

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 62/2023 in Petition No. 149/MP/2015

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 14th March, 2024

In the matter of

Interlocutory Application seeking implementation of Judgment dated 25.7.2023 passed by the Hon'ble APTEL in Appeal No. 185 of 2017 - Rehearing on the issues of O&M expenses in Petition No.149/MP/2015.

And

In the matter of

NLC India Limited, (Formerly Neyveli Lignite Corporation Limited),
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600031

.....Petitioner

Vs

(i) Tamil Nadu Generation and Distribution Corporation Ltd.,
800, Anna Salai, Chennai-600002.

(ii) Power Company of Karnataka Ltd.,
KPTCL building, Kaveri Bhavan,
K.G. Road, Bangalore-560009.

(iii) Bangalore Electricity Supply Company Limited,
KR Circle, Bangalore-560001.

(iv) Mangalore Electricity Supply Company Limited,
Paradigm Plaza, AB Shetty circle,
Mangalore-575001,

(v) Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga-585102.

(vi) Hubli Electricity Supply Company Limited,
Corporate Office, Navanagar, PB Road, Hubli-580025.



(vii) Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, no. 927, LJ Avenue,
New Kantarajours Road, Saraswathipuram,
Mysore - 570009.

(viii) Kerala State Electricity Board Limited,
Thiruvananthpuram - 695004.

(ix) Puducherry Electricity Department,
Puducherry-605001.

(x) Transmission Corporation of Andhra Pradesh,
Hyderabad-500082.

(xi) Transmission Corporation of Telangana,
Hyderabad-500082.

..... Respondents

Parties Present:

Shri Anand Ganesan, Advocate, NLCIL

Ms. Swapna Seshadri, Advocate, NLCIL

Ms. Ritu Apurva, Advocate, NLCIL

Shri Karthikeyan Murugan, Advocate, NLCIL

Shri A. Srinivasan, NLCIL

Shri Vinay Sobti, NLCIL

Shri Mukesh Kumar, NLCIL

Shri S. Vallinayagam, Advocate, TANGEDCO

Shri M. Sethuraman, TANGEDCO

Shri I. Sudhakar, TANGEDCO

ORDER

The Petitioner, Neyveli Lignite Corporation, has filed the present Interlocutory application pursuant to the judgment dated 25.7.2023 passed by the APTEL in Appeal No. 185 of 2017. The Petitioner is a generating company owned and controlled by the Central Government. The Petitioner owns various lignite mines and generating stations based on lignite. It uses the lignite extracted from its own mines for the generation of electricity.

2. Petition No. 149/MP/2015, which was filed by the Petitioner for the approval of the revised Lignite Transfer Price of Neyveli Mines for the period 1.4.2009 to 31.3.2014 on account of trueing up Additional Capitalization, O&M, Income Tax, Return on Equity and FERV as per the Ministry of Coal



guidelines on Fixation of Transfer Price of Lignite. The Commission disposed of the order vide order dated 20.3.2017 in Petition No.149/MP/2015 .

3. Para 4.5 of the MoC guidelines dated 11.6.2009 relates to O&M Expenses and reads as under:

“4.5 O&M Expenses

Though NLC submitted that an escalation @ 13 % per annum on previous years actual should be reckoned, SEBs pleaded that 5.75 % per annum should be adopted, as per CERC Regulations 2009 After detailed deliberations it was agreed that O&M expenses shall be charged at 11.50% per annum by NLC for the period 2009-14. It was also agreed that the O&M expenses would be trued up at the beginning of the next tariff period”.

4. Accordingly, the Commission, in the impugned order dated 20.3.2017, has held that O&M expenses should be computed mine-wise and not be pooled up, and the modality of 11.5% or actuals, whichever is less, should be applied mine-wise. Aggrieved by the above decision of the Commission, the said appeal No. 185 of 2017 was made by the Petitioner in the APTEL.

5. The Tribunal in judgment dated 25.7.2023, has set aside the order dated 20.3.2017 and directed the Commission to hear the petition afresh. Hence the claim of truing up of mines for the period 2009-14 has to be started afresh from the base price.

6. The judgment dated 25.7.2023 passed by the APTEL mainly refers to the methodology applied with respect to O&M expenses of the MoC guidelines dated 11.6.2009. Accordingly, the matter has been remanded back to the Commission for afresh consideration.

