

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 30/RP/2022

In

Petition No. 173/MP/2020

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 28th September, 2023

In the matter of

Petition seeking review of Commission's order dated 10.6.2022 in Petition No. 173/MP/2020 relating to Lignite Transfer Price on account of truing-up in respect of Barsingsar Mines as per MoC guidelines for the period 2014-19.

In the matter of

NLC India Limited,
135, EVR Periyar High Road, Kilpauk,
Chennai-600010

.....Petitioner

Vs

1. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Heavy Industrial Area,
Jodhpur, Rajasthan-342003

2. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhavan, 1st Floor, Janpath,
Jaipur, Rajasthan-302005

3. Ajmer Vidyut Vitaran Nigam Limited,
Old Power House Hathi Bhata,
Jaipur Road, Ajmer, Rajasthan-305001

4. Rajasthan Urja Vikas Nigam Limited,
Shed No. 5/5, Vidyut Bhawan,
Janpath, Jaipur - 302 005

.....Respondents

Parties present:

Shri K. Biswal, Advocate, NLC
Shri Rakesh Pandey, Advocate, NLC
Shri A Srinivasan, NLC
Ms. Akansha, NLC
Shri Amal Nair, Rajasthan Discoms



ORDER

The Commission vide order dated 10.6.2022 in Petition No 173/MP/2020, had revised the Lignite Transfer Price of Barsingsar Mines for the period 2014-19, after truing-up of the additional capital expenditure, O&M expenses, removal of Overburden, and the consequent Depreciation and Return on Equity, as per the Ministry of Coal, GOI guidelines dated 2.1.2015, on the fixation of Lignite Transfer Price. Accordingly, the lignite transfer price in respect of the Barsingsar mines of the Petitioner approved for the period 2014-19, vide impugned order dated 10.6.2022 is as under:

Barsingsar Mines						
	UoM	2014-15	2015-16	2016-17	2017-18	2018-19
100% Capacity	LTs	21.00	21.00	21.00	21.00	21.00
78% Capacity	LTs	16.38	16.38	16.38	16.38	16.38
O&M Cost **		6939.99	5963.77	7466.05	8118.44	7859.22
DRE		1554.68	-	-	-	-
Interest on Loan		1083.82	1010.18	886.03	775.75	738.58
Interest on Working Capital		160.94	141.99	167.16	184.97	181.29
Depreciation & Amortisation	Rs. in lakh	671.01	629.90	653.21	936.60	932.20
Mine Closure Expenses		176.90	185.74	195.02	204.78	215.01
ROE		1537.87	1560.42	1564.43	1575.84	1593.27
Total (before Royalty)		12125.21	9492.00	10931.89	11796.37	11519.57
Base Lignite Transfer Price allowed	Rs./ Tonne	740.25	579.49	667.39	720.17	703.27

*** Difference in the O&M expenses allowed in paragraph 38 above and those considered here is due to the negative impact of the power consumption cost while truing up.*

2. Aggrieved by the said order dated 10.6.2022 (in short 'the impugned order'), the Review Petitioner has filed this review petition, 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' of Construction of Utility buildings and boundary walls etc.*
- (b) *Disallowance of DRE in computation of Interest on working capital.*
- (c) *Disallowance of Stores for the purpose of interest on working capital instead allowing stores & spares. Also, the methodology adopted for arriving the Mines*



portion of spares is not in line with the actual consumption Stores & Spares in Mines.

Hearing dated 6.12.2022

3. The Review Petition was heard on 'admission' on 6.12.2022. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions and prayed that the review on the aforesaid issues may be allowed. The learned counsel appearing for the Respondents, Rajasthan Discoms prayed for grant of time to file reply in the matter. Accordingly, by order dated 8.12.2022, the Review Petition was 'admitted' on the issues raised in paragraph 1 above and the parties were directed to complete their pleadings, in the matter. In response, the Respondent RUVNL (on behalf of other Respondents 1 to 4) have filed its reply on 18.1.2023.

Hearing dated 16.2.2023

4. During the hearing on 16.2.2023, the learned counsel for the Review Petitioner made detail oral submissions on the issues raised in the review petition. The learned counsel for the Respondents, Rajasthan Discoms referred to the reply and objected to the prayers of the Review Petitioner, stating that there is no error apparent on the face of the order. The Commission, after hearing the parties, reserved its order in the petition.

