

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 93/MP/2017

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

Date of Order: 11th of July, 2018

In the matter of

Petition under Section 79(1)(a), 79(1)(b), 79(1)(f) of the Electricity Act, 2003 and Regulation 30 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, seeking clarification on payment of 'Other Charges' claimed by NTPC and Maithon Power Ltd. in the monthly energy bills of the generating stations and the claim of higher 'Annual Fixed Cost' for the tariff period 2014-19, over and above the Annual Fixed Cost approved by Hon'ble Commission in the tariff orders.

**And
In the matter of**

Kerala State Electricity Board Limited
Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram-695004

.....Petitioner

Vs

1. NTPC Limited,
NTPC Bhawan, Core-4,
SCOPE Complex, Lodhi Road,
New Delhi – 110 003

2. Maithon Power Ltd.
Jeevan Bharti, 10th Floor, Tower I, 1241,
Connaught Circus, New Delhi -110001

....Respondents

Parties Present:

Ms. Suparna Srivastava, Advocate, KSEBL
Ms. Latha S.V., KSEBL
Ms. Sheela M. Daniel, KSEBL
Ms. Swapna Seshadri, Advocate, NTPC
Ms. Parichita Choudhary, Advocate, NTPC
Shri Rohit Chhabra, NTPC
Ms. Patanjali Dixit, NTPC
Shri Nishant Gupta, NTPC
Shri Venkatesh, Advocate, MPL
Shri Pratyush Singh, Advocate, MPL



ORDER

The Petitioner, Kerala State Electricity Board Limited (KSEBL) has filed the present petition for seeking clarification on the claim of higher “Annual Fixed Cost” by NTPC for its generating stations over and above the Annual Fixed Cost approved by the Commission in the tariff orders for the period 2014-19 and for appropriate directions on the various expenses that can be included by the generator under “Other Charges” if the same is admissible.

Background

2. KSEBL is one of the constituents of the Southern Region comprising the State of Kerala, Tamilnadu, Karnataka, Andhra Pradesh, Telengana and Union Territory of Pondicherry. KSEBL being the successor of erstwhile KSEB, is the deemed distribution licensee in the State of Kerala and is also responsible for generation and purchase of power for the entire consumers of the State of Kerala.

3. Around 50% of the power purchased by KSEBL is through long term contracts from Central Generating stations and Independent Power Producers. A list of the generators with whom KSEBL has entered into long term PPAs and the share of KSEBL from these stations is as under:

Name of Power Station	Share of KSEBL (MW)
Central Generating Stations	
Ramagundam STPS - I & II	245.07
Ramagundam STPS-III	61
Talcher Stage-II	427
Simhadri STPS -II	89.2
NLC TPS-2 Stage-I	63
NLC TPS-2 Stage-II	89.964
NLC I Exp	67.158
NLC II Exp	79.95
NTECL,Vallur	49.95
NTPL,Tuticorin	72.5
IPPs	



Maithon Power Ltd. - I&II	300
DVC-Mejia	100
DVC-Reghunathpur	50

4. KSEBL has been procuring power from NTPC owned Ramagundam STPS-I &II (11.73%), Ramagundam STPS-III (12.27%), Talcher STPS-II (21.36%), Simhadri STPS-II (9.08%) and Vallur projects (3.37%). KSEBL has also obtained the unallocated shares from Jhajjar generating station of Aravalli Power Company Ltd. (A Joint Venture Company of NTPC Ltd, Haryana Power Generation Company Ltd and Indraprastha Power Generation Company Ltd) during the period from 1.4.2012 to February, 2016.

5. Maithon Power Limited a joint venture company between the Tata Power Company Ltd and Damodar Valley Corporation operates the Maithon Right Bank Thermal Power Project in the State of Jharkhand, with an installed capacity of 1050 MW (2 x 525 MW). On 30.12.2013, KSEBL entered into a Power Purchase Agreement with Maithon Power Ltd. for purchase of 150 MW of power which is valid till 23.7.2042. KSEBL has also contracted another 150 MW under long term basis with Maithon Power Limited and has signed PPA on 29.6.2015.

