



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Petition No. 2203 of 2025**

**QUORUM**

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

**IN THE MATTER OF**

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 51 of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, seeking partial review of the Order 09.12.2024 passed by this Hon'ble Commission in Petition No. 2108 of 2024: Dhariwal Infrastructure Limited vs. Noida Power Company Limited (in relation to prudence check of the cost for procurement and use of Additional Coal on account of shortfall in supply of FSA Grade Coal in FY 2023-24).

**AND**

**IN THE MATTER OF:**

**Noida Power Company Limited (NPCL),**

Electric Sub-station, Knowledge Park – IV, Greater Noida, Gautam Buddha Nagar,  
Uttar Pradesh – 201 310

**...Petitioner**

**VERSUS**

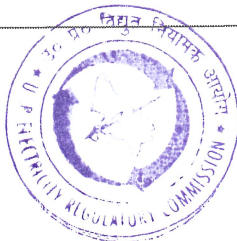
**Dhariwal Infrastructure Limited (DIL),**

Registered Office: CESC House, Chowringhee Square  
Kolkata – 700001, West Bengal

**... Respondent**

**THE FOLLOWING WERE PRESENT**

1. Ms. Divya Chaturvedi, Advocate, NPCL
2. Ms. Srishti Rai, Advocate, NPCL
3. Ms. Shikha Ohri, Advocate, DIL
4. Shri Aveek Chatterjee, DGM, DIL
5. Shri Shubhayu Sanyal, Manager, DIL





## ORDER

(DATE OF HEARING: 17.06.2025)

1. The Petitioner (Noida Power Company Limited) has filed this Petition seeking partial review of the Commission's Order dated 09.12.2024 in Petition No. 2108 of 2024, which pertains to the prudence check of the cost for procurement and use of additional coal due to shortfall in supply of FSA Grade Coal in FY 2023-24 for supply of contracted capacity to NPCL from Unit 2 of Dhariwal Infrastructure Limited's Project.
2. The prayers of the review applicant are as follows:
  - a) Admit the present Review Petition;
  - b) Review, modify and rectify the Impugned Order dated 09.12.2024 passed in Petition No. 2108 of 2024, to the extent assailed herein above;
  - c) Continue to True-up the Respondent / DIL's claims towards Additional Coal on an annual basis, as per the practice followed for the Tariff Period FY 2019-24;

or in the alternative

Allow the Review Petitioner / NPCL to recover the amount paid towards the same along-with Fuel and Power Purchase Adjustment Surcharge, during its ARR/Tariff/Truing-up proceedings for the relevant year, when such payment has been made subject to final prudence check by the Commission, at the time of Truing-up at the end of the Tariff Period FY 2024-29; and

- d) Pass such further or other order(s) as this Commission may deem fit in the facts and circumstances of the case.

### **Background of the case:**

3. DIL had filed Petition No. 2108 of 2024 before the Commission seeking prudence check of the cost for procurement and use of Additional Coal on account of shortfall in the supply of FSA Grade Coal in FY 2023-24. The Commission, vide its Order dated 09.12.2024 in said Petition allowed the incremental cost of procurement of Additional Coal in FY 2023-24 i.e. Rs. 22.50 Crores along with Carrying Cost. The Commission had

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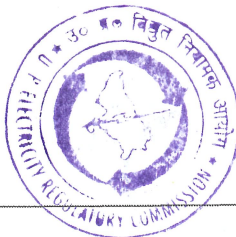


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also held that the prudence check of procurement and use of Additional Coal, henceforth, would be carried out at the time of truing up at the end of the tariff period 2024-29, rather than for every Financial Year of tariff period 2024-29.

4. In view of the above background, NPCL has filed this partial review Petition and mainly submitted as under:
  - a) In terms of the principle set by the Commission vide Order dated 06.05.2020 for the Tariff Period FY 2019-24, the DIL was entitled to claim 90% of the cost of additional coal on a provisional basis through supplementary bills for each financial year of the Tariff Period FY 2019-24. NPCL makes the complete payment towards 90% of DIL's claim for Additional Coal against the supplementary bills raised by DIL. DIL was also mandated to file its Petition for truing-up of its Additional Coal claims, in the beginning of the next financial year. NPCL recovers this approved amount in its ARR/Tariff/truing-up proceedings for the said year, only after the final truing-up Order for DIL is passed by the Commission.
  - b) As per the Commission's Order dated 09.12.2024, NPCL will make payments towards the DIL's claims towards Additional Coal on a yearly basis, however, it will recover the same only after the end of the Tariff Period FY 2024-29, after passing of the MYT true-up Order of DIL.
  - c) Delayed recovery of payments made to DIL would lead to creation of regulatory gap along with carrying cost of the same. As a result, there would be an extra burden of the carrying cost on the end consumers. Additionally, such delayed recovery will also cause significant cash flow issues for NPCL.
5. Subsequently, the Petitioner, vide additional affidavit dated 19.05.2025, submitted that the Commission vide its Order dated 15.04.2025 in Petition No. 2116 of 2024, had allowed DIL to continue the earlier principle for compensation on account of 'Change in Law' events for FY 2024-29 i.e. for approaching the Commission annually for truing-up of its Change in Law claims.



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### **Record of Proceedings:**

6. During the hearing held on 20.05.2025, Ms. Divya Chaturvedi, counsel for review applicant, submitted that as per the said Order under partial review, NPCL would be unable to recover its payments related to DIL's claims towards Additional Coal on annual basis as part of its ARR, which would result in carrying cost implications for the end consumers. Ms. Divya requested the Commission to partially review the impugned order and suggested either reverting to the old mechanism of annual true-up or permitting NPCL to recover the costs annually in its ARR subject to final prudence check at the time of truing up of DIL's claim at the end of the control period i.e. 2024-29. Ms Shikha Ohri, counsel for Respondent, submitted that DIL had no objection to the present review petition and the proposal to revert to the old mechanism. She additionally requested the Commission to consider allowance of 100% of the costs, against the 90% currently allowed. The Commission directed the Respondent to file its reply in two weeks' time, and subsequently, the review applicant may file its rejoinder in one week, if required. On 09.06.2025 DIL submitted its reply.

### **Reply of DIL:**

7. DIL, vide its reply dated 09.06.2025, submitted that it has no objections if the Commission continues with the annual truing up of the cost of procurement and use of Additional Coal for the MYT period 2024-29. DIL was agreeable to recover 100% of the claims related to the procurement and use of Additional Coal for each year of the MYT period 2024-29 through monthly supplementary invoices, as approved by the Commission in the Impugned Order.
8. During the hearing on 17.06.2025, Ms. Divya Chaturvedi, counsel for review applicant, referring to the Commission's Order dated 15.04.2025 in Petition no. 2116 of 2024 wherein DIL was allowed to continue the existing principle for compensation on account of 'Change in Law' events for FY 2024-29, i.e. approaching the Commission annually for truing-up, requested the Commission to continue the earlier practice. After hearing both the parties, the Commission reserved the order in the matter.







### **Commission's View:**

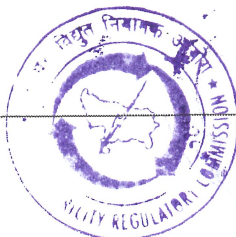
9. Petitioner has filed this Review Petition seeking partial review of the Order dated 09.12.2024, passed in Petition No. 2108 of 2024, to the extent that the truing up for DIL's claim towards procurement and use of Additional Coal on account of shortage of fuel for tariff period FY 2024-29 should be carried out on annual basis rather than at the time of truing-up at the end of the tariff period 2024-29. The Commission vide its Order dated 09.12.2024, passed in Petition No. 2108 of 2024 has observed as under:

***"31. With regard to Prayer 31(e) of the Petitioner, the Commission observes that claim for use of alternative source of fuel by thermal generating station on account of shortage of fuel for tariff period FY 2024-29 would be governed by the provisions of applicable Generation Tariff Regulations. Therefore, the Commission permits the DIL to procure and use additional coal to the extent of shortfall in the quantity of coal supply from the FSA grade coal from SECL in accordance with the provisions of applicable Generation Tariff Regulations. In view of the above discussion, the Commission directs that***

***a. DIL shall implement a transparent and standard procedure for all future procurement of Additional Coal &***

***b. DIL can claim towards Additional Coal in monthly supplementary energy bills on provisional basis in respective Financial Year during the MYT Control Period 2024-29 strictly in accordance with the applicable UPERC Generation Tariff Regulations alongwith following conditions:***

- i. Any FSA grade coal available under the PPA shall be utilized first before using e-auction coal.***
- ii. Any compensation paid by coal company to the petitioner for shortfall in supply of coal than the minimum / threshold quantity as per FSA or debit/credit notes on account of quality variation has to be adjusted from the year-wise relief claimed by the petitioner from the respondent.***





- iii. ***Ex-bus Generation and Scheduled Generation Ex-bus for supply to NPCL bus on month-to-month basis as per the meters at the station switchyard bus shall be reconciled with the relevant/SCADA data of RLDC and /or Regional Energy Accounting of RPC/ RLDC for the month.***
- iv. ***All facts & figures including coal consumed and "GCV as received basis" on month to month shall be duly certified by the statutory auditor along with approved NABL accredited third party sampler GCV report.***

***32. The Commission further reiterates that expense towards Additional Coal during respective Financial Year shall be subject to prudence check of this Commission at the time of truing up at the end of the tariff period 2024-29."***

10. The ground urged by the review Petitioner is that it is not allowed to recover the costs prior to the issuance of final truing-up Order of DIL, in accordance with the Commission's Tariff Order dated 10.10.2024. The relevant extracts of the Tariff Order dated 10.10.2024 are reproduced below:

*"5.5.106. The Commission, in view of the above orders, has allowed the charges as per the below table. However, the impact of change in law and additional coal claimed by the Petitioner (for which the Commission's order has been published in FY 2023-24 and FY 2024-25) shall only be allowed once the NPCL's True-up for respective years will be issued by the Commission. Accordingly, the same is not approved in True-Up of the power purchase cost for FY 2022-23. "*

11. The Commission has noted that truing-up of DIL's claims towards Additional Coal at the end of the tariff period 2024-29, instead of an annual truing-up process, would lead to significant delays in the recovery of payments made to DIL and would impose an additional burden of carrying costs on the end consumers. The Commission has also noted that the Respondent (DIL) has no objection to continue with earlier practice.

12. Therefore, considering the submissions of the parties and also in continuation of earlier practice of annual true-up in 'Change in Law' claims as approved by the Commission vide Order dated 15.04.2025 in Petition No. 2116 of 2024, there exists a prima facie





case for review of Order dated 09.12.2024 in Petition No. 2108 of 2024 to the extent of manner of recovery of cost for procurement and use of Additional Coal.

13. In the light of above discussion, the Commission is of the view that the prudence check of the cost for procurement and use of additional coal due to shortfall in supply of FSA Grade Coal for the tariff period 2024-29 for supply of contracted capacity to NPCL from Unit 2 of Dhariwal Infrastructure Limited's Project shall be dealt on annual basis as per earlier practice vide the Commission's Order dated 06.05.2020 in Petition No. 1438 of 2019. This would also be in line with the mechanism of recovery upheld by the Commission vide Order dated 15.04.2025 in Petition No. 2116 of 2024 for 'Change in Law' claims.

The Petition is disposed of in terms of above.

**(Sanjay Kumar Singh)**

**Member**



**(Arvind Kumar)**

**Chairman**

Place: Lucknow

Dated: 08.07.2025



