

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Record of Proceedings

Petition No. 7/RP/2012

Subject: Review of order dated 11.1.2012 in Petition No. 136/2010 for tariff period 2009-14 in respect of assets commissioned on 1.8.2009/1.9.2009 under ATS of NCL-II Expansion Project in SR under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) Regulations, 1999.

Date of hearing: 26.6.2012

Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member

Petitioner: PGCIL

Respondent: Tamil Nadu Generation and Distribution Company Limited

Parties Present: Shri S.S. Raju, PGCIL
Shri M.M. Mondal, PGCIL
Shri Prashant Sharma, PGCIL
Shri Rajeev Kumar, PGCIL
Shri J. Majunder, PGCIL
Shri Hahender Singh, PGCIL
Shri U.K. Tyagi, PGCIL
Shri R.B. Sharma, BRPL

The learned counsel for the petitioner submitted that present petition has been filed for review of the order dated 11.1.2012 in Petition No. 136/2010 disallowing the Interest During Construction (IDC) and Interest Expense During Construction (IEDC) as part of capital cost which is an error apparent on the face of record. The Commission in the said order determined the transmission tariff for the assets from the date of commercial operation i.e. 1.8.2009/1.9.2009 to 31.3.2014 under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "2009 Regulation"). He further submitted that pursuant to the order dated 11.1.2012, the petitioner approached Neyvelli Lignite Corporation Limited (hereinafter referred to as NLC) for claiming the loss of IDC and IEDC

disallowed in accordance with the Indemnification Agreement. NLC has declined to discharge the liability.

2. The learned counsel for the petitioner submitted that the amendment to the Indemnification Agreement dated 26.12.2007 specified that when the commissioning schedules of both generating units and associated transmission system get delayed, the actual date of commission of generating units or Associated Transmission System (ATS) whichever is commissioned earlier after the original zero date will be considered as the revised zero date. Accordingly, the commissioning date of ATS commissioned on 1.8.2009/1.9.2009 earlier to the generating station becomes the revised zero date and replaces the original zero date 28.2.2009. He further submitted that as per the Indemnification Agreement, the defaulting party pays IDC up to 1 year from the 'Zero date'. Therefore, the IDC is payable from 1.8.2009/1.9.2009 and not from 28.2.2009.

3. The learned counsel for Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) submitted that the present review petition is not maintainable. There is no arithmetic or calculation error in the order 11.1.2012 in Petition No. 136/2010. He further submitted that the original Indemnification Agreement relied upon by the petitioner does not mention the zero date. The document without a date is not valid. The second agreement based on the first agreement cannot also be taken into account.

4. The learned counsel for the petitioner clarified that the annexure to Indemnification Agreement mentions the original zero date as 28.2.2009.

5. The Commission directed to admit the petition and directed the respondents to file their replies by 20.7.2012 and the petitioner to file rejoinder, if any, by 31.7.2012.

6. The matter shall be listed for hearing on 7.8.2012.

By Order of the Commission

**Sd/-
(T. Rout)
Joint Chief (Law)**