IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 92 of 2017

Dated: 17.07.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

NLC India Limited
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600031,
Tamil Nadu, India. **…Appellant**

Versus

1. Central Electricity Regulatory Commission
Through its Secretary,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001

2. Tamil Nadu Generation and Distribution Company Ltd.
Through its Managing Director,
800- Anna salai, Chennai – 600 002.

3. Power Company of Karnataka Limited
Through its Managing Director,
KPTCL Building, Kaveri Bhavan,
K.G. Road, Bangalore-560 001

4. Bangalore Electricity Supply Co. Ltd.
Through its Managing Director,
KR Circle, Bangalore – 560001

5. Mangalore Electricity Supply Co. Ltd.
Through its Managing Director,
Bejai, Kavoor Cross Road,
Managalore-575 004.

6. Gulbarga Electricity Supply Co. Ltd.
   Through its Managing Director,
   Station Main Road, Gulbarga-585102.

7. Hubli Electricity Supply Co. Ltd.
   Through its Managing Director,
   Corporate Office, Navanagar,
   PB Road, Hubli-580025.

8. Chamundeshwari Electricity Supply Corporation Ltd.
   Through its Managing Director,
   Corporate Office, No.CA 29,
   Vijaya Nagar 2nd Stage,
   Hinakal, Mysore 570 017.

9. Kerala State Electricity Board Ltd.
   Through its Managing Director,
   Vidhyuthi Bhavan, Pattom,
   Thiruvananthapuram-695004.

10. Puducherry Electricity Department
    Through its Managing Director,
    137, N.S.C. Bose Road, Salai,
    Puducherry – 605001

11. Transmission Corporation of Andhra Pradesh
    Through its Managing Director,
    Vidyut Soudha, Khairatabad,
    Hyderabad- 500082

12. Transmission Corporation of Telangana
    Through its Managing Director,
    Vidyut Soudha, Khairatabad
    Hyderabad- 500082. **… Respondents**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Ritu Apurva
Mr. Amal Nair
Ms. Kriti Soni
Ms. Ashabari Basu Thakur

Mr. Sarthak Sareen

Counselfor the Respondent(s) : Mr. Anna Malhotra for R-1

Ms. Anusha Nagarajan
Mr. S. Vallinayagam for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned appeal has been filed by M/s. NLC India Limited challenging the Order dated 10.02.2017 passed by the Central Commission in Petition No. 473 of 2014, pertaining to Revision of tariff of NLC Thermal Power Station II Stage-I (630 MW) and Stage-II (840 MW) on account of additional capital expenditure incurred for the period from 01.04.2009 to 31.03.2014 upon Truing- up of annual fixed charges determined by Order dated 27.06.2011 in Petition No. 231/2009 and Order dated 25.6.2013 in Petition No. 17/RP/2011.

Description of the Parties

2. The Appellant, NLC India Limited (in short "NLCIL" or "Appellant") is a Government of India enterprise, and a company incorporated under the Companies Act,1956.

3. Respondent No. 1 is the Central Electricity Regulatory Commission, established under section 76 of the Electricity Act, 2003, having been vested with the powers under section 79 of the Electricity Act, 2003 (in short "Act") inter alia to resolve the dispute herein.

4. Respondent Nos. 2 to 12 are the beneficiaries of the Generating Station built, owned, and operated by the Appellant.

Factual Matrix of the Case

5. The Appellant is engaged in the business of generation and sale of electricity to the Respondent purchasers/beneficiaries in India. The Appellant, being a generating company owned and controlled by the Central Government, is covered by clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The generation and sale of power by the Appellant is regulated under the provisions of the Electricity Act, 2003, by the Central Commission, the Respondent No. 1 herein.

6. One of the generating projects of the Appellant is the Thermal Power Station-II Stage -I (630 MW) and Stage- II (840 MW) (in short "TPS II Station"). The electricity generated from the TPS II Station is supplied to Respondents No. 2 to 12 herein.

7. The TPS II Station with a total capacity of 1470 MW comprises three units of 210MW each under Stage I and four units of 210 MW each under Stage II. The dates of commercial operation of the various units of the two stages of the TPS II Station are as under:

Stage-I		**Stage-II**	
Unit-I	29.9.1986	Unit-I	25.1.1992
Unit-II	8.5.1987	Unit-II	2.6.1992
Unit-III	23.4.1988	Unit-III	17.3.1993
		Unit-IV	9.4.1994

8. For the tariff period from 01.04.2009 to 31.03.2014, the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of

Tariff) Regulations, 2009 (in short "Tariff Regulations, 2009") inter alia, providing for the norms and parameters for the determination of tariff of the thermal generating stations. The relevant part of the Tariff Regulations,2009 is as under:

> *"6. Truing up of Capital Expenditure and Tariff (1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up. Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.*
>
> *………………………………..*
>
> *21. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations*
>
> > *(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae :*
> >
> > *(a) For coal based and lignite fired stations - 35 - ECR = { (GHR – SFC x CVSF) x LPPF / CVPF + LC x LPL } x 100 / (100 – AUX)*
>
> *……………………………………………..*
>
> *25. (1) Recovery of capacity charge, energy charge, transmission charge and incentive by the generating company and the transmission licensee shall be based on the achievement of the operational norms specified in this Chapter.*

(2) The Commission may on its own revise the norms of Station Heat Rate specified in this Chapter in respect of any of the generating stations for which relaxed norms have been provided

(3) The savings on account of secondary fuel oil consumption in relation to norms shall be shared with beneficiaries in the ratio of 50:50, in accordance with the following formula at the end of the year:

(SFC x NAPAF x 24 x NDY x IC x 10 -ACsfoy) x LPSFy x 0.5

Where,

ACsfoy = Actual consumption of secondary fuel oil during the year in ml

Norms of operation for thermal generating station

26. The norms of operation as given hereunder shall apply to thermal generating station:

…………………………

(iii) Secondary fuel oil consumption

(a) Coal-based generating stations other than at (c) below : 1.0 ml/kWh

(b) (i) Lignite-fired generating stations except stations based on CFBC technology and TPS-I : 2.0 ml/kWh

(ii) TPS-I : 3.5 ml/kWh

(iii) Lignite-fired generating stations based on CFBC technology : 1.25 ml/kWh

…………………………………….”

9. In terms of the Tariff Regulations, 2009, and on 29.09.2009, the Appellant filed a Petition being No. 231/2009 before the Central Commission for the

determination of the tariff of the TPS II Station for the period 01.04.2009 to 31.03.2014. The Central Commission vide order dated 27.06.2011 decided the Petition No. 231/2009 and determined the annual fixed charges of the TPS II Station for the period from 01.04.2009 to 31.03.2014.

10. Aggrieved by some of the aspects decided in the said order dated 27.06.2011, the Appellant herein filed Review Petition No. 17/RP/2011. The Central Commission, by order dated 25.06.2013, revised the annual fixed charges of the TPS II Station for 2009-14.

11. On 29.10.2014, the Appellant herein filed a petition being No. 473/GT/2014 seeking revision of the annual fixed charges of the TPS II Station based on the actual additional capital expenditure incurred for the period 2009-14 in accordance with Regulation 6 (1) of the Tariff Regulations,2009.

12. Vide separate Order dated 12.05.2015 passed in Petition No. 65/MP/2013, the Central Commission was pleased to decide a petition filed by the Appellant for increase in the operational and maintenance expenses incurred by Appellant's Mines on account of wage revision with effect from 01.01.2007 to 31.03.2009 and other pay hikes to the employees (Executive and Workmen) linked to Appellant's Power Stations, namely, NLC TPS I (600 MW), NLC TPS II -Stage I (3x210 MW, NLC-TPS II - Stage II (4 x 210 MW) and NLC TPS I Expn (2x210 MW) and pay revision to CISF personnel posted in NLC Mines with effect from 01.01.2006 to 31.03.2009. The Central Commission directed as under:

> *"Accordingly, the petitioner is directed to calculate the impact on variable charge for the tariff period 2006-09 and capacity charge and variable charge in 2009-14 for its different generating stations due to increase in wage revision for Mines and accordingly, adjust tariff as*

approved by the Commission for NLC TPS-I, NLC TPS-II (Stage-I and Stage-II) and NLC TPS-I (Expansion)."

13. On 06.02.2016, the Appellant filed an affidavit before the Central Commission praying that the Appellant may be permitted to revise Energy Charges based on the actual secondary oil consumption.

14. By affidavit dated 17.06.2016, the Appellant filed the details of lignite price revision due to an increase in O&M expenses in terms of the order dated 12.05.2015 in the Petition No. 65/MP/2013 passed by the Central Commission.