7. The matter was taken up for hearing in the Commission on 15.9.2023. The learned counsel for the Respondent TANGEDCO requested time to file its reply on the IA's 'maintainability' . After hearing the learned counsel for the parties, the Commission directed the Respondent TANGEDCO to file its reply on 'maintainability' as well as on 'merits' and directed the Petitioner to file rejoinder, if any.

Reply by the Respondent TANGEDCO

8. The Respondent TANGEDCO, vide affidavit dated 9.10.2023, has submitted that the Tribunal in judgment dated 25.7.2023, has set aside the order dated 20.3.2017 and directed the Commission to hear the petition afresh. Hence, the claim of truing up of mines for the period 2009-14 has to be started afresh from the base price. The Respondent has mainly submitted as under:



- (a) The escalation factor year on year on O&M expenses shall be limited to 11.5% as the higher claim of 13% has been rejected by the MoC and reduced to 11.5%. This also concludes that the 11.5% is the capping for the maximum O&M expenses.
- (b) As per MoC guidelines, the O&M expenses shall also be trued up at the beginning of the next tariff period, hence, the actual O&M prices shall be furnished by the Petitioner and trued up to actuals or 11.5%, whichever is lesser.
- (c) In the 2004-09 MoC guidelines, there is no provision for truing up and the escalation has been given as 8%. In the 2009-14 MoC guidelines, the escalation factor has been increased to 11.5%, with an additional restriction of truing up at actuals. The guidelines, while allowing for an increase, have been cautious to keep a ceiling at 11.5%. For the period 2009-14, the escalation sought by NLCIL is 13%, and the approved increase of 11.5% escalation has been strongly objected to by the beneficiary Discoms. Hence a provision has been made to true up at actuals, wherever the escalation is less than 11.5%.
- (d) If the O&M expenses at actuals are less than 11.5%, then the same shall be taken for the mine for the year. However, if the escalation is more than 11.5%, the same shall be restricted to 11.5%. (para-15)
- (e) Since the Tribunal has directed that the very same modality of pooling, which was earlier adopted during the tariff determination exercise, shall be followed to compute the O&M expenses for the five-year period 2009-14, it is important to see how the O&M expenses were determined during the tariff determination process. Since there was no truing up for the period 2004-09, the prices adopted in tariff determination petitions shall have to be looked into to freeze the modality.

Rejoinder to the Reply filed by the Respondent TANGEDCO

9. The Petitioner, in its rejoinder vide affidavit dated 19.10.2023, has stated that the contentions and averments sought to be raised by TANGEDCO are wholly misconceived, completely irrelevant to



the issue that arises for decision by this Commission and are liable to be rejected. The Petitioner has mainly submitted as under:

- (a) It is wrong and denied that either by the plain reading of the Ministry of Coal Guidelines dated 11.6.2009 or by any involved interpretation of the same, it is that the O&M expenses have to be capped at 11.5%. Further, there is no provision for splitting the cost of the mines separately, as against the pooled basis mechanism followed by the Commission.
- (b) It is wrong and denied that the truing up is required to be done on the basis of actuals or 11.5%, whichever is lower. It is wrong and denied that the truing up at actuals is to be done only wherever the escalation is less than 11.5%, as is sought to be contended by TANGEDCO. NLCIL reiterates the contents of the Petition and the Rejoinder hereinabove and states that the contentions and averments of TANGEDCO to the contrary are wrong and are denied.
- (c) It is reiterated that the present proceedings are not for the consideration of the entire Order of true up by the Commission, but only restricted to the methodology to be applied for truing up. It is wrong and denied that the O&M cost is to be restricted based on the Order dated 12.5.2015 of the Commission in Petition No. 65/MP/2013. Apart from the fact that there is no such restriction to be imposed on merits, the said issue was not the subject matter of Appeal before the Hon'ble Tribunal and is not the subject matter of the remand proceedings. It is wrong and denied that base O&M expenditure for the year 2008-09 is to be restricted to 50% basic + DA.
- (d) Further, the question of restriction on the proportionate basis to be applied mine-wise also is misconceived and, in any event, does not give rise to the present proceedings. It is also wrong and denied that the principle of actual or normative 11.5%, whichever is lower, is to be applied. There can also be no question of any back calculation of O&M expenditure as is sought to be contended by TANGEDCO. TANGEDCO is seeking to go behind the Judgement of the Hon'ble Tribunal by raising all of the above issues, which ought not to be permitted. NLCIL reiterates the contents of the Petition and the Rejoinder hereinabove and states that the contentions and averments of TANGEDCO to the contrary are wrong and are denied.