Submission of the Petitioner

6. The Petitioner has made his submissions primarily on two issues, namely (i) claim of other charges by generating stations in the monthly energy bills, and (ii) clarification on the Annual Fixed Cost in the tariff orders of the Commission for the period 2014-19. With regard to Claim of 'Other Charges' by generating stations in the monthly energy bills, the Petitioner has submitted as under:

- (a) As per Regulation 20 of the 2014 Tariff Regulations, the tariff for supply of electricity from a thermal generating station shall comprise two parts, namely, capacity charge (for recovery of Annual Fixed Cost) and energy charge (for



recovery of primary and secondary fuel cost and limestone cost where applicable). As per Regulation 22 of the Tariff Regulations, energy charges shall be derived on the basis of the landed fuel cost (LFC) of a generating station and shall consist of landed fuel cost of primary fuel and cost of secondary fuel oil consumption;

(b) Regulation 23 of the 2014 Tariff Regulations provides that the landed fuel cost of primary fuel and secondary fuel for tariff determination shall be based on actual weighted average cost of primary fuel and secondary fuel of the three preceding months, and in the absence of landed costs for the three preceding months, latest procurement price of primary fuel and secondary fuel for the generating station, before the start of the tariff period for existing generating stations and immediately preceding three months in case of new generating stations shall be taken into account.

(c) Regulation 30(5) and (6) of the Tariff Regulations stipulates for the methodology for computation of energy charges. Regulation 30 (8) prescribe the methodology for computation of landed cost of fuel for a month.

(d) Regulation 30(7) provides that the generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel, etc., as per the forms prescribed at Annexure-I to the 2014 Tariff Regulations. The Regulation further provides that the generating company shall provide the details separately along with the bills of the respective month and also make it available on the website of the generating company on a monthly basis. The Annexure-I of the Tariff Regulations prescribe the forms to be submitted by the generating companies for tariff determination as well as for claiming monthly tariff. Form-15 of the Annexure-I prescribes the details/information to be submitted in



respect of fuel for computation of energy charges by the generator. As per Form-15, the total amount charged for coal/lignite supplied including transportation (Item No.14 of Form-15) is the sum of total amount charged by coal/lignite company after making adjustments, if any, plus total transportation charges. The total transportation charges (Item No.13 of Form-15) is defined as the sum of the following components:

- a) Transportation charges by rail/ship/ road transport;
- b) Adjustment (+/-) in amount charged by Railways/Transport Company;
- c) Cost of diesel in transporting coal through MGR system, if applicable, Less
- d) Demurrage Charge if any.

(e) The various provisions in the 2014 Tariff Regulations provide for the methodology for computation of landed price of fuel, the details to be furnished by the generator to substantiate the claim for the landed price of primary fuel, secondary fuel, GCV and the prescribed forms in which the generator has to submit the details for claiming energy charges. However, NTPC and Maithon Power Limited are deviating from the procedures prescribed by the Commission and are claiming additional cost under the head "Other Charges" as an extra item (13A/14 in Form-15) and including the same under 'Transportation Charges'. There is no provision in the Tariff Regulations to claim "Other Charges". Since, the amount under 'Other Charges" claimed by the generators is substantially high, it reflects considerably in the energy charges of these generating stations. The claim under "Other Charges" is not consistent for all the months.

(f) MPL has also claimed a considerable amount under 'Other Charges' in Form-15. The total claim made by Maithon Power Ltd. for the years 2014-15 to till date under the head 'Other Charges' is around Rs.49 crore. NTPC has claimed



Rs.133.05 crore for its various generating stations under the head 'Other charges'. Since the claim of the generators is not in line with the provisions of the Regulations issued by the Commission, KSEBL had sought clarification from the Respondents on the claims made under "Other Charges". Subsequently, Maithon Power Limited forwarded split up details of "Other Charges" and the expenses booked under this head are mainly towards documentation of coal, coal feeding through track hopper, maintenance of road for coal transportation and providing signage, coal yard handling, weigh bridge operation, coal sampling, toll tax, stamping fees and software development, etc.

7. With regard to clarification sought by the Petitioner in respect of Annual Fixed Cost approved by the Commission in various orders, the Petitioner has submitted as under:

(a) Regulation 30(8) of the 2014 Tariff Regulations provides that the landed cost of fuel for the month shall include only price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable and transportation cost by rail/road or any other means. Therefore, the claims of the generators are not in line with the provisions of the 2014 Tariff Regulations.

(b) As per Regulation 21 of the 2014 Tariff Regulations, the monthly capacity charges shall be derived on the basis of annual fixed cost and the annual fixed cost of the generating station or the transmission system including communication system shall consist of Return on equity, Interest on loan capital, Depreciation, Interest on working capital and Operation and maintenance expenses.

