CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Review Petition No. 9/RP/2015
in
Petition No. 68/MP/2013

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S.Bakshi, Member

Date of Hearing: 18.8.2015
Date of order: 21.1.2016

In the matter of

Review of the Commission`s order dated 7.5.2015 in Petition No. 68/MP/2013-Petition for revision of pooled lignite price on account of inclusion of Mine-II Expansion lignite cost for the period from 2010-11 to 2013-14.

And
In the matter of

Neyveli Lignite Corporation Limited
Neyveli House, 135,
EVR Periyar Road, Kilpauk,
Chennai-600 010 ….**Review Petitioner**

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited
7th Floor, Eastern Wing,144,
Anna Salai, Chennai-600 002

2. Kerala State Electricity Board
9th Floor, VidyuthBhavanam, Pattom,
Thiruvananthapuram-695 004

3. State Power Purchase Co-ordination Committee
Power Company of Karnataka Ltd.
Kavery Bhavan, Bangalore-560 009

4. Andhra Pradesh Power-Co-ordination Committee
Vidhyuti Soudha, Khairatabad,

Hyderabad-500 082

5. Puducherry Electricity Department Beach Road,
Puducherry-605 001 …..**Respondents**

The following were present:

Shri M.G.Ramachandran, Advocate, NLC
Ms. Anushree Bardhan, Advocate, NLC
Shri J.Dhanasekaran, NLC
Shri S.Villnayagam, Advocate TANGEDCO

ORDER

This review petition has been made by the petitioner, Neyveli Lignite Corporation Limited, for review of order dated 7.5.2015 (impugned order) in Petition No.68/MP/2013 whereby the Commission had revised pooled lignite price on account of inclusion of Mine-II Expansion lignite cost for the period from 2011 to 2013-14

2. Aggrieved by the said order, the Review Petitioner has sought review on the ground of error apparent on the face of the order on the following issues:

(a) The incentive earned by NLC corresponding to enhanced availability above the NAPAF of 75% in case of TPS-II Stage I and Stage-2 generating stations shall be refunded to the beneficiaries; and

(b) The revenue earned by selling lignite to outside agencies shall also be accounted for the benefit of the beneficiaries.

3. With regard to first ground, the review petitioner has submitted that the Commission in the impugned order has specified the NAPAF of 75% in due consideration of limited mining capacity of linked mines but the lignite available from Mine-II expansion led to higher availability. The incentive on NAPAF between 75% and

80% should alone have been subjected to adjustment. Even if the limited mining capacity of linked mines was not there at the time of deciding on the NAPAF of TPS-II Stage I and II, the Commission would have decided on the NAPAF to be the maximum 80%. The Review Petitioner has submitted that denial of incentive earned corresponding to the enhanced availability above the NAPAF of 80% is an error apparent on the face of the record.

4. With regard to second ground, the Review Petitioner has submitted that the Commission seems to have proceeded on the wrong premise that the entire pooled lignite cost is being recovered from the beneficiaries, and therefore, NLC is having a double benefit on the revenues earned by selling lignite to outside agencies which is factually incorrect. The Review Petitioner has submitted the details of the lignite production, total expenditure, the recovery from the beneficiaries, revenues from TAQA and sales to outside agencies for the year 2013-14 as under:

Lignite Production/allocation for 2013-14 (As per the petition)

Particulars	**Mine I Expansion**	**Mine I A**	**Mine II**	**Mine II Expansion**	**Total**
Total expenditure &RoE - Rs. in crore	540	375	1365	705	2984
Normative lignite production @ 85%CU-(Mill. Tonne)	3.40	2.55	8.925	3.825	18.7
Lignite cost- Rs./tonne	1587	1471	1529	1843	1596

Lignite Allocation corresponding to Production of 18.7 MT

Allocation for TPSI Expansion for 80%	2.922	15.63
Allocation for TPSII for 75%	10.496	56.13
Allocation for TPSII Expansion for 75%	3.161	16.90
Sub-Total for beneficiaries	16.579	88.66
Allocation for TAQA	1.900	10.16

