

CENTRAL ELECTRICITY REGULATORY COMMISSION

Petition No: 472/GT/2014

And

Petition No: 474/GT/2014

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 21st June, 2021

In the matter of

Petition No.472/GT/2014

Subject: Petition for truing up of capital expenditure and tariff of NLC TPS-I (600 MW for the period 1.4.2009 to 31.3.2014.

In the matter of

Neyveli Lignite Corporation Limited, Chennai

.....**Petitioner**

Vs

Tamil Nadu Generation and Distribution Company Limited

... **Respondent**

Petition No. 474/GT/2014

Subject: Petition for truing up of capital expenditure and tariff of NLC TPS-I Expansion (420 MW) for the period 1.4.2009 to 31.3.2014.

In the matter of

Neyveli Lignite Corporation Limited, Chennai

.....**Petitioner**

Vs

1. Tamil Nadu Generation and Distribution Company Limited
800-Anna Salai, Chennai-600002

2. Power Company of Karnataka Limited
KPTCL Building, Kaveri Bhavan, K.G. Road, Bangalore-560009

3. Bangalore Electricity Supply Co. Limited
KR Circle, Bangalore-560014

4. Mangalore Electricity Supply Co. Limited
Paradigm Plaza, AB Shetty Circle, Mangalore-575001



5. Gulbarga Electricity Supply Co. Limited
Station Main Road, Gulbarga-5851026
6. Hubli Electricity Supply Co. Limited
Corporate Office, Navanagar, PB Road, Hubli-5800257
7. Chamundeshwari Electricity Supply Corporation Limited
Corporate Office, No.927, LJ Avenue,
New KantarajaUrs Road, Saraswathipuram, Mysore-570009
8. Kerala State Electricity Board Limited
Thiruvananthapuram-6950049
9. Puducherry Electricity Department
Puducherry-605001

... Respondents

Parties present:

Shri M.G. Ramachandran, Senior Advocate, NLCIL
Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Tanya Sareen, Advocate, NLCIL
Shri Anil Kumar Sahni, Advocate, NLCIL
Shri Vinodh Kanna, Advocate, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Dr. R. Alamelu, TANGEDCO

ORDER

The tariff for NLC TPS-I (6x50 MW + 3x100 MW) and NLC TPS-I Expansion (2x210 MW) for the period from 1.4.2009 to 31.3.2014 was determined by the Commission vide its order dated 9.4.2021 in Petition No. 20/2010 and order dated 31.8.2010 in Petition No. 230/2009 respectively, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as 'the 2009 Tariff Regulations'). Subsequently, Petition No. 472/GT/2014 and Petition No. 474/GT/2014 were filed by the Petitioner, Neyveli Lignite Corporation Limited (NLCIL) for revision of tariff in respect of NLC TPS-I and NLC TPS-I Expansion for the period 2009-14 in terms of Regulation 6(1) of the 2009 Tariff Regulations. The Commission vide order dated 26.5.2016 in Petition No.



472/GT/2014 and order dated 27.7.2016 in Petition No. 474/GT/2014 revised the tariff of NLC TPS-I and TPS-I Expansion respectively, after the truing-up exercise.

Background

2. The Petitioner in both the truing-up petitions (i.e. Petition No. 472/GT/2014 and Petition No. 474/GT/2014) had prayed that it may be permitted to revise Energy Charges based on the actual secondary fuel oil consumption (SFC) i.e. substitution of the actual SFC in lieu of normative SFC. The Commission vide order dated 27.7.2016 in Petition No. 474/GT/2014 did not allow for substitution of actual SFC in lieu of normative SFC.

3. Aggrieved by the said order dated 27.7.2016, the Petitioner NLCIL filed appeals (Appeal No. 291 of 2016 and Appeal No. 344 of 2016) in both the petitions before the Appellate Tribunal for Electricity (APTEL).

4. The Appellate Tribunal of Electricity vide order dated 28.5.2020 has remanded these matters back to the Commission, to consider the actual secondary fuel oil consumption in the computation of energy charges.

5. Pursuant to the judgment dated 28.5.2020 of APTEL whereby the petitions were remanded back, these Petitions were taken up for hearing through video conferencing on 13.8.2020. The Commission vide ROP (record of proceedings) of the hearing dated 13.8.2020, directed the Petitioner to furnish additional information.