15. By order dated 10.02.2017, the Central Commission has rejected the claims of the Appellant.

16. In regard to the aspect of secondary fuel oil consumption the Central Commission held as under in the impugned order:

"72. The matter has been examined. In Petition No. 285/MP/2013 filed by KSEB, it was contended by KSEB that the normative value of SFC has to be adopted for arriving at the Energy Charge Rate as against the methodology adopted by NTPC in adjusting the Energy Charge at the end of a year by taking average of (normative SFC+ actual SFC)/2 a year. The Commission after interpretation of the provisions of Regulation 21 (6) of the 2009 Tariff Regulations by order dated 10.7.2015 held that the methodology adopted by the NTPC was wrong. However, based on the fact that NTPC was charging less by applying this methodology as compared to the energy charge

considering normative specific fuel oil consumption 1ml/kWh, the prayer of KSEB was rejected by the said order. It was also clarified in the said order that the decision in this case shall not be used to reopen the settled cases. The relevant portion of the order dated 10.7.2015 is extracted as under:

"16. Perusal of billing data given in the petition reveals that the respondent is adjusting Energy Charge at the end of a year by taking average of (normative SFC+ actual SFC)/2 of a year. This methodology has been adopted by NTPC to share the savings in the consumption of actual SFC in comparison to normative SFC. However, the said methodology is in deviation to Regulation 21 (6) of the Tariff Regulations. However, NTPC is charging less by applying this methodology as compared to the energy charge considering normative specific fuel oil consumption 1ml/kW.

17. In view of the above discussions, there is no merit in the contention of the petitioner. It is clarified that the decision in this case shall not be used to reopen the settled cases"

73. The petitioner in this petition has sought for substitution of the actual SFC in lieu of normative SFC, in the ECR determination under Regulation 21(6) for the period 2009-14, in terms of the order dated 10.7.2015. The Commission in its order dated 10.7.2015 while holding that the methodology adopted by NTPC was not in conformity to the Regulation 26(a) of the 2009 Tariff Regulations had observed that NTPC was charging less by applying the said methodology. Accordingly, the decision in the case of NTPC cannot be made applicable to the instant case of the petitioner. The petitioner has also *prayed for recovery from the beneficiaries along with interest, the differential amount due to revision of ECR consequent to application of actual SFC in lieu of normative SFC. It is noticed that the Commission in the said order had clarified that the said decision cannot be used to reopen settled cases. In the light of the above discussions, the submissions of the petitioner are not acceptable and the prayer of the petitioner for substitution of the actual SFC in lieu of normative SFC in the ECR determination is accordingly rejected."*

17. Thus, being aggrieved by the Impugned Order dated 10.02.2017 passed by the CERC in the Petition No. 473/GT/2014, the Appellant has preferred the present Appeal.

Written Submissions of the Appellant, NLC India Limited

18. The Appellant, NLC India Limited (NLCIL), has filed the present Appeal challenging the Order dated 10.02.2017 passed by the Central Electricity Regulatory Commission in Petition No. 473/GT/2014. The said petition pertained to the revision of the tariff for NLC Thermal Power Station-II, Stage-I (630 MW) and Stage-II (840 MW), for the tariff period 2009-2014.

19. NLCIL has raised four issues in the Appeal:

A. Disallowance of Secondary Fuel Oil Consumption,
B. Disallowance of Life Extension Programme (LEP) assets in the capital cost,
C. Decapitalisation of balancing capital spares from the gross block,
D. Disallowance of Additional Capitalisation.

20. However, NLCIL has chosen not to press Issue D regarding the disallowance of additional capitalisation. The Appeal is thus confined to the remaining three issues: disallowance of secondary fuel oil consumption, exclusion of LEP assets from the capital cost, and the decapitalisation of balancing capital spares.

RE: DISALLOWANCE OF SECONDARY FUEL OIL CONSUMPTION

21. In Petition No. 473/GT/2014, NLCIL had sought for substitution of the actual Secondary Fuel Cost (‘SFC’) in lieu of normative SFC, in the ECR determination under Regulation 21(6) for the period 2009-2014 and recovery of the differential amount, in terms of Order dated 10.07.2015 passed in Petition No. 285/MP/2013 wherein the Central Commission in the case of another generator i.e., NTPC Limited, allowed the said methodology.

22. However, the Central Commission denied the claim of NLCIL, inter alia, holding as under:

> *“…………………………..*
>
> *72. The matter has been examined. In Petition No. 285/MP/2013 filed by KSEB, it was contended by KSEB that the normative value of SFC has to be adopted for arriving at the Energy Charge Rate as against the methodology adopted by NTPC in adjusting the Energy Charge at the end of a year by taking average of (normative SFC+ actual SFC)/2 a year. The Commission after interpretation of the provisions of Regulation 21 (6) of the 2009 Tariff Regulations by order dated 10.7.2015 held that the methodology adopted by the NTPC was wrong. However, based on the fact that NTPC was charging less by applying this methodology as compared to the energy charge*

considering normative specific fuel oil consumption 1ml/kWh, the prayer of KSEB was rejected by the said order. It was also clarified in the said order that the decision in this case shall not be used to reopen the settled cases. The relevant portion of the order dated 10.7.2015 is extracted as under:

"16. Perusal of billing data given in the petition reveals that the respondent is adjusting Energy Charge at the end of a year by taking average of (normative SFC+ actual SFC)/2 of a year. This methodology has been adopted by NTPC to share the savings in the consumption of actual SFC in comparison to normative SFC. However, the said methodology is in deviation to Regulation 21 (6) of the Tariff Regulations. However, NTPC is charging less by applying this methodology as compared to the energy charge considering normative specific fuel oil consumption 1ml/kW.

17. In view of the above discussions, there is no merit in the contention of the petitioner. It is clarified that the decision in this case shall not be used to reopen the settled cases."

73. The petitioner in this petition has also sought for substitution of the actual SFC in lieu of normative SFC, in the ECR determination under Regulation 21(6) for the period 2009-14, in terms of the order dated 10.7.2015. The Commission in its order dated 10.7.2015 while holding that the methodology adopted by NTPC was not in conformity to the Regulation 26(a) of the 2009 Tariff Regulations had observed that NTPC was charging less by applying the said methodology. Accordingly, the decision in the case of NTPC cannot be made applicable to the instant case of the petitioner. The petitioner has also prayed for recovery from the beneficiaries along with interest, the *differential amount due to revision of ECR consequent to application of actual SFC in lieu of normative SFC. It is noticed that the Commission in the said order had clarified that the said decision cannot be used to reopen settled cases. In the light of the above discussions, the submissions of the petitioner are not acceptable and the prayer of the petitioner for substitution of the actual SFC in lieu of normative SFC in the ECR determination is accordingly rejected.*

…………………………………………"

23. It is submitted that the said issue is no more *res-integra* since this Tribunal vide its Judgement dated 28.05.2020 in Appeal No. 291 of 2016 and 344 of 2016 (involving the same parties and the same tariff period (2009-2014) but a different Generating Station) has held that very same reasoning given by Central Commission in Order dated 10.07.2015 in Petition No. 285/MP/20213, that the decision in NTPC cannot be used to *"reopen settled cases"* was inappropriate and if a formula had been accepted as sound in the previous case, there is no reason why it should not apply universally. This Tribunal inter alia held as under:

"……………………………..

17. A similar dispute concerning coal-fired thermal generating station of NTPC had come up before the Central Commission, in context of 2009 Tariff Regulations, in Petition No. 285/MP/2013 which was decided by the said Commission by its Order dated 10.07.2015.

………..

21. The appellant relied upon the decision of the Central Commission in the case of NTPC and prayed before it for the benefit of similar *method of calculation. Its prayer to that effect was rejected by the impugned orders with the observations (as appearing in Order dated 21.07.2016 in Petition No. 474/GT/2014 which is subject matter of first captioned appeal, the reasoning in the other matter being similar) reading thus:*

"62. The petitioner in this petition has sought for substitution of the actual SFC in lieu of normative SFC, in the ECR determination under Regulation 21(6) for the period 2009-14, in terms of the order dated 10.7.2015. The Commission in its order dated 10.7.2015 while holding that the methodology adopted by NTPC was not in conformity to the Regulation 26(a) of the 2009 Tariff Regulations had observed that NTPC was charging less by applying the said methodology. Accordingly, the decision in the case of NTPC cannot be made applicable to the instant case of the petitioner. The petitioner has also prayed for recovery from the beneficiaries along with interest, the differential amount due to revision of ECR consequent to application of actual SFC in lieu of normative SFC. It is noticed that the Commission in the said order had clarified that the said decision cannot be used to reopen settled cases. In the light of the above discussions, the submissions of the petitioner are not acceptable and the prayer of the petitioner for substitution of the actual SFC in lieu of normative SFC in the ECR determination is accordingly rejected.