Balance for open sales Et others	0.221	1.18
Total	18.700	100.00

Apportionment of total expenditure and RoE

	Rs. in crore	%
Expenditure and RoE charged to beneficiaries	2646.454	88.66
Expenditure and RoE charged to TAQA	303.289	10.16
Expenditure and RoE charged to open sales	35.257	1.18
Total	2985	100.00

5. The Review Petitioner has submitted that as per the above statement, the lignite cost is worked out at Rs 1596.257 per tonne for 18.7 Million tonnes of which the apportioned cost to the beneficiaries is only Rs 2646.454 crore for 16.579 million tonnes constituting 88.66% of the total quantum of lignite. The balance Rs 338.546 crore for 2.121 million tonnes constituting 11.34% of the total is recovered from the outside agencies and not from the beneficiaries. Accordingly, the lignite cost was already apportioned between the beneficiaries and the outside agencies. Therefore, there cannot be any further adjustment for the revenue earned by selling lignite to outside agencies in favour of the beneficiaries. Neither Ministry of Coal Guidelines, 2014 nor the earlier guidelines for pricing of lignite have any mention about passing the benefits of open sales.

6. The review petition was heard on 14.7.2015 and the respondents were directed to file their replies. In response, Kerala State Electricity Board Limited and TANGEDCO have filed their replies. The petitioner was directed to submit the copy of Ministry of Coal Guidelines, 2014.

7. The Review Petitioner vide its affidavit dated 23.7.2015 has placed on record the copy of Ministry of Coal Guidelines, 2014 and has submitted as under:

(a) NLC has been permitted to sell surplus lignite available the mines to third parties which has been allowed in respect of various mines operated by NLC since May 1981 onwards and has been duly disclosed in the annual accounts of NLC for the period from 1981-82.

(b) The Feasibility Report in respect of Mine 1-A provides for third party sale. The Feasibility Report was submitted to the Ministry of Coal based on which MoC issued sanction order dated: 26.2.1998.

(c) The fixation of transfer price of lignite for NLC Mines was considered by the Ministry of Coal, Government of India and the Guidelines for the same was being issued by the Ministry from time to time. The Guidelines dated 2.1.2015 was issued after due consideration of all the relevant issues, objections, recommendations and suggestions made by the beneficiaries, etc. In the proceedings before the Ministry of Coal, the Kerala State Electricity Board (KSEB) raised a specific contention in regard to the surplus/excess lignite produced above the normative capacity utilisation. With regard to Capacity Utilisation Factor, KSEB contended that excess lignite produced above normative capacity utilization shall be charged at marginal cost only. Revenue earned through sale of lignite outside NLC power stations shall be shared with the beneficiaries. In the Guidelines issued on 2.1.2015, the Ministry of Coal, Government of India did not agree with the contention of KSEB on the capacity utilisation and third party sale. Accordingly, the practice earlier followed of allowing NLC to sell lignite to third party was not interfered with.

(d) As per the Feasibility Report (FR) of Mine-IA, the balance lignite available, after fulfilling the fuel requirement of a maximum of 1.9 MT to STCMS power plant (which is the present TAQA power plant) can be utilized in the best commercial interest of the company. FR approved by Govt. of India is permitted to NLC to sell lignite to outside agencies.

(e) The report of the 'Working Group for 2012-17' on coal and lignite approved by Govt, of India also make provisions for sale of lignite to other than power generating companies in Tamil Nadu from NLC mines.

(f) In the production projection and plan outlay for 12th and 13th plan period, NLC has projected lignite sales of 2.40/ 3.40/ 3.6 MT from NLC mines which is approved by Govt of India. Out of which, 1.9 MT lignite only is projected to be supplied to M/S.ST-CMS (the present TAQA) and balance for outside consumers.

(g) NLC has been authorised to sell lignite to outside agencies and there being no objection to the same from the Government of India and the sale of lignite to outside agencies being clearly provided in the Feasibility Report, Twelfth and Thirteenth Plan Outlay duly approved by the Government of India, the sale to outside agencies cannot be treated as unauthorised or otherwise any income derived from the sale of lignite to outside agencies cannot be adjusted in the transfer price for the generating stations of NLC supplying electricity to the beneficiaries.

