CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

<u>Petition No. 17/RP/2022 in Petition No. 452/MP/2019</u>
along with
<u>IA No. 61/2023</u>

Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Date of Order: 19th May, 2024

In the matter of

Petition seeking review of Commission's order dated 24.3.2022/26.4.2022 in Petition 452/MP/2019 - Petition seeking approval for revision of Lignite Transfer Price of NLCIL Mines for the period 1.4.2014 to 31.3.2019 on account of truing up on additional capitalization for 2014-19, O&M expenses, Overburden Removal and consequent depreciation and Return on Equity as per Ministry of Coal guidelines dated 2.1.2015 on fixation of Transfer Price of Lignite.

And

In the matter of

NLC India Limited,
135/73, EVR Periyar High Road,
Kilpauk, Chennai-600010 **…. Review Petitioner**

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600 002

2. Transmission Corporation of Andhra Pradesh,
Vidyut Soudha, Khairatabad,
Hyderabad-500 082

3. Southern Power Distribution Company of Andhra Pradesh Limited,
D.No:19-13-65/A, Srinivasapuram, Tiruchanoor Road, Tirupathi,
Andhra Pradesh – 517501

4. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seetammadhara, Vishakapatnam, Andhra Pradesh – 50301,

5. Transmission Corporation of Telangana,
Vidyut Soudha, Khairatabad, Hyderabad-500 082

6. Northern Power Distribution Company of Telangana Limited,
H.No. 1-1-504, Opposite NIT petrol pump, Chaityanayapuri colony,
Hanmkonda, Warangal (Telangana) - 506 004

7. Southern Power Distribution Company of Telangana Limited,
2nd Floor, H.No.6-1-50, Mint Compound, Hyderabad – 500 063

8. Power Company of Karnataka Limited,
KPTCL Complex, Kaveri Bhavan, Bangalore – 560 009

9. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle, Bangalore - 560 001

10. Mangalore Electricity Supply Company Limited,
Corporate Office, MESCOM Bhavana, Bejai, Kavoor Cross Road,
Mangalore 575 004

11. Chamundeshwari Electricity Supply Company Limited
Corporate office No.CA 29, Vijayanagar, 2nd Stage, Hinakal, Mysore -570017

12. Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga -585 102, Karnataka

13. Hubli Electricity Supply Company Limited,
P.B.Road, Navanagar, Hubli - 580 025

14. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004

15. Puducherry Electricity Department,
137, NSC Bose Salai, Puducherry - 605 001 **…. Respondents**

Parties present:

Ms. Swapna Seshadri, Advocate, NLC
Ms. Ritu Apurva, Advocate, NLC
Shri Karthikeyan, Advocate, NLC
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

Petition No. 452/MP/2019 was filed by the Review Petitioner seeking approval for the revision of the Lignite Transfer Price of NLCIL mines for the period 2014-19 on account of the truing-up of additional capitalisation for the period 2014-19, the O&M expenses, overburden removal and the consequent depreciation and return on equity as per Ministry of Coal (MOC) guidelines dated 2.1.2015, and the Commission disposed of the same vide order dated 24.3.2022. Subsequently, the said order was revised vide corrigendum order dated 26.4.2022. Aggrieved by the orders dated 24.3.2022/26.4.2022 (in short, 'the impugned orders'), the Review Petitioner has filed this review petition, seeking review on the ground that there are errors apparent on the face of record on the following issues*:*

A. Disallowance of additional capitalization in respect of 'New Assets' under heads of SI no. 6 to SI no. 9 (para 27);

B. O&M Expenses

(i) Non-executive Wage revision impact for the period 2012-14 was not considered in trued up order for 2009- 14 and 2013-14 trued up price has been considered as the base rate for 2014-19 truing up (para 35).

(ii) Imposition of escalation rate ceiling at 11.5% year on year mine wise contrary to the stipulation of MOC guidelines with respect to pooled mines for the period 2014-19 (para 39).

C. Disallowance of Stores for the purpose of interest on working capital instead allowed stores and spares. Also, the methodology adopted for arriving the Mines portion of spares is not in line with the actual consumption Stores & Spares in Mines (para 58).

D. Applicability of Surcharge/Interest on truing up from NLCIL to Beneficiary.

Hearing dated 24.6.2022

2. The Review Petition was heard on 'admission' on 24.6.2022, and the Commission vide its interim order dated 27.6.2022, permitted the Respondent, TANGEDCO to file its reply 'on maintainability', and for the parties to complete their pleadings in the matter. In response, the Respondent TANGEDCO, vide affidavit dated 11.7.2022, has filed its reply, and the Review Petitioner has filed its rejoinder to the said reply vide affidavit dated 21.7.2022.

Hearing dated 12.8.2022

3. The Commission, after hearing the parties on 'maintainability' of the Review Petition on 12.8.2022, vide its order dated 30.11.2022, admitted the Review Petition on the issues (A) and (C) above. As regards ground (B) above, the Commission had rejected the same vide order dated 30.11.2022, as under:

O&M expenses

"14. We have examined the matter. The main grievance of the Review Petitioner is that the truing-up of O&M expenses on year-wise and mine-wise basis, is not in line with the lignite transfer price under the 2014-19 guidelines, as the said guidelines provide for the consideration of O&M expenses on pooled lignite mine basis. The Review Petitioner has submitted that the Commission had allowed the pooling of mines concept since 1998, as evident from Commission order dated 15.9.2005 in Petition No. 5/2022. It is however noticed that in the Commission's order dated 20.3.2017 in Petition No. 149/MP/2015 (approval of revised lignite transfer price of NLCIL mines for the period 2009-14 on account of truing up of additional capitalisation, O&M expenses, etc as per MOC guidelines, 2009), the prayer of the Review Petitioner to consider O&M expenses on pooled lignite mines basis was rejected. Against this order the Review Petitioner has filed Appeal No. 185 of 2017 before the Appellate Tribunal for the Electricity ('the Tribunal') and the same is pending. Since the guidelines with regard to the computation of O&M expenses for the period 2009-14 and 2014-19 are similar, and the findings of the Commission on the issue of O&M expenses in order dated 20.3.2017, has been challenged by the Review Petitioner and is subjudice before the Tribunal, we find no reason to consider the issue of O&M expenses in this Review Petition. This is however subject to the final decision of the Tribunal in Appeal No. 185 of 2017"

4. As regards ground (D) above, the Commission in the said order, held as under:

> *"18. As regards issue (d) regarding the applicability of surcharge and interest, (as prayed in para 1 above), the same will be guided by the provisions of the 2014-19 Tariff Regulations.*

5. As regards the submission of the Review Petitioner that the wage revision impact, based on the Commission's order dated 9.7.2018 in Petition No.32/MP/2018, had not been considered, the Commission in the said order dated 30.11.2022, directed that the same shall be considered on merits after hearing the parties.

6. Having held that the Review Petition is 'maintainable' on issues (A) and (C) as stated above, the Commission directed the parties to complete pleadings in the matter on merits. In response, the Respondent TANGEDCO, vide affidavit dated 19.12.2022, filed its reply, and the Review Petitioner, vide affidavit dated 9.1.2023, filed its rejoinder to the said reply.

<u>Hearing dated 16.2.2023</u>

7. The Review Petition was heard on 16.2.2023, and the Commission, after hearing the learned counsel for the parties on merits, reserved its orders on the issues (A) and (C) in para 1 above.

IA. No. 61/2023

8. While so, the Review Petitioner, pursuant to the judgment dated 25.7.2023 of the Appellate Tribunal for Electricity (APTEL) in Appeal No. 185/2017 (NLC v CERC &ors) filed IA No. 62/2023 (in Petition No. 149/MP/2015) and IA No. 61/2023 (in Petition No. 17/RP/2022), seeking the implementation of the said judgment of APTEL (which remanded the matter to the Commission), with regard to the computation of the O&M expenses (ground B), taking the actual cost into consideration.

