CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No: 38/RP/2017
In
Petition No. 135/GT/2015

Coram:

Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Date of Order: 26th December 2018

In the matter of:

Petition for review of the Order dated 11.7.2017 in Petition No. 135/GT/2015 in the matter regarding approval of tariff of Coal based NLC Tamil Nadu Power Ltd. (TPS 1000MW) for the period from the date of the declaration of commercial operation of Unit I &II till 31.3.2019.

And in the matter of

NLC India Limited,
Commercial Department,
Corporate office,
Neyveli-607801 …….**Petitioner**

Vs

1. Transmission Corporation of Andhra Pradesh
VidyutSoudha, Khairatabad,
Hyderabad – 500082

2. Southern Power Distribution Company of Andhra Pradesh Ltd,
D. No: 19-13-65/A,Srinivasapuram
Tiruchhanur Road, KesavayanaGunta,
Tirupati (AP) – 517501

3.Eastern Power Distribution Company of Andhra Pradesh Ltd
Corporate Office P&T Colony,Seethammadhara,
Visakhapatnam (AP) – 530013

4. Transmission Corporation of Telangana Ltd
VidyutSoudhaKhairatabad, Hyderabad – 500082

5. Northern Power Distribution Company of Telangana Ltd.
H.No 1-1-504, Opp. NIT petrol pump, Chaityanarayani colony,
Hanamkonda Warangal (Telangana) – 506004

6. Southern Power Distribution Company of Telangana Ltd
2nd Floor,H.No. 6-1-50,Mint Compound
Hyderabad – 500063

7. Power Company of Karnataka Ltd KPTCL Complex,
KaveriBhawan
Bangalore – 560009

8. Bangalore Electricity Supply Company Ltd
Krishna Rajendra Circle
Bangalore – 560001

9. Mangalore Electricity Supply Company Ltd
Paradigm Plaza A.B Shetty circle
Mangalore – 560009

10. Chamundeshwari Electricity Supply Company Ltd
Corporate Office No. 927, L.J Avenue
New Kantharaj Urs Road, Saraswathipuram
Mysore – 570009

11. Gulbarga Electricity Supply Company Ltd
Main Road, Gulbarga
Karnataka – 585102

12. Hubli Electricity Supply Company Ltd
PB.Road, Navanagar
Hubli – 580025

13. Kerala State Electricity Board

VaidyuthiBavanam, Pattom
Thiruvananthpuram – 695004

14. Puducherry Electricity Department 137,
NSC Bose Salai
Puducherry – 605001

15. Tamilnadu Generation and Distribution Corporation Ltd
NPKRR Maaligai, 144, Annasalai,
Chennai – 600002 **....Respondents**

Parties present :
Shri M.G.Ramachandran, Advocate, NLC
Shri Shubham Arya, Advocate, NLC
Ms. Poorva Saigal, Advocate, NLC
Ms. Anushree Bardhan, Advocate, NLC
Shri Pulkit Aggarwal, Advocate, NLC
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The petitioner, NLC India Limited, has filed this review petition seeking review of order dated 11.07.2017 in Petition No 135/GT/2015, whereby the Commission had determined the tariff in respect of NLC Tamilnadu Power Limited TPS (2x500MW) for Unit-I from actual COD (18.06.2015) to 28.08.2015 and for Unit-I & II (i.e. station) from COD of Unit-II (29.08.2015) to 31.03.2019, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations'). The Commission, in the said order dated 11.07.2017, had determined the annual fixed charges of the generating station as under:

(Rs in Lakh)

	2015-16		**2016-17**	**2017-18**	**2018-19**
	18.6.2015 to 28.8.2015 (Unit-I)	**29.08.2015 to 31.3.2016**			

		(Both units)			
Return on Equity	2211.06	13469.73	22830.19	22962.92	23089.16
Interest on Loan	3385.50	21152.14	33745.70	31318.90	28868.26
Depreciation	2530.76	15935.09	26228.02	26372.87	26510.66
Interest on Working Capital	679.18	4871.56	9601.75	9781.03	9805.90
O&M Expense	1734.60	10223.15	18392.56	19532.56	20742.56
Total	**10541.10**	**65651.67**	**110798.23**	**109968.28**	**109016.54**

2. Aggrieved by the said order dated 11.07.2017 the petitioner has filed this review petition with the following prayers:-

(a) To consider & allow the projected un-discharged liabilities to the tune of Rs.1069.31 crores in the tariff computation.