5. Accordingly, based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised in the petition as detailed in the subsequent paragraphs.

A. Disallowance of additional capitalization in respect of 'New Assets' of Construction of Utility buildings and boundary walls etc.

6. The Commission in the impugned order dated 10.6.2022 in Petition No. 173/MP/2020 after considering the MOC, GOI guidelines dated 2.1.2015 had allowed



the additional capital expenditure for the assets created due to replacement of auxiliary equipment, conveyors, roads, specialized mining equipment and ground water clearance equipment and not for any other heads, as under:

25. The Petitioner has also furnished the reasons and justification for incurring the above additional capital expenditure claimed for the 2014-19 tariff period. However, as per the MOC guidelines dated 2.1.2015 quoted in paragraph 22 above, additional capitalization is only allowed for assets created due to replacement of auxiliary equipment, conveyors, roads, specialized mining equipment and ground water clearance equipment's and not on any other head. Accordingly, in terms of the said MOC guidelines and on prudence check of the claim, we allow the additional capitalization claimed by the Petitioner, under the following heads, for the purpose of truing up of lignite transfer price:

Xxxx

26. Accordingly, the total additional capital expenditure claimed and allowed in respect of the Barsingsar mine, for the purpose of inclusion in calculation of lignite transfer price for the 2014-19 tariff period, is as under:

<i>(Rs. in lakh)</i>		
Year	Additional Capital Expenditure claimed	Additional Capital Expenditure allowed
2014-15	230.66	181.62
2015-16	77.12	43.79
2016-17	83.92	68.82
2017-18	251.92	252.11
2018-19	8.06	8.06
Total	651.67	554.40

Submissions of the Review Petitioner

7. The Review Petitioner has submitted that the disallowances made is not as per the provisions/intent of the MOC guidelines dated 2.1.2015 and is also not as per the decisions taken in earlier orders issued by the Commission. It has submitted that the MOC guidelines have specified certain assets, which is not an exhaustive list, but a suggestive list. The Review Petitioner has also submitted that the additional capital expenditure incurred is only on essential items that are required and the procurement of additional capital assets is for the statutory requirement. It has further submitted that the additional assets claimed like construction of utility buildings, construction of boundary walls and Y-type fencing at CISF boundary wall at CISF barracks are for the safety & security of the Mines/Personnel. The Review Petitioner has added that additional assets claimed for Store rooms, Ambulance shed, Waiting shed near central



park in LSN and Water cooler, ACs, Room heaters, Chairs are very much essential to cater to the statutory requirement in order to sustain adverse weather conditions for the period 2014-19 and the non-consideration of the same is an error apparent on the face of record.

Reply of the Respondent RUVNL

8. The Respondent RUVNL has submitted that the Review Petition is not maintainable in as much as the Review Petitioner has failed to make out any case for review by way of pointing out any error apparent on the face of record. It has also submitted that the Review Petitioner under the disguise of a review petition, cannot seek to re-argue its matter. As regards the disallowance of the additional capitalization in respect of 'New Assets', the Respondent has mainly submitted the following:

- (a) The Review Petitioner did not put forward a detailed account of the expenditure made by it on the account of additional capitalization. The auditor's report did not provide any details of the expenditure and did not give any breakup of the said expenses.
- (b) The Review Petitioner had claimed an amount of Rs. 651.67 lakh towards additional capitalization for the period 2014-19. The Review Petitioner later during the proceedings in the original petition, provided a breakup of the said expenditure and the reasoning for the same. It was only after the consideration of the same by the Commission, certain components of the additional capitalization were disallowed. The said disallowance was done only after providing reasoning and strictly in terms of the MOC guidelines.
- (c) The Commission had carefully considered the heads under which the additional capitalization could have been allowed and has rightfully proceeded to allow the same. It is the Review Petitioner's case that the list of assets as provided in the MOC guidelines is suggestive in nature and is not exhaustive. The said stand taken by the Review Petitioner, apart from being incorrect, certainly cannot be raised in a review proceeding. The MOC guidelines have categorically laid down to deal with the issues which are regulatory in nature and cannot by any means, said to be suggestive in nature, in the absence of clear language of the guidelines pointing out to the same. The Review Petitioner is indulging in a self-serving interpretation of the guidelines and raising the same in a review.
- (d) The Commission has categorically dealt with the MOC guidelines and provided the reasoning as to how MOC guidelines cover only certain heads. The Review



Petitioner is claiming the expenses which are not covered by the MOC guidelines.