8. Kerala State Electricity Board Limited in its reply dated 31.7.2015 has submitted as under:

(a) The petitioner has claimed incentive for the enhanced availability of NPTC TPS-I Expansion and NLC TPS-II Stage-1 and Stage-II stations achieved by using the lignite from Mine-2 Expansion. Since the lignite price of Mine-II Expansion has been pooled with the pooled lignite price of other mines and the lignite price pooled have been used for arriving at the energy charges for all the stations, the incentive earned by the petitioner is at the cost of the beneficiaries and therefore, the incentive availed by these stations with availability over and above the normative availability has to be refunded to the beneficiaries. The petitioner`s averment that the incentive on NAPAF between 75% and 80% should alone have been subject to adjustment with the production from TPS-II Expansion is devoid of any merit.

(b) With regard to revenue earned by selling lignite to outside agencies shall also be accounted for the benefit of the beneficiaries, KSEBL has submitted that since the Capacity Utilisation Factor (CUF) is taken as 85%, the total cost of additional lignite produced from Mine-II and sold to outside agency have been factored into lignite transfer price of Mine-II Expansion. Therefore, the additional revenue earned by sale of the unutilized lignite allocated to the linked NLC power stations including NLC-1 expansion, NLC-II stage-1 and 2 shall be shared with the beneficiaries of the NLC power stations. KSEBL has submitted the quantum of lignite sold to outside agencies during 2009-10 to 2012-13 after utilising lignite from Mine-II(Expansion) to other NLC station as under:

Year	Capacity of Mine-2 Expansion at 85% CUF	Lignite used from Mine-II Expansion (MT) at NLC-II stage-1 &2 stations	Balance lignite available from Mine-II expansion for sale in open market
	(Million T)	(Million T)	(Million T)
2009-10	3.83	0.88	2.95
2010-11	3.83	1.08	2.74
2011-12	3.83	1.48	2.35
2012-13	3.83	1.73	2.09
Total	15.30	5.17	10.13

(c) About 10.13 MT of lignite is available from Mine-II expansion for sale in open market. Therefore, the petitioner contention that only 85% of cost has been recovered from the beneficiaries is not correct. Accordingly, there is no error apparent on the face of the record.

9. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) in its reply dated 6.8.2015 has submitted that the petitioner through its review petition has sought reopen the issue by making new and additional submissions which is not permissible in review. The review cannot be in the disguise of an appeal and issues cannot be reopened on merits. The plea taken by the review petitioner is after thought and it cannot be held to be the case of 'discovery' of the documents after passing the impugned order. The power of review is to be exercised by the Commission only for correction of clerical / arithmetical errors or mistakes in the order and not for correction of any error in judgement. Therefore, the matter cannot be reargued on merits as it is beyond the scope of Order 47, Rule 1 of the Code of Civil Procedure.

10. The petitioner has filed rejoinders to the replies of the KESBL and TANGEDCO. The petitioner has submitted that it has only placed on record the apparent error in considering the adjustment of the sale price of lignite to third parties in the energy charges to be considered and has pointed out that the amount which is directed to be so adjusted, the expenditure incurred on the above had already been considered and does not form part of the energy charges claimed by NLC. The petitioner has submitted that it has filed the computation of lignite pricing duly certified by Auditor which was based on the Ministry of Coal Guidelines. The auditor's certificate is only a form of calculation presented and does not add to any new claim.

Analysis and Decision:

11. We have considered the submissions of the Review Petitioner and the respondents and perused the documents available on record. The Review Petitioner has sought review on the two aspects which are discussed as under:

Issue No. 1: Incentive earned by NLC corresponding to enhanced availability above the NAPAF of 75% in case of TPS-II Stage 1 and Stage 2 stations shall be refunded to the beneficiaries:

12. The petitioner has submitted that in case of TPS-I (Expansion), the norms have been decided as 80% and because of the availability of the lignite, had the Commission specified the norms the Commission would have decided on the NAPAF to be at the maximum 80% (and not more). This is without prejudice to the contention of NLC that TPS II stage I and II are old generating stations and should not be equated with TPS I Expansion which is a newer generating stations.

13. The Commission in the impugned order has observed as under:

> "It is pertinent to mention that the relaxed NAPAF of 75% was specified for TPS –II Stage-I and Stage-II stations in due consideration of limited mining capacity of linked mines. It is however noted from the data regarding year-wise availability of TPS II Stage I & II during the years 2009-10, 2010-11, 2011-12 and 2012-13 that use of lignite from Mine-II (Expansion) led to higher availability in case of TPS –II Stage-I and Stage-II stations than the norms of 75% Normative Annual Plant Availability Factor (NAPAF) as major portion of lignite produced from Mine-II (Expansion) is being used in TPS-II stations. Consequently the petitioner is getting more incentive corresponding to enhanced availability of TPS II Stage I & II from the beneficiaries."

14. The Commission in the impugned order held that in order to balance the interest of beneficiaries on account of inclusion of the cost of Mine-II Expansion in the pooled price without commissioning of TPS-II Expansion had taken a considered view and directed that any incentive earned corresponding to enhanced availability above the NAPAF of 75% in case of TPS-II Stage-I and Stage-II stations shall be refunded to the beneficiaries corresponding to their allocation from TPS-II Stage-I and Stage-II.

15. The review petitioner has contended that the Commission would have specified norm of 80% had the lignite been available in Mine-II (Expansion). It is clarified that no such view was taken by the Commission while disposing of the petition. However, it has not been denied that the extra lignite which led to the extra generation on TPS-II, was supplied from Mine-II (Expansion).

16. The Commission in the impugned order while taking a conscious view directed NLC to refund the incentive earned corresponding to enhanced availability above the NAPAF of 75% in case of TPS-II Stage-I. In view of this, there exists no error apparent on the face of the order. Accordingly, review sought by the petitioner on this ground is rejected.

Issue No.2: The revenue earned by selling lignite to outside agencies shall also be accounted for the benefit of the beneficiaries.

17. The Commission in the impugned order had directed that the revenue earned by selling lignite to outside agencies shall be apportioned to the beneficiaries corresponding to their share of power in the stations where pooled lignite price approved by the Commission is applicable for computation of energy charges. It is clarified that pooled lignite transfer price per tonne was computed based on production of lignite at 85% CUF as per the guidelines specified by the Ministry of Coal for Computation of lignite price. The Mines considered for revision of pooled lignite transfer price along with their capacities are as follows:

S. No.	Name of Mines	Capacity at 100% CUF (Million Tonne)	Capacity at 85% CUF (Million Tonne)
1.	Mine-I (Exp.)	4	3.4
2.	Mine-I A	3	2.55
3.	Mine-II	10.5	8.925
4.	Mine-II (Expansion)	4.5	3.825
	Total	22.5	18.7

18. The petitioner has submitted the details of lignite production, total expenditure, recovery from the beneficiaries, revenue from TAQA and sale to outside agencies for the year 2013-14 which have been summarized in para 4 above. Perusal of the tables at para 4 above reveals that 85% production of lignite works out to 3.825 MT for Mine-II (Expansion). The utilization of 3.825 MT at 85% CUF of Mine II Expansion, whether used for power generation or sale to the outside agency, would lead to full annual recovery of charges i.e. Rs. 705 crore for Mine-II (Expansion) at the rate of Rs 1843/tonne. Any sale to outside agency would likely to give additional profit to the

petitioner. Accordingly, in terms of Regulation 103A of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended on 12.11.2013, the prayer of the petitioner for review of order on the second aspect i.e. regarding revenue earned by sale of surplus lignite to outside agencies is considered and allowed. Therefore, the impugned order is modified to this extent that any additional profit earned by sale of lignite to outside agencies over and above the Capacity Utilization Factor of 85% of Mine-II Expansion up to the commissioning of first unit of TPS-II Expansion shall be apportioned to the beneficiaries corresponding to their share of power in the station where pooled lignite price approved by the Commission is applicable for computation of energy charges**.**

19. With the above, the Review Petition is disposed of.

SD/-	SD/-	SD/-
(A. S. Bakshi)	**(A.K. Singhal)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Chairperson**