(b) To correct the error in the funding gap to tune of Rs.157.35 Cr for Unit I and Rs.28.31 Cr for the Station and allow the same for tariff computation.

(c) To allow the grossing up MAT/Applicable tax from the financial year 2017-18 in the computation of ROE.

(d) To allow the additional O&M of Rs.2.208 Lakh/MW for the additional facilities of NTPL

(e) To consider the share application money of Rs.14.61 crores remitted by JV partner on 07.08.2015 as equity for tariff computation.

(f) To consider startup fuel cost of Rs.199.18 crores in full for tariff computation.

(g) To allow the IDC, IEDC, Normative interest and overheads in full considering the details mentioned above.

3. The Commission heard the petition on 09.01.2018 and admitted the petition vide Interim order dated 16.01.2018 and issued notices to the respondents. The case was last heard on 16.10.2018. Based on the submissions of the petitioner and TANGEDCO and the documents available on record, we proceed to examine the issues raised for revision as detailed in the subsequent paragraphs.

A. Issue regarding un-discharged liabilities to the tune of Rs.1069.31 crores in the tariff computation:-

4. The petitioner has submitted that there has been non-consideration of additional capitalization for the period from COD of the generating station till the cutoff date i.e. from 29.8.2015 till 31.3.201. The petitioner has submitted that its claim pertained to the additional capitalization of Rs 1069.31 crores which remained un-discharged at respective CODs and was projected to be discharged up to the cutoff date i.e. 2015-16, 2016-17 and 2017-18. The petitioner has furnished that it had duly discharged a sum of Rs 399.83 crores out of such un-discharged liabilities and had time till 31.3.2018 for discharge of the balance amount.

5. The respondent TANGEDCO vide affidavit dated 6.1.2018 and 16.11.2018 has submitted that the claim of the petitioner to allow the above expenditure is without merit and is liable to be rejected as there is a huge difference between the un-discharged liabilities claimed and the current liabilities as on 31.03.2016 and the Petitioner (NTPL) had not furnished any supporting documents / evidences. Hence, the Commission has rightly disallowed the claim of the petitioner.

6. The petitioner vide affidavit dated 21.07.2018 has submitted that the claim was pertaining to Rs 1069.31 crore which was projected to be discharged during the three financial years up to 31.3.2018. The petitioner has duly discharged the liabilities to the tune of Rs.77438 lakhs as on 31.3.2018 and the balance un-discharged liabilities of Rs.29493 lakh would be discharged in 2018-19 which include ash disposal area development of Rs.4620 Lakh and balance payment to package contract amounting to Rs 2487 lakh. The petitioner vide affidavit dated 27.10.2018 has requested the Commission to consider the discharge of liability to the tune of Rs 77438 lakh as on 31.3.2018.

Analysis and decision

7. The Commission in the impugned order dated 11.07.2017 in Petition No. 135/GT/2015 has not considered these discharges with the following observations:-

42. It is pertinent to mention that as against un-discharged liabilities as per balance sheet, the petitioner in Form 5B has indicated an amount of `106931.42 lakh as un-discharged liabilities and provisions, which is actually the difference between the RCE-II approved cost of `729348.39 lakh and the actual cash expenditure of `622416.97 lakh as on COD of the generating station (29.8.2015). The petitioner has claimed discharge of the said liabilities/provisions during the period from 2015-16 to 2017- 18. These discharges have not been considered for the purpose of tariff and the same will be considered at the time of truing up of tariff.

8. From the above it is clear that the Commission has not neglected the claim of the petitioner but has decided to consider the same at the time of true-up. The petitioner has the opportunity to put up its claim duly supported by relevant documents in the tr4ue-up petition. We do not find any error in the impugned order which requires review.

B. Issue regarding Funding gap:-

9. The petitioner has submitted that there is in reality no funding gap and there is a computation error in the order dated 11.7.2017 for treating an amount of Rs 157.35 crores for Unit I and Rs 28.30 crores for Station as funding gap. The petitioner has submitted a reconciliation statement showing that there is no funding gap as follows:-

(Rs in Lakh)

Particulars	**As on COD of Unit-1**		**As on COD of station**	
	As worked out by the Commission	**As it should be**	**As worked out by the Commission**	**As it should be**
Share Capital	182940.00	182940.00	182940.00	182940.00
Share Application Money	5500.00	5500.00	1461.60	1461.60
Long term Borrowing	432482.00	432482.00	457497.00	457497.00
TOTAL : (A)	**620922.00**	**620922.00**	**641898.60**	**641898.60**