Hearing dated 15.9.2023

9. Accordingly, IA No. 61/2023, along with the Review Petition, was heard on 15.9.2023, and the Commission, after hearing the learned counsels for the Review Petitioner and the Respondent TANGEDCO, directed them to complete their pleadings on both the '*maintainability*' as well as on '*merits.*' In response, the Respondents TANGEDCO and KSEB have filed their replies vide separate affidavits dated 9.10.2023, and the Review Petitioner has filed its rejoinders to the said replies vide separate affidavits dated 19.10.2023.

Hearing dated 8.11.2023

10. The Review Petition, along with IA No. 61/2023, was listed and heard along with IA No. 62/2023 (in Petition No. 149/MP/2015), and the Commission, after hearing the learned counsel for the parties, reserved its order in IA No. 62/2023. The Commission also observed vide ROP, that the hearing of the IA No. 61/2023 will be taken up after the decision of the Commission in IA No. 62/2023. Accordingly, the Commission directed the Review Petitioner to furnish certain additional information and the parties

to complete their pleadings in the matter. In response, the Review Petitioner filed the additional information on 12.12.2023 after serving a copy to the Respondents. The Respondent TANGEDCO has filed its reply vide affidavit dated 22.12.2023, and the Review Petitioner has filed its rejoinder vide affidavit dated 11.1.2024.

Hearing dated 31.1.2024

11. Since the order in the Review Petition No. 17/RP/2022 (along with the IAs No. 61/2023 and 62/2023) could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter was re-listed for hearing. The Commission, based on the consent of the parties, reserved its order in IA No. 62/2023 in Petition No.149/MP/2015. The Commission also directed that Petition No.17/RP/2022, along with IA No. 61/2023 (present case), will be listed for hearing after a final decision in IA No.62/2023 in Petition No.149/MP/2015.

12. Thereafter, the Commission, vide its order dated 24.3.2024, disposed of IA No. 62/2023 (in Petition No. 149/MP/2015) in terms of the judgment of the APTEL dated 25.7.2023. Subsequently, a corrigendum order dated 6.4.2024 was issued in IA No. 62/2023, rectifying the inadvertent errors which had crept into the order dated 24.3.2024.

Hearing dated 4.4.2024

13. During the hearing of this Review Petition (along with IA No. 61/2023), the learned counsels for the Respondent TANGEDCO and the Review Petitioner submitted that pursuant to the issuance of the order dated 14.3.2024 in IA No. 62/2023 (in Petition No. 149/MP/2015), the order in the present IA along with the Review Petition may be reserved. This was accepted by the Commission. However, on the objection raised by the learned counsel for the Respondent TANGEDCO, with regard to the Review Petitioner engaging two different counsels for the same matter, the Commission

permitted both parties to file their submissions on this issue. In response, the Review Petitioner has clarified that while the learned counsel (Shri K.Biswal, Advocate) had been engaged by the Review Petitioner to appear in the Review Petition, M/s MSA Partners (represented by Ms. Swapna Seshadri, Advocate) were additionally engaged by the Review Petitioner for filing and appearing in the said IAs (62/2023 and 61/2023) pursuant to the remand judgment of the APTEL in Appeal No.185/2017, which was handled by MSA Partners. No response/objections have been filed by the Respondent TANGEDCO on this issue. In view of this, we find no procedural infirmity on the part of the Review Petitioner on this issue, and the same is treated as closed.

14. Based on the submissions of the parties and the documents available on record, and keeping in view the judgment dated 25.7.2023 of APTEL in Appeal No. 185/ 2017, we proceed to examine the issues (A), (B) and (C) raised by the Review Petitioner, as detailed in the subsequent paragraphs.

Issue (A): <u>Disallowance of the Additional capitalization in respect of 'New Assets' under heads of Sl no. 6 to Sl no. 9 (para 27);</u>

15. The Petitioner, in Petition No. 452/MP/2019, had claimed additional capital expenditure under the following heads:

S. No.	Total additional capitalization claimed under the following heads
1.	Plant and Machinery
2.	Roads & Buildings
3.	Intangible Assets (Software)
4.	Land
5.	Furniture & Others
6.	Mine Development
7.	Value Addition & Reduction on existing Assets
8.	Other Assets
9.	Asset Deletion

16. As regards additional capitalization, the MOC guidelines dated 2.1.2015 provide as under:

> *"(iii) Considering the lower life of auxiliary equipment's, additional requirement of conveyors, roads, GWC equipment's and also rejuvenation of SMEs, Capital additions based on annual budget/ plans shall be taken for calculating this parameter and the same will be trued up at the beginning of the next tariff period."*

17. The Commission vide the impugned order dated 24.3.2022 decided as under:

> *"27. It is observed that the Petitioner has furnished details only with regard to its claim under heads of Sr. No.1 to Sr. No.5 above. As per the Ministry of Coal guidelines quoted above, additional capitalization is only allowed for assets created due to replacement of auxiliary equipment, conveyors, roads, specialized mining equipment, ground water clearance equipment and not for any other heads. Accordingly, in terms of the Ministry of Coal guidelines dated 2.1.2015 and on prudence check of the claim of the Petitioner, we allow the additional capitalization claimed by the Petitioner in respect of the 'New assets' under heads of Sr. No.1 to Sl. No.5 (in paragraph 26 above) only for the purpose of truing up of the lignite transfer price as tabulated below"*

18. Thus, the Commission in the impugned order dated 24.3.2022, while allowing the assets in Sl. nos.1 to 5 (table under para 15 above), had disallowed the assets claimed by the Review Petitioner in Sl. nos. 6 to 9, in the said table.

Submissions of the Review Petitioner

19. The Review Petitioner has submitted that the mine development stage includes Mining Plan preparation, feasibility studies, geosciences, and engineering studies, and if all of these outcomes are favourable and all approvals are in place, then construction and development of the mine can start. It has also been submitted that all the assets procured are for continuous and sustained excavation of lignite from mines, and the classification under all the heads has been fully covered under the MOC guidelines dated 2.1.2015. The Review Petitioner has further submitted that MOC, in its guidelines, has mentioned that the capital addition is to be based on the annual budget/plan while calculating this parameter, and the same will be trued-up at the beginning of the next tariff period. As regards the assets from Sl. No.6 to 9, which was

disallowed in the impugned order dated 24.3.2022, the Review Petitioner has submitted the following:

(a) Expenditure on Mine Development (Sl. no. 6): It is a continuous process spread over the years of its operation and is not limited to occurrence only before the commercial operation or on reaching the annual targeted quantity but also much beyond, to maintain the annual targeted quantity in line with the approved mine plan. In this some planned and budgeted expenditure is being done every year based on operational needs and is capitalized. This planned expenditure depends on the requirement, which gets approved from time to time based on mine plan.

(b) Additional capitalization on Value Addition & Reduction on existing Assets (Sl. no.7): These are assets on which some planned expenditure was left to be carried out, and this additional expenditure is capitalized once the work is completed.

(c) Other Assets (Sl.no 8): These are Assets of ancillary equipment and Value additions to the existing assets of Plant & Machinery, mainly for the rejuvenation of Specialized Mining Equipment.

(d) Asset Deletion (Sl. no. 9): The asset list contains assets that are deleted, and it leads to a reduction in the value of the asset capitalized when seen on a net basis. Although it reduces the Review Petitioner's claim for additional capitalization, the same is being brought to notice, as it has an impact on the book value of the Gross Block of the asset, thereby giving a true and fair picture.

(e) All the asset additions, as mentioned in Sl. Nos. 6 to 9 are a bare necessity for the operation of the mines and are very well covered under 'capital additions based on Budget' as per MOC guidelines. The details and Auditor Certificate in this regard were also furnished. The guidelines issued by MOC do not specify these 5 categories of assets; rather, the heads were created for accounting by the Review Petitioner. All the assets procured are for continuous and sustained excavation of lignite from mines, and the classification under the above Sl. nos. 1 to 9 has been fully covered under the MOC guidelines 2.1.2015.