- (e) It is clear from the guidelines, that only certain components of additional capitalization are covered in the guidelines. The Review Petitioner cannot claim the expenses independent of the said MOC guidelines.
- (f) Further, even the nexus sought to be raised by the Review Petitioner between the minutes of meeting and the ensuing MOC guidelines is incorrect. The Review Petitioner cannot read the word 'etc.,' into the guidelines when it has not been included. Even otherwise, interpretation of the guidelines cannot be a ground for review.

Analysis and Decision

9. As regards additional capitalisation, the Ministry of Coal (MOC) guidelines dated 2.1.2015, provides 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.”

10. Out of the total claim for additional capital expenditure of Rs. 651.67 lakh, the Commission in the impugned order dated 10.6.2022, had considered the said MOC guidelines and allowed the total additional capitalisation Rs 554.40 lakh, with the following observations:

“25. The Petitioner has also furnished the reasons and justification for incurring the above additional capital expenditure claimed for the 2014-19 tariff period. However, as per the MOC guidelines dated 2.1.2015 quoted in paragraph 22 above, additional capitalization is only allowed for assets created due to replacement of auxiliary equipment, conveyors, roads, specialized mining equipment and ground water clearance equipment’s and not on any other head. Accordingly, in terms of the said MOC guidelines and on prudence check of the claim, we allow the additional capitalization claimed by the Petitioner, under the following heads, for the purpose of truing up of lignite transfer price”

11. It is evident from the above, that the Commission, after prudence check of the information/ details furnished by the Review Petitioner, had allowed the assets created due to replacement of auxiliary equipment, conveyors, roads, specialized mining equipment and ground water clearance equipment as per MOC guidelines dated 2.1.2015. It is clear that the Petitioner is praying to scrutinize the correctness of the



decision which is already made. The Petitioner is trying to reopen the already settled case with a possibility of another opinion different from which is already taken by the Commission. The provision of the review is mainly to correct the error which is apparent on the face of the order and not to reopen the case with the different perspective. In our view, the Review Petitioner, cannot be permitted to reargue the case on merits, by furnishing justification for these claims, in review. Accordingly, we find no error apparent on the face of the impugned order dated 10.6.2022 and review on this count fails. The prayer of the Review Petitioner is therefore rejected.

B. Disallowance of DRE in computation of Interest on working capital

12. The Commission vide its order dated 10.6.2022 in Petition No. 173/MP/2020 had not considered the Deferred Revenue Expenditure (DRE) in interest on working capital, for the following reasons:

“46. It is observed that the Petitioner in the working capital has claimed average deferred revenue expenditure of Rs. 777.34 lakh in 2014-15. This is due to inclusion of Rs. 1554.68 lakh for the period from April, 2014 to December, 2014 (i.e. 9 months). The Deferred Revenue Expenses (DRE) represents Overburden Removal Expenses incurred before commercial operation of mines. The Commission vide order dated 14.3.2017 in Petition No. 227/MP/2015 had admitted the cost of Rs. 6218.70 lakh towards deferred revenue expenditure and had amortized the amount equally over 36 months w.e.f. January, 2012. Though we have considered the deferred revenue expenditure, as a part of O&M expenses, for the year 2014-15, for calculating the base lignite transfer price, the same has, however, not been considered for the computation of interest on working capital for the 2014-19 tariff period, as the deferred revenue expenditure is an amortized prior period expense, and not a current expense, requires working capital.”

Submissions of the Review Petitioner

13. The Review Petitioner has submitted that it had included DRE for Rs 777.34 lakh along with one month O&M expenses for the computation of Interest on working capital for 2014-15, but the Commission has disallowed the same stating that DRE was amortized in the prior period and that it was not a current period expense. It has also pointed out that during the period 2009-14, the average DRE was included and allowed in the computation of working capital. Accordingly, the Review Petitioner has submitted that the Commission may review and allow the DRE for the period 2014-15.



Reply of the Respondent RUVNL

14. The Respondent RUVNL has mainly submitted as under:

(a) It is not understood as to how the disallowance of a component is a ground for review. The Commission has provided reasons for such disallowance and therefore it is clear that the Commission had examined the component and arrived at the conclusion for disallowing the DRE.