Gross Cost of Fixed Asset	335786.69	335800.80	675263.37	675277.48
Capital work in progress	349319.21	349319.21	17495.47	17495.47
Sub-total-1	685105.90	685120.01	692758.84	692772.95
Less:				
Liabilities for capital works	48448.42	48448.42	48029.37	48029.37
Sundry creditors and accrued expenses		11573.84		11949.46
Other Liabilities		4805.80		5131.40
Sub-total-2	48448.42	64828.06	48029.37	65110.23
TOTAL : (B)	**636657.48**	**620291.95**	**644729.47**	**627662.72**
Funding Gap (A-B)	**-15735.48**	**630.05**	**-2830.87**	**14235.88**

10. The respondent TANGEDCO vide affidavit dated 6.1.2018 has submitted that the submission of the petitioner is without merit and therefore is liable to be rejected. The petitioner vide its affidavit dated 27.10.2018 has reiterated its claim that there has been no funding gap.

Analysis and decision

11. The Commission in the impugned order dated 11.07.2017 had considered the funding gap as un-discharged liabilities and deducted the same from the capital cost for the purpose of tariff. The petitioner had considered gross cost of fixed asset by considering tangible asset and intangible asset. Further, the petitioner had sought to consider sundry creditors, accrued expenses and other liabilities as sources of fund for arriving at funding gap, which is not correct. Since, the project funding should be from long term sources only the Commission has not considered the sundry creditors, accrued expenses and other liabilities for the purpose of arriving at funding gap. Thus there is no error apparent on the face of the record as review is rejected on this count.

C. Issue regarding Tax on Return on Equity (ROE):-

12. The petitioner has submitted that 2015-16 being the first year of commercial operation, there was no book profit and the petitioner incurred a loss during 2015-16 and 2016-17, but from FY 2017-

18 it is projected to make profit and there will be liability to pay taxes. Hence, It is necessary to gross up the MAT/Applicable Tax from the financial year 2017-18.

13. The respondent TANGEDCO vide affidavit dated 6.1.2018 has submitted that the claim of the petitioner is without merit and is liable to be rejected as the petitioner can claim the grossing up of tax at the time of truing up as per Regulation 25(3) based on the actual tax paid for the respective financial year as per the income Tax Act. The respondent vide affidavit dated 16.11.2018 has further submitted that no tax has been paid by the Petitioner for the year 2015-16, therefore the Commission in accordance with the Regulation 25(l) of Tariff Regulations, 2019 has not grossed up the tax with the base return on equity and allowed the Base Return on the average equity. Therefore, the actual tax, if any, applicable for FY 2017-18 and FY 20l8-19 needs to be considered only at the time of truing up of tariff at the end of the tariff block. Further, the Petitioner in its affidavit dated 27.10.2018 has also submitted that there has been a tax liability for FY 2017-18 and an advance tax of Rs 5.1 Cr. has been paid on 13.6.2017 and there would also be tax liability during 2017-18.

Analysis and decision

14. Regulation, 25(3) of Tariff Regulations, 2014 provides as under:-

25. Tax on Return on Equity:

3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or *refunded to beneficiaries or the long term transmission customers/DICs as the case may be on year to year basis.*

15. There is a consistent approach followed by this Commission of not grossing up the ROE when company incurs losses in initial years after COD. In terms of Regulation 25(3) of 2014 Tariff Regulations, the generating company shall true up the grossed up rate of return on equity at the end of each financial year. However, this aspect would be considered at the time of truing up based on the actual tax paid. Hence, review in this regard is not accepted.

D. Issue regarding Normative IDC:-

16. The petitioner has submitted that its entitlement to IDC cannot be denied only for the reason that no loan was contracted for the project during the said period. The petitioner has submitted that IDC needs to be allowed at an appropriate rate even if during the relevant period, there was no actual debt contracted by the Petitioner. In the absence of the actual loan, the comparative Interest on borrowings by similar entities could be taken. The petitioner has further submitted that the non-existence of actual loan with the Petitioner cannot be a ground for denying the substantive right of IDC.

17. The respondent TANGEDCO vide affidavit dated 6.1.2018 has submitted that when there is no external borrowing of debt funds, the petitioner cannot claim the IDC on normative basis. Hence, the Commission has rightly disallowed the IDC prior to the actual drawl of loan in accordance with the provisions laid down under Regulation 11 of Tariff Regulations,2014.