(c) Regulation 28 (2) provides that the cost of fuel for the computation of working capital shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of



the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period. Further, as per the Regulation 30(6)(b) of the 2014 Tariff Regulations, the cost of fuel for working capital is required to be computed by adopting the GCV on 'as received' basis. The Commission, in accordance with the norms stipulated in the 2014 Tariff Regulations, has been issuing tariff orders for the period 2014-19 for the various generating stations whose tariff is determined by the Commission under Section 62 of the Electricity Act, 2003.

(d) The methodology adopted by the Commission for computation of energy charge in the "Interest on Working Capital" indicates that "as received" GCV was not available for computation of energy charges for working capital. The Commission adopted "as billed GCV" and applied a correction factor for moisture as per the formula prescribed to work out energy charges for "Working Capital"

(e) NTPC is charging more from the beneficiaries over and above the 'Annual Fixed Cost' approved by the Commission in the tariff orders citing that there is a provision to revise the 'Interest on Working Capital' and 'Annual Fixed Cost' in the tariff orders as per the formula prescribed for correction of moisture content.

8. In the above background, the Petitioner has made the following prayers:

"(a) Intervene and provide clarification on the admissibility of the claims made by the generators under the head "Other Charges" in Form-15 submitted along with monthly tariff payment.

(b) Issue appropriate directions on the various expenses that can be included by the generator under "Other Charges" if the same is admissible.

(c) Issue a clarification on the claim of higher 'annual Fixed Cost' by NTPC for its generating stations over and above the Annual Fixed Cost approved by the Commission in the tariff orders for the tariff period 2014-19."



9. Notices were issued to the respondents to file their replies. Replies to the Petition have been filed by NTPC Limited and Maithon Power Limited. The Petitioner has filed rejoinders to the replies filed by the respondents.

10. NTPC vide its reply affidavit dated 27.7.2017 has submitted that as per Regulation 22, Energy Charges are to be derived on the basis of the landed fuel cost of the generating station. It also provides for the adjustment in fuel cost on account of any refund/ receipt from the fuel supplier. Further, as per Regulation 23, the landed fuel cost for tariff determination is based on actual weighted average cost of primary and secondary fuel. NTPC has submitted that the landed cost of the primary fuel includes all expenditure incurred for and up to receipt of fuel at site. Therefore, charges such as stone picking charges, loco driver's salary, sampling charges, etc. are part of total amount constituting the landed price of the fuel. In the tariff orders of NTPC's generating stations for the period 2014-19, the Commission has approved the cost of coal including the charges such as stone picking charges, loco driver's salary, sampling charges, etc. According to NTPC, there is no dispute on the fact that the 2014 Tariff Regulations specifies the methodology for computation of landed cost of the fuel. There is no deviation from the provisions of the 2014 Tariff Regulations. Merely because there is no separate entry as 'Other Charges' does not mean that the claim is against the provisions of the 2014 Tariff Regulations. Regulations 30 (8) of the 2014 Tariff Regulations deals with transit and handling losses to be applied in the case of pit heads and non pit head generating stations. The words used in the Regulations 30 (8) is transportation cost by rail/ road or any other means and would include all charges incurred in the transportation of coal till the generating station irrespective of the means of transportation. Therefore, Regulation 30(8) completely supports the case of the NTPC.



11. Maithon Power Limited vide its reply affidavit dated 29.7.2017 has submitted that the transportation of coal is incomplete unless the coal is received at the unloading point. In case of Maithon projects, coal is brought in from the mines by the truck tripling up to the unloading point at the site. The cost billed under 'Other Charges' is incurred by MPL in order to bring the coal up to the unloading point. Therefore, such expenses are unavoidable and legitimate and are in the nature of coal handling charges for the generation of power. MPL has submitted that MPL has not included any charges beyond the unloading point in the landed price of coal. MPL has submitted that the Commission in its order dated 25.1.2016 in Petition No. 170/MP/2013 has observed that the expenses incurred by the generating companies in the handling of coal are legitimate costs which are incurred by the generating companies for bringing the coal upto the unloading point for supply of power. As per Regulation 22, the landed fuel cost of the 'Primary Fuel' refers to all such costs incurred by the generating companies to bring the coal till the point of landing at the site i.e. unloading point. The Regulation is not exhaustive and also allowed the cost by other means in the landed cost of coal. Therefore, the cost by other means would also cover all legitimate fuel handling charges upto its unloading point. MPL is not making any profit by passing on such expenses to the beneficiaries. MPL has submitted that it is standard practice across the generating stations to incorporate the cost incurred in transportation of coal from the loading point to the unloading point. The expenses incurred in handling of coal in transit cannot be incorporated under the Operation and Maintenance expenses of the generating station since the same is incurred before the coal is unloaded at the site and is purely an expense related to fuel handling.