6. The Petitioner has submitted the details vide affidavit dated 3.9.2020 as per directions of the Commission. Subsequently, the case was heard on 13.4.2021. The Commission after hearing the parties reserved the order.

Additional submission of the Petitioner in Petition No. 472/GT/2014

7. The Petitioner vide affidavit dated 3.9.2020 has made additional submission as under:



(a) The normative SHR for the generating station specified in Regulation 26(ii)(A)(d)(2) of the 2009 Tariff Regulations is 4000 kCal/kWh. The normative secondary fuel oil consumption in terms of Regulation 26(iii)(b)(ii) of the 2009 Tariff Regulations allowed for the generating station is 3.5 ml/kWh.

(b) Normative SHR of 4000 kCal/kWh specified in Regulation 26(ii)(A)(d)(2) of the 2009 Tariff Regulations is to be achieved primarily through use of lignite and by the use of costlier secondary fuel oil (to bring the heat level in the boiler to an optimum level). The efficiency in operation is achieved by use of lesser secondary fuel oil and by substituting cheaper lignite in its place to achieve the same SHR.

(c) SHR of 4000 kCal/kWh is normative and fixed and if normative secondary fuel oil consumption is allowed at 3.5 ml/kWh, the remaining part of SHR of 4000 kCal/kWh is achieved by use of lignite.

(d) If the actual secondary fuel oil consumption is, say, 2 ml/kWh i.e. 57% of the normative secondary fuel oil consumption allowed at 3.5 ml/kWh, in station heat rate of 4000 kCal/kWh, 2 ml of oil consumption produces a SHR of normative basis of 20 kCal/kWh. Accordingly, 2 ml of oil consumption is to be taken to produce 20 kCal/kWh out of SHR of 4000 kCal/kWh. Use of lesser secondary fuel oil leads to greater efficiency in operation of the generating station. However, in such cases, saving of 1.5 ml/kWh is to be shared between NLCIL and the beneficiaries as per the provisions of the 2009 Tariff Regulations.

(e) If instead 3.5 ml/kWh or more secondary fuel oil is used, the excess secondary fuel oil used will be to the account of NLCIL. NLCIL will be entitled to account for the price of 3.5 ml/kWh towards the normative station heat rate i.e. 35 kCal/kWh and the remaining 3965 kCal/kWh will be accounted to the use of lignite.

(f) The Petitioner has been operating the generating station efficiently and thereby saving on expensive secondary fuel oil. However, this efficient operation requires higher consumption of cheaper primary fuel i.e. lignite. Accordingly, when there is a saving in the secondary fuel oil, apart from the sharing of the benefits with the beneficiaries, the cost of lignite (cheaper fuel as



compared to oil) to the extent of 15 kCal/kWh (3980 kCal/kWh minus 3965 kCal/kWh) needs to be allowed to the NLCIL.

(g) Year-wise amount to be recovered from beneficiaries has been submitted.

(h) The Petitioner has, accordingly, prayed to allow substitution of the actual secondary fuel oil consumption in lieu of normative secondary fuel oil consumption in the determination of energy charges under Regulation 21(6) of the 2009 Tariff Regulations for the period 2009-14 and to recover from the beneficiaries along with interest, the additional expenditure incurred on primary fuel (lignite) on account of reduced secondary fuel oil consumption.

Additional submission of the Petitioner in Petition No. 474/GT/2014

8. The Petitioner vide affidavit dated 3.9.2020 has made additional submission similar to that made in case of Petition No. 472/GT/2014. In case of generating station covered under Petition No. 474/GT/2014, the normative SHR was 2750 kCal/kWh and normative secondary fuel oil consumption was 2 ml/kWh.

Reply filed by the Respondent TANGEDCO

9. In response to the submissions of the Petitioner, the Respondent TANGEDCO vide affidavit dated 16.9.2020 has submitted that the claim has been made by the Petitioner based on theoretical substitution of actual SFC instead of normative SFC in ECR (energy charge rate) calculation and a claim of Rs. 20,47,61,424/- has been made for NLC TPS-I and Rs 10,60,32,589/- has been made for NLC TPS-I Expansion. The details of actual increase in consumption of lignite owing to such usage of lesser secondary fuel oil have not been furnished by the Petitioner. The Petitioner may be directed to furnish the details of actual increase in lignite consumption for the entire Tariff period 2009-14 on monthly basis, owing to lesser utilization of Secondary Fuel.

10. With respect to the interest claimed by the Petitioner, the Respondent TANGEDCO has submitted that the interest claim is not admissible as APTEL has



not given any approval for recovery of the dues along with interest. TANGEDCO stated that this claim is not a truing up claim, for which interest is applicable as per Regulation 6(4) of 2009 Tariff Regulations. In this regard, the Respondent, TANGEDCO relied on the Commission's order dated 30.08.2016 in Petition No. 17/MP/2016, wherein the prayer for the interest on arrears was rejected, as quoted below:

"9 The Commission did not allow any interest on the arrear as a special case in order dated 11.12.2012 passed in Petition No. 201/MP/2011. Though the Commission in its order dated 12-05-2015 in Petition No. 65/MP/2013 did not specify anything on interest payment, the conclusion drawn by the petitioner that absence of any explicit mention about non-payment of interest in the above order dated 12-05-2015 gave the petitioner a liberty to claim interest, in our opinion, is not correct. Keeping in mind the benefit of the beneficiaries, the intent of the Commission for not allowing such interest payment, in this case too, is similar to what was held in order dated 11.12.2012. We therefore are not inclined to allow any such interest payment."

Rejoinder by the Petitioner to the Reply filed by the Respondent TANGEDCO

11. The Petitioner in its rejoinder vide affidavit dated 13.10.2020 has submitted that the contention of the Respondent TANGEDCO that the claim of NLCIL is based on theoretical substitution of actual secondary fuel oil consumption instead of the normative secondary fuel oil consumption is erroneous. The Petitioner further submitted that in the submissions dated 4.9.2020, it has placed on record the actual secondary fuel oil consumed on monthly basis for the period 2009-14 as against the normative figure allowed towards secondary fuel oil for NLC TPS-I and NLC TPS-I Expansion.

12. With regard to the issue of interest, the Petitioner has submitted that it is entitled to an amount of Rs 22,63,00,591/- for NLC TPS-I and Rs 11,57,91,410/- for NLC TPS-I Expansion as on 30.9.2020 towards the additional expenditure incurred on primary fuel (lignite) on account of reduced secondary fuel oil consumption. The petition was filed for truing up the financials of the period 2009-14 and, therefore, the contention of TANGEDCO that the matter is miscellaneous in nature and not for truing up is incorrect.



Analysis and Decision

13. We have considered the submissions made by the Petitioner and the Respondent and perused the decisions, orders and documents available on record. The issue involved in both the petitions relates to the interpretation and application of Regulation 21(6)(a) of 2009 Tariff Regulations dealing with the norms of secondary fuel oil consumption and sharing of savings, if any, on the secondary fuel oil consumption. The main contention of the Petitioner is substitution of the actual secondary fuel oil consumption in lieu of normative secondary fuel oil consumption in the determination of energy charges under Regulation 21(6) for the period 2009-14 and to recover from the beneficiaries, along with interest, the additional expenditure incurred on primary fuel (lignite) on account of reduced secondary fuel oil consumption.

14. The Petitioner in both the petitions for truing up for the period 2009-14 (i.e. Petition No. 472/GT/2014 and Petition No. 474/GT/2014) regarding Energy Charges had prayed that it may be permitted to revise Energy Charges based on the actual secondary oil consumption (i.e. substitution of the actual SFC in lieu of normative SFC) with the following submissions:

“(a) NLC had computed ECR for the tariff period 2009-14 in accordance with Regulation 21(6) of CERC 2009-14 Tariff Regulations adopting the normative Secondary Fuel Oil Consumption (SFC) as specified in Regulation 26(iii) of the 2009 Tariff Regulations and recovered the same from the beneficiaries.

(b) The petitioner seeks permission of the Commission for substitution of the actual SFC in lieu of normative SFC, hitherto be applied by NLC in the ECR determination under Regulation 21(6) for the period 2009-14, in accordance with the Para 12 of the order in Petition No. 285/MP/2013 and to recover from the beneficiaries along with interest, the differential amount due to revision of ECR consequent to application of actual SFC in lieu of Normative SFC in the algorithm.”