22. ***The observation of the Central Commission that the decision in NTPC cannot be used to "reopen settled cases" is inappropriate. If a formula had been accepted as sound in the previous case, there is no reason why it should not apply***

universally. The matters before the Central Commission in which the impugned orders were passed relate to truing-up and, therefore, it cannot be said that they are cases which had been "settled" earlier.

24. ***The Central Commission, in our view, has fallen in error by declining to follow the principle laid down in the previous decision dated 10.07.2015 in the matter of NTPC, this rendering it a case of inconsistency, the impugned orders being vitiated by the element of arbitrariness. In our view, subject to scrutiny being made of the claim of savings actually made by reduction of the secondary fuel oil consumption (which has to be shared with the beneficiaries in terms of Regulation 25), the Central Commission must follow its decision in the matter of NTPC for purposes of the present claims of the appellant. We order accordingly. After all, the additional expenditure incurred on primary fuel (lignite) on account of reduced SFC cannot be left uncovered****".”*

24. The reasoning in the Impugned Order of the Central Commission is exactly the same as was the reasoning in the Orders dated 26.05.2016 in Petition No. 472/GT/2014 and 27.07.2016 in Petition No.474/GT/2016, which came to be set aside by the Tribunal.

25. During the hearing, TANGEDCO argued that in the aforesaid Judgment passed by the Tribunal, the issue whether the method applied for calculation was in deviation of Regulation 21(6) or not, was not considered. This is erroneous. It is

submitted that this Tribunal in the said Judgment had specifically considered this aspect and inter alia held as under:

> "…………………
>
> *23. In our view, it was not correct on the part of the Central Commission to say in its Order dated 10.07.2015 in the matter of NTPC that the method of calculation applied there was in deviation of Regulation 21(6). The said view is in the teeth of conclusion recorded in para 12 of the said order (quoted earlier) that the element of "SFC" appearing in the formula for calculation of ECR in Regulation 21(6) implies that it has to be "on actual basis". We endorse the said view (in para 12) for the reason that in the explanatory notes below clause (6) of Regulation 21, the qualifying word "normative" has been added wherever required (i.e. in relation to auxiliary energy consumption and limestone consumption). In sharp contrast, the explanatory note of SFC begins with the expression "specific", which is it clearly indicative of the actual secondary fuel oil consumption being factored in rather than normative SFC.*
>
> *……………………………………"*

26. The above judgment is between the very same parties and for the very same tariff period. The judgment is binding intra-parties, and merely because it is a different generating station of the Appellant, it is not open to the Respondent to contend to the contrary.

27. In view of the above, since the above issue stands covered by the Judgement dated 28.05.2020 of this Tribunal, the same ought to be allowed.

RE: DISALLOWANCE OF LIFE EXTENSION PROGRAME ASSETS

28. At Para 46 of the Impugned Order, the Central Commission erred in excluding the value of Life Extension Programme (LEP) assets from the capital cost, on the ground that these assets were shown as deleted in the Appellant's books of account, implying their decapitalisation.

29. However, this is an arithmetic and interpretational error. The assets were not decapitalised but were merely reclassified under a different accounting head in compliance with applicable Accounting Standards. No request for decapitalisation was made by the Appellant, and the assets remain in use. This factual and accounting error requires rectification.

RE: DECAPITALISATION OF BALANCING CAPITAL SPARES FIGURE FROM THE GROSS BLOCK

30. The Central Commission, in the table under Para 47 of the Impugned Order, has incorrectly computed Rs. 619.53 lakhs (Rs. 6.1953 crores) as the value of capital spares de-capitalised for the year 2012-13. This is an arithmetical error. The figure includes entries from rows (ii) and (iii), which represent Compensation Allowance and Special Allowance claimed under tariff regulations and are not actual assets recorded in the balance sheet.

31. Only the entry in row (i) pertains to an additional asset as claimed in the petition. Since Compensation and Special Allowances are tariff-based payments and not capitalised assets, their inclusion in the calculation of de-capitalisation is erroneous and requires correction.

Written Submissions of the Respondent No. 2, TANGEDCO

32. The Appellant had filed Petition bearing 473/GT/2014 before the CERC for the revision of tariff of NLC Thermal Power Station II Stage-I (630 MW) and Stage-II (840 MW) on account of additional capital expenditure incurred for the period from 01.04.2009 to 31.03.2014 determined by Order dated 27.06.2011 in Petition No. 231/2009 and Order dated 25.06.2013 in Petition No. 17/RP/2011 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ("2009 Tariff Regulations").

33. The generating station with a total capacity of 1470 MW comprises three units of 210 MW each under Stage I and four units of 210 MW each under Stage II. The commercial operation dates of the different units of the generating station are as under:

UNIT (STAGE -I)	Commercial Operation Date	UNIT (STAGE - I)	Commercial Operation Date
Unit-I	29.09.1986	Unit-I	25.01.1992
Unit-II	08.05.1987	Unit-II	02.06.1992
Unit-III	23.04.1988	Unit-III	17.03.1993
		Unit - IV	09.04.1994

34. By Order dated 10.02.2017 in Petition No. 473/GT/2014, the CERC disallowed certain claims of the Appellant, out of which, the Appellant has raised the following issues in the captioned Appeal:

- Issue No. 1: Rejection of the Appellant's claims for appropriate adjustment for efficiency in the consumption of secondary fuel oil and substitution of lignite in place thereof.
- Issue No. 2: Disallowance of additional capitalisation of items such as Ash Weigh Bridge, RCC approach road to Ash Weigh bridge, electronic weigh bridge, and DCS and transformer.
- Issue No. 3: Deletion of LEP assets of stage I (indicated as deletion/sold in year 2013-14 reconciliation of additional capitalisation) to the tune of INR 29063 lakhs with an adjustment of INR 26163 lakhs for cumulative depreciation.
- Issue No. 4: Decapitalisation of balancing capital spares from gross block as not furnished, culminating in a reduction in ROE and Depreciation.

Issue No. 1: Secondary Fuel Oil

35. The Appellant has contended that the actual consumption of Secondary Fuel Oil (SFC) is lower than the normative value under the CERC 2009 Tariff Regulations. It is the case of the Appellant that as a result of such lower consumption, the energy charges rate (ECR) ought to be adjusted to allow the cost of lignite to compensate for the reduction in the actual consumption of SFC as compared with the normative SFC.

36. The premise of the Appellant's contention is the formula of ECR contained in Regulation 21(6) of the CERC 2009 Tariff Regulations, which provides as under:

> ***<u>21. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations</u>***
>
> *….*

(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae :

(a) For coal based and lignite fired stations

ECR = { (GHR – SFC x CVSF) x LPPF / CVPF + LC x LPL } x 100 / (100 – AUX)

(b) For gas and liquid fuel based stations

ECR = GHR x LPPF x 100 / {CVPF x (100 – AUX) }

Where, AUX = Normative auxiliary energy consumption in percentage.

CVPF = Gross calorific value of primary fuel as fired, in kCal per kg, per litre or per standard cubic metre, as applicable.

CVSF = Calorific value of secondary fuel, in kCal per ml.

ECR = Energy charge rate, in Rupees per kWh sent out.

GHR = Gross station heat rate, in kCal per kWh.

LC = Normative limestone consumption in kg per kWh.

LPL = Weighted average landed price of limestone in Rupees per kg.

LPPF = Weighted average landed price of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month.

SFC = Specific fuel oil consumption, in ml per kWh.

37. It is submitted that under the scheme of the CERC 2009 Tariff Regulations, the expenses on SFC are to be considered on a normative basis, except where otherwise provided under the said Regulations. The normative SFC is defined and stipulated in Regulation 20 of the CERC 2009 Tariff Regulations as under:

20. Expenses on secondary fuel oil consumption for coal-based and lignite-fired generating station.

(1) Expenses on secondary fuel oil in Rupees shall be computed corresponding to normative secondary fuel oil consumption (SFC) specified in clause (iii) of regulation 26, in accordance with the following formula:

= SFC x LPSFi x NAPAF x 24 x NDY x IC x 10

Where,

SFC – Normative Specific Fuel Oil consumption in ml/kWh

LPSFi – Weighted Average Landed Price of Secondary Fuel in Rs./ml considered initially

NAPAF – Normative Annual Plant Availability Factor in percentage

NDY – Number of days in a year

IC - Installed Capacity in MW.

