of wage revision after disposal of the true up petitions. Considering the circumstances under which the Petitioner could not submit the data regarding wage revision in true up petitions, we allow the Petitioner's claim by invoking provisions of Regulation 44 of the 2009 Tariff Regulations "Power to Relax" in the present petition as a special dispensation despite the fact that true up petitions have already been decided.
- 17. On merit of the claim, the Commission is of the view that while deciding the norms for the period 2009-14, the data available for the period 2004-05 to 2006-07 were taken into consideration. Therefore, the wage revision with effect from 1.1.2012 of non-executives and workmen working in generating stations of the Petitioner were not factored in the norms. Accordingly, the Petitioner is entitled for the impact of wage revision on the basis of actual expenditure over and above the escalation factored in the O&M norms. Pay and allowances are mandatory expenditures and

are necessary inputs to determine cost of supply of electricity to the beneficiaries. If the impact of wage revision carried out with effect from 1.1.2012 is denied to the Petitioner, it would result in under recovery of cost of electricity by the generating company. Therefore, in our view, a clear case has been made for allowing the impact of wage revision of the non-executives and workmen of NLCIL in the norms for the period 2009-14.

18. In our view, the claim of the Petitioner can be considered subject to verification that actual O&M expenditure for the period 2009-14 is in excess of normative O&M expenditure allowed to the various generating stations of NLCIL. The Petitioner in its rejoinder dated 11.5.2018 has furnished the station-wise actual O&M expenditure for the period 2009-14 regarding "Furnishing of actual performance/ operational data", O&M Expenditure and other particulars in respect of NLC power stations. To access the claim of the Petitioner, the Commission vide ROP for the hearing dated 29.5.2018 directed the Petitioner to submit the details of actual O&M expenditure versus normative O&M.

19. The Petitioner vide its affidavit dated 18.6.2018 has submitted the details of the Norms Vs Actual O&M Expenses certified by the Auditor as under:

Station	Capacity (MW)	Norm In Rs. Lakh/MW	Total normative expenditure (Rs.in crore)	Actual (Rs in crore)	Under- Recovery (Rs in crore)	Wage Revision (Rs in crore)	Total Under Recovery (Rs in crore)
FY 2011-12							
TPSI	600	30.18	181.08	235.92	(54.84)	1.52	(56.35)
TPS 1 Exp	420	20.34	85.43	99.66	(14.23)	0.36	(14.59)
TPSII	1470	20.34	299.00	393.46	(94.46)	2.54	(97.00)
TPSII(S-I)	630	20.34	128.14	168.03	(39.89)	1.09	(40.98)
TPS II (S-II)	840	20.34	170.86	225.43	(54.57)	1.45	(56.02)
BTPS	Order 130).GT.2016	15.21	16.99	(1.79)	0.08	(1.87)
Total			580.71	746.04	(165.33)	4.49	(169.82)
FY 2012-13							
TPSI	600	31.90	191.40	250.82	(59.42)	7.00	(66.42)
TPS1 Exp	420	21.51	90.34	106.43	(16.09)	1.76	(17.85)
TPSII	1470	21.51	316.20	407.69	(91.49)	11.99	(103.48)
TPSII(S-I)	630	21.51	135.51	174.72	(39.21)	5.14	(44.35)
TPS II (S-II)	840	21.51	180.68	232.96	(52.28)	6.85	(59.13)
BTPS	250	28.36	70.90	69.77	1.13	0.40	0.73
Total			668.84	834.71	(165.87)	21.14	(187.02)

FY 2013-14							
TPSI	600	33.73	202.38	281.50	(79.12)	7.73	(86.86)
TPS1 Exp	420	22.74	95.51	115.30	(19.79)	1.94	(21.74)
TPSII	1470	22.74	334.28	468.21	(133.93)	13.20	(147.14)
TPSII(S-I)	630	22.74	143.26	200.66	(57.40)	5.66	(63.06)
TPS II (S-II)	840	22.74	191.02	267.55	(76.54)	7.54	(84.08)
BTPS	250	29.98	74.95	75.75	(0.80)	0.45	(1.25)
Total			707.12	940.77	(233.65)	23.33	(256.98)

Perusal of the above table reveals that the normative O&M expenditure allowed by the Commission for the period 2011-14 is less than the actual O&M Expenses. In our view, since the wage revision of workers and non-executives, due from 1.1.2012, was not a part of the normative O&M Expenses and the actual O&M is more than the normative O&M Expenses, we allow the following year-wise and station-wise Audited claim of the Petitioner subject to ceiling of 50% of Basic + DA as considered by the Commission in its previous orders:

				(Rs. in lakh)
STATIONS	2011-12 (1.1.2012- 31.3.2012)	2012-13	2013-14	TOTAL
TPS I	151.51	699.70	773.19	1624.40
TPS I EXP	36.76	176.17	194.32	407.25
TPS II ST I	108.80	513.72	565.81	1188.34
TPS II ST II	145.06	684.97	754.42	1584.45
BTPP	8.07	39.64	45.44	93.14
Total	450.20	2114.20	2333.18	4897.58

- 20. The arrears shall be paid by the beneficiaries in twelve equal monthly instalments from the month of August, 2018 without interest.
- 21. The increase in the O & M Expenses on account of revision of wages as allowed in Para 19 above shall not be used for recovering the IWC component of AFC for the period from 1.1.2012 till 31.3.2014 as per the 2009 Tariff Regulations.
- 22. Petition No.31/MP/2018 is disposed of in terms of the above.

Sd/- sd/- sd/- sd/- sd/- (Dr. M.K.lyer) (A. S. Bakshi) (A. K. Singhal) (P.K. Pujari) Member Member Chairperson