(b) The Commission has clearly stated that though it has considered the DRE for calculating the O&M expenses for the period 2014-15 for calculating the base lignite transfer price, the same had not been considered for computation of working capital for the period 2014-19, since DRE is an amortized prior expense and not a current period expense which would require working capital.

(c) Challenging the order of the Commission on merits is a ground for appeal and not for review. O&M expenses are the expenses required for the regular operation and maintenance of the mine or project. However, DRE only pertains to past period and is not a regular activity. Therefore, Commission was correct in the rejecting the DRE as a part of the O&M expenses.

Analysis and Decision

15. It is evident from para 46 of the impugned order (quoted above) that the Commission had given adequate reason for not considering DRE in the computation of working capital during the period 2014-19. The Review Petitioner, in the Review Petition, has sought to re-argue the case on merits, which is not permissible. The Review Petition, in our view, cannot be an appeal in disguise. The Review Petitioner has also not demonstrated the error apparent on the face of the impugned order. For these reasons, we find no reason to review the impugned order dated 10.6.2022 on this count. Accordingly, the prayer of the Review Petitioner, on this count, is rejected.

C. Disallowance of Stores for the purpose of interest on working capital instead allowing Stores & Spares. Also, the methodology adopted for arriving the Mines portion of spares is not in line with the actual consumption Stores & Spares in Mines.

16. The Commission in the impugned order dated 10.6.2022 in Petition No. 173/MP/2020, had disallowed the claim for consumption of stores as under:



“47. Further, it is observed that the Petitioner has claimed amounts towards consumption of stores & spares, instead of consumption of spares, which is only allowable in terms of the MOC guidelines dated 2.1.2015. In view of this, the stores and spares consumption is apportioned towards spares consumption, in the ratio of respective year’s overall company level Spares consumption to the overall company level Stores & Spares consumption amounts for the Petitioner Company (including power generation and mining segments) for the 2014-19 tariff period, and accordingly spares consumption alone is allowed for inclusion in working capital for calculation of IWC.

Submissions of the Review Petitioner

17. The Review Petitioner has submitted that Spares alone (and not Stores & Spares) have been included in the computation for working capital. It has also submitted that the methodology adopted for arriving at the Mines portion of Spares, is not in line with the actual consumption of Stores & Spares in Mines. It has further submitted that:

- (a) As per definition, Working capital means, the cycle which starts from Procurement of material, deployment of labour, consumption of power/fuel, stores & Spares and processing expenditure to convert the raw material to Finished Good and Sales of the finished good till the realization of money from Customer. Financial terminology which defines working capital as the money available to meet current, short-term obligations. It indicates the liquidity levels of businesses for managing day-to-day expenses and covers inventory, cash, accounts payable, accounts receivable and short-term debt. Expenditure on Stores is required for day-to-day operation and is like Diesel, Petrol other consumables etc. which are used by Mines. It can be said that both Stores & Spares are required for day-to-day operations of Mines.
- (b) In all the orders issued by Commission, for Lignite price for the period 2004-09 and 2009-14, there is no discrimination between the expenditure on Stores and expenditure on Spares and these two terms of expenditure had been used together and not separately.
- (c) The intent of the 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 need to be re-looked and the actual expenses of stores and spares may be considered for computation of working capital.

Reply of the Respondent RUVNL

18. The Respondent RUVNL has mainly submitted that ‘Stores and Spares’ is a separate head and cannot be bifurcation into two. It has also submitted that the other



grounds raised by the Review Petitioner, viz., the meaning of the term “working capital” and reference to the past orders of Commission apart from being incorrect in light of the specific language of the guidelines, are all grounds of appeal and not review.

Analysis and Decision

19. The MOC guidelines dated 2.1.2015, provides that the working capital shall cover:

- (i) One-month Operation & Maintenance Expenses*
- (ii) 12 months Consumption of Spares*
- (iii) 20 days Lignite stock at cost as on 31st March of the preceding year”*

20. We have examined the submissions of the parties. The Commission in the impugned order dated 10.6.2022, had disallowed the claim for consumption of stores in line with literal meaning under the MOC guidelines dated 2.1.2015 (*quoted in para 15 above*). 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 consumption of Stores and consumption of Spares for purpose of working capital. Also, the MOC guidelines do not provide for such demarcation. It is noted that in the mining industry, Consumption of diesel, Petrol and Explosives along with other Spares are required for extraction of lignite from Mines. Further, the requirement of Diesel, Petrol, Explosives are very much essential for the excavation of lignite and are covered under Stores. In our view, these aspects were inadvertently 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 consumption of Spares. We direct accordingly.



