

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram: Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Date of hearing : 10.1.2012

Petition No. 17/RP/2011

Subject: Review of order of the Hon'ble Commission dated 27.6.2011 in Petition No. 231/2009 pertaining to fixation of tariff in respect of NLC TPS Stage-I and II for the period from 1.4.2009 to 31.3.2014.

Petitioner: Neyveli Lignite Corporation Limited (NLC)

Respondents: Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), Power Company of Karnataka Limited, Kerala State Electricity Board and Puducherry Electricity Department.

Parties present: Shri R.Suresh, NLC
Shri S.Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

This review petition has been filed by Neyveli Lignite Corporation Limited (NLC) against the order of the Commission dated 27.6.2011 in Petition No. 231/2009, wherein the tariff in respect of NLC TPS Stage-I and II for the period from 1.4.2009 to 31.3.2014 was determined.

2. The representative of the petitioner submitted as under:

- (i) By this petition, the petitioner has sought review of order of the Commission dated 27.6.2011, as regards the disallowance of additional capitalization arising out of common assets for the period 2007-09 and projected additional capital expenditure for the period 2009-14.
- (ii) Taking into consideration that NLC follows Net Fixed Assets methodology wherein the capital cost is dented on account of depreciation and additional capitalization, the Commission may

consider to allow capitalization of common assets for 2007-09 and 2009-14 apart from additional capitalization for 2009-14.

- (iii) Regulations 3(3), 5(2) and 19(e) of the 2009 Tariff Regulations may not be read in isolation and the Commission in exercise of prudence check may allow the additional capital expenditure claimed by the petitioner.
- (iv) Even prior to the regulatory regime and the notification of the regulations, these common assets, which was major/minor in nature, have been considered with the consent of the beneficiaries and the same may not be viewed as an element of tariff.
- (v) The amount claimed towards additional capitalization arising out of common assets is very meager as compared to the tariff claimed and the same may be allowed, on prudence check, at the discretion of the Commission. Moreover, if these assets are disallowed, the petitioner would suffer irreparable loss throughout the life of the generating station.
- (vi) The capital expenditure claimed by the petitioner for 2009-14 in terms of Regulation 9(2) may be allowed by the Commission, subject to prudence check.

3. The learned counsel for the respondent No.1 TANDEGCO, submitted as under:

- (i) The prayer of the petitioner to allow the expenditure on common assets, under Regulation 9(2)(ii) of the 2009 Regulations i.e change in law, is not tenable. Moreover, the asset is not covered under the provisions of Regulation 9 (2) and hence, the question of relaxation of the provisions under Regulation 44 does not arise.
- (ii) The prayer of the petitioner in its original petition for relaxation and to allow Common assets was rejected by the Commission by a reasoned order while determining the tariff of the generating station. Hence, the prayer of the petitioner for relaxation in this review application is not tenable.
- (iii) Moreover, the Commission while rejecting the prayer for capitalization of common assets had taken into account the NFA methodology adopted for NLC and thus, the question of considering the same in the review petition is not tenable.

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- (iv) Proviso to Regulation 9(2) of the 2009 regulations does not permit the capitalization of minor items/assets.
 - (v) The revision of tariff based on the review application, if allowed, would cause burden on the consumers. In this regard, the observations of the Hon'ble Supreme Court in its judgment dated 3.3.2009 in C.A No. 1110/2007 (UPPCL-v-NTPC & ors) may be taken into consideration.
4. The representative of the petitioner clarified and submitted as under:
- (a) The Commission has the powers to allow the capitalization of common assets and the additional capitalization for 2009-14, in exercise of its 'power to relax', after prudence check.
 - (b) The actual lignite transfer price may be considered for the computation of Interest on Working capital.
5. After hearing the parties, the Commission reserved its order in the matter.

By order of the Commission



(T. Rout)
Joint Chief (Law)