(2) Initially, the landed cost incurred by the generating company on secondary fuel oil shall be taken based on actuals of the weighted average price of the three preceding months and in the absence of landed costs for the three preceding months, latest procurement price for the generating station, before the start of the year.

The secondary fuel oil expenses shall be subject to fuel price adjustment at the end of the each year of tariff period as per following formula:

SFC x NAPAF x 24 x NDY x IC x 10 x (LPSFy – LPSFi)

Where, LPSFy = The weighted average landed price of secondary fuel oil for the year in Rs. /ml

38. It is therefore submitted that wherever SFC is to be considered for the purposes of the CERC 2009 Tariff Regulations, it has to be SFC as arrived at in terms of Regulation 20 of the CERC 2009 Tariff Regulations.

39. The only provision under the CERC 2009 Tariff Regulations which contemplates factoring in the actual SFC is Regulation 25 of the CERC 2009 Tariff Regulations, which provides for the sharing of the benefit of savings in the SFC. Regulation 25 of the CERC 2009 Tariff Regulations provides as under:

> *25. (1) Recovery of capacity charge, energy charge, transmission charge and incentive by the generating company and the transmission licensee shall be based on the achievement of the operational norms specified in this Chapter.*
> *(2) The Commission may on its own revise the norms of Station Heat Rate specified in this Chapter in respect of any of the generating stations for which relaxed norms have been provided*
> *(3) The savings on account of secondary fuel oil consumption in relation to norms shall be shared with beneficiaries in the ratio of 50:50, in accordance with the following formula at the end of the year:*
>
> *(SFC x NAPAF x 24 x NDY x IC x 10 -ACsfoy) x LPSFy x 0.5*
>
> *Where, ACsfoy = Actual consumption of secondary fuel oil during the year in ml*.

40. The normative SFC is set out in Regulation 26 of the CERC 2009 Tariff Regulations, which sets out the mandatory norms of operation of thermal power plants.

> *26. The norms of operation as given hereunder shall apply to thermal generating station:*
> *(i) Normative Annual Plant Availability Factor (NAPAF)*
> *….*
> *(ii) Gross Station Heat Rate*
> *….*
> ***(iii) Secondary fuel oil consumption***
>
> *(a) Coal-based generating stations other than at (c) below : 1.0 ml/kWh*
>
> *(b) (i) Lignite-fired generating stations except stations based on CFBC technology and TPS-I (ii) TPS-I : 2.0 ml/kWh : 3.5 ml/kWh*
> *(iii) Lignite-fired generating stations based on CFBC technology: : 1.25 ml/kWh*.

41. It is submitted that where the Regulations of the CERC specifically prescribe normative parameters to be applied, then, except where a specific provision is made for applying the actuals (as in the case of Regulation 25, which provides for sharing of savings), the normative parameters have to be applied.

42. Reliance placed by the Appellant on the judgment dated 28.05.2020 passed by this Tribunal in APL No. 291 of 2016 is misplaced.

43. It is submitted that while passing the Order dated 28.05.2020, this Tribunal did not consider the effect of Regulations 20 and 26 (iii) of the CERC Tariff Regulations 2009, which specially define the norm for Secondary fuel oil consumption that is to be considered. As such, there is no regulatory basis for adjusting the ECR on the basis of actual SFC.

44. It is further submitted that there is no rationale for contending that the reduction in actual consumption of secondary fuel oil necessarily leads to an increase in the use of lignite. It is submitted that secondary fuel oil is not a direct substitute for lignite, but is used in order to smooth operations at the time of start-up, shut-down, ramp-up and ramp-down. This is also recognised in the Statement of Reasons for the CERC 2009 Tariff Regulations, which provides as under:

> *30.4 The Commission is of the view that the generators should not be discouraged to* ***take oil support when necessary which is important from the boiler safety and grid security point of view****. Commission is, therefore, providing for a norm of 1.0 ml/kWh but with a provision for sharing of savings with the beneficiaries on account of actual consumption being lower than the norms in the ratio of 50:50. Similarly in respect of lignite based stations we are providing for a norm of 2.0 ml/kWh and relaxed norm of 3.5 ml/kWh for TPS 1 station of NLC. In case of lignite fired generating stations, CEA has recommended a norm of 1.25 ml/kWh. CEA is of the view that CFBC boiler does not require oil support at low load operations. As such, we are accepting CEA's recommendations in this regard. In case of DVC also relaxed norms of 2008-09 are being allowed. The savings in oil consumption shall also be shared by these stations with the*

beneficiaries in the 50:50 ratios. Accordingly, following specific fuel oil norms are provided in clause (iii) of Regulation 26

(iii) Secondary fuel oil consumption

(a) Coal-based generating stations other than at (c) below

: 1.0 ml/kWh

(b)

(i) Lignite-fired generating stations except stations based on CFBC technology and TPS-I : 2.0 ml/kWh

(ii) TPS-I : 3.5 ml/kWh

(iii) Lignite-fired generating stations based on CFBC technology

: 1.25ml/kWh

Issue No. 2: Additional Capitalisation

45. During the hearing dated 17.03.2025, the Appellant's counsel submitted that the Appellant is not pressing this issue.

Issue No. 3: Life Extension Programme of the Assets

46. As per the Appellant, the CERC erred in not considering the value of LEP assets as a part of capital assets.

47. The Central Commission appropriately declined to consider the value of Life Extension Programme (LEP) assets as part of the capital assets. The CERC reasoned that these assets had been removed from the books of accounts, which indicates that they were deleted following the completion of their useful life. This

decision was based on the accounting treatment, which reflects that the assets were no longer active or recognized as part of the capital base.

48. Furthermore, the CERC observed that the additional capital expenditure recorded in the books of accounts also encompassed the capitalization of assets under compensation allowance and special allowance granted to Stage I. This includes capital spares that were capitalized during the 2009-14 tariff period. Additionally, an amount of INR 29,131.98 lakh for the financial year 2013-14 related to Stage-I was reported as deletion/sale. This figure includes INR 29,063.37 lakh, representing the gross value of assets that were transferred to the Life Extension Programme as well as assets that continue to be in operation within Stage I. The CERC held that:

> *42. The petitioner, in compliance with the directions of the Commission vide ROP of the hearing dated 5.1.2016 has submitted vide affidavit dated 6.2.2016, the station wise reconciliation statement of additional capital expenditure for the period 2009-14. <u>In the said reconciliation statement, certain assets have been shown under the heads Deletion/ Sold during each year of the period 2009-14. Accordingly, in the absence of any justification for the same either in the balance sheet or in the reconciliation statement, we are inclined to consider the said amounts as deletion in the books and deduct the same from the capital cost for the period 2009-14</u>.*
>
> *46. It is observed from the above that the actual additional capital expenditure claimed by the petitioner is at variance with the additional capital expenditure as per books of accounts. This variance is on account of the fact that the additional capital expenditure as per books*

of accounts also includes capitalization of assets under compensation allowance and Special allowance allowed to Stage-I and the capital spares capitalized during 2009-14. Moreover, an amount of `29131.98 lakh in 2013-14 for stage-I is shown as deletion/sold which includes a sum of `29063.37 lakh towards the gross value of assets transferred to life extension programme and assets which are still in operation in S-I. This deletion has been considered for calculation of capital cost for the period 2009-14 with adjustment of cumulative depreciation amounting to `26167.63 lakh.

49. It is evident from the affidavit submitted by the Appellant on 06.02.2016 before the CERC that the Appellant provided a detailed station-wise reconciliation of the additional capitalization statement for the financial year 2013-14. In this reconciliation, an amount of INR 29,131 lakh was reported under the category of "Deletion/Sold." This amount was explicitly identified as having been removed from the capital assets.

50. Furthermore, the Appellant confirmed that this reconciliation, along with the associated figures, had been audited and certified by the Auditor. The auditor's certification lends credibility to the accuracy and reliability of the data presented, ensuring that the deletions or sales were properly accounted for in accordance with the applicable accounting standards and regulatory requirements.

51. Regulation 10 of the 2009 CERC Tariff Regulations provides as under:

10. Renovation and Modernisation. (1) The generating company or the transmission licensee, as the case may be, for meeting the expenditure on renovation and modernization (R&M) for the purpose *of extension of life beyond the useful life of the generating station or a unit thereof or the transmission system, shall make an application before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, record of consultation with beneficiaries and any other information considered to be relevant by the generating company or the transmission licensee:*

Provided that in case of coal-based/lignite fired thermal generating station, the generating company, may, in its discretion, avail of a 'special allowance' in accordance with the norms specified in clause (4), as compensation for meeting the requirement of expenses including renovation and modernisation beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be considered and the applicable operational norms shall not be relaxed but the special allowance shall be included in the annual fixed cost:

Provided also that such option shall not be available for a generating station or unit for which renovation and modernization has been undertaken and the expenditure has been admitted by the Commission before commencement of these regulations, or for a generating station or unit which is in a depleted condition or operating under relaxed operational and performance norms.