(e) The question of going behind the base figure to be considered as actual of the previous year does not arise. The provisions of the Ministry of Coal Guidelines dated 11.6.2009 ought to be strictly followed. The issues now sought to be raised by TANGEDCO are wholly irrelevant and are liable to be rejected as such. It is incomprehensible as to how, despite the specific direction of the Hon'ble Tribunal, TANGEDCO is still seeking to contend that the price determination is to be arrived at mine-wise. NLCIL reiterates the contents of the Petition and the Rejoinder hereinabove and states that the contentions and averments of TANGEDCO to the contrary are wrong and are denied.

Reply by the Respondent KSEB Ltd.

10. The Respondent KSEB Ltd. vide affidavit dated 9.10.2023 has submitted that as per MoC guidelines, in case the actual O&M expenses are more than 11.5%, they shall be restricted to 11.5% and in case less than 11.5%, they shall be considered on actuals for truing up purpose. Further, the Petitioner, in the filed petition 65/MP/2013, while seeking an increase in O&M expenses incurred by NLC mines on account of wage revision, has considered and determined O&M expenses by taking mine-wise costs. Therefore, mine-wise costs have to be considered for arriving at the pooled cost.

Rejoinder to the Reply filed by the Respondent KSEB Ltd.

11. The Petitioner, in its rejoinder to KSEB Ltd. vide affidavit dated 19.10.2023, has submitted that the issue now sought to be raised by KSEBL is wholly irrelevant and is liable to be rejected. It is incomprehensible as to how, despite the specific direction of the Hon'ble Tribunal, KSEBL is seeking to contend that the price determination is to be arrived at mine-wise and not on a pooled cost basis. Further, the provisions of the Ministry of Coal Guidelines dated 11.6.2009 ought to be strictly followed, and there is no provision provided in the said Guidelines for splitting the cost of the mines separately, as against the pooled basis.

12. The methodology of considering the cost of the mine separately, and not on a pooled basis, and applying the principle of normative escalation of 11.5% or actuals, whichever is lower, is required to be reconsidered and applied only on an actual cost basis. This is as per the provisions of the Guidelines



of the Ministry of Coal dated 11.06.2009. In the facts and circumstances mentioned above, there is no merit in the reply by KSEB Ltd.

13. The matter was last heard on 8.11.2023. The learned counsel for the Respondent TANGEDCO circulated a note for arguments and made detailed oral submissions. The learned counsel for the Petitioner also made detailed oral submissions and prayed that the IA may be allowed. After permitting to file written submissions by 15.12.2023, the order in the IA was reserved.

Reply by the Respondent TANGEDCO vide affidavit dated 22.12.2023

14. The Respondent TANGEDCO, vide affidavit dated 22.12.2023, has mainly submitted that:

- (a) The Tribunal, in order dt: 25.7.2023, set aside the order dt: 20.3.2017 and remanded the same back to CERC for consideration afresh.
- (b) Further, the Tribunal had also ordered that *“Suffice it to make it clear that the opinion expressed in this order is only in the context of the five-year period 2009-14 and not beyond”*. In other words, the judgment applies only to Petition No: 149/MP/2015, which is for the period 2009-2014, and not for any other period. Hence, there shall not be any analysis of the claim of the Petitioner beyond the period 2009-14 as per the directions of the Tribunal.
- (c) However, the Commission in ROP dated 8.11.2023 has directed the Petitioner to recalculate the working for the period 2009-14 and 2014-19, which is against the specific instructions given by the Tribunal. The Tribunal has not given orders for revision of calculation beyond 2009-14.
- (d) Further the Tribunal, after setting aside the Order dated 20.3.2017, has remanded the matter to CERC for consideration afresh. Hence, the claim of truing up of mines for the period 2009-14 has to be started afresh from the determination of the base price.
- (e) TANGEDCO has submitted the written submission in respect of 62/IA/2023 in Petition No: 149/MP/2015. TANGEDCO has mainly submitted the following issues in the re-determination of tariff afresh, which is applicable for both 61/IA/2023 and 62/IA/2023:
- (f) The tariff for the period 2009-14 in respect of pooled mines has been decided mine-wise, year-wise and then pooled.



