

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

IA NOs. 1157 OF 2017 & 1759 OF 2018

IN

APPEAL NO. 379 OF 2017

Dated: 31st January, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

TANGEDCO

Vs.

Central Electricity Regulatory Commission & Ors.

...Appellant(s)

...Respondent(s)

Counsel for the Appellant(s) : Mr. G. Umapathy
Mr. S. Vallinayagam
Ms. S. Amali
Mr. Jayaprakash

Counsel for the Respondent(s) : Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Mr. Shubham Arya a/w
Mr. J. Shanasekaran (Rep.)
for R.2

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

1. The issue involved in the main appeal pertains to prudence check made by Respondent No.1-Central Commission towards lignite transfer price arrived at by Respondent No.2 on the basis of guidelines issued by the Ministry of Coal and the consequential tariff claimed by Respondent

No.2 in respect of thermal generating stations TPS II, Stage I and Stage II.

2. A petition came to be filed by Respondent No.2 / Neyveli Lignite Corporation (for short “**NLC**”) for approval of annual fixed charges and energy charges for the period between 2014-2019 towards TPS-II, Stage-I (630 MW) and Stage-II (840 MW) (hereinafter referred to as “the generating station”). The dates of commercial operation of the three units with a capacity of 210 MW each in the Stage-I and four units with a capacity of 210 MW each in the Stage-II are as under:

Stage-I		Stage-II	
Unit-I	29.9.1986	Unit-I	25.1.1992
Unit-II	8.5.1987	Unit-II	2.6.1992
Unit-III	<u>23.4.1988</u>	Unit-III	17.3.1993
		Unit-IV	9.4.1994

IA No. 1157 of 2017

3. This Application is filed by the Appellant-TANGEDCO seeking following reliefs:

- (a) *Stay the operation of the impugned order dated 08.03.2017 passed by the Central Electricity Regulatory Commission in 256/GT/2014 till the disposal of the appeal;*
- (b) *In the alternative restrain the second respondent from claiming surcharge from the appellant and adjusting the payments made by the appellant towards arrears;*

(c) *Pass any other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case.*

4. Tariff petition filed by NLC involved prudence check of lignite transfer price of the mines owned and operated by NLC and the tariff of electricity generated at its thermal power station. According to the Appellant, Central Commission fixed the lignite transfer price without appreciating the fact that NLC did not bring on record reliable documents to show how it arrived at the lignite transfer price based on Ministry of Coal guidelines of January 2015. It is further contended that based on auditors' certificate of NLC, the figures are arrived at. Central Commission ought to have asked as to how the calculations were made by the auditors in arriving at the figures while granting the certificate. If prudence check is not conducted, the entire cost of lignite transfer price becomes a pass through and has to be borne by the consumers, who had no opportunity to raise objections at the time of determining transfer price of lignite.

5. According to the Appellant, there is difference in the lignite price quoted by NLC and the lignite price approved by the Central

Commission in the impugned order dated 08.03.2017 in 256/GT/2014.

Pooled Mines

Period	Price of lignite quoted by NLC in their affidavit. (Rs. per Tonne)	Price approved by CERC in its order dt.8.3.17 (Rs. per Tonne)
April 2016 to December 2016	Rs.2066 (Rs.1949 base price + Rs.117 royalty)	Rs.2329 (incl. Of royalty)
From January 2017	Rs.2173 (Rs.2050 base price + Rs.123 royalty)	Rs.2329 (incl. Of royalty)

Standalone Mine-I

Period	Price of lignite quoted by NLC in their affidavit. Rs. per Tonne)	Price approved by CERC in its order dt.08.03.17 (Rs. per Tonne)
April 2016 to December 2016	Rs.2066 (Rs.1949base price + Rs.117 royalty)	Rs.2312 (incl. Of royalty)
From January 2017	Rs.2173 (Rs.2050 base price + Rs.123 royalty)	Rs.2312 (incl. Of royalty)