12. The Respondents vide RoP for the hearing dated 28.9.2017 were directed to file the information regarding complete details of the "Other Charges" being booked in the landed cost of fuel, and exact details of the stone picking location whether the same is prior to the



unloading point or beyond the unloading point. NTPC was directed to file the documents/clarification:

(a) Certificate from the Auditor to the effect that during the period 2008- 09 to 2012-13, these "Other Charges" were not being booked in the regular "O&M expenses".

(b) Whether NTPC is revising the IWC on month to month basis by applying the correction factor/formula approved by the Commission.

13. The Respondents have submitted the information called for which have been mainly discussed in succeeding paras. With regard to (a) above, MPL vide its affidavit dated 26.10.2017 has submitted that there are numerous costs involved in bringing the coal upto the unloading point from the mines which comprises the Handling Charges which are separate from the charges paid to the coal companies and the transportation companies. Therefore, they have been indicated separately as Entry 13A for the sake of greater clarity. With regard to (b) above, MPL has submitted that MPL has entered into Long Term Fuel Supply Agreement with BCCL and CCL for supply of majority of the coal required and is presently procuring coal primarily using road transport and rail transport to limited extent (till Damagoria Siding). MPL has submitted that stone picking is one of the activities outsourced to third party for feeding coal from Truck Tippers to Track Hopper (Unloading Point) at the Plant and its charges are part of coal feeding charges.

14. With regard to complete details of 'Other Charges' being booked in the landed cost of fuel, NTPC vide its affidavit dated 9.11.2017 has submitted the category-wise details of the charges included under the head 'Other Charges' as under:

"(i) Sampling Charges: This refers to the cost involved in process of coal sample collection, its contract execution at the stations before unloading of coal to assess the quality parameters. These charges are paid to third party towards sampling collection, analysis, etc. of coal at loading and unloading end.

(ii) Stone Picking Charges: To have a problem free system of operation of coal handling plant (Damage to crushers and Choking of chutes, etc.), the stone picking is done during unloading



in Track Hoppers/Wagon Tiplers and Associated Systems. The charges paid thereof are stone picking charges.

(iii) Unloading Charges: Charges paid towards deployment of unloading labour through a contract for unloading of coal from Railway wagons, in wagon tiplers and Track hoppers/wharf was for further transportation through conveyor belt, etc. Further, machines like rock breaker, etc. are deployed many times for breaking the big size coal boulders if necessary. This is an integral part of coal unloading contract.

(iv) Railway Retired Staff Salary/Loco Driver Salary: The ex-railway staffs are deployed for operation and maintenance of MGR and railway siding, MGR control room. The salaries and perks paid to them are covered through this head. These are charges paid to retired railway staff deployed for operation of movements of coal rakes (Station controllers, gatemen, pointsmen), Signalling system (Electrical and Mechanical Signal maintainers) and inspection of Track (Permanent way inspectors) and shunting operations.

(v) Supervision charges at mine end: Charges paid towards coal materialisation and loading supervision of coal rake supplies from coal mines, through contract.

(vi) Payment to Railways: These are the charges payable to Indian Railways on account of land license fees for the siding and other services taken from Railways for coal transportation.”

Analysis and Decision

15. We have heard the learned counsels for the Petitioners and the Respondents and have perused the documents on record. The following issues arise for our consideration:

- (a) Whether the claims of ‘Other Charges are legitimate? and
- (b) Whether the generating stations are entitled to claim higher ‘Annual Fixed Cost’ over and above the Annual Fixed Cost approved by the Commission in the tariff orders for the tariff period 2014-19.

Issue No. 1: Whether the claim of ‘Other Charges are legitimate.