(2) Where the generating company or the transmission licensee, as the case may be, makes an application for approval of its proposal

for renovation and modernisation, the approval shall be granted after due consideration of reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors as may be considered relevant by the Commission.

(3) Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on the estimates of renovation and modernization expenditure and life extension, and after deducting the accumulated depreciation already recovered from the original project cost, shall form the basis for determination of tariff.

(4) A generating company on opting for the alternative in the first proviso to clause (1) of this regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/year in 2009-10 and thereafter escalated @ 5.72% every year during the tariff period 2009-14, unit-wise from the next financial year from the respective date of the completion of useful life with reference to the date of commercial operation of the respective unit of generating station:

Provided that in respect of a unit in commercial operation for more than 25 years as on 1.4.2009, this allowance shall be admissible from the year 2009-10.

52. Regulation 10 of the Tariff Regulations, 2009 provides that generating companies or transmission licensees planning to undertake Renovation and Modernization (R&M) to extend the life of their generating station or transmission system beyond its useful life must obtain prior approval from the Central

Commission, supported by a detailed project report. As per Regulation 10(4), such entities may either claim the actual R&M expenditure or opt for a special allowance in lieu of it. Once the special allowance option is exercised, separate claims for capital expenditure towards the same purpose are not permitted, as the allowance is intended to comprehensively cover such costs.

53. Therefore, any capital expenditure incurred for assets beyond their useful life must be disallowed under the regulatory framework. If the Appellant deems the special allowance inadequate, the appropriate remedy lies in challenging the regulation before a competent court. However, as long as Regulation 9(2)(iii) and Regulation 10 remain in force, claims for additional capitalisation on such grounds cannot be entertained.

54. Further, the Appellant did not place the necessary documents before the Central Commission or this Tribunal. If the Tribunal now considers revisiting the matter based on additional material submitted after nearly eight years from the date of the Impugned Order, the Respondents should not be burdened with any interest liability for the intervening period.

Issue No. 4: Decapitalisation of balancing capital spares figure from gross block

55. The additional capital expenditure claimed by the Appellant differs from the figures reflected in its books of account. This discrepancy arises because certain items, such as compensation allowance and capital spares capitalised during the 2009-14 tariff period, are recorded in the accounts but are not part of the regulatory capital expenditure claim. This inconsistency highlights the necessity for a proper

reconciliation between book entries and the amounts claimed before the Commission to ensure clarity and accuracy in tariff determination.

56. Upon conducting a prudence check of the data filed by the Appellant in its Affidavit dated 06.02.2016, the Central Commission noted de-capitalisation of capital spares in the amounts of (-) INR 259.03 lakh (2009-10), (-) INR 296.19 lakh (2010-11), (-) INR 86.51 lakh (2011-12), (-) INR 619.51 lakh (2012-13), and (-) INR 530.97 lakh (2013-14), as reflected in the books of account. Based on this information, the Commission considered only INR 39.12 lakh for Stage-I and INR 91.91 lakh for Stage II as admissible additional capitalisation towards capital spares.

57. The CERC in the impugned Order, while disallowing the claims, has rendered the following findings:

> *48. It is observed from the above that there has been a variation of (-)\`144.03 lakh, (-)\`296.19 lakh, (-) \`986.51 lakh, (-)\` 619.51 lakh and (-)\`530.97 lakh during the years 2009- 10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively which are not mentioned in the details of additional capitalization as per books of account in the affidavit dated 6.2.2016 and the reasons for the same has not been furnished by the petitioner in affidavit dated 6.2.2016. It appears that there is de-capitalization of capital spares of (-)\`259.03 lakh, (-) \`296.19 lakh, (-)\`1086.51 lakh, (-)\`619.51 lakh and (-) \`530.97 lakh during 2009-10, 2010-11, 2011- 12,2012-13 and 2013-14 respectively in the books of account. Hence, the above mentioned amounts on capital spares has been considered as de-capitalized in the books.*
>
> ……

> *50. It is observed from the above that the actual additional capital expenditure claimed by the petitioner is at variance with the additional capital expenditure as per books of accounts. This variance is on account of the fact that the additional capital expenditure as per books of accounts also includes capitalization of assets under compensation allowance allowed to Stage-II and the capital spares capitalized during 2009-14*.

58. As the Appellant did not furnish the necessary documents either before the Central Commission or this Tribunal, it is submitted that, should the Tribunal choose to re-examine the Appellant's claims on the basis of new material filed nearly eight years after the Impugned Order, the Respondents ought not to be held liable for any interest accruing during this extended period of delay.

<u>Analysis and Conclusion</u>

59. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

a) *Whether the Central Commission erred in denying the Appellant's claim for adjustment in energy charges on account of actual Secondary Fuel Oil Consumption being lower than the normative consumption, contrary to the Commission's own decision in Petition No. 285/MP/2013?*

b) *Whether the Central Commission acted correctly in treating the Life Extension Programme (LEP) assets of Stage-I as deleted assets for FY 2013-14, and consequently excluding Rs. 290.63 crores from the capital cost with an adjustment of Rs. 261.63 crores towards cumulative depreciation?*

c) *Whether the Central Commission was right in de-capitalising balancing capital spares from the Gross Block, based solely on reconciliation data furnished in compliance with the Record of Proceedings dated 05.01.2016 particularly when such spares were never claimed under the 2009-14 Tariff Regulations and thereby reducing the Return on Equity and Depreciation admissible to the Appellant?*

60. The Appellant, during the hearing, expressly gave up the challenge in respect of the disallowance of additional capitalization related to certain equipment and infrastructure. Therefore, this Tribunal is called upon to adjudicate only the above three issues.

Issue No. (i): Whether the Central Commission erred in denying the Appellant's claim for adjustment in energy charges on account of actual Secondary Fuel Oil Consumption being lower than the normative consumption, contrary to the Commission's own decision in Petition No. 285/MP/2013?

61. The Appellant submits that in Petition No. 473/GT/2014 before the Central Commission, it had sought the substitution of actual Secondary Fuel Oil Consumption (SFC) in place of the normative SFC for computation of the Energy Charge Rate (ECR) under Regulation 21(6) of the 2009 Tariff Regulations. This,

according to the Appellant, was consistent with the earlier decision of the Central Commission dated 10.07.2015 in Petition No. 285/MP/2013, where NTPC had adopted a methodology using actual SFC in the ECR formula and the Commission, while noting that such a methodology was technically a deviation, had nonetheless refused to intervene since the generator (NTPC) had charged beneficiaries less under such a method.

62. The Appellant points out that in the impugned order, the Central Commission rejected its claim by relying on the same reasoning given in Petition No. 285/MP/2013, i.e., that the NTPC methodology was in deviation from Regulation 21(6) and that the decision in that case could not be used to reopen “settled cases.” However, the Appellant strongly contests this conclusion, stating that its case involves a truing-up exercise and therefore cannot be treated as “settled.”

63. It further asserts that this very question has been addressed by this Tribunal in ***Appeal Nos. 291 and 344 of 2016***, which involved the same parties and tariff period but related to another generating station. Therein, this Tribunal held that the reasoning of the Central Commission in refusing to extend the benefit of actual SFC-based ECR computation to generators other than NTPC was arbitrary, particularly since the Commission had not found any substantive loss to beneficiaries under the NTPC approach.

64. The Appellant further submits that this Tribunal, in the said judgment, had analysed Regulation 21(6) in detail and concluded that the SFC referred to therein was to be construed as actual consumption, and not normative, as the Regulation did not explicitly provide for normative SFC unlike auxiliary energy consumption or limestone consumption which were qualified with the word “normative.”

65. The Appellant also rejects TANGEDCO's contention raised during the hearing that the Tribunal in the aforesaid judgment failed to consider the implications of Regulation 21(6) and other relevant provisions. On the contrary, it is submitted that this Tribunal had thoroughly addressed this aspect and had unequivocally held that the SFC in the ECR formula was meant to reflect actual consumption. Therefore, the Appellant contends that the present issue is squarely covered by the Tribunal's earlier binding decision, inter alia, the same relief ought to be granted in this case as well.

