

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 101/MP/2010

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 31.01.2012

Date of Order : 01.01.2013

In the matter of

Miscellaneous petition under Regulation 12, "Power to remove difficulties" and Regulation 13 "Power to Relax" of the CERC (Terms and Conditions of Tariff) Regulations, 2004, on account of additional cost incurred owing to revision of scale of pay for executives from 1.1.2007 to 31.3.2009 consequent to implementation of revision with effect from 1.1.2007, as detailed in the petition.

Power Grid Corporation of India Limited

.....Petitioner

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd, Bhubaneshwar
4. Damodar Valley Corporation, Calcutta
5. Power Department, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Assam
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Arunachal Pradesh
10. Power & Electricity Department, Aizwal
11. Electricity Department, Imphal
12. Department of Power, Nagaland
13. Tripura State Electricity Corporation Ltd, Agartala
14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd, Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd, Rajasthan
16. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd, Rajasthan
18. Himachal Pradesh Electricity Board, Shimla

19. Punjab State Electricity Board, Patiala
 20. Haryana Power Purchase Centre, Haryana
 21. Power Development Department, Jammu
 22. Uttar Pradesh Power Corporation Ltd, Lucknow
 23. Delhi Transco Ltd., New Delhi
 24. Chandigarh Administration, Chandigarh
 25. Uttarakhand Power Corporation Ltd, Dehradun
 26. BSES Yamuna Power Ltd, New Delhi
 27. BSES Rajdhani Power Ltd, New Delhi
 28. North Delhi Power Ltd, New Delhi
 29. NDMC, New Delhi
 30. North Central Railway, Allahabad
 31. Karnataka Power Transmission Corporation Ltd, Bangalore
 32. Bangalore Electricity Supply Company Ltd, Karnataka
 33. Gulbarga Electricity Supply Company Ltd, Karnataka
 34. Hubli Electricity Supply Company Ltd, Karnataka
 35. Mangalore Electricity Supply Company Ltd, Karnataka
 36. Chamundeswari Electricity Supply Company Ltd, Karnataka
 37. Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
 38. Eastern Power Distribution Company of Andhra Pradesh, Andhra Pradesh
 39. Southern Power Distribution Company of Andhra Pradesh Ltd, Andhra Pradesh
 40. Central Power Distribution Company of Andhra Pradesh, Andhra Pradesh
 41. Northern Power Distribution Company of Andhra Pradesh, Andhra Pradesh
 42. Kerala State Electricity Board, Thiruvananthapuram
 43. Tamil Nadu Electricity Board, Chennai
 44. Electricity Department, Pondicherry
 45. Electricity Department, Panaji
 46. Madhya Pradesh Tradeco. Jabalpur
 47. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd, Indore
 48. M/s Jindal Powers Ltd, International Home Deco Park, Noida
 49. Maharashtra State Electricity Distribution Co. Ltd, Mumbai
 50. Gujarat Urja Vikas Nigam Ltd, Baroda
 51. Electricity Department, Daman
 52. Electricity Department, Silvassa
 53. Chhattisgarh State Electricity Board, Chhattisgarh
-Respondents

Counsel/Representatives present:-

1. Shri M.G. Ramachandran, Advocate for the petitioners
2. Ms. Swapna Seshadri, Advocate for the petitioners
3. Shri S.S. Raju,PGCIL
4. Shri R.B. Sharma, Advocate for BSEB, JSEB, GRIDCO and BRPL
5. Shri Sanjay Srivastav, BRPL
6. Shri Satpal Tomar, BRPL
7. Shri Deepa Shankar, BRPL
8. Shri Prashant Dua, BRPL
9. Shri S. Vallinayagam, TANGEDCO
10. Shri S. Balaguru, TANGEDCO

11. Shri Manoj Dubey, MPPTCL
12. Dr. Meenu Mishra, BYPL
13. Shri Dushyant Hanolha, BYPL
14. Shri Manish Garg, UPPCL
15. Ms. Suparna Shrivastava, CSPDCL
16. Shri M. K. Adhikary, APDCL
17. Shri B. M. Saikia, APDCL

ORDER

The petitioner, Power Grid Corporation of India Limited has filed this petition seeking appropriate directions of the Commission to allow the petitioner to bill and recover the additional O & M cost due to increase in employee cost with respect to Board level and below Board level executives and non-executives as an additional component under O & M expense from the respondents as a onetime payment in proportion to their Annual Transmission Charges in the respective years.