15. The Commission vide order dated 27.7.2016 in Petition No. 474/GT/2014 has disposed of the contention of the Petitioner for substitution of actual SFC in lieu of normative SFC with the following observations:

“62. The petitioner in this petition has sought for substitution of the actual SFC in lieu of normative SFC, in the ECR determination under Regulation 21(6) for the period 2009-



14, in terms of the order dated 10.7.2015. The Commission in its order dated 10.7.2015 while holding that the methodology adopted by NTPC was not in conformity to the Regulation 26(a) of the 2009 Tariff Regulations had observed that NTPC was charging less by applying the said methodology. Accordingly, the decision in the case of NTPC cannot be made applicable to the instant case of the petitioner. The petitioner has also prayed for recovery from the beneficiaries along with interest, the differential amount due to revision of ECR consequent to application of actual SFC in lieu of normative SFC. It is noticed that the Commission in the said order had clarified that the said decision cannot be used to reopen settled cases. In the light of the above discussions, the submissions of the petitioner are not acceptable and the prayer of the petitioner for substitution of the actual SFC in lieu of normative SFC in the ECR determination is accordingly rejected.”

16. Aggrieved by the said order dated 27.7.2016, the Petitioner NLCIL filed appeals (Appeal No. 291 of 2016 and Appeal No. 344 of 2016) before APTEL on the common issue of rejection of the Petitioner’s claim for appropriate adjustment by substitution of the actual Secondary Fuel Oil Consumption in lieu of normative Specific Fuel Oil Consumption in the Energy Charge Rate claimed in accordance with the decision of the Commission vide order dated 10.7.2015 in Petition No. 285/MP/2013.

17. The APTEL vide order dated 28.5.2020 in Appeal No. 291 of 2016 and Appeal No. 344 of 2016 has remanded the matter back to the Commission with the following observations:

“22. The observation of the Central Commission that the decision in NTPC cannot be used to “reopen settled cases” is inappropriate. If a formula had been accepted as sound in the previous case, there is no reason why it should not apply universally. The matters before the Central Commission in which the impugned orders were passed relate to truing up and, therefore, it cannot be said that they are cases which had been “settled” earlier.

23. In our view, it was not correct on the part of the Central Commission to say in its Order dated 10.07.2015 in the matter of NTPC that the method of calculation applied there was in deviation of Regulation 21(6). The said view is in the teeth of conclusion recorded in para 12 of the said order (quoted earlier) that the element of “SFC” appearing in the formula for calculation of ECR in Regulation 21(6) implies that it has to be “on actual basis”. We endorse the said view (in para 12) for the reason that in the explanatory notes below clause (6) of Regulation 21, the qualifying word “normative” has been added wherever required (i.e. in relation to auxiliary energy consumption and limestone consumption). In sharp contrast, the explanatory note of SFC begins with the expression “specific”, which is it clearly indicative of the actual secondary fuel oil consumption being factored in rather than normative SFC.



24. The Central Commission, in our view, has fallen in error by declining to follow the principle laid down in the previous decision dated 10.7.2015 in the matter of NTPC, this rendering it a case of inconsistency, the impugned orders being vitiated by the element of arbitrariness. In our view, subject to scrutiny being made of the claim of savings actually made by reduction of the secondary fuel oil consumption (which has to be shared with the beneficiaries in terms of Regulation 25), the Central Commission must follow its decision in the matter of NTPC for purposes of the present claims of the appellant. We order accordingly. After all, the additional expenditure incurred on primary fuel (lignite) on account of reduced SFC cannot be left uncovered.

25. For the foregoing reasons, the impugned orders to the extent thereby the benefit of dispensation in the case of NTPC (as referred to above) was declined to the appellant in the truing-up exercise for the periods in question are set aside. The Central Commission is directed to examine the data presented by the appellant and take appropriate decision on the subject of computation of ECR following the principle laid down in its Order dated 10.07.2015 in the matter of NTPC.”

