

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 93/MP/2017**

- Subject : Petition under Section 79(1)(a), (b) and (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 the Commission in the tariff orders.
- Date of hearing : 28.9.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member
- Petitioner : Kerala State Electricity Board Limited.
- Respondents : NTPC Limited & Others.
- 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 Venkatesh, Advocate, MPL  
Shri Pratyush Singh, Advocate, MPL  
Shri Nishant Gupta, MPL

**Record of Proceedings**

At the outset, learned counsel for the petitioner submitted that the present petition has been filed 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 tariff 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. Learned counsel further submitted as under:

a. In accordance with the provisions under Regulation 7 of the Central electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations), NTPC has filed tariff petitions for the control period 2014-19 before the Commission. The Commission has issued tariff orders for some of the generating stations and the tariff orders of remaining generating stations are under process.

b. 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 and energy charge. "Energy charges", as per Regulation 22 shall be derived on the basis of the landed fuel cost (LFC) of a generating station. 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.

c. Regulation 30(7) stipulates 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 Tariff Regulations. 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 prescribe the details/information to be submitted in respect of fuel for computation of energy charges by a generator.

d. 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 any adjustments, if any, plus total transportation charges. The total transportation charges (Item No. 13 of Form 15) is defined as the sum of the transportation charges by rail/ship/road transport, adjustment (+/-) in amount charged by Railways/Transport Company, cost of diesel in transporting coal through MGR system, if applicable less and demurrage charge, if any.

e. NTPC and Maithon Power Limited (MPL) are deviating from the procedures prescribed by the Commission and are claiming additional cost under the head "Other Charges" as an extra item (13 A/14 in form -15) and including the same under 'Transportation Charges'. There is no provision in the 2014 Tariff Regulations to claim "Other Charges". Since, the amount under "Other Charges" claimed by the respondents is substantially high, it reflects considerably in the energy charges of these stations. The claim under "Other Charges" are not consistent for all the months.

f. The petitioner had sought clarifications from the respondents with respect to the claims made under "Other Charges". However, no response was received from NTPC. On the other hand, on 30.1.2017 and 31.1.2017, the petitioner had conducted a meeting with MPL for reconciliation of claims made by MPL under "Other charges" wherein it

was remarked by MPL 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 power station along road. Subsequently, MPL forwarded split up details of “Other Charges”.

g. Since, the claim of the respondents are not in line with the provisions in 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.

h. In accordance with the 2014 Tariff Regulations, 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 (the Act) . For computation of ‘Interest on Working Capital’, the Commission has fixed the ‘Annual Fixed Cost’ of generating stations in the various orders issued for the tariff period 2014-19.

i. Once the Commission has fixed the working capital for the entire tariff period, as per the 2014 Tariff Regulations, further adjustment in working capital cannot be allowed for the generator for claiming from the beneficiaries. 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.

j. 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. The said approach adopted by NTPC is against the tariff orders and the norms in the 2014 Tariff Regulations.

2. Learned counsel for MPL submitted as under:

a. The costs that are being incurred and claimed under ‘Other Charges’ are all inextricably linked to the overall procurement process and for the same MPL seeks reimbursement from the petitioner. MPL in its reply dated 29.7.2017 has explained in detail the nature of ‘Other Charges’ incurred and claimed by it from the petitioner.

b. Regulation 3(42) of the 2014 Tariff Regulations, defines O&M expenses of the project, i.e. within the project and by its very definition excludes expenditure incurred for water and fuel, whether within or outside the project. Therefore, the associated fuel expense which are claimed by MPL as part of ‘Other Charges’ in no manner can form part of O&M expenses.

c. The elements of ‘other charges’ incurred and claimed for transportation of coal in transportation from colliery to the unloading point of the power project, itself is outside the purview of O&M expenses. Since, all fuel expenses and 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 within the project would also not form part of O&M

expense. The norm of O&M expenses fixed by the Commission was based on elements, which did not include any of the elements of 'Other Charges'.

d. Regulation 22 of 2014 Tariff Regulations mandates that the landed cost of primary fuel shall be considered for the purpose of computing energy charges. In the present case, the expenses incurred by MPL are all in relation to handling and management of coal from colliery to power project hence form part of the overall landed cost of fuel and are being claimed from the petitioner.