20. Accordingly, the Review Petitioner has submitted that the non-consideration of the above assets while dealing with additional capitalization is an error apparent on the face of the record. Therefore, the Commission may allow the capital additions mentioned pertaining to serial nos. 6 to 9 in the said table for the period 2014-19.

Reply of the Respondent TANGEDCO

21. The Respondent TANGEDCO, in its reply, has mainly submitted that as per the MOC guidelines dated 2.1.2015, the additional requirement of conveyors, roads, GWC equipments and also rejuvenation of SMEs, and capital additions based on annual budget plans shall be considered subject to truing up. On scrutiny of the details enclosed, it was seen that most of the spares claimed are of a revenue nature (to be covered under O&M expenses) that have been included under capital spares, such as ACs, computers, laptops, steel almirahs, printers, cooking utensils, cell phones, cots, etc. It has also been submitted that the Commission shall admit only the eligible items and other expenses shall be met out from the O&M expenses if essentially required. The Respondent has stated that the Commission has carried out a prudence check and restricted the claims that are eligible as per the MOC guidelines. It has added that the items claimed by the Review Petitioner are neither of capital nature nor admissible as per the applicable MOC guidelines and therefore, the Commission has rightfully restricted the claims that are eligible for admission. Accordingly, the Respondent has contended that there is no merit in the claim of the Petitioner for review of the order on this ground and the same shall be dismissed.

Rejoinder of the Review Petitioner

22. The Petitioner, in its rejoinder, has submitted the following:

(a) Selective list of assets referred to by the Respondent TANGEDCO are capital in nature because the life of those assets is more than 1 year as per accounting principles. Moreover, assets like ACs, Computers, Laptops, Printers, etc. cannot be considered revenue items or cannot be treated as consumables.

(b) Further, the MOC guidelines for the determination of Lignite Transfer Prices are different from the guidelines issued by the Commission for the determination of tariffs for thermal power generating stations. In the regulations of the Commission, for thermal power generating stations, there is a provision for compensation allowance/special allowance to take care of minor items or assets, including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. However, there is no such provision in MOC guidelines dated 2.1.2015. Instead, the MOC guidelines have permitted to claim the capital expenditure for procurement of minor assets as per the annual plan /budget.

Analysis and Decision

23. We have examined the submissions. It is evident from the impugned order dated 24.3.2022 (as quoted in para 17 above) that the Commission, in terms of the MOC guidelines dated 2.1.2015 (as quoted in para 16 above), had allowed only the assets (as per Sl. nos.1 to 5 of the table in para 15 above) created due to the replacement of auxiliary equipment, conveyors, roads, specialized mining equipment and ground water clearance equipment, on prudence check of the details made available/furnished by the Petitioner. However, as the details with regard to the additional capitalisation in respect of other assets (in Sl.nos.6 to 9) were not made available by the Review Petitioner, the claims of the Petitioner, on these heads were not allowed vide order dated 24.3.2022. In our view, the Review Petitioner cannot be permitted to reargue the case on merits by furnishing the justification for these claims and seeking review on this count. Accordingly, we find no reason to allow the prayer of the Review Petitioner on this ground.

Issue (B): O&M Expenses

24. The prayer of the Review Petitioner for review of the impugned order, on this count, is twofold as stated below:

(i) Non-executive Wage revision impact for the period 2012-14 was not considered in trued up order for 2009- 14 and 2013-14 trued up price has been considered as the base rate for 2014-19 truing up.

(ii) Imposition of escalation rate ceiling at 11.5% year on year mine wise contrary to the stipulation of MOC guidelines with respect to pooled mines for the period 2014-19.

Submissions of the Review Petitioner

25. The Review Petitioner has submitted that it maintains the books of accounts for Mine I (capacity 105 LT), Mine IA (capacity 30 LT) & Mine II (capacity 150 LT) only. Mine I and Mine II are further bifurcated into Mine I & Mine I Expansion and Mine II and Mine Expansion, respectively, based on their capacity. It has stated that the capacity of the original mines and the expansion scheme of Mine I and Mine I Expansion are 65 LT and 40 LT, respectively, and of Mine II and Mine II Expansion are 105 LT and 45 LT, respectively. Mine-wise bifurcation of actual expenditures of Mine I and Mine II are not identifiable, so the actual expenditure is allocated based on capacity. The Review Petitioner has stated that the O&M expenses of Mine I are apportioned between Mine I& Mine IE and of Mine II between Mine II & Mine IIE, based on the capacity of the original mines and its expansion scheme. It has been added that the apportionment of O&M expenses is worked out only for the purpose of the transfer price determination. The Review Petitioner, while pointing out that as per MOC guidelines, the calculation will be made on a pooled basis, has submitted that the consideration of the O&M expenses on a pooled basis will be more appropriate and scientific rather than the indicative figures considered mine-wise. In this regard, the submissions of the Review Petitioner are summarized as under:

(a) The Commission vide its order dated 9.7.2018 in Petition No.32/MP/2018 had allowed the wage revision impact of non-executives with effect from 1.1.2012 and requested to consider appropriate adjustment of wage revision impact for the base year i.e. 2013-14 in O&M expenses.

(b) As per the MOC guidelines for fixation of transfer price for Petitioner’s mines vide OM dated 2.1.2015 for the period 2014-19, the actual O&M expenses incurred in 2013-14 with 11.5% escalation shall be the base O&M for the first year of period, i.e., 2014-15 and thereafter the O&M expenses shall be escalated at 11.5% per annum. The same will be trued up at the beginning of the next tariff period.

(c) The year-on-year escalation of 11.5% on mine-wise true up of O&M for 2013-14 considered by the Commission is not in line with the lignite transfer price guidelines 2014-19, as the guidelines are specified for pooled lignite mines.

(d) The year-wise impact due to wage revision for the years 2012-13 and 2013-14 are as under:

2013-14 Wage Revision Impact

(in Rs.)

Mines	After Wage Revision	Before Wage revision	Difference
Mine I (6.5)	1,858,069,448	1,648,593,896	209,475,552
Mine I E	1,143,427,352	1,014,519,321	128,908,031
Mine 1A	964,419,232	855,373,110	109,046,122
Mine II	3,184,541,391	2,825,369,655	359,171,736
Barsingsar Mine	4,228,739	3,746,654	482,085
Total NLCIL Mines	7,15,46,86,162	6,34,76,02,636	807,083,526
Total Neyveli Mines	7,15,04,57,423	6,34,38,55,982	80,66,01,441

(e) As per the above, the wage revision for Neyveli Mines, excluding the Barsingsar Mines, has been allowed for Rs 80,66,01,441. Out of this, Rs 35,91,71,736 pertains to Mine-II, which has been apportioned between Mine-II and Mine-II Expansion in the ratio of their capacity (105LT:45LT) for working out the Base O&M of 2013-14. The apportioned wage revision impact worked out was Rs 25,14,20,215 for Mine-II and Rs 10,77,51,521 for Mine II Expansion. Thus, the allowable O&M expenses for the period 2013-14 have been considered as under:

			Rs. In lakh
	Base O&M Without Wage Revision impact (As per order dated 20.3.2017 in Petition No. 149/MP/2015 (for 2013-14) and considered in para 39 of order dated 24.3.2022 in Petition No.452/MP/2019	Wage Revision Impact order dated 09-07-2018 in Petition No. 32/MP/2018	Total O&M of 2013-14 as admitted by Commission for the trued-up period 2009-14
A	**B**	**C**	**D**
Mine-I: Standalone	64,357.00	2,094.76	66,451.76
Mine-I (Expansion): Pooled	39,454.00	1,289.08	40,743.08
Mine-IA: Pooled	31,554.77	1,090.46	32,645.23
Mine-II: Pooled	81,644.76	2,514.20	84,158.96
Mine-II (Expansion): Pooled	34,990.93	1,077.52	36,068.45
Total Neyveli Mines	**252,001.46**	**8,066.01**	**260,067.47**
Total Pooled Mines	**1,87,644.46**	**5,971.26**	**1,93,615.72**

(f) The Commission may consider the O&M expenses along with the above wage revision impact as per Column D as the base year 2013-14 for the period 2014-19.