Analysis and decision

18. The Commission in the said order dated 11-07-2017 while disallowing the normative IDC has observed as under:-

45. As stated above, the schedule COD of the units have been shifted on account of time overrun in the declaration of commercial operation of the units. The petitioner has claimed *normative IDC for the period from June, 2006 to February, 2009 by considering the rate of interest @ 11.10% p.a. applicable to the first drawl of loan. But, there was no actual loan for the generating station as well as the Petitioner Company as a whole prior to 31.3.2009. Hence, there is no weighted average rate of interest available in order to work out the Normative IDC prior to the actual drawl of the loan (31.3.2009). Therefore, no normative IDC has been allowed prior to the actual drawl of the loan. Similar view had been taken by the Commission in order dated 8.2.2016 in Petition No. 198/GT/2013 and the relevant portion of the said order is extracted as under:*

"51. The petitioner has claimed the notional IDC for the period from 2003-04 to 2007-08 by considering the rate of interest @ 10.75% p.a. applicable to the first drawl of loan. But, there was no actual loan for the station as well as the petitioner company as a whole before 26.6.2008. Hence, there was no weighted average rate of interest available to work out the notional IDC before the actual drawl of the loan (26.6.2008). Therefore, no IDC has been allowed before the actual drawl of the loan.

52. Further, Notional IDC has also been allowed up to the date of scheduled COD only. The apportionment of Notional IDC has been made as per apportionment of IDC. Accordingly, the total notional IDC of `1533.54 lakh has been allowed in the capital cost for the purpose of tariff."

19. From the above observation of the Commission it is clear that no normative IDC has been allowed prior to the actual drawl of the loan. This is a consistent practice followed by this Commission for standalone projects. Accordingly, the claim of the petitioner for normative IDC is rejected and review on this ground fails.

E. Issue regarding additional O&M of Rs 2.208 lakh/MW and Limiting the O&M expenses:-

20. The petitioner has had claimed 2.208 lakh/MW/year as additional O&M expenses under 'Power to Relax' Regulation towards cost of chemicals for producing the RO water (Rs.4.00 Cr per

year), filters and membranes replacement cost including Salaries and Wages of manpower deployed (Rs. 4.00 Cr per year inclusive), annual additional expenses for O&M of Shore unloader (Rs.5.25 Cr) & Offshore Conveyor system (Rs.5.77 Cr) and disposal of Bottom ash (Rs.3.06 Crores). In the impugned order, the Commission restricted the additional O&M expenses to 0.312 lakh/MW/year comparing the expenditure with Vallur Thermal Power Project of Tamil Nadu Electricity Company limited and based on the O&M expenses for RO Desalination Plant. The petitioner has submitted that limiting the O&M expenses to the level of the other generating stations such as NTECL Vallur and without considering that the two generating units of the petitioner were based on superior technology giving other benefits to the beneficiaries but involving additional O&M expenses is an error apparent on the face of the record. The petitioner has submitted that in NTPL case, the additional O&M expenses claimed is not only for Desalination Plant but also for O&M of Shore unloader, Offshore Conveyor system and disposal of Bottom ash. The petitioner has submitted that, there are other differences of NTPL in comparison to NTECL:

a. Ultra-filtration technology is available in NTPL whereas it is not available as yet in NTECL.

b. In NTPL, there are 8 skids available in ultra filtration with 108 membranes in each skid which needs to be changed once in 4 years which cost about 1.4 lakh/each and thus total cost for replacement of membranes for 4 years works out to 12.096 Cr. and for 1 year it is Rs.3.024 Cr.

c. Post treatment of desalinated water using lime stone filter and Co2 dosing is available in NTPL. NTECL is in the process of implementing the same. Approximately in NTPL each day 600-700 kg of CO2 is being dosed which costs about Rs. 7000/- per day and limestone is being dosed at a cost of Rs. 3000/- per day and for 1 year it costs about 0.365 Cr.

21. The petitioner has further submitted that, out of the Rs.8.00 Cr Claimed for Additional O&M expenses for Desalination plant, the Commission has allowed only Rs. 3.1256 Cr whereas additional O&M expenditure is being incurred for Shore unloader (Rs.5.25 Cr), Offshore Conveyor system (Rs.5.77 Cr) and disposal of Bottom ash (Rs.3.06 Crores) when compared to Vallur Thermal Power

Project of NTECL. The aggregate amount of Rs.22.08 Cr. per annum towards O&M expenses in place of Rs. 3.126 Cr allowed in the order dated 11.07.2017, needs to be considered by the Commission.