2. The petitioner has submitted that the Commission notified the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2004, (hereinafter referred to as "2004 Tariff Regulations) on 26.3.2004 providing for the norms and parameters for tariff determination for the period 1.4.2004 to 31.3.2009. Regulation 56 (iv) of the 2004 Tariff Regulations specified the year-wise normative O&M expenses for the transmission systems in terms of Ckt kms and Bays for the period 2004-09 as under:

	2004-05	2005-06	2006-07	2007-08	2008-09
O&M expenses(Rs in lakh per ckt. km.	0.227	0.236	0.246	0.255	0.266
O&M expenses(Rs in lakh per ckt. km.	28.12	29.25	30.42	31.63	32.90

The petitioner has submitted that that the above mentioned norms have been arrived at by the Commission on the basis of the O&M expenses of the petitioner for years 1998-99,1999-2000,2000-01,2001-02 and 2002-03. The petitioner has submitted

that the norms capture different components such as employee cost, repair and maintenance, insurance, electricity charges, travel, C.C. allocation etc.

3. The petitioner has submitted that consequent to the notification of the norms for the period 2004-09, the Department of Public Enterprises (DPE) issued Office Memorandum Nos. 2(70)/08-DPE(WC) dated 2.4.2009, 9.2.2009 and 26.11.2008 for revision of pay with effect from 1.1.2007 for the Board level and below Board level executives, and non-unionised supervisors in the Central Public Sector Enterprises. The petitioner being a Central Public Sector Enterprise is mandated to follow the DPE as regards the revision of pay. Consequently, the component of employee cost incident on the petitioner has increased for the years 2006-07, 2007-08 and 2008-09 during the tariff period 2004-09. According to the petitioner, the impact of the revision of employee cost has not been factored/considered while arriving at the norms for O&M expenses during the tariff period 2004-09. Moreover, while arriving at the norms for O&M expenses for the tariff period 2004-09, there is no provision for addressing the impact consequent to revision in the scale of pay of the employees which is due with effect from 1.1.2007. The petitioner has submitted that in all its tariff petitions for determination of tariff during 2004-09, the petitioner has raised the issue that the wage revision of its employees is due from 1.1.2007 and the O&M expenses claimed in the transmission charges during 2004-09 period are subject to adjustment due to additional employee cost which becomes payable after the wage revision or alternatively, the increase in the employee cost due to wage revision be allowed as per actual based on the auditor's certificate for such extra employee cost. The petitioner has submitted that the Commission in the respective tariff orders has allowed the petitioner to approach for relief at an appropriate stage in accordance with law.

4. The petitioner has submitted the details of the additional employee cost incurred, excluding the employee incentive, consequent to the pay revision of only the Board level and below Board level executives relating to the transmission and they are as under:-

(₹ in lakh)				
Region	2006-07 (w.e.f.1.1.2007)	2007-08	2008-09	Total
Eastern	145.35	661.06	813.38	1619.79
Northern	265.61	1165.46	1368.80	2799.87
North Eastern	92.66	377.02	455.79	925.47
Southern	216.58	869.56	1046.51	2132.65
Western	132.20	580.21	743.43	1455.84
Total	852.40	3653.31	4427.91	8933.62

5. The petitioner has sought indulgence of the Commission to allow the above expenditure to be recovered as an additional component under O&M expense from the Respondents as a onetime payment in proportion to their Annual Transmission charges in respective years by invoking the provisions of Regulations 12 (Power to remove difficulties) and Regulations 13 (Power to Relax) of 2004 Tariff Regulations.