18. Regulation 26(iii)(b)(i) and 26(iii)(b)(ii) of the 2009 Tariff Regulations provide that the normative Secondary Fuel Oil Consumption for NLC TPS-I and NLC TPS-I Expansion shall be 3.5 ml/kWh and 2.0 ml/kWh respectively. Further, Regulation 21(5) of the 2009 Tariff Regulations deals with the computation of energy charge which is extracted as under:

“21(5) The energy charge shall cover the primary fuel cost and limestone consumption cost (where applicable), and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the energy charge rate of the month (with fuel and limestone price adjustment). Total Energy charge payable to the generating company for a month shall be:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh.}”

19. The above regulation provides that the energy charge shall cover the primary fuel cost only i.e. lignite in this case and is payable by the beneficiary on the basis of total energy supplied during a calendar month at the energy charge rate of the month. Calculation of “Energy Charge Rate” has been dealt with in Regulation 21(6)(a) of the 2009 Tariff Regulations which is extracted as under:

“21(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae :

(a) For coal based and lignite fired stations

ECR = {(GHR – SFC x CVSF) x LPPF / CVPF + LC x LPL} x 100 / (100 – AUX)

Where,

AUX = Normative auxiliary energy consumption in percentage.



CVPF = Gross calorific value of primary fuel as fired, in kCal per kg, per litre or per standard cubic metre, as applicable.

CVSF = Calorific value of secondary fuel, in kCal per ml.

ECR = Energy charge rate, in Rupees per kWh sent out.

GHR = Gross station heat rate, in kCal per kWh.

LC = Normative limestone consumption in kg per kWh.

LPL = Weighted average landed price of limestone in Rupees per kg.

LPPF = Weighted average landed price of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month.

SFC = Specific fuel oil consumption, in ml per kWh.”

20. From the formula for ECR as above, it is seen that SFC is not specified as Actual or Normative and it can further be inferred that the effect of secondary fuel oil is to determine as to how much heat the secondary fuel oil is contributing which will be deducted from the Gross Normative Station Heat Rate. The Commission vide order dated 10.7.2015 in Petition No. 285/MP/2013 in case of NTPC has already come to the conclusion that the energy charge would be adjusted after the end of the year based on actual consumption of secondary fuel oil.

21. Under Annual Fixed Cost (AFC), payment against normative secondary fuel oil expenses is given to generating station at year end based on actual secondary fuel oil consumption and savings are shared as per Regulation 25(3) of the 2009 Tariff Regulations, that provides as under:

“25(3) The savings on account of secondary fuel oil consumption in relation to norms shall be shared with beneficiaries in the ratio of 50:50, in accordance with the following formula at the end of the year:

(SFC x NAPAF x 24 x NDY x IC x 10 -ACsfoy) x LPSFy x 0.5

Where,

ACsfoy = Actual consumption of secondary fuel oil during the year in ml”

22. From perusal of the formulae for computation of Energy Charges as per Regulation 21(6) of 2009 Tariff Regulations, the Energy Charge Rate (ECR) is calculated considering the landed price of primary (lignite) fuel (LPPF) only and ECR is directly proportional to lignite cost. Further, secondary fuel oil price is not used in the ECR calculation, but multiplication of specific fuel oil consumption (in ml/kWh) and its calorific value (CVSF) (in kCal/ml) are only used in the calculation to deduct



the heat rate (in kCal/kWh) contribution of secondary fuel oil. Hence, if less than normative value of secondary fuel oil is used, then this value will be smaller and to achieve same normative station heat rate, more lignite has to be burned.

23. If the actual value of SFC is less than normative value, generators even after providing same gross station heat rate by burning more lignite will get lower ECR if in the above formula of ECR, instead of actual SFC, normative values of secondary fuel oil consumption (SFC) is used as the value of ECR will come less (due to deduction of $SFC \times CVSF$ from GHR). So in all such instances, actual value of SFC need to be used to fully compensate generator so as to provide same GSHR by burning more or better lignite.

24. The Station Heat Rates for the generating station as per the 2009 Tariff Regulations are 4000 kCal/kWh and 2750 kCal/kWh for NLC TPS-I and NLC TPS-I Expansion respectively. And Specific Fuel Oil Consumption is 3.5 ml/kWh and 2ml/kWh for NLC TPS-I and NLC TPS-I Expansion respectively. The Petitioner has stated that the savings on the secondary fuel oil consumption would not reduce the normal Station Heat Rate allowed to the generating stations. It only effectively means that instead of the secondary fuel oil being used to the extent of less than the normative along with the lignite to achieve the normative Station Heat Rate, the said Station Heat Rate was being achieved by use of more lignite, within the overall ceiling of normative Heat Rate. For example, if the actual specific oil consumption is 1 ml/kWh against the normative specific oil consumption of 2 ml/kWh, the quantity of lignite consumed per kWh (kg/kWh) would be higher than what would have been consumed if 2 ml/kWh oil is used. The cost of lignite consumption per kWh generated is energy charge rate. If ECR is not revised based on the actual SFC, the additional cost of lignite consumption per kWh generated due to less consumption of SFC would remain un-recovered. The above example illustrates the situation where the



same end result is achieved, through substituting more lignite (cheaper fuel) in place of secondary fuel oil (costly fuel).