Table 1: Considered by *Commission in its order* ***(Rs. In lakh)***

Year	**Standalone**	**Pooled Mine**				
	Mine I	**Mine IE**	**Mine IA**	**Mine II**	**Mine IIE**	**Total**
Base Trued up O&M of 2013-14 considered						
2013-14	64357	39454	31554.8	81644.8	34990.93	1,87,644.46
O&M escalated at 11.5% allowed by Commission vide order dated 24.3.2022 in Petition No. 452/MP/2019						
2014-15	71758	43,991	35,184	91,034	39,015	2,09,224
2015-16	80010	49,050	39,230	1,01,503	43,502	2,33,284
2016-17	89211	54,691	43,741	1,13,176	48,504	2,60,112
2017-18	99471	60,980	48,771	1,26,191	54,082	2,90,025
2018-19	110910	67,993	54,380	1,40,703	60,302	3,23,378
Total entitlement						**13,16,022**

(g) The Commission has considered the truing-up of the O&M expenses on a year-wise and mine-wise basis, which is not in line with the lignite transfer price 2014-19 guidelines. Also, the wage revision impact, based on the Commission's order dated 9.7.2018 in Petition 32/MP/2018, has not been considered. The adoption of the O&M expenses, year-wise and mine-wise, is adversely affecting the determination of the lignite price.

(h) The total entitlement, after escalation, remains the same when calculated mine-wise and pooled-wise. The escalation working @ 11.50% on the pooled trued -up escalation for 2013-14 (based on the Commission's order with the wage revision impact) as per guidelines is as under:

(Rs. in lakh)

Mines	**Trued up 2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
Standalone (Mine I)	66,451.76	74,094	82,614	92,115	1,02,708	1,14,520	4,66,052
Pooled Mines	1,93,615.72	2,15,882	2,40,708	2,68,389	2,99,254	3,33,668	13,57,901

(i) Review Petitioner has adopted various cost control measures to bring down the O&M cost, which has restricted the O&M expenses as Rs 3,778 Cr of Mine I (Standalone Mine) and 12,812 Cr (pooled Mine) (with Power Cost impact) during the period 2014-19 against the entitlement of Rs.4,661 Cr in case of Mine I (Standalone Mine) Rs. 13,579 Cr in case of Pooled Mines. The Commission has allowed O&M expenditure of Rs 12210 Cr during the period 2014-19 by adopting the truing up year-wise and mine-wise against the total expenditure of Rs 12812 crore. As per LTP guidelines, the actual O&M will be trued up at the beginning of the next tariff period. Thus, truing-up of the O&M expenditure, year-wise and mine-wise, is not in line with the MOC guidelines and the wage revision impact has also not been considered.

(j) An example illustrating the impact of the same is submitted herewith for consideration of the Commission:

(Rs. in lakh)

Standalone Mines	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
O&M with 11.5% (A)	66451.76	74094	82614	92115	102708	114520	466,052
Actual (B)		71202	70089	75469	78065	82946	377771
Allowed in Order dated 26th April 2022 (C)		71202	70089	75469	78065	82946	377771

(Rs. In lakh)

Pooled Mines	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
O&M with 11.5% (A)	193615.72	215882	240708	268389	299254	333668	1357901
Actual (B)		231572	238656	268300	268869	273710	1281107
Lower of (A) & (B)		215882	238656	268300	268869	273710	1265417
Allowed in Order dated 26th April 2022 (C)		207524	226234	251863	261707	273710	1221038

(k) The Commission may consider the O&M expenses for the pooled Mine together with the wage revision impact for the base year 2013-14.

(l) While approving the O&M expenses in the truing-up exercise for the period 2014-19, the Commission had followed the principle of (lower of the normative and actuals) on mine-wise and year-wise basis, without the wage revision impact, instead of the pooled mine O&M expenses, for a tariff period. The Petitioner has taken various cost control and system improvement methods to minimise the cost. Truing- up exercise should be based on the operating norms fixed in the regulations and so that if the utility is doing better than the norms, it shall be rewarded, or conversely, if it operates at below the stipulated parameters, it will be penalized.

(m) The Nature of expenses in the mines is not uniform,; the pattern of expenditure changes from year to year, with the movement of mines, length of the conveyor belt deployed for transportation of lignite, and encountering the changing strata of mines along with the age of mining equipment. There are years in which more expenditure is incurred towards the replacement of spares due to their aging. Once the spares are changed, it will not be required to be changed in the next two to three years as per the life of the spares. Thus, the expenditure in one year will be on a higher side as compared to the next two to three years. Similarly, with the movement of the mines, the strata of the Mines also change, and with the encounter of hard strata, more explosives are consumed in that particular year in comparison to the other years.

(n) Due to the above diversity factor in the mining operations, it would be most appropriate to compare the normative allowance of O&M cost vis-a-vis the actual O&M expenditure on an aggregate basis for the tariff period of 5 years taken together rather than for each individual year by considering the normative or actual expenditure, whichever is lower, which will be very onerous for the mining business as explained above. The truing-up of the O&M expenses should be on a pooled basis for the mines in Neyveli taken together, instead of individual mines, considering the fact that the transfer price of lignite is being applied to the different linked power plants, on a pooled basis.

(o) The Commission may consider the most appropriate way of truing-up of the O&M expenses by considering the O&M expenses entitlement for a tariff period with regard to the actual pooled O&M expenses.

Reply of the Respondent TANGEDCO

26. The Respondent TANGEDCO has mainly submitted as under:

(a) The Petitioner had not sought to consider the same under O&M expenses in the main Petition viz., 452/MP/2019 filed for the truing-up of mines for the period 2014-19. This claim made is now only an afterthought, and a prayer that has not been included in the main Petition cannot be considered in the Review Petition.

(b) Without prejudice to the above observation the claim made now is not maintainable, and the Petitioner ought to have calculated the wage revision impact month-wise mine-wise, which can be linked to the power generation. The Petitioner had not furnished any such details.

(c) Further, a review petition is maintainable only on the grounds of discovery of new and important matter or evidence which was not within the knowledge or could not be produced by the Petitioner after the exercise of due diligence, or mistake or error apparent on the face of the record. Since the Review Petition has not been filed on either of the above grounds, the Petition is not admissible. Hence, the Review Petition filed by the Petitioner may be dismissed with costs.

(d) Since the APTEL judgment dated 25.7.2023 specifically states that the order is specifically applicable for the period 2009-14 and not beyond, the Review Petitioner's request to consider the same in IA No. 61/2023 may be rejected.

Rejoinder of the Review Petitioner

27. The Review Petitioner has clarified as under:

(a) The O&M expenses claimed in Petition No. 452/MP/2019 are actuals based on the audited accounts. While approving the O&M expenses for the period 2014-19, the Commission had considered the escalation @11.5% over the actual expenditure incurred in the base year, i.e., 2013-14. The Commission had restricted the O&M expenses to 11.5% calculated from the base year 2013-14, which has resulted in the decrease in the entitlement of O&M expenses for the period 2014-19.

(b) Although the Commission allowed recovering the impact of wage revision of non-executive employees separately, on a monthly basis, in the next tariff period, the base-year expenses were not rectified, considering the wage revision impact.

(c) O&M expenses incurred during the base year 2013-14 have to be corrected based on the Commission's order dated 9.7.2018, as the impact of the same would be reflected in the O&M expenses and the component of working capital in the subsequent tariff periods.

(d) Hence, the Respondent's submission is devoid of merits and liable to be rejected. The impact of the wage revision for the non-executive employees may be considered while calculating base year expenses for 2013-14 and the O&M expenses and other related expenses for the subsequent years may be calculated, escalating the revised base year expenses.