6. On 10.05.2017 and 03.06.2017 the Appellant did ask Respondent No.2-generator to clarify on the above difference of lignite price for the purpose of calculating the tariff vis-a-vis transfer price of lignite. In reply, Respondent No.2 on 13.06.2017 in its letter stated that the Central Commission has approved the rate of Rs.2329/- per ton (including

royalty as the pooled price of lignite) as the pooled price of lignite for the period from 01.04.2016 to 31.03.2017, NLC has chosen to charge only Rs.2066 (including royalty) for the period from 01.04.2016 to 31.12.2016 and due to expenses related to wage revision the lignite price for the period from 01.01.2017 to 31.03.2017 is fixed at Rs.2173/- (including royalty). Further NLC has also informed that the above prices will be trued up at the beginning of the next tariff period – 2017-2018. Therefore, the Appellant contends that the intention of claiming a lesser rate of lignite price by Respondent No.2 than the price approved by the Central Commission was mainly to retain a more preferable position in the Merit Order Dispatch so that the generator would get dispatch instruction and to run all its thermal stations for the time being and to claim the arrears at a future period. They further contend that the volition act of Respondent No.2 in reducing the lignite transfer price clearly establishes that pooled price for lignite transfer claimed by Respondent No.2 is inflated, which is reflected in the certificates issued by Chartered Accountants of Respondent No.2 forming the basis of the claim of the tariff petition and seems to be false, therefore, they contend that the tariff order deserves to be set aside on this ground alone.

7. Further, Respondent No.2 by letter dated 12.09.2017 informed the Appellant that it had adjusted majority of the payments made by the

Appellant towards tariff under arrears/surcharge on tariff. The tariff order does not provide for any surcharge which could be calculated by Respondent No.2 by devising its own methods of tariff process. The claims of Respondent No.2 towards further surcharge by letters dated 06.10.2017 and 03.11.2017 are not *bona fide* figures. The claim for lignite price never came to be substantiated by Respondent No.2 before the Central Commission, therefore, tariff order implementation deserves to be stayed till disposal of the present appeal is the stand of the Appellant. In fact, the specific prayers are made in this application to that effect, which reads as under:

IA No. 1759 of 2018

8. This Application came to be filed by Respondent No.2-NLC seeking the following reliefs:

- (a) dismiss the application IA No. 1157 of 2017 filed by the Appellant-TANGEDCO for interim Orders;
- (b) direct the Appellant-TANGEDCO to pay the outstanding amount as on 30.11.2018 within a time to be specified by this Hon'ble Tribunal; and
- (c) pass such further order or orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case."

9. Reading of the above prayers clearly indicate that this application apart from making independent claim also answer the stay application of the Appellant. According to Respondent No.2, the Central Commission while deciding the tariff of Respondent No.2, for the tariff period 01.04.2014 to 31.03.2019 has approved the lignite transfer price for the above period so far as NLCIL mines linked to NLCIL power plants. The reasons are given in the impugned order of the Central Commission for allowing various claims made by NLC. The impugned order came to be passed nearly about three years after the commencement of the control period i.e., 01.04.2014. By virtue of the impugned order, substantial amount has become due and is payable by the Appellant to NLC. It is clearly mentioned in the reply to the appeal that as on 28.02.2018, outstanding amount payable by the Appellant is Rs.2258.70 Crores. Further, various other amounts also became due subsequent to 28.02.2018. They have also given the table of amounts due and outstanding from the Appellant upto 30.11.2018, which is as under:

Sl.No	Dues as on date	Fig Rs Cr (cumulative)
1	Dues as on 08.03.2017	591.88
2	Bills raised during 27/28.03.2017 (on account of CERC 08.03.2017 Order)	1563.38
3	Dues as on 31.03.2017	2155.26
4	Dues as on 30.04.2017	2161.62
5	Dues as on 31.05.2017	2263.94
6	Dues as on 30.06.2017	2195.48