6. Replies to the petition have been filed by UP Power Corporation Limited (UPPCL), Madhya Pradesh Power Trading Company Limited (MPPTCL), Bihar State Electricity Board (BSEB), Haryana Power Purchase Centre (HPPC), Tamil Nadu Electricity Board (TNEB) and BSES Rajdhani Power Limited (BRPL). The petitioner has filed its rejoinders to these replies of the respondents. The replies of the respondents are briefly discussed as under:

(a). UP Power Corporation Limited in its affidavit dated 22.4.2010 has submitted that the employee cost in O&M is about 60% as admitted by the petitioner in Petition No.67/2003. The average increment of DA is about 3% whereas the employee cost included in O&M increases by 3.66% to 4.42% in case of transmission lines and from 3.28% to 4.25% in case of bay. The balance amount remaining after adjusting increment in DA of 3% is profit/saving to the petitioner. On the basis of the total line length and number of bays in 2002-03, the saving is ₹ 671.599 lakh. The savings would be more if the actual figures of line length and number of bays are considered upto 2008-09. UPPCL has submitted that the petitioner should be asked to submit the net additional impact due to wage revision from 1.1.2007 after updating figures of length of lines and number of bays upto 2008-09 and after adjusting the saving out of the employee cost from 2004-05 to 2008-09. UPPCL in its affidavit dated 31.1.2012 has further submitted that as per the DPE guidelines, affordability is an important criteria for implementing the pay revision. The DPE guidelines provides for a fitment of 30% of basic pay plus DA @68.8% as on 1.1.2007 and the petitioner in its Office Order No.11/2011 dated 5.4.2011 and Office Order No.10/2011 dated 5.4.2011 has adopted the same formula and percentage of fitment. If this amount was not affordable from the profit of the petitioner, then the petitioner should have adopted a fitment of 10% or 20% under intimation to DPE. Since the petitioner has implemented the fitments as per guidelines of DPE, it follows that the petitioner can afford the expenditure and the impact of pay revision should not be loaded to the beneficiaries. UPPCL has further submitted that it cannot approach the State Commission for increase in tariff for the period 2004-09 since the tariff for the said period has already been determined, billed and recovered from the consumers. No supplementary demand can be made to consumers with retrospective effect and any increase in tariff can be recovered prospectively. In support of its

contention, UPPCL has relied upon the judgment of the Supreme Court dated 3.3.2009 in Civil Appeal No.1110/2007 and other related appeals. UPPCL has further argued that since the petitioner has not presented any bill in this regard till 24.1.2012 even after two years of the expiry of the 2004-09 tariff period, the same is not recoverable in terms of the limitation imposed by section 56(2) of the Electricity Act, 2003 (the Act). UPPCL has also submitted that in the light of the judgment of the Appellate Tribunal for Electricity in Appeal No.134 of 2008 and related appeals with regard to water charges of NTPC, inclusion of actual wage hike in O&M cannot be taken in isolation as tariff is a complete package.

(b). Madhya Pradesh Trading Company Limited (MPPTCL) in its affidavit dated 26.5.2010 has submitted that the petition under Regulation 12 of the 2004 Tariff Regulations does not sustain as the Commission is not facing any difficulties in giving effect to the regulations. It has been further submitted that the petition does not call for invoking of the powers under Regulation 13 because the DPE directions regarding revision of pay scale with effect from 1.1.2007 are to be implemented only if the concerned CPSE is in a position to afford that on its own. Further, MPPTCL in its affidavit dated 9.5.2011 has submitted that from analysis of the data submitted by the petitioner in connection with the determination of norms for the tariff period 2009-14, it is evident that the petitioner has collected ₹141008 lakh as normative O&M expenditure as part of the annual fixed charges against the actual O&M expenditure of ₹120562.20 lakh, resulting in an excess recovery of ₹20446.44 lakh. When this additional recovery is compared with the additional employee cost of ₹8933.61 lakh, it is clearly evident that the petitioner has already recovered more than their actual expenses including additional

burden of employee cost and there is no case for invoking the provisions of Regulation 12 or Regulation 13 of 2004 Tariff Regulations.