Reply of the Respondent KSEBL

28. The Respondent KSEBL has submitted that as per the MOC guidelines, in case the actual O&M expenses are more than 11.5%, they shall be restricted to 11.5%, and in case lesser than 11.5%, they shall be considered on the actuals, for truing-up purposes. Further, the Petitioner in Petition 65/MP/2013, while seeking the increase in the O&M expenses incurred by NLC mines on account of the wage revision, had considered and determined the O&M expenses by taking the mine-wise cost. Therefore, the mine- wise cost has to be considered for arriving at the pooled cost.

Rejoinder of the Review Petitioner

29. In its rejoinder to the reply of the Respondent KSEBL, the Review Petitioner has submitted that 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 the actual cost basis. This is as per the provisions of the MOC guidelines dated 11.6.2009. As the MOC guidelines dated 11.6.2009 and 2.1.2015 are similar, the said methodology ought to be applied in the present case. The Review Petitioner has added that it was for this purpose that the Commission had held that the decision for the period 2014-19 with regard to the O&M expenses was subject to the decision of

the APTEL in Appeal No. 185 of 2017 field by the Review Petitioner, which was then pending.

Analysis and Decision

30. We have considered the submission of the parties and the documents available on record. It is pertinent to mention that the Review Petitioner has earlier filed Petition No. 149/MP/2015 for revision of Lignite Transfer Price of NLC Mines for the period 2009-14 on account of truing up of the additional capital expenditure, O&M expenses, Income Tax, Return on Equity and FERV as per the guidelines of the Ministry of Coal, GOI on fixation of Transfer Price of Lignite and the Commission disposed of the same vide its order dated 20.3.2017. In respect of the Review Petitioner's claim for the impact of wage revision for non-executives and labourers of NLC with effect from 1.1.2012 at actuals, the Commission, in the said order dated 20.3.2017 had decided as under:

> *"32. The wage revision for non-executives and labours has not been quantified and therefore, in the absence of complete details with regard to impact of wage revision, the claim cannot be decided in this order. However, the petitioner is granted liberty to approach the Commission with all relevant details in accordance with law"*

31. Further, as regards the claim of the Petitioner for O&M expenses for the individual mines for the period 2009-14 in the said petition, the Commission, in its order dated 20.3.2017, decided as under:

> *"25. The Ministry of Coal vide its guidelines dated 11.6.2009 has specified 11.5% as ceiling for escalation. Accordingly, in case, the actual O&M expenses are more than 11.5%, they shall be restricted to 11.5% and in case, O&M expenses are less than 11.5%, they shall be considered on actual for truing up purpose. Therefore, we are of the considered view that the escalation of the O&M expenses exceeding the ceiling of 11.5% on actual shall be restricted to 11.5% as per the MOC guidelines dated 11.6.2009.*
>
> *26. With regard to the O&M cost of the Mine-I (standalone) and Mine-I (Expansion), there will be no change in the O&M cost of the Mine-I and Mine-I (Expansion) as the increase in the O&M cost for the period 2009-14 is within the escalation rate of 11.5% on previous years actuals O&M expenses of Mine-II for the years 2009-10 and 2010-11 are Rs. 75694 lakh and Rs 65361 lakh respectively. Since, there is a substantial reduction in the O&M expenses of Mine-II during 2010-11 from previous year 2009-10 which has been justified, the O&M cost of Mine-II for the year 2009-10 has been*

back calculated and restricted to Rs 58619.73 lakh. Accordingly, the increase in the O&M expenditure for Mine-II and Mine-II(Expansion) for the year 2013-14 on actual is restricted to @11.5% as under:
XXX

32. Aggrieved by the Commission's order dated 20.3.2017 on the computation of the O&M expenses for the period 2009-14, the Review Petitioner filed Appeal No.185/2017 before the APTEL and contended that the Commission, instead of applying the earlier modality of pooling-up, had applied the modality of taking the actual cost of lignite or 11.5% whichever is less, for each mine separately for the purpose of computation of O&M expenses.

33. During the pendency of the said appeal, the Review Petitioner had filed Petition No. 32/MP/2018 claiming the increase in the O&M expenses incurred by NLCIL's Mines on account of the wage revision and other pay hikes with effect from 1.1.2012 to its employees (non-executives and workmen) posted in the NLCIL Mines linked to its power stations, and also to allow the appropriate adjustment of money due from/payable to the beneficiaries of NLCIL stations for the period 1.1.2012 to 31.3.2014. The Commission, vide its order dated 9.7.2018 in Petition No. 32/MP/2018, allowed the wage revision impact of non-executives pertaining to NLCIL mines on the basis of the quantity of the lignite consumed for power generation. The relevant portion of the order is extracted below:

"26. As such, the Petitioner is directed to first calculate the month-wise and mine-wise increase in Lignite Transfer Price (Rs/MT) corresponding to wage revision impact which can be linked to power generation. Then based on this increase in Lignite Transfer price (LTP), month-wise recovery corresponding to schedule energy from each generating station, based on operating parameters and source of supply shall be calculated. Summation of these month-wise/station-wise recoveries for the period in question i.e 1.1.2012 to 31.03.2014 shall be recovered from the beneficiaries in twelve equal instalments starting from the month of issue of this order"

34. Thereafter, APTEL, vide its judgment dated 25.7.2023 in Appeal No. 185/2017, set aside the appeal with regard to the computation of O&M expenses (as stated

in para 32 above) and remanded the matter to the Commission for fresh consideration. The relevant portion of the judgment is extracted below:

> *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 had 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 year period 2009-14 were taken as the basis, then the O& M expenses would be Rs. 8,968 crores, which would be far 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 changed 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. <u>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 years period 2009-14, at the true up stage also taking the actual cost into consideration.</u>*
>
> *<u>Xxx</u>*
>
> *<u>………..Suffice it to also make it clear that the opinion expressed in this order is only in the context of the five year period 2009-2014, and not beyond. The appeal stands disposed of accordingly.</u>*

35. We notice that the Respondent TANGEDCO has raised objections stating that the prayer of the Review Petitioner to consider the O&M expenses for the pooled Mines together with the wage revision impact for the base year 2013-14, were not sought in Petition No.452/MP/2019 and therefore, the prayer of the Review Petitioner, seeking the same in the Review Petition is not maintainable. The Respondent has also submitted that in terms of the observations of APTEL in its judgment dated 25.7.2023, the implementation of the judgment dated 25.7.2023 (for the period 2009-14) cannot be made applicable for the period 2014-19 in this petition. The Review Petitioner has contended that the impact of wage revision for non-executives for the period 2012-14 was not considered in the base O&M for the year 2013-14, and the imposition of 11.5% escalation year on year is contrary to the MOC guidelines dated 2.1.2015, applicable

for the period 2014-19. We have examined the matter. The Review Petitioner has certified that the impact of wage revision has not been billed to the beneficiaries by considering the increased lignite transfer price for the period 2011-12 to 2013-14. It is pertinent to note that the provisions of the MOC guidelines dated 11.6.2009 (for 2009-14) are similar to the provisions of the MOC guidelines dated 2.1.2015 (applicable for 2014-19). While clause 4.5 of the MOC guidelines dated 11.6.2009 states that the normative escalation rate of 11.5% per annum would be provided for the period 2009-14 and the O&M expenses would be trued up at the beginning of the next tariff period, clause 8(v) of the MOC guidelines dated 2.1.2015 provides as under:

> *"8.(v) Considering the impact of wage revision which cannot be quantified at this stage and adverse stripping ratios of OB beyond the normative level as considered in FR necessitating outsourcing, these factors shall not be part of normal O & M expenditure. Moreover, in the absence of truing up claim of lignite by NLC for 2009-14, the proposal of NLC to enhance escalation from 11.55 to 13% is not agreeable. Therefore, the prevailing rate of 11.55 shall continue.*
>
> *Actual O&M expenses (excluding expenditure incurred on OB removal at Neyveli through outsourcing) incurred in 2013-14 with 11.5 escalation shall be the base O&M for 2014-15 and thereafter escalated at 11.5% p.a. The same will be trued up at the begininig of the next tariff period.*
>
> *Xxxx*
>
> *...As the impact of wage revision of workers from 1.1.2012 cannot be quantified and included in the tariff at this point of time. Hence, as and when the same is finalized, NLC shall claim at actual. However, NLC shall take maximum care at the time of negotiation with workmen unions to keep the wage increase to the minimum."*

36. In view of the above, it is clear that the 11.5% escalation allowed by MOC in the O&M expenses of mines for computing lignite transfer price for the period 2009-14 did not include the wage revision impact for the period 2012-14 as submitted by the Review Petitioner. With regard to the non-applicability of the APTEL judgment dated 25.7.2023 in the present case, as contended by the Respondent TANGEDCO, we note that the Commission's methodology of computing the O&M expenses mine wise (instead of pooled basis) with a normative escalation of 11.5% or actuals, whichever is less, for the period 2009-14 was set aside the APTEL in its judgment dated

25.7.2023, stating that the methodology adopted at the tariff determination stage, cannot be changed to the detriment of the appellant (NLCIL) at the truing-up change. The relevant portion of the judgment is extracted below:

> *"Consequently, the modality adopted at the tariff determination stage of pooling lignite, procured by the Appellant from all is mines, and the amount so arrived at being apportioned equally among all its generating stations, ought to have been applied at the true up stage also. The change in methodology, which is detriment of the appellant, is therefore liable to be set-aside.*
>
> *We must express our inability to agree. A plain reading of clause 4.5 of the GOI order dated 11.6.2009, does not accord with this submission. All that was state therein is that 11.5%escaltaion per annuum would be provided for the period 2009-14 and O&M expenses would be trued up at the beginning of the next tariff period. The only manner in which O&M expenses can be trued up is on the basis of actuals, and not at the normative rate of 11.5% per annum."*
>
> *Xxx*

37. Admittedly, the Commission, in its order dated 24.3.2022/26.4.2022 in Petition No.452/MP/2019 for truing-up of the O&M expenses for the period 2014-19, had changed the methodology of computation of the O&M expenses, by considering the cost of mine separately and not on a pooled basis and applying the principle of normative escalation of 11.5% or actuals, whichever is lower. This change in methodology at the time of truing-up was set aside by APTEL's judgment dated 25.7.2023 and is squarely applicable to the present case. Keeping in view that the MOC guidelines dated 2.1.2015 provide for consideration of the O&M expenses on a pooled lignite mine basis and that the O&M expenses allowed for the year 2013-14 will form the base O&M expenses for computation for the period 2014-19, we hold that the APTEL judgment is squarely applicable to the present case. Even otherwise, it is observed that the Commission, in its order dated 30.11.2022 in Petition No. 17/RP/2022 (present review petition), had decided that the issue of O&M expenses on the transfer price of lignite was subject to the decision of the APTEL in Appeal No. 185 of 2017. No review or appeal has been filed by the Respondent TANGEDCO on the said decision. Accordingly, the contentions of the Respondent TANGEDCO stand

rejected. In term of the above discussions, the actual O&M expenses incurred in 2013-14 with 11.5% escalation, shall be the base O&M for the first year of the tariff period, i.e., 2014-15 and thereafter, the O&M expenses shall be escalated at 11.5% per annum. IA is disposed of accordingly.

38. The O&M expenses allowed for the Pooled mines in the orders dated 14.3.2024 and 6.4.2024 in IA No. 62/2023 (in Petition No. 149/MP/2015) for the period 2009-14, computed based on the APTEL judgment dated 25.7.2023 are as under:

(Rs. in lakh)

O&M Cost	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Pooled Mines	124848	148806	168008	179482	213721

39. In an order dated 26.4.2022 (corrigendum to order dated 24.3.2022) in Petition No. 452/MP/2019, the total O&M expenses allowed for the Standalone as well as pooled mines for the period 2014-19 are as under:

(Rs. in lakh)

Net allowable O&M expenses (after adjustment of the revised power cost)					
	2014-15	2015-16	2016-17	2017-18	2018-19
Standalone Mines					
Mine I	70958	69559	75295	77882	83143
Pooled Mines					
Mine I Expansion	42118	41746	46382	47939	51167
Mine 1A	35053	38327	43243	48398	50635
Mine II	90322	100322	112880	114870	121247
Mine II Exp	38710	42996	48378	49229	51963
Total of Pooled Mines	206204	**223391**	**250883**	**260436**	**275011**

40. Considering the fact that the base O&M expenses for the year 2013-14 were revised by the Commission's order dated 14.3.2024 read with the corrigendum order dated 6.4.2024 in IA No. 62/2023 (in Petition No. 149/MP/2015). The O&M expenses for the period 2014-19 will also undergo further revision, considering the pooled O&M expenses of the mines.

41. The O&M expenses of Mine-I and pooled mines, on actuals, claimed by the Review Petitioner for the period 2014-19 is as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Standalone Mines					
Mine I	71,202	70,089	75,469	78,065	82,946
Mine I E	42,292	42,000	46,442	48,040	51,044
Mine 1A	41,964	46,763	58,329	55,934	50,440
Mine II	1,03,121	1,05,632	1,14,533	1,15,427	1,20,558
Mine II Expn	44,195	44,261	49,086	49,468	51,668

42. For the period 2014-19, the O&M cost of the mines will undergo further revision as per the principle laid down in the order dated 14.3.2024 read with corrigendum order dated 6.4.2024 in IA No. 62/2023 (in Petition No. 149/MP/2015) in line with APTEL judgment dated 25.7.2023 in Appeal No. 185 of 2017, by considering the actual O&M cost of the mines for the period of 2014-19.

43. The O&M expenses of Mine-I and Pooled mines on actuals allowed for the period 2014-19 after iterative adjustment of Power cost are as under:

(Rs. in lakh)

Standalone Mines					
	2014-15	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Mine-I	71166.37	69667.62	75446.22	77958.32	83160.04
Pooled Mines O&M Cost actuals					
Mine	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**
MINE - IE	42281.43	41830.60	46495.44	47988.88	51180.43
MINE-1A	41874.64	45907.91	57871.58	55592.85	50611.00
MINE-II	103077.58	104846.44	114798.22	115145.61	121321.79
Mine II E	44175.92	43924.20	49199.76	49347.43	51995.05
Total	**231409.58**	**236509.15**	**268365.00**	**268074.77**	**275108.27**

Issue (C): <u>Disallowance of Stores for the purpose of interest on working capital instead of allowed stores and spares. Also, the methodology adopted for arriving the Mines portion of spares is not in line with the actual consumption Stores & Spares in Mines (para 58).</u>

44. As regards working capital, the MOC guidelines dated 2.1.2015 provide that the working capital shall cover:

a. One-month Operation & Maintenance Expenses
b. 12 months Consumption of Spares
c. 20 days Lignite stock at cost as on 31st March of the preceding year"

45. The Commission, in the impugned order dated 24.3.2022, decided as under*:*

"58. It is observed that the Petitioner has claimed amounts towards consumption of Stores and Spares instead of consumption of Spares, which is only allowable in terms of the Ministry of Coal guidelines dated 2.1.2015. In view of this, the corresponding Stores and Spares Consumption amounts for the Petitioner Company (including power generation and mining segments) for the period 2014-19, has been verified from the financial statements (as published in respective annual reports) of the Petitioner NLCIL and are tabulated under"

Submissions of the Review Petitioner

46. As regards the disallowance of Stores for the purpose of working capital, the Review Petitioner has mainly submitted the following:

(a) As per definition, working capital means the cycle which starts from the Procurement of material, deployment of labour, consumption of power/fuel, stores & Spares and processing expenditure to convert the raw material to finished Good & Sales of the finished good, till the realization of money from customer. In the mining industry OB Removal, Consumption of diesel, Petrol, Explosives, teeth and other spares are required for the extraction of the lignite from Mines. Thus, the requirement of Diesel, Petrol, and Explosives, which are covered under stores, are very much essential for bringing out the lignite, and hence the exclusion of the same from the computation of working capital is not in order and the financial terminology that defines working capital. It can be said that both Stores & Spares are required for day to day operations of Mines.