7	Dues as on 31.07.2017	2084.85
8	Dues as on 31.08.2017	2079.68
9	Dues as on 30.09.2017	2114.00
10	Dues as on 31.10.2017	2137.34
11	Dues as on 30.11.2017	2178.53
12	Dues as on 31.12.2017	1928.49
13	Dues as on 28.2.2018	2258.70
14.	Dues as on 31.3.2018	2344.94
15.	Dues as on 30.4.2018	2067.77
16.	Dues as on 31.5.2018	2345.37
17.	Dues as on 30.6.2018	2287.03
18.	Dues as on 31.7.2018	2124.35
19.	Dues as on 31.8.2018	1959.78
20.	Dues as on 30.9.2018	2223.08
21.	Dues as on 31.10.2018	2221.69
22.	Dues as on 30.11.2018	2156.03

10. The Appellant-TANGEDCO is not paying the outstanding amount to NLC, which results in huge and adverse financial implications to NLC. NLC is affected in meeting various liabilities including the cost and expenses of its operation of the power generating units/mines on account of such failure of the Appellant to clear outstanding dues. In order to have stay of the operation of the impugned order, the Appellant has no case, much less *prima facie* case. They also bring on record the relevant terms of PPA dated 05.03.2014, which provides as under:

“6.1.5 All payments made by TANGEDCO towards amount due, shall be appropriated by NLC in the following order of priority.

- i) towards Late Payment surcharge payable if any, as intimated by NLC through Late Payment Surcharge bills as per CERC Tariff Regulations; and*
- ii) towards earlier unpaid bill(s) including arrear bills if any;*
- iii) towards statutory dues like income tax, other tax, royalty etc., in the current bill(s)*

iv) towards other charges in current monthly bill

6.1.6 In case the Procurer disputes any amount even then, it shall pay 100% of the disputed amount forthwith and file a written objection with the Seller within 365 days of presentation of the bill, giving following particulars:

i) Item disputed, with full details/data and reasons of dispute

ii) Amount disputed against each item.

Provided that non-acceptance of tariffs determined / approved by CERC or any other Competent Authority shall not be a valid ground for dispute.

iii) all other terms including payment terms will remain the same”.

11. By virtue of the above terms, according to the Appellant, in spite of raising any dispute by them, the amounts due from the Appellant have to be paid to the full extent. Since the amounts now claimed by Respondent No.2 – NLC is in terms of order of the Central Commission, at this stage, there cannot be any issue on computation of amount and the fact that the amount being due to NLC is because the Appellant has a binding obligation under the PPA to pay the amount claimed by NLC. The impugned order clearly indicates that the transparent process is followed.

12. The Appellant now for the first time questions or raises the issue of Merit Order Despatch, which was not raised by the Appellant at any time during the proceedings before the Ministry of Coal or before the Central

Commission, which led to the passing of the impugned order. In order to cover up the failure on the part of the Appellant to pay the amounts due and discharge their obligations, they are raising Merit Order Despatch as an afterthought contention. With these submissions, they have sought for dismissal of the stay application and have sought for payment of the amount of Rs.2156.03 Crores, which became due as on 30.11.2018.

13. Respondent No.2 contends that the appeal came to be filed with a delay of 98 days. It further contends that though detailed reasoning for allowing various claims of NLC including claims which are now being challenged by the Appellant were given by CERC. The Appellant has raised frivolous contentions and, therefore, the circumstances do not warrant any case making out balance of convenience in favour of the Appellant. As per the statement of NLC cumulative amount that has become due from the Appellant as on 08.03.2017 i.e. the date of impugned order and thereafter till 31.12.2017 are as under:

Sl.No	Dues as on date	Fig Rs Cr (cumulative)
1	Dues as on 08.03.2017	591.88
2	Bills raised during 27/28.03.2017 (on account of CERC 08.03.2017 Order)	1563.38
3	Dues as on 31.03.2017	2155.26
4	Dues as on 30.04.2017	2161.62

5	Dues as on 31.05.2017	2263.94
6	Dues as on 30.06.2017	2195.48
7	Dues as on 31.07.2017	2084.85
8	Dues as on 31.08.2017	2079.68
9	Dues as on 30.09.2017	2114.00
10	Dues as on 31.10.2017	2137.34
11	Dues as on 30.11.2017	2178.53
12	Dues as on 31.12.2017	1928.49