- (g) The base O&M price shall be taken from 65/MP/2015, in which the O&M expenses have to be restricted to 50% of the wage revision claim, as per the order dated 12.5.2015.
- (h) The CUF shall be restricted to 85% based on the CERC's Order dated 20.3.2017.
- (i) Further to this, as has been observed by the CERC in the Order dt: 20.3.2017 in Petition No 149/MP/2015, the O&M expenses claimed by the Petitioner of Mine-II for the years 2009-10 and 2010-11 are Rs. 75694 lakhs and Rs. 65361 lakhs respectively. Since there is a substantial reduction in the O&M expenses of Mine-II during 2010-11 from the previous year 2009-10 which has been justified, the O&M cost of Mine-II for the year 2009-10 has to be back calculated and restricted to Rs 58619.73 lakhs.
- (j) All the above aspects shall be considered while determining the tariff afresh, and a detailed description of the above issues has been furnished in the main counters to the Petition filed vide affidavit dated 9.10.2023.

15. However, no rejoinder has been submitted by the Petitioner in this regard.

Analysis and Decision

16. We have considered and perused all the available documents on record. The Tribunal vide judgment dated 25.7.2023 has set aside the CERC order dated 20.3.2017 and directed the Commission to hear the petition afresh. Hence, the claim of truing up of mines for the period 2009-14 has to be started afresh from the base price. The Appellant Tribunal, in the said order dated 25.7.2023, has mainly observed as under:

"Mr. Anand K. Ganesan, learned Counsel for the Appellant, would submit that the Appellant's grievance is not that 11.5% should not have been applied, but only that the CERC should either have taken actuals or the normative value of 11.5%, uniformly for all mines together, into consideration; the error which the CERC has committed was in holding that O&M expenses should be computed at 11.5% or actuals whichever is less; and, if 11.5% annual increase for the 5 years period 2009-14 were taken as the basis, then the O&M expenses would be Rs. 8,968 crores, which would be for higher than the actual O&M expenses claimed by the Appellant of Rs. 8,349 crores. It is evident from this submission of Mr. Anand K. Ganesan, learned Counsel for the Appellant, that applying the normative rate, of 11.5% per annum increase for O&M



expenses for the five years period 2009-14, would only make consumers suffer an additional financial burden of Rs. 619 crores, more than if the actual cost were to be taken into consideration. We are satisfied, therefore, that the CERC has erred in deviating from the basic principles and premises on which the tariff order was passed, and in having changes the rules mid-way on the eve of the true-up stage.

Consequently, the Order under appeal is set aside and the matter is remanded to the CERC for its consideration afresh. The CERC shall apply the very same modality of pooling, which was earlier adopted during the tariff determination exercise, and compute the O&M expenses, for the 5 year period 2009-14, at the true up stage also taking the actual cost into consideration.”

17. Since, the Appellant Tribunal has remanded the matter and directed the O&M expenses be computed taking actual cost into consideration, the Commission has gone through all the details pertaining to the 2009-14 period again and the observation and analysis of the Commission is dealt with as under.

18. Respondent TANGEDCO, vide affidavit dated 9.10.2023, has submitted that the Commission, in the order dated 12.5.2015 in Petition No. 65/MP/2013 (regarding wage revision claim for the period 1.1.2007 to 31.3.2009), had directed the Petitioner that the actual increase in NLC employees cost on account of wage revision is allowed which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006 and for the CISF personnel deployed in NLC mines, the salary increase shall be on actual basis and shall be a pass through to the beneficiaries.

19. However, as per the direction of the APTEL, taking the actual cost into consideration, the contention of the Respondent TANGEDCO to consider the O&M expenditure for the year 2008-09 as 50% (basic + DA) is not accepted.

20. Lignite transfer price for the period 2009-14 computed by NLC, based on MoC guidelines dated 11.6.2009 & on estimated Mine closure cost allowed by the Commission in tariff orders of NLC stations, is as under.

	(Rs/ Tonne)				
Year/Mines	2009-10	2010-11	2011-12	2012-13	2013-14
Mine I	1101	1173	1262	1359	1466
Pooled Price	1411	1477	1556	1568	1642

** The above rates were exclusive of Clean Cess Energy w.e.f. 1.7.2010 @Rs 50 per tonne and Excise duty on Lignite and other taxes and duties.*



21. Ministry of Coal, Govt. of India had issued guidelines for preparation of Mine Closure Plan vide letter dated 27.8.2009 and specified the Mine Closure Cost at Rs 6 lakh/Hectare. Revised lignite transfer price based on actual Mine closure cost and as approved by Commission vide order dated 05.02.2014 in Petition No. 167/MP/2011 is as under:-

	(Rs/ Tonne)				
Year/Mines I	2009-10	2010-11	2011-12	2012-13	2013-14
Mine I	1067	1140	1229	1326	1434
Pooled Price	1376	1443	1522	1535	1610

* The above rates were exclusive of Clean Cess Energy w.e.f. 01.07.2010 @Rs 50 per tonne and Excise duty on Lignite and other taxes and duties.