21. In view of the above discussions, the lignite transfer price in respect of the Barsingsar mines of the Petitioner approved for the period 2014-19 is revised, as stated in the subsequent paragraphs:

Interest on working capital

22. The interest on working capital allowed for period 2014-19 vide para 48 of the impugned order dated 10.6.2022 is as under:

<i>(Rs in lakh)</i>					
	2014-15	2015-16	2016-17	2017-18	2018-19
1 Month O&M	578.53	497.21	554.38	618.14	655.20
12 Months Spares	34.40	35.91	16.85	47.09	56.46
20 Days Stock	579.21	518.69	599.01	646.38	631.21
Total Working Capital	1192.14	1051.81	1238.20	1370.17	1342.86
Rate of Interest	13.50%				
Interest on Working Capital	160.94	141.99	167.16	184.97	181.29

23. Based on the findings in para 19 above, the interest on working capital allowed for period 2014-19 by this order, is as under:

<i>(Rs in lakh)</i>					
	2014-15	2015-16	2016-17	2017-18	2018-19
1 Month O&M	578.53	497.21	622.34	676.71	655.20
12 Months Stores & spares	47.88	52.29	19.35	55.73	70.35
20 Days Stock	579.31	518.81	599.03	646.44	631.31
Total Working Capital	1205.72	1068.31	1240.71	1378.88	1356.86
Rate of Interest	13.50%				
Interest on Working Capital	162.77	144.22	167.50	186.15	183.18

Lignite Transfer Price for the period 2014-19

24. The lignite transfer price in respect of the Barsingsar mine of the Petitioner approved for the period 2014-19, vide para 63 of the impugned order dated 10.6.2022 is as under:

Barsingsar Mines						
	UoM	2014-15	2015-16	2016-17	2017-18	2018-19
100% Capacity	LTs	21.00	21.00	21.00	21.00	21.00
78% Capacity	LTs	16.38	16.38	16.38	16.38	16.38
O&M Cost **	Rs. in lakh	6939.99	5963.77	7466.05	8118.44	7859.22
DRE		1554.68	-	-	-	-
Interest on Loan		1083.82	1010.18	886.03	775.75	738.58



Interest on Working Capital		160.94	141.99	167.16	184.97	181.29
Depreciation & Amortisation		671.01	629.90	653.21	936.60	932.20
Mine Closure Expenses		176.90	185.74	195.02	204.78	215.01
ROE		1537.87	1560.42	1564.43	1575.84	1593.27
Total (before Royalty)		12125.21	9492.00	10931.89	11796.37	11519.57
Base Lignite Transfer Price allowed	Rs./ Tonne	740.25	579.49	667.39	720.17	703.27

** Difference in the O&M expenses allowed in paragraph 38 above and those considered here is due to the negative impact of the power consumption cost while truing up.

25. The Lignite transfer price for Barsingsar Mines allowed as above, for the period 2014-19, stands revised by this order, is as under:

Barsingsar Mines							
Particulars	UoM	2014-15	2015-16	2016-17	2017-18	2018-19	
100% Capacity	LTs	21.00	21.00	21.00	21.00	21.00	
78% Capacity	LTs	16.38	16.38	16.38	16.38	16.38	
O&M Cost	Rs in Lakh	6939.99	5963.77	7466.05	8118.44	7859.23	
DRE		1554.68	-	-	-	-	
Interest on loan		1083.82	1010.18	886.03	775.75	738.58	
Interest on Working Capital		162.77	144.22	167.50	186.15	183.18	
Depreciation & Amortisation		671.01	629.90	653.21	936.60	932.20	
Mine Closure Expenses		176.90	185.74	195.02	204.78	215.01	
ROE		1537.87	1560.42	1564.43	1575.84	1593.27	
Total (before Royalty)		12127.05	9494.23	10932.23	11797.55	11521.46	
Base Lignite Transfer Price allowed		Rs/ Tonne	740.36	579.62	667.41	720.24	703.39

26. Review Petition No. 30/RP/2022 in Petition No.173/MP/2020, is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