66. Per Contra, TANGEDCO has contended that the claim for adjustment in ECR based on actual SFC is contrary to the scheme of the 2009 Tariff Regulations. It submits that Regulation 21(6), which prescribes the formula for computing ECR, must be read in conjunction with Regulation 20, which deals with the computation of expenses on secondary fuel oil and expressly mandates the use of "normative" SFC as specified under Regulation 26(iii). TANGEDCO asserts that the only context in which actual SFC is relevant is under Regulation 25, which provides for the sharing of gains due to reduced consumption of secondary fuel oil, in the ratio of 50:50 between the generating company and the beneficiaries.

67. TANGEDCO submits that there is no provision in the 2009 Regulations that permits substitution of actual SFC for normative SFC in the ECR formula. The Regulations, being statutory in character, must be applied as per their express language, and it is not open to generators to substitute one parameter for another based on their internal methodology.

68. It is further argued that there is no direct correlation between reduced use of secondary fuel oil and increased lignite consumption, since secondary fuel oil is only used for start-up, shutdown, and stabilising operations, not as a substitute for

lignite. Therefore, the Appellant's premise that higher lignite costs due to lower SFC consumption must be compensated through higher ECR is flawed and unsupported by the technical scheme of operations.

69. TANGEDCO also argues that the judgment of this Tribunal dated 28.05.2020 in Appeal Nos. 291 of 2016 and 344 of 2016 are not binding in the present case, as they allegedly do not address the specific statutory language of Regulations 20 and 26, which prescribe normative SFC. In any case, the reliance on NTPC's past practice cannot justify deviation from express statutory norms and should not be extended across the board.

70. Having heard the learned counsel and perused the record, we find considerable force in the submissions of the Appellant.

71. Firstly, this Tribunal notes that the identical issue has been adjudicated in Appeal Nos. 291 and 344 of 2016, involving the very same parties and tariff period, where the Tribunal, after a detailed examination of the provisions of Regulation 21(6), held that there was no justification for the Commission to deny the Appellant the benefit of actual SFC, especially when such methodology had already been allowed to another generator (NTPC). The reasoning of the Commission that it could not "reopen settled cases" was expressly rejected by this Tribunal, noting that tariff petitions involving truing-up exercises cannot be regarded as settled.

72. The relevant paragraphs from the Appeal Nos. 291 and 344 of 2016, dated 28.05.2020, are as follows:

> *"17. A similar dispute concerning coal-fired thermal generating station of NTPC had come up before the Central Commission, in context of*

2009 Tariff Regulations, in Petition No. 285/MP/2013 which was decided by the said Commission by its Order dated 10.07.2015. Relevant part of the said decision may be quoted as under:

> *"12. Perusal of ECR formula in Regulation 21(6) (a) reveals that the effect of secondary fuel oil is to determine as to how much heat the fuel oil is contributing which will be deducted from the Gross Normative Station Heat Rate. Now the question for our consideration is whether energy charge would be adjusted after the end of the year based on actual consumption of secondary fuel oil or it would remain as computed based on normative SFC for the month. The petitioner has submitted that the respondent be directed to calculate ECR with normative value of SFC (1ml/kWh). However, in formula for computation of ECR, SFC has been specified as specific fuel oil consumption in ml per kWh, and not the normative specific fuel consumption, implying that it has to be on actual basis. The petitioner has contended that as per Regulation 25 (3) of 2009 Tariff Regulations, savings in SFC in relation to norms shall be shared by the generating company with the beneficiaries in the ratio of 50:50. Regulation 25 (3) of the 2009 Tariff Regulations is extracted as under:*
>
> > *"25 (3) The savings on account of secondary fuel oil consumption in relation to norms shall be shared with beneficiaries in the ratio of 50:50, in accordance with the following formula at the end of the year:*

> *(SFC x NAPAF x 24 x NDY x IC x 10 - ACsfoy) x LPSFy x 0.5*
>
> *Where,*
>
> *ACsfoy = Actual consumption of secondary fuel oil during the year in ml.*
>
> *...*

15. Since the energy charge <u>in 2009 Tariff Regulations</u> comprises only the coal cost, <u>the amount of specific oil consumption has bearing on the energy charge</u>. For example, <u>if the actual specific oil consumption is 0.12 ml/kWh</u> against the normative specific oil consumption of 1.00 ml/ kWh, <u>then the quantity of coal consumed per kwh</u> i.e. specific coal consumption (kg/kwh) <u>would be higher in case</u> of secondary oil consumption of 0.12 ml/kWh. The cost of specific coal consumption is energy charge rate. If <u>ECR is not revised based on the actual SFC, the additional specific coal consumption cost due to less consumption of SFC would remain un-recovered.</u> This can be explained by the following example:

Assuming

Cost of coal = 2000/ton   GCV of oil = 10000 kcal/liter

SFC Actual =0.12 ml/kwh GCV of Coal=3800 kcal/kg.

SFC Normative =1 ml/kwh Normative Station Heat Rate=2425 kcal/kwh

	Normative	Actual
Cost of oil consumption	Sp. Oil consumption x cost of oil/liter	
	1ml/kwh x Rs.35000 1000000	0.12 ml x Rs.35000 1000000
	Rs. 0.035/kwh	Rs. 0.0042 /kwh
Heat contribution of oil	Gross calorific value of oil x Sp. Oil consumption	
	10000 kcal/liter x 1 ml/kwh 1000	1000 x 0.12 1000
	10 kcal/kwh	1.2 kcal/kwh
Heat contribution of coal	2425-10	2425-1.2
	2415 kcal/kwh	2423.8 kcal/kwh
Specific coal consumption	Heat contribution of coal Gross calorific value of coal	2423.8 3800
	2415 = 0.6355 kg/kwh 3800	0.6378 kg/kwh
Cost of specific coal	0.6355 x 2000 1000	0.6378 x 2000 1000
	Rs. 1.271	Rs. 1.2756
Difference in cost	1.2756-1.2710 = 0.0046 = 0.46 paise/kWh	

16. Perusal of billing data given in the petition reveals that the respondent is adjusting Energy Charge at the end of a year by taking average of (normative SFC+ actual SFC)/2 of a year. This methodology has been adopted by NTPC to share the savings in the consumption of actual SFC in comparison to normative SFC. However, the said methodology is in deviation to Regulation 21 (6) of the Tariff Regulations. However, NTPC is charging less by applying this methodology as compared to the energy charge considering normative specific fuel oil consumption 1ml/kWh.

17. In view of the above discussions, there is no merit in the contention of the petitioner. It is clarified that the decision in this case shall not be used to reopen the settled cases."

[Emphasis supplied}

……

22. The observation of the Central Commission that the decision in NTPC cannot be used to "reopen settled cases" is inappropriate. If a formula had been accepted as sound in the previous case, there is no reason why it should not apply universally. The matters before the Central Commission in which the impugned orders were passed relate to truing up and, therefore, it cannot be said that they are cases which had been "settled" earlier.

23. In our view, it was not correct on the part of the Central Commission to say in its Order dated 10.07.2015 in the matter of NTPC that the method of calculation applied there was in deviation of Regulation 21(6). The said view is in the teeth of conclusion recorded in para 12 of the said order (quoted earlier) that the element of "SFC" appearing in the formula for calculation of ECR in Regulation 21(6) implies that it has to be "on actual basis". We endorse the said view (in para 12) for the reason that in the explanatory notes below clause (6) of Regulation 21, the qualifying word "normative" has been added wherever required (i.e. in relation to auxiliary energy consumption and limestone consumption). In sharp contrast, the explanatory note of SFC begins with the expression "specific", which is it clearly indicative of the actual secondary fuel oil consumption being factored in rather than normative SFC.

24. The Central Commission, in our view, has fallen in error by declining to follow the principle laid down in the previous decision *dated 10.07.2015 in the matter of NTPC, this rendering it a case of inconsistency, the impugned orders being vitiated by the element of arbitrariness. In our view, subject to scrutiny being made of the claim of savings actually made by reduction of the secondary fuel oil consumption (which has to be shared with the beneficiaries in terms of Regulation 25), the Central Commission must follow its decision in the matter of NTPC for purposes of the present claims of the appellant. We order accordingly. After all, the additional expenditure incurred on primary fuel (lignite) on account of reduced SFC cannot be left uncovered".*

25. For the foregoing reasons, the impugned orders to the extent thereby the benefit of dispensation in the case of NTPC (as referred to above) was declined to the appellant in the truing-up exercise for the periods in question are set aside. The Central Commission is directed to examine the data presented by the appellant and take appropriate decision on the subject of computation of ECR following the principle laid down in its Order dated 10.07.2015 in the matter of NTPC."

73. Secondly, the Tribunal had also interpreted Regulation 21(6) to hold that the use of the word "specific" in the expression "Specific Fuel Oil Consumption" (SFC) in the formula indicates actual consumption, especially in contrast with other parameters where the Regulation expressly uses the word "normative." This interpretation is directly relevant in the present appeal, and we see no reason to depart from the same.