14. The appeal is filed only to avoid payments due to NLC. If stay is granted, NLC has to face financial problems since it has to discharge various ongoing liabilities pertaining to generation, undertaking etc., They also refer to Clauses 6.1.5 and 6.1.6 of the PPA to contend that the Appellant is bound by contractual terms and, therefore, they must first pay the amount though there is dispute. They also refer to Paras 80 to 86 of the impugned order to contend that only based on the guidelines issued by the Central Government i.e., Ministry of Coal, the assessment of lignite transfer price is made. They also refer to ABT Order dated 04.01.2000 passed by the Central Commission, which supports the opinion of the Central Commission on the above issue. According to Respondent No.2 in terms of guidelines of Ministry of Coal, the lignite transfer price for each of the five financial years has been continued and placed before the Central Commission. The Appellant has no valid or legal objection pertaining to decision of lignite transfer price since

Central Commission has passed detailed order after discussion on this issue. They further contend that in order to accommodate the Appellant and other procurers, who were having a grievance of the lignite price being payable at Central Commission approved rate of Rs.2197/- per ton (pooled) and Rs.2181/- per ton (stand alone) (excluding royalty, cess, taxes and duties) during financial year 2016-17 as per the order dated 08.03.2017, NLC agreed to claim an amount of Rs.1949/- per ton applicable for FY 2015-16 for the period 2016-17. The balance amount due to NLC was to be adjusted at the time of the truing up to be undertaken at a later stage. There was no waiver given by NLC in regard to the balance amount or with regard to the carrying cost payable by the appellant and other procurers to NLC on the remaining amount to be paid. There was however, an element of increase in the O & M cost due from 01.01.2017 on account of wage revision for public sector units in terms of the report given by the 3rd Pay Revision Committee constituted for the purpose. By giving effect to the above, in relation to lignite mines O & M expenses, the lignite price was revised from 1949 per ton to Rs.2050/- per ton effective from 01.04.2017 and Rs.2150/- from 01.11.2017. It is further contended that the lignite price being recovered by NLC is still much lower than the Central Commission approved rate of Rs.2181/- (stand alone) and Rs.2197/- (pooled) per ton for financial year 2016-17 and Rs.2431/- (stand alone) and Rs.2412/-

(pooled) for financial year 2017-18 per ton payable in terms of the order dated 08.03.2017 namely Rs.2050/- from 01.04.2017 and Rs.2150/- from 01.11.2017 per ton which is Rs.248 to 362 lesser. Therefore, NLC has acted to accommodate the Appellant and the procurers by charging less than the tariff computed in terms of the order dated 08.03.2017. Instead of appreciating the efforts of NLC, the Appellant is now complaining only to avoid payment of legitimate payments to Respondent No.2. With these contentions contending that there is no *prima facie* case, balance of convenience in favour of the Appellant, it seeks dismissal of the stay application.

15. We have gone through the impugned tariff order. We are not concerned with the other issues pertaining to tariff at this stage except lignite transfer price. However, it would be convenient and useful to refer to paras 80 to 86 of the impugned order in order to understand how the Central Commission has arrived at lignite transfer price in the impugned tariff order which reads as under:

“Lignite Transfer Price and Energy Charges during 2014-19

80. *The petitioner in this petition has claimed year- wise energy charges for the period 2014-19 based on the weighted average lignite price of `1819.64/Ton and GCV of 2624 kCal/kg and oil procured and burnt for the preceding three months in accordance with the 2014 Tariff Regulations as under:*

	2014-15	2015-16	2016-17	2017-18	2018-19
Stage-I					
Energy charges (ex-bus) `./kWh	2.329	2.329	2.329	2.329	2.329
Stage-II					
Energy charges (ex-bus) `./kWh	2.329	2.329	2.329	2.329	2.329

81. The petitioner vide affidavit dated 16.10.2015 has submitted that the guidelines for fixation of transfer price of Lignite for NLC mines for the period 2014-19 were issued by Ministry of Coal (MoC), GOI vide letter No.28012/1/2014-CA-I dated 2.1.2015 and that the year wise Lignite Transfer Prices has been fixed based on the MoC guidelines dated 2.1.2015 and the transfer price of lignite so computed has been certified by the statutory auditor. Accordingly, the petitioner in its affidavit dated 16.10.2015 has prayed for adoption of lignite transfer price in the computation of energy charges in respect of this generating station, including other generating stations of the petitioner wherein tariff for the period 2014-19 had been determined and/ or pending for determination of tariff by the Commission.