22. The Respondent TANGEDCO in its reply dated 6.1.2018 has submitted that, the Commission while allowing the O&M Expenses for RO desalination plant has considered the site specific factors and has compared similar type of expenditure claimed by NTECL for Vallur Thermal Power Project which is having 3x500 MW capacity, and restricted the expenditure to Rs.0.312 lakhs/MW/year. The Petitioner had projected the expenditure relating to Chemicals, shore unloader, offshore conveyor and bottom ash disposal on the estimated basis but did not furnish any documents pertaining to the expenditure incurred for these equipments/materials

Analysis and Decision

23. The Commission in the order dated 11.07.2017 allowed the O&M expenses separately for R.O. desalination plant to the tune of Rs 0.312 lakh/MW/year as against the claim of the petitioner of Rs 2.208 lakh/MW/year. The reason for restricting the O&M expenses for R.O. desalination plant to Rs 0.312 lakh/MW/year based on expenditure allowed by the Commission in similar R.O. plant in case of NTECL Vallur at the stage of passing the order was non availability of actual O&M expenses for R.O. plant. The Commission, in the said order has clarified that the expenditure allowed in R.O. desalination plant is subject to true up at the end of the tariff period and the petitioner was directed to place on record all relevant information/justification in support of its claim in comparison to Vallur TPS of NTECL. The observation and direction of the Commission in the order dated 11.07.2017 in Petition No.135/GT/2015, has been reproduced below:-

> *"73. The matter has been examined. It is observed that the plant is located near sea coast and thus there will be no water charges, as water will be made available from sea itself. In addition, the O&M expenses for RO desalination plant is allowed separately as normative O&M for*

meeting the water requirement of the plant. Considering the location of the plant, an amount of `22.08 crore per annum (which works out to`2.208 lakh/MW/year), claimed by the petitioner is too high in comparison to the amount of `468.84 lakh (which works out to`0.312 lakh/MW/year) for 2015-16 claimed by Vallur Thermal Power Project of NTECL which has 3 x 500 MW units as compared to 2x500 MW units of this generating station. In view of this, the Operation & Maintenance expenses claimed by the petitioner including consumables are restricted to an amount of `0.312 lakh/MW/year (`312.56 lakh) at this stage. The O&M expenses for RO desalination plant allowed as above is subject to truing-up of tariff and the petitioner is directed to place on record all relevant information/justification comparing the claim for chemicals filters & membranes etc. with respect to the Vallur Thermal Power Project of NTECL. The normative O&M expenses do not include additional features like desalination plant, chemicals, filters and membranes used for the same. Hence, expenses on desalination plant are allowed separately."

24. Since, the petitioner has been granted liberty to approach the Commission with details of expenditure incurred, relevant documents and justification, we find no error in the impugned order in this regard.

F. Issue regarding the share application money of Rs.14.61 crores remitted by JV partner on 07.08.2015 as equity for tariff computation:-

25. The petitioner has submitted that, the share application money is intended for investment in equity only. The Share application money of Rs 55.00 Cr was remitted by NLCIL on 29.05.2015 to NTPL and the same was refunded on 03.08.2015 due to non- remittance of equity by the other JV partner - TANGEDCO. The Share application money of Rs 14.61 Cr was then remitted by TANGEDCO on 07.08.2015 and the share certificates are issued to them on 05.09.2015. The share application money which was converted into equities within the stipulated period of 60 days (as per

the Companies Act) may be treated as Equity as on 29.08.2015 (i.e. COD of the Station) for tariff purpose.

26. The respondent TANGEDCO vide affidavit dated 6.1.2018 has submitted that there is no error apparent in the impugned order as the petitioner failed to furnish any documentary evidence to substantiate its claim in the original petition and only in the present Review Petition the Petitioner has stated that the share application money has been converted to in equity shares.

27. The petitioner in its affidavit 27.10.2018 has further reiterated its claim that the said share application money has to be considered as equity for the purpose of tariff in terms of 2014 Tariff Regulation. The petitioner has submitted that the Commission in case of NTECL in Petition No. 277/GT/2014 had allowed the similar claim.

28. The respondent TANGEDCO vide affidavit dated 16.11.2018 has further submitted that in case of 277/GT/20l4, NTPC has mentioned that as per the Balance sheet, the share application money has been converted into share capital. The Commission has allowed the equity in that case considering that the share application money has been converted in the same financial year of the DOCO of the Station.