16. The Petitioner has submitted that there is no provision in the 2014 Tariff Regulations to include ‘Other Charges’ as claimed by the Respondents. According to the Petitioner, the Respondents are deviating from the procedures prescribed by the Commission and are claiming additional cost under the head ‘Other Charges’ as an extra



item (13A/14 in Form-15) and are including the same under 'Transportation Charges'. The Petitioner has submitted that since the amount under 'Other Charges' claimed by the Respondents is substantially high, it reflects considerably in the energy charges of these generating stations. The Petitioner has submitted that claim under 'Other Charges' are not consistent for all the months. The Petitioner has submitted the details of amount claimed by NTPC and MPL under the head 'Other Charges' for the period from 1.4.2014 till date as under:

(Rs. in crore)

	Maithon Power Ltd.	RSTPS-I, II & III	Talcher Stage-II	Simhadri STPS-II	Vallur STPS	Jhajjar
2014-15	0.00	5.63	7.71	0.00	0.00	12.84
2015-16	16.16	5.58	14.97	17.01	0.00	11.24
2016-17	32.84	14.80	16.00	4.08	21.32	1.87
Total	49.00	26.01	38.68	21.09	21.32	25.95

17. The Petitioner has submitted that it had sought clarification from the Respondents with respect to the claims made under "Other Charges". However, no response was received from NTPC. The Petitioner has further submitted that on 30.1.2017 and 31.3.2017, the Petitioner convened the meetings with MPL for reconciliation of claims made by MPL under 'Other Charges'. In the said meeting, MPL informed that the amount 'Other Charges' comprises mainly of Security Charges, Handling Charges, Sampling charges, etc. incurred by it to preserve the quality of coal received from the mines while transporting to the generating station along with road. The Petitioner has submitted that since the claim of the Respondents are not in line with the provisions of the Tariff Regulations, the Commission may issue appropriate directions on the various expenses that can be included under 'Other Charges' if the same is ordered to be admissible.

18. MPL vide its affidavit dated 29.7.2017 has submitted that coal is received at Maithon Project from BCCL (Bharat Coking Coal Limited) and CCL (Central Coalfields Limited) as per existing Fuel Supply Agreements (FSAs). Coal from the mines is



transported to the Maithon site through road transport mode by truck tippers as well as a combination of Rail-cum-Road transport with last mile connectivity through Truck Tippers as the rail line connectivity for the Maithon project has still not been implemented due to difficulties in acquisition and possession of the land required for laying of railway tracks. According to MPL, the customized Track Hoppers are used for feeding coal brought in by Truck Tippers. Weigh Bridge is used for weighment of coal loaded on the Truck Tipper. MPL has submitted that since all costs associated with movement of coal up to the unloading point at site form part of the landed cost of coal, a separate line item indicating "Other Charges" has been added in Form-15. According to MPL, had the railway transport mode been in place, it would have incurred costs towards diesel/demurrage as envisaged in the prescribed format. MPL has further submitted that the transportation of coal is incomplete unless the coal is received at the unloading point. Therefore, such expenses are unavoidable and legitimate and in the nature of coal handling charges for generation of power. No charges beyond the unloading point are included in the landed price of coal.

19. MPL vide its affidavit dated 31.10.2017 has submitted that there are numerous costs involved in bringing the coal up to the unloading point from the mines comprising of the handling charges which are separate from the charges paid to the coal companies and the transportation companies and therefore, indicated separately as Entry 13A for the sake of greater clarity. MPL has submitted that the landed price of coal claimed from the beneficiaries through monthly billing are based on the cost of coal charged by the coal companies, cost of transportation as charged by the transportation companies and other charges paid to the other agencies involved in handling of coal.



20. MPL in its written submissions dated 16.5.2018 has submitted that the elements of 'other charges' incurred and claimed for transportation of coal from colliery to the unloading point of the power project, itself is outside the purview of O & M expenses. Since, all fuel related expenses, not only the fuel cost, are specifically excluded from the definition of O & M expense, even the elements of 'Other Charges' incurred for fuel handling would also not form part of O & M expense. According to MPL, Regulation 22 mandates that the landed cost of primary fuel shall be considered for the purpose of computing energy charges. Admittedly, the expenses incurred by MPL are all in relation to handling and management of coal from colliery to unloading point of the power project. Hence, they form part of the overall landed cost of fuel and are being claimed by the Petitioner. MPL has submitted that in the term landed cost, charges incurred upto the destination i.e unloading point of the generating station are included. Therefore, the true import of Regulation 22 would be to include all the costs incurred by MPL for bringing the coal from colliery to unloading point of the generating station. Moreover, for clarity, MPL has created a separate entry for all such charges, though they form part of overall transportation cost, but can be separately identified and are booked accordingly under fuel cost. MPL has submitted that the reliance placed by the Petitioner on Regulation 23 is misplaced as the said regulation only concerns to cost of fuel which is only a sub-set of the total landed cost of fuel considered for the purpose of computing energy charges. Regulation 23 specifically stipulates that landed cost of fuel shall be based on the weighted average cost of fuel. Regulation 23 does not say that landed cost of fuel shall be equal to or shall only comprise of cost of fuel and clarifies that while computing cost of fuel, which is a major component of landed cost of fuel, weighted average cost of fuel of preceding three months has to be considered. Therefore, Regulation 23 in no manner restricts the mandate of Regulation 22.