82. The Lignite Transfer Price based on MoC guidelines dated 2.1.2015 and certified by the auditor is as under:

	Lignite price (Standalone) `/Tonne*	Lignite price (Pooled) (`/Tonne)*
2014-15	1780	1814
2015-16	2077	2066
2016-17	2312	2329
2017-18	2577	2557
2018-19	2878	2821

* The above price is inclusive of Royalty @ 6%

83. It is observed from the above table that the year wise increase in Standalone Lignite transfer price during the period 2014-19 is 16.68%, 11.31%, 11.46% and 11.68% and increase in Pooled lignite transfer price for the period 2014-19 is 13.89%, 12.73%, 9.79% and 10.32%. It is also observed that the lignite Transfer price computed as above consists of O&M cost, Over Burden (OB) removal through outsourcing, Interest on loan, Interest on working capital, Depreciation, Mine closure, Return on equity and Royalty @6%. The details of Overburden removal (outsourcing) furnished by the petitioner is as under:-

	OB removal (outsourcing) Standalone	OB removal (outsourcing) Pooled
2014-15	2785.71	1714.29
2015-16	8580.00	14184.00
2016-17	9438.00	16263.00
2017-18	10382.05	16371.95
2018-19	11420.19	20204.81

84. It is observed from the details of overburden removal (outsourcing) furnished by the petitioner that there is an increase of OB removal of 208% in 2015-16 from the previous year (2014-15) 10% in 2016-17 from 2015-16, 10% in 2017-18 from 2016-17 and 9.99% in 2018-19 from 2017-18 for Standalone mine and 727% in 2015-16 from 2014-15, 14.65% in 2016-17 from 2015-16, 0.675 in 2017-18 from 2016-17 and 23.41% in 2018-19 from 2017-18 for Pooled mines. Thus, there is substantial increase in the amounts in the year 2015-16 and as per MoC guidelines dated 2.1.2015 the said increase is on account of additional unfavorable stripping ratio. Though more OB outsourcing is required to be carried out due to adverse overburden-lignite ratio to excavate same quantity of lignite, the petitioner has not furnished details of stripping ratio and overburden computation in support of the variation in the overburden removal cost. In this background, the same has not been considered in this order. Therefore, only the pooled lignite transfer price as submitted

by the petitioner for the period 2014-19 and referred in the table under para 82 above is considered for the computation and recovery of month to month Energy Charges for this generating station during the period 2014-19. This is subject to truing-up based on the justification for variation in the year to year lignite transfer price for the period 2014-19. The prayer of the petitioner in affidavit dated 16.10.2015 to allow the Standalone lignite transfer price from Mine-I and Pooled lignite transfer price from Mine-I expansion, Mine- I A, Mine- II and Mine-II expansion (as referred in the table under 82 above) is disposed of in terms of the above decision.

85. *The petitioner has also prayed that the Lignite Transfer Price as per MoC guidelines dated 2.1.2015 may be considered in respect of petitions where tariff had been determined by the Commission by its various orders for the period 2014-19. Based on the decision in para 84 above, we direct that Lignite Transfer Price as referred to in para 82 above shall be made applicable for computation of month to month Energy charges in respect of the generating station whose tariff has been determined by the Commission for the period 2014-19. Accordingly, the Lignite Transfer Price for the period 2014-19 as allowed at para 82 above shall also be applicable for computation of monthly energy charges during 2014-19 in case of Petition No. 253/GT/2014 and 254/GT/2014.*