(c). Bihar State Electricity Board in its affidavit dated 25.5.2010 has submitted that the petitioner has not identified any particular regulation where it is encountering difficulty. The petitioner has been allowed legitimate O&M expenses under the various petitions in accordance with the provisions of 2004 Tariff Regulations and hence encountering the difficulty in giving effect to the regulations does not arise. As regards the prayer of the petitioner for allowing additional cost on account of pay revision by invoking the power of relaxation under Regulation 13 of 2004 Tariff Regulations, it has been submitted that the O&M expenses are norm based and not on actual expenses. The norms are liberal and would take care of the additional cost incurred on account of pay revision. BSEB has further submitted that any increase in employee cost should be taken care of by improvement in their productivity level by the petitioner so that the beneficiaries are not burdened. BSEB has further submitted that safeguarding of consumer interest and at the same time recovery of the cost of electricity in a reasonable manner is an important consideration while framing the terms and conditions for determination of tariff through regulations as per section 61(d) of the Act. Seeking relaxation on any account whatsoever amounts to disturbing this delicate balance which the Commission has tried to maintain through 2004 Tariff Regulations, and relaxation of the regulations would result in unreasonable benefits to the petitioner. It has also been submitted that although annual fixed charges of the transmission system comprises of five components for the purpose of determination of tariff, the regulations do not prescribe that each and every component of the annual fixed charges is required to be tested on the requirements of

reasonability. It is for the petitioner to show that the tariff as a whole is unreasonable and then claim for relief under component or sub-component as the case may be.

(d). Tamil Nadu Electricity Board in its affidavit dated 15.6.2010 has submitted that the petitioner has claimed relief under the inherent power of the Commission under Regulations 111, 113 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking to meet ends of justice is not correct as the tariff is fixed based on normative basis and not on actual. The petitioner's request for considering the wage revision impact with effect from 1.1.2007 alone amounts to cherry picking the benefits from the tariff package which is not in line with the principle of equity. The revision of tariff in view of impact of the pay revision under O&M expenses for the tariff period 2004-09 cannot be exercised retrospectively i.e. after the expiry of tariff period. The demand for additional O&M cost due to increase in employee cost is on similar lines as the NTPC's demand for additional water charges for the year 1997-98 to 2000-2001 which was disallowed by the Appellate Tribunal for Electricity on the ground that abnormal water charges cannot be taken in isolation as the tariff is a complete package and that the petitioner has not suffered any loss or has not earned the prescribed return on equity during the tariff period. Any increase in tariff can be recovered prospectively and TNEB faces a challenge in this respect as it cannot recover the tariff from future consumers for the power consumed by the past consumers in the light of the decision of the Hon'ble Supreme Court in its judgment dated 3.3.2009 in Civil Appeal No.1110/2007 and other related appeals.

(e). BSES Rajdhani Power Limited (BRPL) has submitted that the petition is not maintainable as it seeks to reopen all past petitions relating to five regions which have