e. Coal is received at MPL from a basket of mines under the existing FSA with the respective coal companies. Coal from the mines is transported to the MPL site through road transport mode by Truck Tippers as well as through a combination of Rail-cum-Road transport mode with last mile connectivity through Truck Tippers. Therefore, in accordance with the tariff principles specified under Section 62 of the Act, all costs associated with transportation and movement of coal upto the unloading point at site form part of the Landed Cost of Coal. Accordingly, a separate item indicating 'Other Charges' have been added in Form 15 since the prescribed format does not account for all aspects/components of Landed Price of coal especially for transportation of coal via road mode. MPL has included the same in the category of 'Other Charges' under Transportation Charges.

f. The Ministry of Power (MoP), Government of India (GoI) under para 3.1 of the Notification dated 14.4.2015 directed the Commission to review and determine the energy charges for cost plus PPA under Section 62 of the Act. The energy charges shall be reviewed after including the Run of Mine (ROM) price of coal, transportation cost along with distance to the end use power plant, washery charges, crushing charges, royalty/duties and levies and Other Charges.

g. The said notification clearly demarcates 'Other Charges' which are incurred by generating companies from 'Transportation Charges'. The said notification is not applicable to the petitioner. However, the GoI being cognizant of such costs has given its specific dispensation for projects being established under the New Coal Distribution Policy wherein such Other Charges must be considered while computing energy Charges. The 2014 Tariff Regulations cover these expenses under the inclusive definition of Landed Cost of Fuel in Regulation 30(8).

h. Proviso to Regulation 22 of the 2014 Tariff regulations provides that any amount received on account of penalties from fuel supplier shall have to adjusted in fuel cost. Therefore, any amount received from the coal supplier as a penalty for stones will have to be adjusted in fuel cost passed on to the distribution licensee. Accordingly, the expenses incurred by the generator for stone picking should also be included in the landed fuel cost.

i. The delay in completion of rail transport system is due to problem of land acquisition, which is beyond the control of MPL. In any case, the allowance of other charges will have to be decided on the basis of Tariff Regulations. Non-availability of rail transport is not the subject matter of the present petition as the present petition is only confined to the clarification on payment of 'Other Charges' in terms of the Regulation.

Accordingly, the commission may provide necessary clarification and direct the petitioner to make payment towards the monthly Energy bills raised with such expenses as per the provisions of 2014 Tariff Regulations.

j. The Commission in its order dated 25.1.2016 in Petition No. 170/MP/2013 (where procurement of power was under Section 63 of the Act) has held that the said expenses are legitimate and directed to pass the expenses on the distribution licensee. In the present case, the tariff for MPL has been determined under Section 62 of the Act i.e. on cost plus basis. Therefore, once the Commission has allowed the legitimate expenses to be passed on in a PPA under Section 63 of the Act, the same rationale would apply for a Section 62 PPA. Therefore, the legitimate expenses incurred by MPL in transportation of coal from coal mine to the power station should be allowed.

3. Learned counsel for NTPC 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. The claim does not become against the 2014 Tariff Regulations merely because there is no separate entry as 'other charges'. The 2014 Tariff Regulations specifies the methodology for computation of landed fuel. The charges incurred as 'Other Charges' are nothing but the application of the methodology for arriving at the landed cost of fuel. The words used in Regulation 30(8) are 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 such transportation and therefore, support the case of NTPC. Learned counsel further submitted that the Commission, in the tariff orders passed for NTPC's generating stations for 2014-19 period has approved the cost of coal including the charges as being claimed from the beneficiaries including the petitioner and in the present case, NTPC has raised the revised bills to the beneficiaries in line with the Commission's directions in such orders.

4. After hearing the learned counsels for the parties at length, the Commission directed the respondents to file on affidavit by 27.10.2017, the following, with an advance copy to the petitioner:

- a. Complete details of the "Other Charges" being booked in the landed cost of fuel.
- b. Exact details of the stone picking location whether the same is prior to the unloading point or beyond the unloading point.

5. The Commission directed NTPC to file on affidavit by 27.10.2017, the following, information with an advance copy to the petitioner:

- 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.

6. The Commission directed the parties to convene a meeting within one month to explore the possibility of an amicable solution to the issues involved in the petition and submit a report in this regard by 10.11.2017. The Commission directed the petitioner to file its response, if any, to the information filed by the petitioner by 10.11.2017. The Commission directed that the due date of filing the information and response should be strictly complied with. No extension shall be granted on that account.

7. The petition shall be listed for hearing on 21.11.2017.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Legal)**