86. *The Commission in its order dated 19.2.2016 in Petition No. 33/MP/2014 of NTPC (Dispute arising as a result of non-furnishing of details by NTPC and DVC in terms of Regulation 21 of the 2009 Tariff Regulations) had directed that generating stations shall introduce helpdesk to attend to the queries of the beneficiaries with regard to the Energy Charges. Accordingly, contentious issues if any, which arise regarding the Energy Charges should be sorted out by this petitioner with the beneficiaries at the Senior Management level”.*

16. The Appellant by placing reliance on letter dated 16.06.2016 written to NLC and also the correspondence between the parties contended that in order to take advantage of Merit Order Despatch, NLC quoted higher price but later reduced the said price. The correspondence relied upon by the parties is filed along with the appeal papers. Their contention also seems to be that NLC for some time adopted NFA capital method and later changed to GFA method (i.e., Net Block Method to Gross Block Method), which was not acceptable to the Appellant. The entire material was placed before the Central Commission for its perusal. At this stage, the opinion of the Central Commission in the impugned Order and other correspondence has to be seen in order to understand and appreciate *prima facie* case. Since the opinion of the State Commission at paras 80 to 86 indicate that pooled lignite transfer price as submitted by NLC for the period between 2014-19 which is referred to in the table under Para 82 deserves to be considered for the computation and recovery of month to month energy charges for the generating station in question. They also opined that based on the justification for variation with regard to year to year lignite transfer price, the same will be taken up in the truing up. Therefore, the claim of the NLC, Petitioner before the Central Commission was to allow the standalone lignite transfer price from Mine – I and Pooled lignite transfer price from Mine-I expansion, Mine-1A, Mine-II and Mine II

expansion and the same came to be disposed of in terms of discussion made in paras from 80 to 86. Therefore, at this stage, we are of the opinion that there is *prima facie* material in favour of NLC, Respondent herein.

17. Subsequent to this Order dated 08.03.2017, there was some correspondence between parties with regard to difference in the lignite transfer price as indicated in the impugned order and the claim made by NLC. The Appellant addressed a letter to NLC in terms of Annexure-A11, which reads as under:

“TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

From
S.ARULSAMY, M.Com., ACMA., ACS.,B.GL., B.Ed.,
Director/Finance,
TANGEDCO
10th Floor, NPKRR Maaigai,
144, Anna Salai,
Chennai-600 002.

To
The Chief General Manager/
Finance, NLCIL,
Neyveli House,
Cuddalore District
Neyveli – 1.

Lr.No. CFC/RC/SE/CERC/EE/AAO/F.Lignite Price/D.129 / 2017, dt.10.05.2017

Sir,

Sub: Revision of lignite price for the period 1.4.2014 to 31.3.2019 ordered by CERC vide its order dt. 8.3.2017 in Petition No. 256/GT/2014 – Claim of Rs.1405.39 Crores towards difference in Annual fixed charges and energy charges – Reg.

*Ref: 1. CERC's order dt. 8.3.2017 in Petition No.256/GT/2014
2. Letter No. NLC/Commercial/LigTrn Price/2016-17, dt. 25.3.2017.
3. Lr.No. CommI/TANGEDCO/341/EC Diff/2017, dt. 28.3.2017
4. GM/Finance/NLC E-mail dt. 4.5.2017*

Referring to the calculations furnished vide reference (4) above, it is found that NLC has considered the base pooled price of lignite as Rs.2050 for the period

from Jan 2017 instead of Rs.1949 for the period upto 31.3.2017 as agreed by NLC and communicated vide Ministry of Coal letter dt. 6.9.2016.

2) Further, there is a difference in the lignite price quoted by NLC and the lignite price approved by the CERC in its order dt. 8.3.17 in Petition No.256/GT/2014, the same is tabled below.