(b) In all the orders issued by this Commission for the periods 2004-09 and 2009-14, there was no discrimination between the expenditure on Stores and expenditure on Spares. In the annual financial statement, the following expenditure is shown as consumption of Stores & Spares and expenditure on Spares for the period 2014-19:

(Rs in lakh)

	2014- 15	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
Consumption of Stores and Spares Company as whole	63269	53549	61974	50576	51412	**280780**
Expenditure on Spares of Company as whole	45455	36776	53973	42732	41260	**220196**

(c) Till 2017-18 as per accounting policy, Expenditure on Teeth was booked under miscellaneous expenditure. It was not shown under Consumption of Stores and Spares expenditure as per the annual financial statement. With the change in accounting policy, the same is shown under Consumption of stores and spares expenditure from 2018-19. So, the consideration of expenditure on Stores and Spares from the annual financial statement is not in line. It may be noted that the above expenditure is for the Company as a whole.

(d) Neyveli Mines has a higher portion in expenditure on Stores & Spares together as well as only on spares portion also. Actual expenditure on spares is much higher in actual as compared to the ratio, so the allocation of expenditure based on the Gross Block of assets is not wise. Even if Commission wanted to allow only spares expenditure it may have allowed based on actuals not on Gross Block asset ratio.

(e) The intent of the MOC guidelines with the literal meaning of spares, includes consumables and spares and not only spares excluding consumables. Hence, the methodology adopted by the Commission for segregating spares of mines and thermal is not in the line and spirit of the regulation and needs to be re-looked and the actual expenses of stores and spares may be considered for computation of working capital.

Reply of the Respondent TANGEDCO

47. The Respondent TANGEDCO has mainly submitted as under:

(a) The Commission has rightfully admitted the claims for interest on working capital for Spares alone as per MOC guidelines dated 2.1.2015.

(b) In the said orders for the periods 2004-09 and 2009-14, the Commission had not dealt with the issue of applicability of Spares/Stores on interest on working capital. The Petitioner has never highlighted that they had claimed both spares and stores under the head 'interest on working capital'. Similarly, the Commission has not dealt with the admittance of claims under 'interest on working capital' for mines thread bare based on the submissions made by the Petitioner.

(c) MOC has considered only the consumption of spares all along the formation of guidelines. The Petitioner has not objected to the guidelines so far during the last ten years for not including both spares and stores under the 'interest on working capital', as they were enjoying both spares and stores under IWC so far, even when the guidelines have narrowed down only to spares.

(d) As regards the submission of the Review Petitioner that the requirement of Diesel, Petrol, Explosives, and teeth, which are covered under stores, are very much essential for bringing out lignite, have not been considered while allowing IWC, it is submitted that all the above categories of items are consumables in nature and are to be booked under O&M expenses meant for the mines.

(e) The Petitioner has stated that the Commission has allowed spare expenditure in the ratio of Gross Block of respective Mine, based on the Audit Certificate submitted for Gross Block of the asset. The certificate was submitted for additional capitalization and not for the spares expenditure computation ratio.

The Petitioner has also stated that the actual expenditure on spares is much higher in actual as compared to the ratio, so the allocation of expenditure based on the Gross Block of assets is not correct. It is submitted that the normative expenses are allowed only on the Gross Block of assets and not on actuals as claimed by the Review Petitioner. This is in consonance with the stand taken by the Commission in retaining the O&M expenses with 11.5% expenses based on MOC guidelines and not based on the actual claim made by the Review Petitioner in Petition 452/MP/2019 as well in the Review Petition.

Rejoinder of the Review Petitioner

48. The Review Petitioner, in its rejoinder, has mainly submitted as under:

(a) The intent of the MOC guidelines with the literal meaning of spares includes ‘consumables and spares’ and not ‘only spares’ excluding ‘consumables. Hence, the actual expenses for both stores and spares had been considered for computation of working capital in the main petition

(b) Working capital means the cycle that starts from the procurement of material, deployment of labour, consumption of power/fuel, stores & spares, including processing expenditure to convert the raw material to finished goods, sales of the finished good till the realization of money from the customer.

(c) In the mining industry, consumption of diesel, petrol, explosives, teeth, and other spares are required for OB removal and extraction of lignite from mines. Thus, the requirement of diesel, petrol, and explosives, which are covered under stores are very much essential for extracting lignite from mines. Thus, the consumption of stores is an integral part of working capital and is covered under the “Stores and Spares” in accounting and financial terminology. Expenditure on stores is required for day-to-day operations like teeth, diesel, petrol, etc., which are used in mines. It can be said that both Stores & Spares are required for day to day operations of mines.

(d) Based on the above, it is unerring to consider the actual consumption of “Stores and Spares” together instead of only “spares,” as has been followed by the Commission since the previous control periods.

Analysis and Decision

49. We have examined the submissions of the parties. The Commission in the impugned order dated 24.3.2022, had disallowed the claim for consumption of stores in line with literal meaning under the MOC guidelines dated 2.1.2015. However, it is pertinent to mention that the Commission, in its orders for the periods 2004-09 and

2009-14, had not made any demarcation between the consumption of Stores and the consumption of Spares for the purpose of working capital. Also, the MOC guidelines do not provide for such demarcation. It is pertinent to mention that working capital is a very important aspect of any business and is the money available to meet the current and short-term obligations. It is a known fact that, particularly in the mining industry, Overburden removal, Consumption of Diesel, Petrol, and Explosives, along with other spare parts, are required for the extraction of lignite from Mines. Further, the requirement of Diesel, Petrol, and Explosives are very much essential for the excavation of lignite and are covered under Stores. In our view, these aspects were not taken into consideration while computing the interest on working capital in the impugned order dated 24.3.2022. This, according to us, is an error apparent on the face of the order, and review on this ground is therefore maintainable. Accordingly, review on this ground is allowed and for the purpose of working capital, the consumption of Stores is required to be considered along with the consumption of Spares. We direct accordingly.

50. In the light of the above observations, the total interest on Working Capital as allowed is as under:

(Rs. in lakh)

	2014-15	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Stores & Spares for Standalone Mine	10423.43	9314.51	9522.18	8119.51	8416.17
Stores & Spares for Pooled Mines	43222.56	33786.47	38214.64	29534.65	27824.11
Working Capital for Standalone Mine	20022.35	19070.29	20547.34	19916.80	20672.16
Working Capital for Pooled Mines	74495.96	66807.85	77196.94	69666.77	67064.84
IWC for Standalone Mine	2703.02	2574.49	2773.89	2688.77	2790.74
IWC for Pooled Mines	10056.95	9019.06	10421.59	9405.01	9053.75

51. In view of the above considerations, the Lignite transfer price for NLCIL mines (standalone and pooled mines) for the period 2014-19 is allowed as under:

Standalone Mine-I						
	UoM	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**
100% Capacity	*LTs*	65.00	65.00	65.00	65.00	65.00
85% Capacity	*LTs*	55.25	55.25	55.25	55.25	55.25
O&M Cost	*Rs in Lakh*	71166.37	69667.62	75446.22	77958.32	83160.04
OB Removal (Outsourcing)	*Rs in Lakh*	2627.44	2896.17	5772.87	10095.08	6285.96
Interest**:**						
KFW Loan	*Rs in Lakh*	18.36	17.53	16.70	15.86	15.03
Working Capital	*Rs in Lakh*	2703.02	2574.49	2773.89	2688.77	2790.74
Depreciation & Amortisation	*Rs in Lakh*	2500.62	2401.58	2545.05	3723.81	3325.09
Mine Closure Expenses	*Rs in Lakh*	812.02	852.61	895.25	940.01	987.01
ROE - 15.5%	*Rs in Lakh*	10853.09	11798.55	11,826.13	12496.38	12816.14
Total before Statutory Payments#	*Rs in Lakh*	90680.92	90208.56	99276.11	107918.23	109380.01
Trued up Price	*Rs/ Tonne*	**1641.28**	**1632.73**	**1796.85**	**1953.27**	**1979.73**

Pooled Mines						
Year: 2014-15		**MINE - IE**	**MINE-1A**	**MINE-II**	**Mine II E**	**Total**
100% Capacity	*LTs*	40	30	105	45	220
85% Capacity	*LTs*	34	26	89	38	187
O&M Cost	*Rs in Lakh*	42281.43	41874.64	103077.58	44175.92	231409.57
O&B Removal	*Rs in Lakh*	1616.88	155.64	0.00	0.00	1772.53
Interest:						
On Debt	*Rs in Lakh*	156.86	7.06	5.36	8,478.96	8,648.25
Working Capital	*Rs in Lakh*	1646.24	1757.14	4657.50	1996.07	10056.95
Depn. & Amortisation	*Rs in Lakh*	4214.34	1406.46	5656.65	10725.30	22002.75
Cost of Mine Closure	*Rs in Lakh*	499.71	199.77	1,028.62	440.84	2,168.93
ROE	*Rs in Lakh*	4756.47	5315.85	17247.30	14723.17	42042.79
Total before Royalty	*Rs in Lakh*	**55171.93**	**50716.57**	**131673.02**	**80540.25**	**318101.77**
Base Price	*Rs/Tonne*					***1701.08***
Pooled Mines						
Year: 2015-16		**MINE - IE**	**MINE-1A**	**MINE-II**	**Mine II E**	**Total**
100% Capacity	*LTs*	40	30	105	45	220
85% Capacity	*LTs*	34	26	89	38	187
O&M Cost	*Rs in Lakh*	41830.60	45907.91	104846.44	43924.20	236509.15
OB Removal	*Rs in Lakh*	1782.26	0.00	2733.26	1171.40	5686.92
Interest:						
On Debt	*Rs in Lakh*	150.04	6.74	5.12	7,871.25	8,033.15
Working Capital	*Rs in Lakh*	1571.57	1858.38	3920.33	1668.78	9019.06
Depreciation & Amortisation	*Rs in Lakh*	4192.76	1688.17	6977.41	11300.13	24158.47
Mine Closure Expenses	*Rs in Lakh*	524.69	209.75	1,080.04	462.88	2,277.36
ROE	*Rs in Lakh*	4880.64	5381.60	20723.16	15486.87	46472.26
Total before Royalty	*Rs in Lakh*	**54932.56**	**55052.55**	**140285.78**	**81885.50**	**332156.38**
Base Price	*Rs/Tonne*					***1776.24***
Pooled Mines						
Year:2016-17		**MINE - IE**	**MINE-1A**	**MINE-II**	**Mine II E**	**Total**
100% Capacity	*LTs*	40	30	105	45	220
85% Capacity	*LTs*	34	26	89	38	187
O&M Cost	*Rs in Lakh*	46495.44	57871.58	114798.22	49199.76	268365.00
O&B Removal	*Rs in Lakh*	3552.53	0.00	) 5605.46	2402.34	11560.33

Interest:						
On Debt	*Rs in Lakh*	143.22	6.42	4.88	6,828.09	6,982.61
Working Capital	*Rs in Lakh*	1707.00	2094.95	4633.74	1985.90	10421.59
Depn & Amortisation	*Rs in Lakh*	4272.96	1052.76	8478.76	11384.94	25189.42
Cost of Mine Closure	*Rs in Lakh*	550.92	220.24	1,134.08	486.04	2391.28
ROE	*Rs in Lakh*	4454.42	5442.34	23352.41	16064.03	49313.20
Total	*Rs in Lakh*	**61176.50**	**66688.29**	**158007.55**	**88351.09**	**374223.42**
Base Price	*Rs/Tonne*					***2001.09***
Pooled Mines						
Year:2017-18		**MINE - IE**	**MINE-1A**	**MINE-II**	**Mine II E**	**Total**
100% Capacity	*LTs*	40	30	105	45	220
85% Capacity	*LTs*	34	26	89	38	187
O&M Cost	*Rs in Lakh*	47988.88	55592.85	115145.61	49347.43	268074.77
O&B Removal	*Rs in Lakh*	6212.36	0.00	5276.99	2261.57	13750.91
Interest:						
On Debt	*Rs in Lakh*	136.40	6.10	4.63	5804.57	5951.70
Working Capital	*Rs in Lakh*	1616.60	1752.17	4225.37	1810.87	9405.01
Depreciation & Amortisation	*Rs in Lakh*	3548.12	2351.70	12839.70	11957.51	30697.02
Cost of Mine Closure	*Rs in Lakh*	578.47	231.25	1190.75	510.32	2510.80
ROE	*Rs in Lakh*	4,596.46	5,376.09	24,032.39	16,479.91	50,484.85
Total	*Rs in Lakh*	**64677.28**	**65310.16**	**162715.43**	**88172.17**	**380875.05**
Base Price	*Rs/Tonne*					***2036.76***
Pooled Mines						
Year:2018-19		**MINE - IE**	**MINE-1A**	**MINE-II**	**Mine II E**	**Total**
100% Capacity	*LTs*	40	30	105	45	220
85% Capacity	*LTs*	34	26	89	38	187
O&M Cost	*Rs in Lakh*	51180.43	50611.00	121321.79	51995.05	275108.27
O&B Removal	*Rs in Lakh*	3868.28	5144.29	3248.13	1392.06	13652.76
Interest:						
On Debt	*Rs in Lakh*	129.58	5.78	4.39	5219.55	5359.30
Working Capital	*Rs in Lakh*	1641.62	1594.45	4072.38	1745.31	9053.75
Depreciation & Amortisation	*Rs in Lakh*	3752.43	1828.48	7706.89	11186.28	24474.07
Cost of Mine Closure	*Rs in Lakh*	607.39	242.82	1250.29	535.84	2636.33
ROE	*Rs in Lakh*	4624.60	5199.58	23446.79	16787.50	50058.47
Total before Royalty	*Rs in Lakh*	**65804.33**	**64626.39**	**161050.66**	**88861.58**	**380342.96**
Base Price	*Rs/Tonne*					**2033.92**

52. Accordingly, the base lignite transfer price (excluding royalty, statutory charges, and taxes & duties) as allowed vide corrigendum order dated 26.4.2022 in Petition No. 452/MP/2019 and as allowed in the present petition is as under:

(Rs/Tonne)

Standalone Mine						
		2014-15	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Mine-I	Base lignite transfer price as allowed in corrigendum order dated 26.4.2022	1623	1615	1781	1940	1966
	Base lignite transfer price as allowed in present Review Petition	**1641.28**	**1632.73**	**1796.85**	**1953.27**	**1979.73**

Pooled Mines						
Mine-I (Expansion), Mine-IA, Mine-II, Mine-II (Expansion)	Base lignite transfer price as allowed in corrigendum order dated 26.4.2022	1547	1689	1891	1983	2021
	Base lignite transfer price as allowed in the present Review Petition	**1701.08**	**1776.24**	**2001.19**	**2036.76**	**2033.92**

53. Review Petition No. 17/RP/2022 (in Petition No.452/MP/2019) along with IA No. 61/2023, is disposed of in terms of the above.

Sd/-	Sd/-	Sd/-
(Pravas Kumar Singh)	**(Arun Goyal)**	**(Jishnu Barua)**
Member	**Member**	**Chairperson**