Analysis and Decision

29. We have perused all the documents on record. The Commission at Para-56 of the impugned order dated 11.07.2017 in Petition No. 135/GT/2015 had disallowed the claim with the following observations:

> *56. It is observed that there is share application money amounting to `5500.00 lakh and `1461.60 lakh respectively pending for allotment. Though, the same has been utilized toward expenditure of project, the same was not converted into share capital as on COD. As such, the same cannot be treated as part of equity and has been considered as debt for the calculation of*

debt equity ratio for the purpose of tariff. Accordingly, the debt-equity ratio is worked out as under:-

(Rs in Lakh)

	18.6.2015	***29.8.2015***
Equity (Share Capital)	*182940.00*	*182940.00*
Share Application Money (i)	*5500.00*	*1461.60*
Long term Borrowing (ii)	*432482.00*	*457497.00*
Debt (i+ii)	*437982.00*	*458958.60*
Debt %	*70.54%*	*71.50%*
Equity %	*29.46%*	*28.50%*

30. From the above order of the Commission it is clear that as the share application money was not converted into share capital as on COD, the same was not treated as part of equity and was considered as debt for the calculation of debt equity ratio for the purpose of tariff. In the above background, we do not find any error apparent on the face of the record and accordingly, review on this ground is rejected. However, petitioner is granted liberty to submit the details along with documentary evidence in this regard at the time of true-up.

G. Issue regarding Computational errors in the calculation of fuel cost:-

31. The petitioner has submitted that, in Para 36 and 37 of the Order, there is a computational error in the calculation of fuel cost to the sum of Rs 78.62 crores. As per the certificate furnished by the auditor, as on date of station COD, the initial Start-up oil and Coal consumption value worked out is Rs.199.18 Cr. The petitioner vide affidavit dated 02.09.2016 has furnished certain information regarding the details of the fuel used from synchronization to COD as Rs 120.56 Cr in connection with adjustment of infirm Power. The petitioner has further submitted that the cost of fuel incurred for testing before synchronization was not included in the above affidavit, such as Burner testing, Steam

Blow Out and other testing. Total cost of start-up fuel including fuel used before synchronization and from Synchronization to COD is Rs.199.18 Cr. Accordingly, the certified value of Rs.199.18 Cr. for Initial Start-up oil and Coal consumption need to be considered.

32. The Respondent TANGEDCO in its reply dated 6.1.2018 has submitted that, there is a difference in, expenditure of Rs.7862.89 lakhs (Rs.19918.47 lakhs-Rs.12055.58 lakhs) in the fuel cost furnished by the petitioner vide affidavit dated 2.9.2016. The Petitioner (NTPL) in Forrn-5B has shown excessive cash expenditure of Rs.7862.89 lakhs. Further, the Petitioner in its additional affidavit dated 2.9.2016, has not shown any justification for the difference in the fuel cost stated in Form-5B and the fuel cost furnished in the additional affidavit. Therefore, considering the documents on record and the statements furnished by the Petitioner, the Commission has rightly deducted the difference of Rs.7862.89 lakhs in fuel cost and considered the expenditure towards fuel cost as Rs.12055.58 lakhs as per the data’s available with the Commission.

Analysis and Decision

33. We have examined the submission of the Petitioner. The Commission in the impugned order had adjusted the revenue earned from sale of infirm power with the following observations:-

“36. The petitioner vide ROP of the hearing dated 2.8.2016 was directed to submit the details of infirm power injected in the grid by Units-I and II separately, till its COD along with the revenue earned from sale of infirm power, excluding fuel cost, and the details of fuel used from synchronization till COD along with expenditure on fuel for pre-commissioning activities. In response, the petitioner vide affidavit dated 2.9.2016 has submitted the details of infirm power injected in the grid by Units-I & II separately from synchronization to COD’s of Units, revenue earned from sale of infirm power excluding fuel cost and the detail of fuel used from synchronization to COD for pre-commissioning activities as summarized under-