22. TPS-II (Expansion) and Mine-II (Expansion) were sanctioned as one integrated project; it was first considered to include Mines-II (Expansion) in the tariff petition to be filed for TPS-II (Expansion). However, considering the fact that TPS-II (Expansion) was not able to achieve COD due to technical snags and since Mine-II (Expansion) went into production on 12.3.2010, pooling of Mine-II (Expansion) lignite cost cannot be delayed, the petitioner has filed a Petition No.68/MP/2013 for revision of the pooled lignite transfer price from the year 2010-11 onward. Accordingly, the Commission vide order dated 7.5.2015, after the inclusion of Mine-II (Expansion), had revised and allowed the pooled lignite transfer price for the period 2010-14 as under:

	(Rs/ Tonne)			
Year/Mines I	2010-11	2011-12	2012-13	2013-14
Pooled Price	1444	1569	1588/1604*	1610

* The above rates are exclusive of clean cess energy w.e.f. 1.7.2010 @ Rs 50/Tonne & excise duty on lignite and other taxes & duties.

* Based on royalty revision from 10.05.2012.

23. The Petition No.149/MP/2015 was filed by the Petitioner NLCIL seeking approval of the Commission for the lignite transfer price as revised/ trued-up at the end of tariff period 2009-14 on the basis of MoC guidelines dated 11.6.2009 as under:

	(Rs/ Tonne)					
Year/Mines	2009-10	2010-11	2011-12	2012-13 (up to 9.5.2012)	2012-13 (from 10.5.2012)	2013-14
Mine I	1168	1245	1329	1443	1453	1535
Pooled Price (including NLC Mines-II Expansion)	1383	1432	1543	1518	1530	1673

The above rates are exclusive of clean cess energy w.e.f. 01.07.2010 @ Rs 50/Tonne & excise duty on lignite and other taxes & duties.



24. Considering the fact that the O&M expenses for the period 2009-14 are being revised in this order as per the judgment of the Appellate Tribunal for Electricity dated 25.7.2023, the O&M expenses as allowed above by the Commission, including wage revision vide order dated 12.5.2015 in Petition No. 65/MP/2013 is considered as base O&M expenses of 2008-09, which is as under:

(Rs in Lakh)

Year	O&M Allowed for the Period 2008-09
Mine-I	39063.36
Mine-I (Exp.)	24038.99
Mine-IA	18310.10
Mine-II	66576.12

25. The petitioner in the impugned truing up petition 149/MP/2015 had claimed the following O&M cost for the period 2009-10 to 2013-14.

(Rs in Lakhs)

O&M Cost	2009-10	2010-11	2011-12	2012-13	2013-14
Mine-I Standalone price	44011	48491	53350	58338	64357
Mine-I Expansion	26898	29640	32606	35588	39454
Mine-I A	22256	25793	33355	39288	45856
Mine-II	75694	65361	71433	73224	89888
Mine-II Expansion	--	28012	30614	31382	38523

26. The O&M cost of Mine-I standalone for the period 2009-14 is within the escalation rate of 11.5% during 2009-14 on the previous year's actuals. Accordingly, there will not be any change corresponding to O&M expenses of Mine-I Standalone for the period 2009-14.

27. Further, considering the base O&M expenses of 2008-09, as allowed by the Commission vide order dated 12.5.2015, the projected O&M expenses for the period from 2009-10 to 2013-14 of pooled Mines (i.e. Mine-I expansion, Mine-IA and Mine-II) @11.5% escalation is worked out as under:

(Rs in Lakhs)

O&M Cost	2008-09 (base)	2009-10	2010-11	2011-12	2012-13	2013-14
Pooled Mines	108925.21	121451.61	135418.54	150991.68	168355.72	187716.63

28. Accordingly, the O&M of Pooled Mines corresponding to Mine-I expansion, Mine-IA and Mine-II for the base year 2008-09 is considered as Rs 108925.21 lakh. Considering an 11.5% escalation the



O&M for the period 2009-10 works out as Rs 121451.61 lakh. However, the actual O&M expenses for the pooled mines claimed by the Petitioner for the period 2009-10 is Rs 124848 lakh.