25. The Commission in its order dated 10.7.2015 in Petition No. 285/MP/2013 in KSEB vs NTPC has explained the logic of using actual SFC in computation of ECR:

“15. Since the energy charge in 2009 Tariff Regulations comprises only the coal cost, the amount of specific oil consumption has bearing on the energy charge. For example, if the actual specific oil consumption is 0.12 ml/kWh against the normative specific oil consumption of 1.00 ml/ kWh, then the quantity of coal consumed per kWh i.e. specific coal consumption (kg/kwh) would be higher in case of secondary oil consumption of 0.12 ml/kWh. The cost of specific coal consumption is energy charge rate. If ECR is not revised based on the actual SFC, the additional specific coal consumption cost due to less consumption of SFC would remain un-recovered.”

26. The normative secondary fuel oil allowed to the Petitioner's generating stations under Regulation 26(iii)(b)(ii) and 26(iii)(b)(i) of the 2009 Tariff Regulations are 3.5 ml/kWh and 2.0 ml/kWh for NLC TPS-I and NLC TPS-I Expansion respectively and the actual consumption of secondary fuel oil as submitted by the Petitioner which was also submitted before The APTEL is as under:

Normative Specific Fuel Oil Consumption	Actual Specific Fuel Oil Consumption (ml/kWh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
3.5 ml/kWh For TPS-I	1.216	2.092	1.329	1.219	0.992
2.0 ml/kWh For TPS-I Expansion	1.220	1.800	0.904	0.690	0.866

27. The Petitioner has submitted that such savings have been duly shared with the respondents/ beneficiaries.

28. The month-wise data of normative secondary fuel oil consumption (SFC), ECR for normative SFC, actual SFC, revised ECR for actual SFC and difference in ECR to be recovered, scheduled energy and the month-wise amount to be recovered from the beneficiaries for the period 2009-14 have been furnished by the Petitioner.

29. Based on details furnished by the Petitioner, year-wise amount to be



recovered from beneficiaries is as under:

	In Petition No. 472/GT/2014 (NLC TPS-I)	In Petition No. 474/GT/2014 (NLC TPS-I Expansion)
Year	Amount in Rs.	
2009-10	3,72,79,711	1,52,67,613
2010-11	3,33,65,111	1,29,95,859
2011-12	3,93,94,832	2,21,12,247
2012-13	4,28,85,867	2,84,00,207
2013-14	5,18,35,903	2,72,56,663
Total	20,47,61,424	10,60,32,589

30. The APTEL in its order dated 28.5.2020, while remanding back the matter to the Commission had observed that the Commission has erred by declining to follow the principle laid down in the order dated 10.7.2015 in Petition No. 285/MP/2013 in the matter of NTPC and directed the Commission to examine the data presented by the Petitioner herein and take appropriate decision on the subject of computation of ECR following the principle laid down in Order of the Commission dated 10.7.2015 in the matter of NTPC.

31. Accordingly, the petitioner is permitted to substitute the actual secondary fuel oil consumption in place of normative secondary fuel oil consumption in the formula for determination of energy charges under Regulation 21(6) for the period 2009-14.

32. The Respondent TANGEDCO has requested to direct the Petitioner to provide the details of actual increase in consumption of lignite owing to usage of lesser secondary fuel oil. In our view, saving in one component of fuel increases the consumption of the other component of fuel for the same total heat output of the mixed fuel. Hence, we do not find merit in the contention of the Respondent TANGEDCO.

33. Accordingly, the Petitioner may recover the differential amounts in ECR arising out of the substitution of actual secondary fuel oil consumption in lieu of normative specific oil consumption from the beneficiaries after reconciliation of the



computation in respect of actual SFC and scheduled energy.