Pooled Mines

<i>Period</i>	<i>Price of lignite quoted by NLC in the affidavit. (Rs. Per Tonne)</i>	<i>Price approved by CERC in its order dt.8.3.17 (Rs. Per Tonne)</i>
<i>April 2016 to December 2016</i>	<i>Rs.2066 (Rs.1949 base price + Rs.117 royalty)</i>	<i>Rs.2329 (incl. Of royalty)</i>
<i>From January 2017</i>	<i>Rs.2173 (Rs.2050 base price + Rs.123 royalty)</i>	<i>Rs.2329 (incl. Of royalty)</i>

18. The Appellant has also annexed a letter dated 06.09.2016 written by Ministry of Coal to the Appellant with regard to calculation of transfer price of lignite, which reads as under:

*“No. 28012/1/2014-CA II
Government of India
Ministry of Coal*

Shastri Bhawan, New Delhi

Dated the 6 Sept. 2016

To

*The Principal Secretary/ Chairman & Managing Director
TANGEDCO, TNEB Ltd. & TANTRANSCO
N P K R R, Maaligai, Electricity Avenue,
144, Anna Salai,
Chennai – 600 002.*

Sub: ***Request for modification in guidelines issued by MoC for calculation of transfer price of lignite – reg.***

Sir,

I am directed to refer to your D.O letter no. CFC/RC/SE/CERC/EE/F.Lignite Transfer Price/D.144/2016 dated 16.06.2016 and to inform the following:-

- i) Ministry of Coal (MoC) issued broad guidelines for determination of transfer price of lignite produced from the Mines of NLCIL for the tariff period 2014-19 after consulting all stakeholders including TANGEDCO.*
 - ii) Although MOC issues broad guidelines for lignite transfer price, NLCIL has informed that the lignite price so arrived is based on the guidelines which goes through the process of Board approval, audit certification etc. CERC conducts hearing on the company's petition wherein all respondents (beneficiaries) participate in the hearing. CERC issues the tariff order only after going through the entire process. Despite the fact that MOC issued guidelines in Jan, 2015 and filing of the tariff petition by NLCIL for the period 2014-19 is already completed, CERC's formal tariff order for the tariff period 2014-19 is still awaited.*
 - iii) NLCIL retained the lignite price for FY 2016-17 at the same price level of Rs. 1949 per MT applicable for FY 2015-16 with the provision for truing up as per MOC guidelines, despite the petitioned rate for FY 2016-17 being Rs.2197 per MT.*
- 2. The issues / concerns raised were referred to NLCIL and the response (para-wise comments) are briefly stated in the Annexure.*

Encl:- As above.

Yours faithfully,

Sd-/

(Kishore Kumar)

Under Secretary to Government of India

Email Id:-soca2.moc@nic.in

19. Again they addressed a similar letter on 03.06.2017, which is at page 166 of the appeal paper book. On 13.06.2017, NLC sent reply to the Appellant, which is as under as per Annexure A.12:

NLC India Limited
 (Formerly Neyveli Lignite Corporation Ltd)
CIN : L93090TN1956GO1003507
 Navratna – A Government of India's Enterprise
COMMERCIAL DEPARTMENT
 Corporate Office, Block -I, Neyveli -607801

Email:commercial@nicindia.com Tel:04142-253429 Fax:04142-254429, 252645

Lr.No.NLCIL/Comml./Lig Trn Price/2017-18

Dated 13.06.2017

To
 The Chief Engineer/Mechanical/Regulatory Cell,
 M/s. Tangedco Ltd.
 7th Floor, NPKRR Maaligai
 144, Anna Salai
 Chennai – 600002

Sir,

Sub: *Revision of lignite Transfer Price for the period 01.04.2014 to 31.03.2019 ordered by CERC vide its order dt.08.03.2017 in Petition No. 256/GT/2014-Claim of Rs. 1405.39 Crs. towards difference in Annual Fixed Cost and Energy charges-Reg.*

Ref: 1) CERC's order dated 08.03.2017 in Petition No. 256/GT/2014
 2) Letter No. NLC/Commercial/Lig Tr. Price/2016-17,dt 25.03.17
 3) Lr. No. Comml./TANGEDCO/341/EC Diff/2017, dt 28.03.2017
 4) GM/Finance/NLCIL Email dt 04.05.2017
 5) TANGEDCO Lr. No. CFC/RC/SE/CERC/EE/A.A.O./F.Lignite Price/D.129/2017, dt10.05.2017
 6) TANGEDCO Lr. No. CFC/RC/SE/CERC/EE/A.A.O./F.Lignite Price/D.144/2017, dt03.06.2017

With reference to your letter (5) & (6) cited above, we wish to clarify that though CERC vide its order dated 08.03.17 has approved the base price of Rs. 2197 (including royalty - Rs. 2329) for FY 2016-2017, NLCIL has chosen to charge only Rs. 1949 as base price (including royalty Rs. 2066) for period 2016-17 i.e. retaining the same price applicable for 2015-16.