29. However, Mine-II Expansion was included in the pooled mines w.e.f. 2010-11. Accordingly, the O&M expenses of Mine-II were included in the Pooled mines w.e.f. 2010-11. Taking into account the O&M expenses from Mine-II expansion, the base O&M expenses of the Pooled Mines, including Mine-I expansion, Mine-IA, Mine-II and Mine-II Expansion from 2010-11, and considering the base O&M expenses for the year 2010-11 on actuals including the pooling of Mine-II expansion, the O&M expenses for the period from 2010-11 to 2013-14 of pooled Mines @11.5% escalation is worked out as under:

	<i>(Rs in Lakhs)</i>			
O&M Cost	2010-11	2011-12	2012-13	2013-14
Pooled Mines	148806	165918.69	184999.34	206274.26

30. The total O&M expenses for the pooled mines claimed by the Petitioner for the period from 2010-11 to 2013-14 are as under:

	<i>(Rs in Lakhs)</i>			
O&M Cost	2010-11	2011-12	2012-13	2013-14
Pooled Mines	148806	168008	179482	213721

31. In light of the above two tables, it is observed that the O&M expenses of the pooled mines claimed by the Petitioner for the period 2010-11 to 2013-14 are more than 11.5% per annum except for the year 2012-13. However, the Ministry of Coal, vide its order No. 43001/2/2014-Lig-CA-II dated 11.6.2009, prescribed the escalation of O&M expenses of 11.5% per annum as under:

"4.5 Though NLC submitted that an escalation @ 13% per annum on previous years actual should be reckoned, SEBs pleaded that 5.75% per annum should be adopted, as per CERC Regulations 2009. After detailed deliberations it was agreed that O&M expenses shall be charged at 11.50% per annum by NLC for the period 2009-14. It was also agreed that the O&M expenses would be trued up at the beginning of the next tariff period."

32. As per the above notification, it was agreed that the O&M expenses would be trued up at the beginning of the next tariff period. Further also, consequent to the APTEL order dated 25.7.2023 in



Appeal No. 185 of 2017 & IA No. 1071 of 2022, we consider the actual O&M incurred by the Petitioner for the period 2009-14 only. Accordingly, the O&M expenditure considered for the period 2009-14 is as under:

	<i>(Rs in Lakhs)</i>				
O&M Cost	2009-10	2010-11	2011-12	2012-13	2013-14
Pooled Mines	124848	148806	168008	179482	213721

33. Further, the Commission vide order dated 20.3.2017 in the impugned order had observed that the petitioner has not provided actual capacity utilization in respect of different mines and Para 4.1 of MOC Guidelines dated 11.6.2009 states as follows:

4.1 Capacity Utilization "The existing guidelines of 85% capacity utilization are to be retained, as this is a basis on which projects are formulated and economic evaluation of the project is done. Also capacity utilization is heavily dependent on various mining operational conditions, land availability, space constraints and availability of main mining equipments etc. SEBs had suggested adoption of marginal costing norms for pricing of lignite produced at 85% of capacity utilization, while NLC insisted on retained existing guidelines of 85% capacity utilization. Since inception, mines have achieved mine capacity utilization of less than 85% cumulatively. The performance of mines over its entire life has to be taken into consideration while fixing parameters and should not be based on sporadic performance. The said norms were also the basis on which earlier agreements with SEBs were settled and agreed to by SEBs. Therefore, the extant guidelines shall be retained, as this would also act as an incentive to NLC to achieve higher capacity utilization, which would be in the interest of all stakeholders."

34. As per para 4.1 of the guidelines, 100% of O&M cost shall be recovered at 85% capacity utilization. If the mines have achieved lower capacity utilization, the O&M cost shall be proportionately reduced based on actual capacity utilization, and the lignite transfer price shall be worked out accordingly. In line with MOC guidelines, we have not gone into the detailed prudence of numbers/values as given in the auditor's certificate. Therefore, the petitioner shall ensure that a proportionate reduction in the O&M cost is done in case the capacity utilization is less than 85%.

35. The petitioner is directed to calculate the impact on variable charge for the tariff period 2009-14 for its different generating stations within three months and adjust the same in the tariff accordingly.



36. The IA No. 62/2023 in Petition No. 149/MP/2015 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

