

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 532/MP/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 30th April, 2023

In the matter of

Petition under Section 79(1)(a) and 79(1)(f) of the Electricity Act, 2003 and Regulation 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, seeking intervention on the lignite transfer price fixed by Neyveli Lignite Corporation of India Limited for the period 2019-24.

And

In the matter of

Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004, Kerala

... **Petitioner**

Vs

1. NLC India Limited,
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of Food Corporation of India,
Chetpet, Chennai – 600 031,
Tamil Nadu, India
2. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600002
3. Power Company of Karnataka Limited,
KPTCL Complex, Kaveri Bhavan,
Bangalore-560009.
4. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle,
Bangalore-560 001.
5. Mangalore Electricity Supply Company Limited,
MESCOM Bhavana, Bejai, Kanvoor Cross Road,
Mangalore-575 004.

6. Chamundeshwari Electricity Supply Company Limited,
Corporate office No.CA 29, Vijayanagar 2nd stage,
Hinakal, Mysore -570017.
7. Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga,
Gulbarga-585 102
8. Hubli Electricity Supply Company Limited,
Corporate office, P.B.Road,
Navanagar, Hubli- 580025.
9. APTRANSCO, Vidyut Soudha,
Khairatabad, Hyderabad- 500082.
10. Southern Power Distribution Company of AP Limited,
D.NO:19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupathi- 517501.
11. Eastern Power Distribution Company of AP Limited,
P&T Colony, Seetammadhara,
Vishakapatnam – 503013.
12. ATSTRANSCO,
Vidyut Soudha, Khairatabad,
Hyderabad – 500082
13. Northern Power Distribution Company of Telengana Limited,
H.No.1-1-504, Opp. NIT petrol pump,
Chaityanayapuri colony, Hanmkonda,
Warangal (Telengana) – 506 004.
14. Southern Power Distribution Company of Telengana Limited,
2nd Floor, H.No.6-1-50, Mint Compound,
Hyderabad – 500063.
15. Puducherry Electricity Department,
137, NSC Bose Salai,
Puducherry – 605001.

... Respondents

Parties present:

Shri Prabhas Bajaj, Advocate, KSEBL
Shri Ankit Roy, Advocate, KSEBL
Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Srishti Khindaria, Advocate, NLCIL
Shri A Srinivasan, NLCIL
Ms. Akansha, NLCIL

ORDER

The Petitioner, Kerala State Electricity Board Limited, has filed the present Petition with the following prayers:

“(a) Declare that the purported “guidelines” issued by the Respondent No.1 for determination of lignite transfer price for the period of 2019-2024 are illegal and without any lawful authority.

(b) Direct the respondent 1, NLCIL to strictly follow the guidelines of the Ministry of Coal, Govt. of India [which were being followed for the earlier periods] for fixing the lignite transfer price for 2019-24, and to decide the lignite transfer price in accordance with the Ministry of Coal guidelines with the approval of Hon’ble Commission.

(c) Direct that till this petition is finally decided and lignite transfer prices are re-fixed, the lignite transfer price of 2018-19 may be followed, so as to protect the interest of the beneficiaries and the ultimate consumers of the petitioner.

(d) Pass such other order(s) as this Commission deems fit and necessary in the facts and circumstances of the present case in the interest of justice.”

2. The Petitioner has mainly submitted as under:

(a) The price of lignite from captive mines of NLC India Limited (NLCIL) was being determined based on the relevant Guidelines issued by the Ministry of Coal (MoC), Government of India from time to time based on the proposal forwarded by the Board of Directors of NLCIL and in consultation with stakeholders, which was subsequently approved by the Commission. The Guidelines for fixation of transfer price of lignite for NLCIL mines for the period 2014-19 were issued by Ministry of Coal, Government of India vide order No. 28012/1/2014-CA-II dated 2.1.2015 and the lignite transfer price computed on that basis, were approved by the Commission vide its order dated 8.3.2017 in Petition No. 256/GT/2014.

(b) For the tariff period 2019-24, Regulation 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019

(in short, ' the 2019 Tariff Regulations') provides that input price of lignite from the integrated mines will be computed in accordance with the Regulations to be notified by the Commission separately and till the time such Regulations are notified, the input price of lignite shall be continued to be determined as per the Guidelines specified by MoC.

(c) NLCIL approached MoC for fixation of transfer price of lignite for NLCIL mines from 1.4.2019. MoC vide its letter No. 28012/1/2014-CA-II dated 24.6.2019 intimated that the NLCIL's Board can, in consultation with the stakeholders, decide the lignite pricing at such frequency as the situation may demand.

(d) As per the above letter, while MoC permitted NLCIL's Board to determine the transfer price of lignite and to decide the frequency of undertaking the process of price determination. However, the principles for determining the transfer price are required to be governed by the Regulation 36(3) of the 2019 Tariff Regulations. NLCIL was only to determine the lignite price in terms of the MoC's guidelines, and not to modify MoC's existing Guidelines or to frame fresh Guidelines for fixing the lignite price.

(e) However, NLCIL, in complete violation of Regulation 36(3) of the 2019 Tariff Regulations, has issued fresh Guidelines for fixing the lignite transfer price for 2019-24, the provisions of which were also in deviation from the earlier methodology issued by MoC. NLCIL has also proceeded with billing the beneficiaries based on this lignite price.