The above decision was taken based on the various cost control measures undertaken during the year. Accordingly, the beneficiaries have been charged at Rs. 1949 /Ton for the period

from 01.04.2016 onwards. However, this is subject to truing up at beginning of the tariff period.

On further review, it was noticed that the expenditure has increased in some areas and further the wage revision for executives and non-executives have become due from 01.01.2017 onwards.

Considering the above, it was decided to raise the base rate from Rs. 1949/T to Rs. 2050 /T wef 01.01.2017, though NLCIL can charge Rs. 2197/T as approved by CERC. This is also subject to truing up at the beginning of the tariff period.

As per CERC order dated 08.3.2017, NLCIL shall charge Rs. 2412/Ton as base rate (including royalty – Rs.2557/T) for the period from 01.4.2017 to 31.3.2018. However, it was decided to retain the same base price at Rs. 2050/T till further review, which may be taken up during the course of the year.

With Regards,

Yours faithfully,

For NLC India Limited,

DEPUTY GENERAL MANAGER (COMMERCIAL)”

20. The above material clearly explains the charging of base price and transfer price of the lignite. From the above correspondence it is clear that for the period between 2016-17, Respondent NLC had chosen to charge only Rs.1949/- as base price (including royalty Rs.2066/-). They also explain why such decision was taken to charge Rs.1949/- per ton from 01.04.2016 onwards on the basis of various cost control measures undertaken by them. From this correspondence, it seems that the Appellant do not grieve about the rate at Rs.1949/- per ton at all. Their grievance is with regard to claim of the Respondent in claiming less than what the Central Commission has granted. At this stage, in all fairness,

the Appellant at least must pay the price of lignite at Rs.1949/- as base price (including royalty Rs.2066/-) as claimed in IA No. 1759 of 2018 till date and shall continue to pay at the same rate for computation and recovery of energy charges for the generating station in question. If such amounts are not paid, NLC will face adverse financial difficulties since they will not be able to meet various liabilities including the cost and expenses on operation of the power generating units/mines and this would affect the national asset adversely on account of failure of the Appellant to clear the outstanding dues.

21. In terms of Clause 6.1.5 and 6.1.6 of PPA also even if the Appellant were to raise any dispute with regard to monthly bills, they must first pay and then get the dispute resolved. Therefore, even in terms of contractual obligation, the Appellant has to make good the outstanding dues till date to the NLC. Balance of convenience, therefore lies in favour of the NLC since the Appellant do not raise any objection with regard to price at Rs.1949/- per ton excluding royalty so far as lignite price.

22. Arguments pertaining to manipulations said to have been done by NLC with regard to Merit Order Despatch so that the generator could get despatch instructions and is able to run all its generating units for the

time being should be looked into at the time of disposal of the appeal on merits.

23. Accordingly, stay application filed by the Appellant being IA No. 1157 of 2017 is rejected and IA No. 1759 of 2018 filed by NLC is allowed. The Appellant is directed to make payments as indicated in IA No. 1759 of 2018 and also subsequent dues till date within two months from today. They shall continue to pay the electricity charges (month to month) based on pooled lignite transfer price and all other outstanding amounts as indicated in the said application till date as claimed by the Appellant.

24. With the above observations, the applications are disposed of.

25. List the main appeal for hearing on 02.04.2019.

26. Pronounced in the open court on this day the 31st January, 2018.

S.D. Dubey
[Technical Member]

Justice Manjula Chellur
[Chairperson]

REPORTABLE/~~NON-REPORTABLE~~