	Unit	*Unit-I*	*Unit-II*	*Total*
Consumption of coal	*MT*	*149220*	*94785*	*244005.00*
Landed cost of coal	*Rs/MT*	*3009.430*	*3553.76*	
Fuel Cost (Coal)	*Rs*	*449067144.60*	*337162980.00*	*786230124.60*
Consumption of oil (HFO)	*KL*	*4190*	*5633*	*9823*
Consumption of oil (LDO)	*KL*	*1025*	*546*	*1571*
Landed cost of HFO	*Rs/KL*	*34086.67*	*32792.58*	
Landed cost of LDO	*Rs/KL*	*58946.66*	*57462.57*	
Fuel cost (oil)	*Rs*	*203229157.40*	*216098816.93*	*419327974.33*
Revenue from infirm power excluding fuel cost	*Rs.*	*(-)365324983.88*	*(-)372756154.05*	*(-)738081137.93*
Infirm power injected into the grid	*MU*	*202.6127*	*126.6674*	*329.2801*
Revenue earned from sale of Infirm Power	*Rs.*	*286971318.12*	*180505642.88*	*467476961.00*

37. It is observed from the above that the revenue from sale of infirm power, excluding fuel cost, from Units-I and II of the project till the COD of the generating station is (-)`738081137.93. It is further observed that the revenue earned from sale of infirm power amounting to `4674.77 lakh has been adjusted in the capital cost. However, from the details of fuel cost, it is noticed that the total cash expenditure on fuel cost (coal+oil) is `12055.58 lakh, and whereas, the fuel cost as indicated in Form-5B is `19918.47 lakh. The petitioner has however not furnished any explanation/ justification for the said discrepancy in the fuel cost. In the absence of any explanation/ clarification, we have in this order, considered the fuel cost of `12055.58 lakh instead of `19918.47 lakh. Accordingly, the fuel cost has been adjusted by (-)`7862.89 lakh (19918.47-12055.58).”

34. The Commission in the said order has adjusted the revenue earned from sale of infirm power as per submission of the petitioner vide affidavit dated 2.9.2016. The petitioner in this review petition has contended that the Commission has allowed the fuel cost and adjusted the infirm power from synchronization to COD of the units, however, the cost of fuel incurred for testing before

synchronization, such as Burner testing, Steam Blow Out and other testing was not included in the said order dated 11.07.2017. The petitioner in the review petition has submitted the details of consumption of startup fuel i.e. Coal, LDO & HFO before synchronization and up to COD.

35. The definition of Infirm power in Regulation 3(32) of the Tariff Regulations, 2014 provides as under:-

> *"Infirm power" means electricity injected into the grid prior to the commercial operation of a unit or a block of the generating station in accordance with Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time."*

36. Further, the amendment dated 21.03.2012 to Clause (7) of Regulation 8 of the Principal Regulations, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, provides as under:-

> *"(7) Notwithstanding anything contained in clause (6) of this regulation and any provision with regard to sale of infirm power in the PPA, a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre:"*

37. Regulation 18 of the 2014 Tariff Regulations provides as under:-

> ***"18. Sale of Infirm Power***
>
> *Supply of infirm power shall be accounted as deviation and shall be paid for from the regional deviation settlement fund accounts in accordance with the Central Electricity Regulatory*

Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014, as amended from time to time or any subsequent re-enactment thereof

Provided that any revenue earned by the generating company from supply of infirm power after accounting for the fuel expenses shall be applied in adjusting the capital cost accordingly.

38. Thus the supply of infirm power takes place during testing including full load testing. Cost of fuel during testing should also include the cost of fuel incurred for testing before synchronization such as Burner testing, Steam blow out and other testing and the short up fuel such as coal, LDO and HFO. Such expenditure need to be accounted for against the revenues earned from supply of infirm power before adjusting the same in the capital cost. To this extent, we allow the review. The petitioner is directed to furnish the bifurcation of initial start up coal consumptions prior to synchronization and from synchronization to COD along with audited copy of the details of consumption of startup fuel. Accordingly, the review on this aspect is admitted and will be considered after prudence check subject to submission of the relevant audited documents at the time of truing up of tariff.

H. Issue regarding delay and consequential IDC and IEDC:-

39. The petitioner had claimed a time overrun of 39.23 months and 36.60 months in the COD of Unit-I & Unit-II respectively. However, the Commission in the impugned order condoned only 15 months for Unit I and 11 Months for Unit II respectively, as under:

(a) 10 Months for Unit I and 6 Months for Unit II were allowed for delay in start of Boiler erection due to unpredictable soil characteristics & Heavy Rain.

(b) 27 days of delay was condoned for Unit I and Unit II (20 days for flooding in the Project area and 7 days due to fatal accident).

(c) 4 months each for Unit I and Unit II for delay due to Statutory Environmental Clearance.

40. The petitioner has submitted that the Commission has not considered some aspects of the time overrun as under:-

i. The letter dated 11.11.2014 from Principal Secretary, Tamil Nadu Industries Department to Chairman Tamil Nadu Pollution Control Board requesting to permit the trial operations of NTPL generating units pending final clearances, referring to the 'Communication from District Environment Engineer (Tamil Nadu Pollution Control Board) dated 10.09.2014 stating that NTPL can proceed with trial operations only after obtaining Wildlife clearance and any violations will attract provisions of Environment Protection act' (Page 137 of Petition 29.03.2016 and Page 13 & 14 of Affidavit dated 04.11.2016).

ii. The Government of Tamil Nadu has banned the quarrying of River sand in this locality as a measure to check illegal mining for 2 months during April and June 2011. For the similar ban by NGT for quarrying, the Hon'ble Commission has duly condoned 8 months of delay for NTECL Vallur.

iii. The hostile climate including dust storms and heavy wind which affected drum lifting works of Boiler I and Boiler II of NTPL during June, July & August of 2011

iv. The delayed issuance of statutory clearances, viz. Forest Clearance, Wild Life Clearance and CRZ clearance had a cascading effect and implication on various other works.

41. The petitioner vide its affidavit dated 27.10.2018 has submitted that entire period of time overrun was on account of factors beyond the control of the petitioner. The Respondent TANGEDCO vide its reply dated 6.1.2018 has submitted that, the above factors were within the ambit of "controllable factors" as provided under Regulation l2(1) of Tariff Regulations, 2014. The Petitioner has failed to furnish the documentary evidences in support of its claim for the delay caused due to heavy wind and dust storms during June to August 2010. TANGEDCO has submitted that, all these facts have been taken into account by the Commission while disallowing partially the claim of IDC/IEDC for the periods of delay not condoned. TANGEDCO has submitted that, as there is no error on the order, the claim of the review petitioner for review of time overrun and IDC/IEDC is liable to be rejected.

Analysis and Decision

42. We have examined the submission of the Petitioner and TANGEDCO. The Commission has considered all relevant documents placed on record and has recorded detailed reasons in para 16 to 26 of the impugned order while disallowing the time overrun of 24.23 months for Unit-I and 25.60 months for Unit-II. Paras 21 and 25 of the impugned order are extracted as under:-

> *"21………………………………..(ii) In addition to forest clearance, the petitioner has attributed time overrun due to delay in previous milestones activities like ban on sand supply by Govt. of Tamil Nadu during the months of May, 2011and June, 2011, Dust storms during June, July and August of project years and heavy rains during the months of November and December. The delay due to heavy rains and heavy winds had already been considered as above in the civil works for boiler erection. However, the ban on quarrying of river sand by the State Govt. of Tamil Nadu was a measure to check illegal mining and to regularize the supply of river sand. Moreover, the period of delay affected by the ban on sand supply was in April,2011 and the lighting up of Units-I and II was scheduled during the months of October, 2011 and March,2012 respectively and the actual completion of lighting up of the said units were carried out in the months of March,2014 and September, 2014. In this background, the time overrun on account of delay in previous milestones such as ban on sand supply, heavy rains and dust storms has not been condoned.*
>
> *25. The balance delay of 24.23 months for Unit-I and 25.60 months for Unit-II are in respect of factors namely, delay in providing inputs like making land available to the contractors is due to slackness on the part of the petitioner in project management and is within the control of the petitioner. Since these are controllable factors in terms of Regulation 12(1) of the 2014 Tariff Regulations, the delay is attributable to the petitioner. Accordingly, in terms of the principles laid down by the Tribunal in the judgment dated 27.4.2011 [(situation 7.4(i)], the delay of 24.23 months for Unit-I and 25.60 months for Unit-II cannot be said to be beyond the control of*

petitioner and hence not condoned. Therefore, the increase in cost on account of the said delay has to be borne by the petitioner. However, the Liquidated Damages (LD) and Insurance proceeds if any, received by the generating company, on account of the said delay, could be retained by the generating company."

43. We find that the petitioner in the review petition has only re-argued his case regarding time overrun. Since, in the impugned order, all justifications including the supporting documents furnished by the petitioner have been considered there is no error apparent on the face of the order. The petitioner is seeking to reargue the matter on merit which is beyond the scope of review. Hence, review on this ground is rejected.

44. Petition No. 38/RP/2017 is disposed of in terms of the above.

Sd/-	**Sd/-**
(Dr. M.K.Iyer) **Member**	**(P. K. Pujari)** **Chairperson**