21. NTPC vide its affidavit dated 27.7.2017 has submitted that the bills raised by NTPC are strictly in terms of Regulations 22, 23, 30, Annexure 1 and Form 15 of the 2014 Tariff Regulations. According to NTPC, the landed cost of primary fuel includes all expenditure incurred for and up to receipt of fuel at site. Accordingly, charges such as stone picking charges, loco driver's salary, sampling charges, etc. are also essentially a part of total amount constituting the landed price of the fuel. There is no dispute on the fact that the 2014 Tariff Regulations specifies the methodology for computation of landed cost of fuel. NTPC has submitted that the charges included as 'Other Charges' are nothing but the application of the above methodology for arriving at the landed cost of fuel. There is no deviation from the provisions of the 2014 Tariff Regulations.

22. Vide ROP for the hearing dated 28.9.2017, the Petitioner and the Respondents were directed to convene a meeting to explore the possibility of an amicable solution to the issues involved in the petition and submit a report in this regard. NTPC, vide its affidavit dated 9.11.2017 has submitted that as per the Commission's direction a meeting was convened on 26.10.2017, wherein NTPC clarified to the Petitioner that the 'Other Charges' are being shown separately as item 13A only for the sake of greater clarity and transparency. NTPC further clarified that the other charges do not result in giving NTPC anything additional than the "landed cost of fuel" which is in terms of the 2014 Tariff Regulations. NTPC has submitted that there is no merit in the contention of the Petitioner since all the charges claimed in Entry 13A are in accordance with Regulations 22, 23 and 30 of the 2014 Tariff Regulations. NTPC has submitted that the details of "Other Charges" for NTPC's generating stations consist broadly of sampling charges, stone picking charges, unloading charges, Railway retired staff salary/ Loco driver salary, supervision charges at mine end and Payment to Railways- Land licence fee and other services. The Petitioner vide its affidavit dated 15.5.2018 has submitted that in compliance with the



directions of the Commission, the Petitioner convened a meeting with NTPC and MPL on 26.10.2017 and 27.10.2017 respectively. However, the meeting was not fruitful. The Petitioner has asserted that "Other charges" comprising of stone picking charges, Loco drivers salary and sampling charges, etc. shall be booked/met to/from O&M expenses, in place of booking the same to "Transportation Charges".

23. NTPC in its written submission dated 16.5.2018 has submitted that NTPC is entitled to recover the landed cost of fuel or the actual weighted average cost of primary and secondary fuel. According to NTPC, provisions of Regulation 30 (7) are for the purpose of providing information for details and these, in no way, can change the entitlement that has been provided under Regulations 22 and 23 of the 2014 Tariff Regulations. NTPC has submitted that while items 13 and 14 of the Form 15 are derivative figures, item 15 regarding 'landed cost of coal/lignite' is not derivative figure. If the contention of the Petitioner is accepted, it would mean that item 15 is unnecessary since item 14 itself can be the final figure. The principle of the Regulations is that the costs necessary for arriving at the actual weighted average cost of fuel/landed cost of fuel is allowable for deriving the ECR. Accordingly, the charges mentioned in Entry 13A are necessary to arrive at the cost and therefore, have been billed.

24. We have considered the submissions of the Petitioner and the Respondents. Regulation 22 of the 2014 Tariff Regulations deals with energy charges as under:

"22. Energy Charges:

Energy charges shall be derived on the basis of the landed cost (LFC) of a generating station excluding hydro) and shall consist of the following cost:

- (a) Landed Fuel Cost of primary fuel; and
- (b) Cost of secondary fuel oil consumption:

Provided that any refund of taxes and duties along with any amount received on account of penalties from fuel supplier shall have to be adjusted in fuel cost."



As per above provision, energy charges are to be derived on the basis of the landed cost of the generation station.

25. Regulation 30(8) of the 2014 Tariff Regulations provides the methodology for computation of landed cost of fuel for a month as under:

“30(8) The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below:

Pithead generating stations: 0.2%

Non-pithead generating stations: 0.8%

Provided that in case of pit head stations if coal or lignite is procured from sources other than the pit head mines which is transported to the station through rail, transit loss of 0.8% shall be applicable:

Provided further that in case of imported coal, the transit and handling losses shall be 0.2%.

As per Regulation 30 (8), the landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/ road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month. Perusal of Regulation 30 (8) of the 2014 Tariff Regulations reveals that the other charges are not separately mentioned as part of landed cost of the fuel. However, these charges are incidental to the coal cost.

26. It is noted that the issue of inclusion of such other charges including ‘fuel handling charges’ in “O & M’ expenses was highlighted during 2004-09 tariff period wherein NTPC submitted that as per its accounting practice such charges related to fuel handling are booked in the "cost of fuel" in place of regular O&M expenses. Therefore, if the NTPC has



adopted the same practice i.e. not booking these "Other Charges" under regular O&M expenses during the period 2008-09 to 2012-13, based on which normative O&M expenses of thermal generating stations have been calculated for the tariff period 2014-19, then NTPC's booking of these "Other Charges" in transportation charges is appropriate. However, in case NTPC has been booking these "Other Charges" in regular O&M expenses during the period 2008-09 to 2012-13, then booking them under Transportation Charges would lead to double recovery. NTPC vide its affidavit dated 9.11.2017 has placed on record the Auditors Certificate stating that during the period 2008-09 to 2012-13, the expenses under "Other Charges" in Form-15 were not being booked in the regular O&M expenses. With regard to the issue of them being part of O&M expenses, it is noted that normative O&M expenses for the period 2014-19 applicable to all thermal generating stations including generating station of MPL, with the exception of certain old generating stations, were based on the normalization of actual O&M expenditure of NTPC's generating stations and the fact that as per accounting practice of NTPC, other charges such as unloading charges,/sampling charges, etc. which are incidental to the process of bringing coal till unloading point of the generating station, are not included in the regular O&M expenditure. Therefore, in our view, expenses incurred in connection with fuel handling charges are legitimate expenses and the same have been incurred by NTPC as well as MPL for supply of power and it does not result into double recovery.

27. In the meeting held on 27.10.2017 between the Petitioner and MPL, the Petitioner informed that MPL has submitted all the invoices relating to the expenses coming under "Other Charges". However, no supporting details for the rates adopted in the invoices were furnished by MPL. In the said meeting, MPL stated that MPL has not made any deviation in Form-15, instead the transportation charges are divided into two parts for



better clarity. MPL vide its affidavit dated 16.5.2018 has furnished the break-up of 'Other Charges' and has submitted that by the very nature of the charges claimed by MPL under "Other Charges", these cannot form part of O&M expenditure. Accordingly, the expenses claimed under 'Other Charges', being legitimate fuel handling expenses, the Commission may allow the generating stations to include the same under the fuel expenses. Therefore, it has stated that the contention of the Petitioner is devoid of merit and ought to be rejected. MPL has furnished category-wise breakup of the charges included under the head "Other Charges", namely documentation of coal, coal feeding through track hopper, maintenance of road for coal transportation and providing signage, coal dust handling, weigh bridge/RFID operation, coal sampling, toll tax, statutory stamping fees and lease Rent of DMGS (Damagoria siding).

28. The 2014 Tariff Regulations provides for computing the energy charges considering the landed price of fuel. Landed price would take into account charges paid to Coal Company, the transportation cost and all incidental costs involved in bringing coal upto the unloading point. The expenses indicated by NTPC and MPL are in the nature of incidental costs involved in bringing coal upto the unloading point. These charges have been shown separately only to indicate them as charges paid in addition to what is paid to coal companies and transportation companies and are therefore, part of landed cost of fuel. Therefore, the claim under other charges is not illegitimate as pleaded by the Petitioner.

Issue No. 2: Whether the generating stations are entitled to claim higher 'Annual Fixed Cost' over and above the Annual Fixed Cost approved by the Commission in the tariff orders for the tariff period 2014-19?