74. Moreover, the apprehensions raised by TANGEDCO regarding the sanctity of the regulatory scheme are addressed by the fact that this Tribunal in the

aforementioned judgment had categorically held that the Central Commission's earlier finding that actual SFC use in the NTPC case was inconsistent with the Regulations was itself based on a flawed reading of Regulation 21(6). Hence, the plea of deviation is untenable.

75. **Accordingly, the Tribunal holds that the Central Commission erred in rejecting the Appellant's claim. The benefit of actual SFC must be allowed, subject to verification of savings and compliance with Regulation 25, as directed in the Tribunal's earlier judgment.**

<u>Issue No. (ii): Whether the Central Commission was justified in treating the Life Extension Programme (LEP) assets of Stage-I as deleted assets for FY 2013-14 and consequently excluding Rs. 290.63 crores from the capital cost with an adjustment of Rs. 261.63 crores towards cumulative depreciation?</u>

76. The Appellant has challenged the decision of the Central Commission to exclude the value of Life Extension Programme (LEP) assets from the capital cost of the generating station for the year 2013-14. It is the specific case of the Appellant that the exclusion of Rs. 290.63 crores on the ground that such assets had been "deleted" from the books is based on an erroneous reading of the Appellant's accounting treatment and reconciliation statement.

77. According to the Appellant, the assets in question were not physically deleted or removed from operation, but had merely been reclassified in the books of accounts in line with applicable accounting standards. The Appellant submits that such movement of assets under different heads of account does not imply de-capitalisation or retirement of assets from service. It was never the Appellant's

case before the Commission that such assets were being de-capitalised or had been removed from the capital base. On the contrary, these assets continue to be actively in use as part of Stage I of the power station.

78. The Appellant asserts that the Commission's assumption, based solely on reconciliation statements provided in response to directions dated 05.01.2016, that such assets were no longer in service, is an arithmetical and interpretational mistake. The value of these LEP assets had only been moved to a different accounting head, not deleted from the gross block. Therefore, the deduction of Rs. 290.63 crores from the capital cost, along with the downward adjustment of Rs. 261.63 crores towards cumulative depreciation, is entirely unjustified.

79. The Appellant further submits that such an error directly affects the admitted capital cost of the generating station, which has a cascading impact on other components of the tariff, such as depreciation, Return on Equity (RoE), and Annual Fixed Charges. It is submitted that the Appellant never claimed any capitalisation in respect of Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009, which would otherwise have precluded inclusion of such capital expenditure. Therefore, there is no basis in fact or law for the Commission to assume that the Appellant had opted for Special Allowance or that the LEP assets were not eligible to form part of the capital base.

80. TANGEDCO, on the other hand, has strongly supported the view taken by the Central Commission in the impugned order. It submits that the Commission acted correctly in treating the LEP assets as deletions for the purpose of truing-up the capital cost. According to TANGEDCO, the reconciliation statement furnished by the Appellant in its affidavit dated 06.02.2016 clearly recorded an amount of Rs. 29,131.98 lakhs under the head "Deletion/Sold" for FY 2013-14. Of this, Rs.

29,063.37 lakhs were attributed to the gross value of LEP assets. These entries were made by the Appellant itself and had also been audited and certified by the statutory auditor.

81. TANGEDCO contends that once the Appellant has shown the assets under deletion/sale in its reconciliation of additional capital expenditure, and when such classification has been confirmed by the auditor, there is no error in the Commission accepting this treatment as the basis for exclusion from the capital cost. It further points out that the Commission had, in Para 46 of the impugned order, correctly noted that the additional capital expenditure as per books also included items under Special Allowance and Compensation Allowance, which are tariff elements and not physical capital assets. The Commission was justified in taking a conservative approach in excluding what appeared to be reconciled deletions from the capital base, especially in the absence of proper justification or clarification by the Appellant at that stage.

82. Moreover, TANGEDCO relies on Regulation 10(4) of the 2009 Tariff Regulations to submit that if a generating company has exercised the option of claiming Special Allowance in lieu of Renovation and Modernisation (R&M) expenditure, then such capital expenditure cannot be claimed simultaneously. The whole purpose of granting Special Allowance is to give a lump sum in lieu of R&M costs, and a generator cannot avail of both benefits. Therefore, even assuming that the LEP assets were not deleted, they would still be ineligible for capitalisation if Special Allowance had been claimed.

83. TANGEDCO submits that if the Appellant now contends that it did not opt for Special Allowance or that the LEP assets are still in service, it must establish these facts with proper documents. In the absence of such contemporaneous material,

the Commission's findings cannot be faulted. TANGEDCO further argues that permitting such claims at this stage, almost eight years after the impugned order, would unfairly burden the beneficiaries with retrospective liability, especially when interest claims may arise.

84. Upon a comprehensive consideration of the respective submissions and the relevant material on record, this Tribunal finds that the controversy hinges on whether the Commission was correct in treating the LEP assets of Stage-I as de-capitalised or deleted assets based solely on the accounting presentation in the reconciliation statement furnished by the Appellant.

85. Paragraph 46 of the impugned order is as follows:

> *"46. It is observed from the above that the actual additional capital expenditure claimed by the petitioner is at variance with the additional capital expenditure as per books of accounts. This variance is on account of the fact that the additional capital expenditure as per books of accounts also includes capitalization of assets under compensation allowance and Special allowance allowed to Stage-I and the capital spares capitalized during 2009-14. Moreover, an amount of ₹29131.98 lakh in 2013-14 for stage-I is shown as deletion/sold which includes a sum of ₹29063.37 lakh towards the gross value of assets transferred to life extension programme and assets which are still in operation in S-I. This deletion has been considered for calculation of capital cost for the period 2009-14 with adjustment of cumulative depreciation amounting to ₹26167.63 lakh."*

86. The reconciliation statement, as noted in the impugned order at Para 46, did indicate a deletion/sale of Rs. 291.31 crores in FY 2013-14. However, the Appellant's categorical assertion before us is that this classification was an internal accounting adjustment and not an actual removal of assets from operation or capital base. The Tribunal notes that there is a crucial difference between accounting reclassification and actual de-capitalisation for regulatory purposes. Unless it is demonstrated that assets were physically retired, sold, or otherwise rendered non-operational, it would not be appropriate to treat their removal from one head in the books as an automatic deletion from the capital cost.

87. That being said, this Tribunal also takes note of TANGEDCO's submission that the Appellant had opted for Special Allowance under Regulation 10(4), which, if true, would bar the Appellant from simultaneously claiming capitalisation of R&M/LEP assets. Regulation 10(4) provides a mutually exclusive choice: either the generator can claim actual capital expenditure under R&M subject to prudence check, or it can claim Special Allowance, in which case no revision of capital cost is permitted.

88. The record before us, however, does not conclusively establish whether the Appellant had claimed Special Allowance in the relevant tariff period for Stage-I. The impugned order notes that the capital expenditure figures in the books included entries under Compensation and Special Allowances, but it does not clarify whether these allowances were actually claimed by NLCIL before the Commission or were merely present in the accounting records.

89. Therefore, we find that the Commission acted prematurely in treating Rs. 290.63 crores worth of LEP assets as deleted assets purely based on the reconciliation statement without verifying the actual operational status of the assets

or whether the Special Allowance route had been availed. This approach resulted in the unwarranted exclusion of Rs. 261.63 crores in cumulative depreciation as well, thereby compounding the tariff impact.

90. Even the TANGEDCO also argued that if the Appellant now contends that it did not opt for Special Allowance or that the LEP assets are still in service, it must establish these facts with proper documents. In the absence of such contemporaneous material, the Commission's findings cannot be faulted.

91. We agree with the argument of the TANGEDCO that the Appellant has to establish the facts as claimed by it.

92. In our considered view, this matter requires a factual determination which the Commission is better placed to undertake. Accordingly, the issue is remanded to the Central Commission to examine:

(a) whether the Appellant had actually opted for Special Allowance under Regulation 10(4) for Stage-I, and

(b) whether the LEP assets shown as deletions in the reconciliation statement were physically removed from service or continued in use.

93. **Subject to these findings, the Commission shall determine afresh whether such assets and their depreciation ought to be retained in the capital cost.**

Issue No. (iii): Whether the Central Commission was right in de-capitalising balancing capital spares from the Gross Block based solely on reconciliation data, particularly when such spares were never claimed under the 2009-14 Tariff Regulations

<u>and thereby reducing the Return on Equity and Depreciation admissible to the Appellant?</u>

94. The Appellant submits that the Central Commission, while undertaking a prudence check of additional capital expenditure claimed in Petition No. 473/GT/2014, has erroneously de-capitalised certain amounts recorded in the reconciliation statement as capital spares for the year 2012-13. Specifically, the Commission, in Para 47 of the impugned order, has arrived at a figure of Rs. 6.1953 crores (or Rs. 619.53 lakhs) as de-capitalisation of capital spares based on entries found in the reconciliation statement filed by the Appellant pursuant to the directions dated 05.01.2016.

95. It is the Appellant's specific case that this figure of Rs. 6.1953 crores have been arrived at due to an arithmetical error on the part of the Commission. The Appellant explains that in the reconciliation statement, the entries were categorised across three distinct rows:

(i) additional assets claimed as per the petition,
(ii) assets claimed under Compensation Allowance, and
(iii) assets claimed under Special Allowance.

96. Out of these, only the first category, assets claimed as per the petition, represent capitalised assets which form part of the books and can be considered for purposes of capitalisation or de-capitalisation.

97. The Appellant submits that the other two categories, Compensation Allowance and Special Allowance, are purely tariff elements prescribed by the CERC Tariff Regulations, 2009, and are not entries in the capital asset register or

the books of account. These represent notional amounts allowed to generators as part of Annual Fixed Charges and do not correspond to any physical or book assets. Hence, there was no question of such allowances being capitalised, and consequently, there could not be any de-capitalisation of these amounts.

98. The Appellant argues that the Commission, in the impugned order, has mistakenly included the entries relating to Compensation and Special Allowance in its computation of de-capitalised capital spares. This, according to the Appellant, constitutes a manifest error, both arithmetical and conceptual, since the base of de-capitalisation was wrongly inflated by inclusion of non-capital entries. The result of this error was that the Commission deducted Rs. 6.1953 crores from the Gross Block, thereby artificially lowering the capital cost and reducing the Return on Equity and Depreciation admissible to the Appellant for the relevant year.

99. The Appellant therefore prays that the impugned deduction on account of capital spares be set aside and the correct figures be restored after excluding the non-capital entries.

100. TANGEDCO supports the decision of the Central Commission and submits that there has been no error, much less any arithmetical error, in the computation of de-capitalised spares. According to TANGEDCO, the Commission has, based on the affidavit dated 06.02.2016 filed by the Appellant, prudently examined the reconciliation statement and noted that during each year of the control period 2009-14, certain negative entries were recorded in respect of capital spares.

101. Specifically, the Commission observed de-capitalisation of spares amounting to (-) Rs. 259.03 lakh in 2009-10, (-) Rs. 296.19 lakh in 2010-11, (-) Rs. 1086.51 lakh in 2011-12, (-) Rs. 619.51 lakh in 2012-13 and (-) Rs. 530.97 lakh in 2013-14.

TANGEDCO points out that the Commission has correctly noted in Para 48 of the impugned order that these variations were not accounted for in the additional capitalisation claimed in the petition but were, nonetheless, reflected in the books of account. In the absence of any justification provided by the Appellant for such entries, the Commission proceeded to treat them as de-capitalizations.

102. TANGEDCO contends that the Appellant cannot now claim that these were entries related only to Compensation or Special Allowance, especially when no distinction to that effect was drawn in the affidavit filed before the Commission. The reconciliation statement was prepared and submitted by the Appellant itself, and the Commission acted within its regulatory authority in relying on the same.

103. Further, TANGEDCO submits that the overall additional capital expenditure claimed by the Appellant varied significantly from that recorded in the books of accounts. This divergence justified the Commission's decision to reconcile and adjust capitalisation figures using the station-wise data submitted. TANGEDCO argues that if the Appellant is now claiming a differentiation between capital and non-capital elements within the same reconciliation statement, it is incumbent upon it to file detailed and verifiable material showing such segregation. In the absence of such evidence, the Commission’s reliance on the overall entries in the affidavit cannot be faulted.

104. TANGEDCO concludes that the Commission has rightly disallowed amounts on account of de-capitalised capital spares, and that such a decision should be upheld, especially when it is based on the Appellant’s own data.

105. After perusing the rival submissions and the material placed on record, we find that the key dispute revolves around the treatment of certain entries in the

reconciliation statement filed by the Appellant, which were construed by the Central Commission as indicative of de-capitalisation of capital spares.

106. It is not in dispute that in the affidavit dated 06.02.2016, filed in compliance with the directions of the Central Commission, the Appellant had submitted station-wise reconciliation data that included negative entries in various years of the control period, including (-) Rs. 619.51 lakh for FY 2012-13. It is also not in dispute that in the same reconciliation statement, entries under Compensation Allowance and Special Allowance were included.

107. What the Appellant now asserts, and rightly so in our view, is that the latter two categories, Compensation Allowance and Special Allowance, are regulatory tariff constructs and not physical assets recorded in the books of accounts. These allowances are prescribed under the Tariff Regulations, 2009, to cover costs incurred by generators in lieu of actual capital expenditure and do not correspond to any capitalised assets that could be either capitalised or de-capitalised in the true sense.

108. Therefore, the inclusion of such entries in the computation of capital de-capitalisation, without a clear segregation or adjustment, constitutes an error on the part of the Commission. Even assuming that the reconciliation data included these items, the Commission was required to distinguish between entries pertaining to actual capital assets and entries that were merely tariff allowances, not forming part of the Gross Block. This distinction is material and affects the admissibility of Return on Equity, Depreciation, and Fixed Charges.

109. The Appellant’s contention that the deduction of Rs. 6.1953 crores (for FY 2012-13) was influenced by the inclusion of non-capital tariff allowances has not

been rebutted by TANGEDCO based on any contrary data. The Commission's finding at Para 48 of the impugned order does not demonstrate that such a differentiation was made before treating the entries as indicative of de-capitalisation.

110. Paragraph 48 of the impugned order is as follows:

> *"It is observed from the above that there has been a variation of (-)₹144.03 lakh, (-)₹296.19 lakh, (-) ₹986.51 lakh, (-)₹ 619.51 lakh and (-)₹530.97 lakh during the years 2009- 10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively which are not mentioned in the details of additional capitalization as per books of account in the affidavit dated 6.2.2016 and the reasons for the same has not been furnished by the petitioner in affidavit dated 6.2.2016. It appears that there is de-capitalization of capital spares of (-)₹259.03 lakh, (-) ₹296.19 lakh, (-)₹1086.51 lakh, (-)₹619.51 lakh and (-) ₹530.97 lakh during 2009-10, 2010-11, 2011- 12,2012-13 and 2013-14 respectively in the books of account. Hence, the above mentioned amounts on capital spares has been considered as de-capitalized in the books."*

111. In our view, the error is both arithmetical and conceptual in nature. While the Commission acted on data submitted by the Appellant, it failed to interpret the nature of the entries and their relevance to capital asset accounting. Regulatory prudence requires not only mathematical accuracy but also a correct understanding of the character of financial entries, particularly when they impact tariff fixation.

112. Accordingly, the deduction of Rs. 6.1953 crores from the Gross Block on account of de-capitalised capital spares, and the consequential reduction in Return on Equity and Depreciation, is set aside. The matter is remanded to the Central Commission to recompute the capital cost after excluding the impact of Compensation Allowance and Special Allowance entries, and to revise the tariff elements accordingly.

Conclusion

113. To sum up the above;

a) The Central Commission's refusal to allow the Appellant's claim for adjustment of Energy Charges on account of actual Secondary Fuel Oil Consumption is set aside. The Commission is directed to recompute ECR in accordance with the methodology recognized in this Tribunal's Judgment dated 28.05.2020 in Appeal Nos. 291 and 344 of 2016.

b) The exclusion of Rs. 290.63 crores towards LEP assets and the corresponding depreciation adjustment of Rs. 261.63 crores are set aside. The issue is remanded to the Central Commission for reconsideration with direction to verify whether the Appellant had opted for Special Allowance under Regulation 10(4) and whether the assets in question were operational or actually deleted.

c) The de-capitalisation of Rs. 6.1953 crores towards capital spares for FY 2012-13 is set aside. The Central Commission shall segregate actual capital asset entries from non-capital tariff allowances and recompute the Gross Block and related tariff components accordingly.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 92 of 2017 has merit and is allowed to the extent as concluded herein above. The Impugned Order dated 10.02.2017 passed by the Central Electricity Regulatory Commission in Petition No. 473/GT/2014 is set aside to that extent.

The matter is remanded to the Central Commission to pass the Order afresh in terms of the conclusion rendered herein.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 17th DAY OF JULY, 2025.

(Virender Bhat) **Judicial Member**	**(Sandesh Kumar Sharma)** **Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~
pr/mkj/kks