(f) The fresh Guidelines issued by NLCIL for fixing lignite transfer price are without any lawful authority or jurisdiction, and are contrary to the 2019

Tariff Regulations. The said guidelines deserve to be set aside by the Commission.

(g) In 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 lignite transfer price notified by the Commission. Therefore, in the interim, NLCIL ought to be directed to consider the lignite transfer price @ Rs. 2132.239 per ton based on the MoC Guidelines till the Regulations for computation of input price of lignite are notified by the Commission.

3. The matter was admitted on 27.8.2020. During the course of hearing, learned counsel for the Respondent, NLCIL submitted that up to 2019, the transfer price of lignite was being determined on basis of the MoC Guidelines, which was also being approved by the Commission from time to time. Thereafter, as per Regulation 36 of the 2019 Tariff Regulations notified on 7.3.2019, determination of the input price of lignite from the integrated mines is to be in accordance with the Regulations to be notified by the Commission separately. While draft Regulations in this regard have already been issued on 1.6.2020 and public hearing thereon also concluded, for interim period, MoC vide its letter dated 24.6.2019 stated that NLCIL's Board in consultation with the stakeholders can decide the lignite pricing at such frequency as the situation may demand. The said letter was in response to the NLCIL's letter dated 23.1.2019 for fixation of transfer price of lignite mine from 1.4.2019 onwards as the MoC Guidelines of 2015 were operative only till 31.3.2019. Accordingly, NLCIL only after meeting and consulting all stakeholders including KSEBL, has issued the said Guidelines for lignite transfer price.

4. During the course of hearing, the Commission observed that the input lignite price from NLCIL's integrated coal mines, even though determined on the basis of the MoC Guidelines, was subject to approval of the Commission. Thereafter, for the tariff period 2019-24, in terms of Regulation 36 of the 2019 Tariff Regulations, the input price of lignite from the integrated mines is required to be computed in accordance with the Regulations to be separately notified by the Commission. While the Commission had already issued draft Regulations in this regard, Regulation 36(3) of 2019 Tariff Regulations clearly provided that till the time such Regulations are notified by the Commission, the input price of lignite shall continue to be determined as per the Guidelines specified by MoC. In the above circumstances, the Commission observed that it was not appropriate for NLCIL to devise its own Guidelines for fixation of transfer price of lignite from NLCIL's mines for 2019-24 and proceed to bill the beneficiaries in accordance thereof without prior approval of the Commission on the transfer price of lignite so arrived at. Accordingly, the Commission directed NLCIL to keep the said Guidelines in abeyance. Learned counsel for the Respondent, NLCIL agreed for the same.

5. The Commission vide ROP dated 27.08.2020 directed NLCIL 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 till the Regulations for computation of input price of lignite are notified by the Commission. The Commission noted 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.

6. The matter was further heard on 24.4.2023. During the course of hearing, learned counsel for the Petitioner submitted that vide Record of Proceedings for the hearing dated 27.8.2020, the Commission, *inter-alia*, directed that the Guidelines issued by NLCIL shall be kept in abeyance and till the Regulations for computation of Lignite Transfer Price are notified by the Commission, NLCIL shall follow the guidelines of MoC. Subsequently, on 19.2.2021, the Commission issued the Second Amendment to the Tariff Regulations, 2019 - amending the Regulation 36 thereof and inserting the Regulations 36A to 36P - for determination of the Lignite Transfer Price for the period 2019-24. Further, in terms of the said amended Regulations, NLCIL was required to file a Petition for approval of the Lignite Transfer Price. NLCIL, thereafter, filed Petition No. 223/MP/2022 for approval of its Lignite Transfer Price for the period 2019-24 and subsequently also filed Petition No. 104/MP/2023 for determination of provisional tariff on fixation of Lignite Transfer Price for the period 2019-24. In terms of the direction of the Commission dated 13.4.2023, the later petition was to be treated as IA in the former and both of them were listed for hearing on 27.4.2023. Learned counsel submitted that in view of the above developments, the present Petition may be disposed of by the Commission by, *inter-alia*, directing that (i) the Guidelines dated 19.9.2019 framed by NLCIL, being entirely without any jurisdiction, would deserve to be set aside, and (ii) the interim arrangement as directed by the Commission in its order dated 27.8.2020 would deserve to be continued till the determination of provisional Tariff /Tariff by this Commission in Petition No. 223/MP/2022.

7. Learned counsel for the NLCIL submitted that NLCIL will act as per the provisional order to be issued by the Commission.

8. We have considered the submissions of the Petitioner and the Respondent NLCIL. Present Petition has been filed, *inter-alia*, challenging the validity of the Guidelines framed by NLCIL for determination of the Lignite Transfer Price. It is noticed that NLCIL has already filed IA (Diary No. 1051/2023) in Petition No. 223/MP/2022 for determination of provisional tariff of the lignite transfer price. Considering the submission of the learned counsel for NLCIL that NLCIL has filed the Petition No. 223/MP/2022 in terms of the 2019 Tariff Regulations, and NLCIL will raise the bills as per the order(s) to be issued by the Commission, we are of the view that the issues raised by the Petitioner in the instant Petition no longer survive. Further, we make it clear that the impugned Guidelines issued by NLCIL shall not be acted upon.

9. Accordingly, the Petition No. 532/MP/2020 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson