

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 33/2023
in
Petition No. 223/MP/2022

Coram:

Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Date of Order: 4th May, 2023

In the matter of

Application seeking approval of provisional tariff on fixation of Lignite Input Price for Neyveli Mines for the period from 1.4.2019 to 31.3.2024.

And

In the matter of:

Petition seeking approval for Lignite Input Price for the period 1.4.2019 to 31.3.2024 in respect of Neyveli Mines as per the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Second Amendment, Regulations, 2021.

And

In the matter of:

NLC India Limited,
No. 135, EVR Periyar High Road,
Kilpauk, Chennai-600031.

.....Applicant/ Petitioner

Vs

(1) Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai, Chennai-600002.

(2) Power Company of Karnataka Limited,
KPTCL complex, Kaveri Bhavan,
K.G. Road, Bangalore-560009.

(3) Bangalore Electricity Supply Company Limited
Krishna Rajendra Circle, Bangalore-560001.

(4) Mangalore Electricity Supply Company Limited
Corporate Office, MESCOM Bhavana, Bejai,
Kavoor Cros Road, Mangalore-575004.



- (5) Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga, Karnataka-585102.
- (6) Hubli Electricity Supply Company Limited
Corporate Office, P.B.Road, Navanagar, Hubli,
Karnataka-580025.
- (7) Chamundeshwari Electricity Supply Corporation Limited
Corporate Office, No. CA 29, Vijayanagar 2nd Stage, Hinakal,
Mysore, Karnataka - 570017.
- (8) Kerala State Electricity Board Limited
VaidyuthiBhavanam, Pattom,
Thiruvananthpuram - 695004.
- (9) Puducherry Electricity Department,
137, NSC Bose Salai,
Puducherry-605001.
- (10) Andhra Pradesh Power Coordination Committee,
VidyuthSoudha, 48-12-4/1, Elluru Road, Gundala,
Vijayawada, Andhra Pradesh-520008.
- (11) Southern Power Distribution Company of Andhra Pradesh Limited,
D. No. 19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupathi, Andhra Pradesh-517501
- (12) Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seetammadhara, Vishakapatnam,
Andhra Pradesh – 503013
- (13) Central Power Distribution Corporation of Andhra Pradesh Limited,
Beside Polytechnic College, ITI Road,
Vijayawada, Andhra Pradesh- 520 008.
- (14) Northern Power Distribution Company of Telangana Limited,
H.No. 1 -1-504, Opp. NIT petrol Pump, Chaityanayapuri colony,
Hanmkonda, Warangal, Telangana - 506 004.
- (15) Telangana State Power Coordination Committee
TSTRANSCO, VidyutSoudha, Khairatabad,
Hyderabad-500082.
- (16) Southern Power Distribution Company of Telangana Limited,
Corporate Office: No. 6-1-50, Mint Compound, Hyderabad,
Telangana - 500 063.
- Respondents**

Parties Present:

Shri. Kulamani Biswal, Advocate, NLCIL
Shri Rakesh Pandey, Advocate, NLCIL
Shri Mukesh Aggarwal, NLCIL
Shri A. Srinivasan, NLCIL
Shri S. Vallinayagam, Advocate, TANGEDCO



ORDER

The Petitioner is a generating company owned and controlled by the Central Government and the tariff of the Petitioner's generating stations, namely TPS-I, TPS-II (Stage I and Stage II), TPS-I (Expansion) and TPS-II (Expansion) is regulated by this Commission in terms of Section 79(1)(a) of the 2003 Act, Lignite extracted from the mines which are maintained and operated by the Petitioner, is used for generation of electricity for supply to the Respondents.

2. Till the period 2014-19, the lignite transfer price of the Petitioners mines, was based on the guidelines issued by Ministry of Coal, GOI. Thereafter, the Commission notified the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Regulations, 2019 (in short' the 2019 Tariff Regulations), which came into force from 1.4.2019. Subsequently, the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Second Amendment, Regulations, 2021 (in short 'the 2021 Second Amendment Regulations), which were gazette notified on 13.9.2021, stipulates the terms and conditions for the determination of the input price of coal supplied from integrated Mines to the linked generating stations.

3. Petition No. 223/MP/2022 has been filed by the Petitioner, seeking approval of the Lignite Transfer Price, in respect of Petitioner's Mines, for the period 2019-24, in terms of the 2021 Amendment Regulations. Accordingly, the reliefs sought by the Petitioner, in the said petition, are as under:

- a. *To take on record the present petition and determine the lignite Input price for the period 2019-24 for the Pooled Mines at Neyveli which supply lignite to the linked thermal power generating stations of NLCIL and the TAQA generating station in terms of the submissions made above;*
- b. *To permit the petitioner to submit the revised Mine Plan approval in respect of NLCIL Mines as and when approved by competent authorities.*



- c. *To permit the Petitioner to continue the depreciation computation from the earlier control periods as per MoC guidelines and as approved by the Commission.*
- d. *To permit the petitioner to claim the amortization of its mining land of the prior period uniformly during the tariff period 2019-24.*
- e. *To permit the petitioner to claim the Mine Development expenditure due to modification in accounting policy in line with the CERC 2nd amendment for integrated mines for the tariff period 2019-24 in the financial year 2021-22.*
- f. *To approve the funding methodology of Net Fixed Asset to Mine I, Mine IA and Mine II. Gross fixed Asset methodology to Mine II Expansion in the determination of the input price.*
- g. *To permit the petitioner to recover the FERV on Guarantee fee, interest and loan repayment*
- h. *To allow the O&M expenditure as claimed in the petition.*
- i. *To allow the revision of Input Price of Lignite for the control period 2019-24 based on the outcome of Review petition filed if any.*
- j. *To recover the filing fee from the beneficiaries*

4. The said petition was admitted on 22.12.2022 and the parties have been directed to complete the pleadings in the matter. The petition is listed for further hearing. During the pendency of this petition, the Petitioner has filed Petition No.104/MP/2023, seeking approval of the provisional Lignite Transfer Price for Neyveli Mines for the period 2019-24.

Hearing dated 13.4.2023

5. During the hearing of Petition No. 104/MP/2023, on 13.4.2023, the Commission directed that this Petition be treated as an Interlocutory Application (IA) to Petition No. 223/MP/2022. Accordingly, IA (Dy no.1051/2023) was admitted and the Respondents were directed to file their replies to the IA. In response, the Respondent TANGEDCO has filed its reply on 26.4.2023.

Hearing dated 27.4.2023

6. During the hearing of IA No. 33/2023 (Dy no. 1051/2023), the learned counsel for the Applicant/Petitioner made detailed oral submissions in support of the prayer



for grant of provisional lignite transfer price, for the period 2019-24, in respect of the Neyveli Mines, pending final determination of the same in Petition No.223/MP/2022.

7. The Respondent TANGEDCO, has submitted that since pleadings are complete in the petition, it would be proper to hear and dispose of the petition seeking lignite transfer price. In this context, the Respondent, while pointing out that there is huge delay in the filing of the petition, has submitted that the reasons given for not filing the petition, within the period of 60 days, from the date of coming into force of the Second Amendment Regulations, is unjustifiable. This submission of the Respondent is not tenable. It is noticed from records that the Commission, vide its order dated 22.12.2022 in IA No.54/2022 filed by the Petitioner, had condoned the delay in filing the petition (Petition No.223/MP/2022), and has admitted the same, with directions to complete pleadings. Though pleadings are complete in the matter, the parties are required to be heard further and the disposal of the same will take some more time. In this background, there is no bar for the consideration of the IA filed by the Petitioner, praying for the grant of provisional lignite transfer price, pending final disposal of the petition.

8. The Respondent TANGEDCO has also contended that there is no provision in the 2019 Tariff Regulations to seek provisional lignite transfer price after a lapse of four years in a tariff block. This submission of the Respondent merits no consideration. Admittedly, the 2021 Amendment Regulations, notified on 13.9.2021, and applicable for the period 2019-24, enabled the Petitioner to file petition for determination of lignite transfer price, within 60 days from the date of the said regulations coming into force. However, after the lignite transfer price was trued -up for the period 2014-19, by Commission's order dated 24.3.2022 (read with corrigendum order dated 26.4.2022), the Petitioner has filed the petition, in terms of



the proviso to Regulation 9(4) of the 2021 Amendment Regulations, for determination of the lignite transfer price for the period 2019-24. It is pertinent to note that Section 94(2) of the 2003 Act, provides that the Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate. Thus, the Commission has the full discretion to pass interim orders, as it considers appropriate in the facts of the case. Therefore, the consideration of the prayer in the IA during the pendency of the petition, is, according to us, in order.

9. The Respondent KSEBL has contended that there is no such exercise of 'determination of provisional tariff' envisaged under the 2019 Tariff Regulations, as the Petitioner is statutorily mandated to comply with Regulation 36(3) of the 2019 Tariff Regulations, which provide for the last available pooled lignite transfer price as determined by the Commission. Regulation 36(3) of the 2021 Amendment Regulations provides as under:

"36(3) The generating company shall, after the date of commercial operation of the integrated mine(s), till the input price of lignite is determined by the Commission under these regulations, fix the input price of lignite for the generating station at the last available pooled lignite price as determined by the Commission for transfer price of lignite or the estimated price available in the investment approval, whichever is lower"

10. In terms of the above regulation, the generating station is required to fix the last available pooled lignite transfer price, till the same is determined by the Commission as per the regulations. As stated earlier, the lignite transfer price for the period 2014-19 was trued up by order dated 24.3.2022/26.4.2022 in Petition No.452/MP/2019 and based on this, the Petitioner has filed the petition for determination of the lignite transfer price for the period 2019-24. As per Regulation 36(3), the last available pooled lignite price, which is to be recovered/fixed by the Petitioner, till determination by the Commission, is the trued-up lignite transfer price of Rs 2021/ton, for the period



2014-19, as determined by order dated 24.3.2022. The Petitioner cannot be expected to recover the lignite transfer price adopted prior to this, since it has to meet its ongoing financial obligations, apart from the reasonable recovery of cost of supply of electricity to the Respondents. In this background, the IA filed by the Petitioner seeking provisional lignite transfer price, falls within the ambit of Regulation 36(3) of the 2021 Amendment Regulations. The submission of the Respondent is therefore not acceptable.

11. The Respondent KSEBL has further contended that since the Commission's order dated 27.8.2020 in Petition No. 532/MP/2020 lays down the mechanism to charge tariff by the Petitioner, till the final determination of tariff by the Commission, which is in operation for the last three years, the application for provisional tariff, seeking variation of the said order, is not justifiable. Admittedly, Petition No.532/MP/2020 (filed by the Respondent) was prior to the notification of the 2021 Amendment Regulations. Regulation 36(3) of the 2019 Tariff Regulations (prior to the 2021 Amendment) provided that till the time such Regulations are notified by the Commission; the input price of lignite shall continue to be determined as per guidelines specified by MOC. In line with is, the Commission vide interim order dated 27.8.2020 held as under:

"8. In the interim, till the Regulations for computation of input price of lignite are notified by the Commission, NLCIL is directed to continue to consider the lignite transfer price based on the MoC Guidelines issued vide order No. 28012/1/2014-CA-II dated 2.1.2015. The Commission notes that, in the Petition No. 219/GT/2019, NLCIL has itself considered pooled lignite transfer price @ Rs. 2132.239 per MT based on the MoC Guidelines, which was allowed by the Commission in its order dated 29.1.2020, subject to revision in accordance with the Regulations for computation of lignite transfer price to be notified by the Commission.

12. It is evident from the above that the Petitioner was directed to continue with the lignite transfer price (as per MOC guidelines dated 2.1.2015), till the notification of regulations for the same. As stated, the Commission has notified the 2021



Amendment Regulations, on 13.9.2021, and the Petitioner, has filed petition for determination of the lignite transfer price for the period 2019-24, based on the trued-up lignite transfer price for the period 2014-19. Hence, there is no bar for the Petitioner to file the IA and seek the provisional lignite transfer price for 2019-24, pending final determination of the same. Even otherwise, Regulation 36(4) of the 2021 Amendment Regulations, provides for the adjustment of the excess or short recovery of the lignite transfer price, with simple rate of interest, equal to the bank rate prevailing as on 1st April of the respective years of the tariff period, in six equal monthly instalments. Therefore, the reliance placed by the Respondent, on the interim order dated 27.8.2020, is incorrect and not acceptable.

13. In view of the above, the contentions of the Respondents are rejected and the IA filed by the Petitioner seeking approval of provisional lignite transfer price, pending final decision in the petition, is maintainable.

14. It is pertinent to note that while the Petitioner has incurred expenditure towards lignite price for its mines, the Respondent beneficiaries are reaping the benefits of such expenditure, by way of supply of power. Also, Petition No.223/MP/2022, is pending for further hearing of the parties and the final disposal of the same, will take some more time. In this background, and in order to enable the Petitioner to meet its ongoing financial obligations, we consider the grant of interim lignite transfer price, in respect of the Mines of the Petitioner, for the period 2019-24, as stated in the subsequent paragraphs.

15. The Commission vide its orders dated 24.3.2022/26.4.2022 in Petition No.452/MP/2019 had allowed the trued-up pooled lignite transfer price for the year 2018-19, as under:



Pooled Mines						
Year: 2018-19	UOM	Mine-I (Expansion)	Mine-IA	Mine-II	Mine-II (Expansion)	Total
100% Capacity	LTs	40	30	105	45	220
85% Capacity	LTs	34	25.5	89.25	38.25	187
O&M Cost	Rs. in lakh	51167	50635	121247	51963	275011
O&B Removal	Rs. in lakh	3868	5144	3248	1392	13652
Interest						
On Debt	Rs. in lakh	130	6	4	5220	5359
Working Capital	Rs. in lakh					6659
Depreciation & Amortization	Rs. in lakh	3752	1828	7707	11186	24474
Cost of Mine Closure	Rs. in lakh	607	243	1250	536	2636
ROE %	Rs. in lakh	4625	5200	23447	16787	50058
Total	Rs. in lakh					377850
Base Price	Rs./Tonne	-	-	-	-	2021

16. It is observed from the above table, that against the total cost of Rs 3778.50 crore, an amount of Rs 2750.11 crore is towards O&M cost. This works out to 72.78 % of the total cost.

17. The Petitioner, in the petition, (Petition No.223/MP/2022) has claimed the lignite transfer price for the period 2019-24, based on actual expenses incurred for 2019-20, 2020-21 and projected expenses for the period from 2021-22 to 2023-24 as tabulated below:

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
ROM cost Rs. per ton	2,124	2,617	2,254	2,202	2,311

18. The Petitioner, in the IA has sought provisional lignite transfer price for the period 2019-24 considering the base lignite transfer price of Rs 2021/ton as approved by the Commission vide Corrigendum order dated 26.4.2022 in Petition No.



452/MP/2019, for 2018-19 and escalated the same at the rate of 3.5% per annum, as under:

Year	Unit	Rs./Ton
2019-20	Rs./Ton	2075.00
2020-21	Rs./Ton	2131.00
2021-22	Rs./Ton	2187.00
2022-23	Rs./Ton	2246.00
2023-24	Rs./Ton	2306.00

Note: The above costs are base price only exclusive of taxes & duties

19. The Respondent TANGEDCO has objected to the aforesaid claim of the Petitioner and has submitted that the Petitioner, instead of considering the O&M charges for 2018-19, for further projections, has adopted a new methodology with an intention to justify the claim for provisional tariff, which is erroneous. Regulation 36(l)(b) of the 2019 Tariff Regulations, provides that the O&M expenses for the tariff period ending on 31st March 2024, in respect of the integrated mine(s) of lignite commissioned on or before 31st March 2019, shall be worked out based on the O&M expenses, as admitted by the Commission in 2018-19 and escalated at the rate of 3.5% per annum. Thus, in terms of the said regulation, the O&M expenses for 2018-19, is subject to escalation of 3.5% per annum.

20. However, it is observed that after factoring only O&M escalation of 3.5% per annum, the effective increase in the lignite transfer price works out to 2.55% (72.78% of 3.5%). Further, taking into consideration the lignite transfer price of Rs 2021/Ton, as approved vide order dated 24.3.2022/26.4.2022 (in Petition No. 452/MP/2019), for 2018-19, the interim lignite transfer price for the period 2019-24, is worked out as under:

Year	Unit	Rs./Ton
2019-20	Rs./Ton	2072.54
2020-21	Rs./Ton	2125.39
2021-22	Rs./Ton	2179.58
2022-23	Rs./Ton	2235.16
2023-24	Rs./Ton	2292.16

Note: The above costs are base price only exclusive of taxes & duties.



21. Since the provisional lignite transfer price of Rs 2246/ton, claimed in the IA, (in para 18 above) and as computed above as 2235.16/ton (in para 20 above) for the year 2022-23 is higher than the lignite transfer of Rs 2202/ton claimed for the said year, in the main Petition No. 223/MP/2022, the same is restricted to Rs 2202/ton for the year 2022-23. Accordingly, the interim lignite transfer price allowed for the period 2019-24 is tabulated below:

Year	Unit	Rs./Ton
2019-20	Rs./Ton	2072.54
2020-21	Rs./Ton	2125.39
2021-22	Rs./Ton	2179.58
2022-23	Rs./Ton	2202.00
2023-24	Rs./Ton	2292.16

22. The interim lignite transfer price approved as above, is subject to adjustment after final determination of the lignite transfer price for the period 2019-24, in Petition No.223/MP/2022.

23. I.A.No. 33/2023 (in Petition No. 223/MP/2022) is disposed of in terms of the above. Petition No.223/MP/2022 shall be listed for hearing on **16.5.2023**.

Sd/
(Pravas Kumar Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