29. The Petitioner has submitted that as per Regulation 21 of the 2014 Tariff Regulations, the monthly capacity charges shall be derived on the basis of annual fixed cost and the Annual Fixed Cost (AFC) of a generating station or a transmission system



including communication system shall consist of return on equity, interest on loan capital, depreciation, interest on working capital, and operation and maintenance expenses. The Petitioner has submitted that as per Regulation 30(6)(b), the cost of fuel for working capital is required to be computed by adopting the GCV on 'as received' basis. The Petitioner has contended that the Commission has been issuing tariff orders for the period 2014-19 for the various generating stations whose tariff is determined by the Commission under Section 62 of the Electricity Act, 2003, in terms of norms specified in 2014 Tariff Regulations.

30. The Petitioner has contended that NTPC is charging from the beneficiaries over and above the 'Annual Fixed Cost' approved by Commission in the tariff orders stating that there is a provision to revise the 'Interest on Working Capital' and 'Annual Fixed Cost' in the tariff orders as per the formula prescribed for correction of moisture content. Therefore, the above approach adopted by NTPC is against the tariff orders issued by the Commission and the norms specified in the 2014 Tariff Regulations.

31. NTPC vide affidavit dated 27.7.2017 has submitted that the value of GCV considered by the Commission in the tariff orders of thermal generating stations for the period 2014-19 was on "as billed basis". Further, the Commission in its various orders has computed the energy charge provisionally by taking GCV of coal on as billed basis and has allowed the adjustment for inherent moisture by giving a formula. NTPC has contended that NTPC has calculated the weighted average value of GCV based upon the formula as provided by the Commission. The adjustment in GCV on account of above has resulted in difference in the ECR value which consequently has changed the working capital and AFC value. NTPC has submitted that the AFC fixed by the Commission will obviously vary due to application of the correction formula which will impact the IWC, which is one of the components of AFC.



32. We have considered the submissions of the Petitioner and NTPC. Regulation 28(a) provides the method of computation of 'Interest on Working Capital', one of the components of Annual Fixed Cost for coal-based/lignite fired thermal generating stations as under:

"28. Interest on Working Capital: (1) The working capital shall cover:

(a) Coal-based/lignite-fired thermal generating stations

(i) Cost of coal or lignite and limestone towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;

(ii) Cost of coal or lignite and limestone for 30 days for generation corresponding to the normative annual plant availability factor;

(iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;

(iv) Maintenance spares @ 20% of operation and maintenance expenses specified in regulation 29;

(v) Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor;
and

(vi) Operation and maintenance expenses for one month."

Further, Regulation 28(2) provides as under:

"28(2) The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) of this regulation shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period."

As per above provisions, the cost of fuel for the computation of working capital as above shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.



33. The Petitioner vide its affidavit dated 18.8.2017 has contended that, once the working capital has been fixed for the entire tariff period as per the provisions of the 2014 Tariff Regulations, further adjustment in working capital cannot be allowed. However, the generator can adopt the adjustment prescribed for the moisture content in the computation of monthly energy charges till the procedure for measuring "as received" GCV is implemented.

34. It is noticed that the Commission in its various orders for the period 2014-19 has arrived at the IWC on "as billed GCV" of the coal. It was left to the generator to revise the IWC based on the moisture content of coal received during the preceding three month by applying the moisture correction formulae. However, interest on working capital once fixed based on the landed price of fuel during preceding three months and by application of inherent moisture correction factor as finalized by the Commission, is not to be revised every month based on the moisture content of the fuel received during month of billing. Revising GCV based on moisture content of the fuel is allowed for calculation of "Energy Charge Rate" on month to month basis only for billing of monthly variable charges.

35. NTPC, vide Record of proceedings for the hearing dated 28.9.2017, was directed to clarify whether NTPC is revising the IWC on month to month basis by applying the correction factor/formula approved by the Commission. NTPC vide its affidavit dated 9.11.2017 has clarified that NTPC is not revising the IWC on month to month basis and the adjustment has been taken into account by NTPC in IWC calculation on normative basis only once to arrive at the fixed charges for the period 2014-19.

36. Considering the submission of the NTPC that it is not revising the IWC on month to month basis, in our view, it is not claiming AFC over and above that approved by the Commission.



37. Petition No. 93/MP/2017 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/-
(P.K.Pujari)
Chairperson