34. The Petitioner has also submitted that the said amount may be recovered from the beneficiaries along with interest. The impact of interest claimed by the Petitioner is as under:

For NLC, TPS-I in Petition No. 472/GT/2014

Period	Financial Impact (in Rs.)	Period	Rate of Interest (%)	Interest (in Rs.)
2009-10	3,72,79,711	2009-10	12.25	20,45,924
2010-11	3,33,65,111	2010-11	11.00	58,80,234
2011-12	3,93,94,832	2011-12	11.23	98,32,096
2012-13	4,28,85,867	2012-13	13.15	1,66,38,111
2013-14	5,18,35,903	2013-14	13.36	2,34,36,764
Total	20,47,61,425	2014-15	13.50	2,76,42,792
		2015-16	13.50	2,76,42,792
		2016-17	12.80	2,62,09,462
		2017-18	12.60	2,57,99,940
		2018-19	12.20	2,49,80,894
		2019-20	12.05	2,46,73,752
		2020-21 (up to Sept)	11.25	1,15,17,830
		Total		22,63,00,591

For NLC, TPS-I Expansion in Petition No. 474/GT/2014

Period	Financial Impact (in Rs.)	Period	Rate of Interest (%)	Interest (in Rs.)
2009-10	1,52,67,613	2009-10	12.25	12,09,764
2010-11	1,29,95,859	2010-11	11.00	21,39,311
2011-12	2,21,12,247	2011-12	11.23	42,65,155
2012-13	2,84,00,207	2012-13	13.15	83,30,558
2013-14	2,72,56,663	2013-14	13.36	1,26,08,309
Total	10,60,32,589	2014-15	13.50	1,43,14,400
		2015-16	13.50	1,43,14,400
		2016-17	12.80	1,35,72,171
		2017-18	12.60	1,33,60,106
		2018-19	12.20	1,29,35,976
		2019-20	12.05	1,27,76,927
		2020-21	11.25	59,64,333
		Total		11,57,91,410

35. In these petitions, the Petitioner has prayed for permission to revise ECR based on actual SFC and also to recover the differential amounts from the beneficiaries with interest vide its affidavit(s) dated 6.2.2016, while replying to the Commission's queries and submitting additional information sought vide RoP of the hearing dated 5.1.2016. However, the Commission vide order dated 27.7.2016 in Petition No. 474/GT/2014 did not allow for substitution of actual SFC in lieu of



normative SFC and the question of payment of interest was never considered by the Commission. It is also observed that there is no mention in judgement of the APTEL dated 28.5.2020 regarding claim of interest to be recovered from the beneficiaries.

36. As regards interest on differential amount in the energy charge rate, it is clear that the beneficiaries did not have any role in the non-payment/delayed payment of such amount as there was no order of this Commission to that effect nor any consequent invoice raised by the Petitioners. However, at the same time, time value of money cannot be ignored and the Petitioner is eligible for the same as per provisions of the 2009 Tariff Regulations. Regulation 6(4) of the 2009 Tariff Regulations regarding truing up of capital expenditure and tariff provides as under:

“Where after the truing up of tariff recovered exceeds the tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to the beneficiaries or the transmission customers, as the case may be, the excess amount so recovered along with simple interest at the rate equal to short-term Prime Lending rate of State Bank of India as on 1st April of respective year.”

37. In view of above, balancing the interests of both the parties, it would be appropriate if the Respondents are required to pay interest arising out of differential ECR from 6.2.2016 when such claim was first raised by the Petitioner and not from the beginning of the 2009-14 period. The interest shall be payable at the rate specified in Regulation 6(4) of the 2009 Tariff Regulations i.e. equal to short-term Prime Lending Rate of State Bank of India as on 1st April of respective year.

38. The principal amount payable on account of differential in ECR due to substitution of actual SFC in lieu of normative SFC along with applicable interest w.e.f. 6.2.2016, after due reconciliation of actual SFC and scheduled energy, shall be paid to the Petitioner by the Respondents within 60 days of raising the invoices by the Petitioner based on this order.

39. With this, the directions of the APTEL in judgement dated 28.5.2020 in



Appeal No. 291 of 2016 and Appeal No. 344 of 2016 stand implemented. Petition No. 472/GT/2014 and Petition No. 474/GT/2014 are disposed of in terms of the above findings and discussions.

**Sd/-
Pravas Kumar Singh
(Member)**

**Sd/-
Arun Goyal
(Member)**

**Sd/-
I.S. Jha
(Member)**

**Sd/-
P.K. Pujari,
(Chairperson)**