attained finality. The Commission has already factored the impact of pay and wage revision during the tariff block 2009-14 by allowing 50% of the impact to be borne by the beneficiaries. It has been further submitted that tariff consists of a number of packages and each package need not be examined on the anvil of reasonability. As tariff is a complete package, its reasonability is required to be examined in its totality. The norms in the 2004 Tariff Regulations were very liberal and the respondent had not questioned the norms as it believed in its sanctity. Since the petitioner does not believe in the sanctity of the norms, the Commission may introduce the concept of truing up and undertake the yearly revision of tariff based on the audited information so that all parties are assured that the cost of electricity is reasonable. Seeking relaxation on any account whatsoever amounts to disturbing this delicate balance which the Commission has tried to maintain through 2004 Tariff Regulations, and relaxation of the regulations would result in unreasonable benefits to the petitioner. Further, BRPL has submitted that the claim for recovery of additional cost incurred consequent to pay revision of employees is belated and has been made after the tariff period is over. In this connection, reliance has been placed on the judgment of the Supreme Court in Civil Appeal No.1110/2007- NTPC Ltd vs UPPCL in support of contention that claim is permissible when tariff is in force and not afterwards.

(f) Haryana Power Purchase Committee on behalf of Haryana Utilities has submitted that the petitioner has been allowed certain O&M expenses since 1.4.2004 with annual escalation. The petitioner should give the data about the actual deployment of persons and the corresponding data regarding transmission line length and the number of bays maintained and confirm that there has been no saving on salary account as per the tariff provision. HPPC has submitted that since a number of new transmission lines are being

added every year, there would be savings on manpower in O&M expenses which should be utilized to meet the additional O&M expenses.

7. The petitioner in its rejoinders to the reply of respondents has submitted that subsequent to the norms framed for O&M expenses for the tariff period 2004-09, revision of pay for CPSEs was issued by the DPE. Additional cost towards employees is as such an incident on the petitioner and Regulation 56(iv) read with Regulation 49(xv) entitles the petitioner to recover such legitimate cost. The petitioner has submitted that the norms to calculate tariff for a particular tariff period with respect to various heads viz. RoE, O&M expenses, depreciation etc. are separately arrived at so as to address the specific needs of each of the heads. Each of the norms for the heads so arrived is for distinct purposes and cannot be adjusted or traded against one another. The petitioner has submitted that the difficulty has arisen owing to the fact that it would not have been possible to assess the employee cost on ex-ante basis and to tide over the difficulty, the petitioner is seeking revision in O&M norms to account for the expenditure which has become available after the implementation of the revision of pay as per DPE directives. Refuting the contention of the respondents about detailing of O&M expenses allowed by the Commission in various tariff petitions and the actual expenditures, the petitioner has submitted that the norms arrived at and included under annual fixed charges are not prescribed to be tested with reference to actual figures. The petitioner has further submitted that when a component towards additional employee cost owing to revision of pay under the O&M expenses was not represented/factored while arriving at the O&M norms, there is a need to compensate for the additional cost which is incident on the petitioner and to be recovered under the Cost of Service Regulations. Accordingly, the

petitioner has prayed for removal of difficulty under Regulation 12 and relaxation of the relevant provisions under Regulation 13 of 2004 Tariff Regulations to allow the additional employee cost on account of pay revision.

8. We have heard the parties and perused the documents on record. Before we proceed to the merit of the case of the petitioner, we have to deal with the objections of the respondents. The objections of the respondents can be grouped under the following categories which have been dealt with in the subsequent paragraphs.

- (a) Maintainability of the petitions under Regulation 12 and Regulation 13 of 2004 Tariff Regulations;
- (b) Tariff is a package and norms should not be reopened for actual;
- (c) Burdening present consumers for the past dues;
- (d) Other miscellaneous pleas.

Maintainability

9. The petitioner has filed its petitions under Regulation 12 and 13 of the 2004 Tariff Regulations. The said Regulations provide as under:

“12. Power to Remove Difficulties: If any difficulty arises in giving effect to these regulations, the Commission may, of its own motion or otherwise, by an order and after giving a reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with these regulations, as may appear to be necessary for removing the difficulty.

13. Power to Relax: The Commission, for reasons to be recorded in writing, may vary any of the provisions on its own motion or on an application made before it by an interested person.”

10. The petitioner has submitted that Regulation 56(iv) of the 2004 Tariff Regulations did not factor in the increased salary and wages of the employees of PGCIL

consequent to the wage revision of public sector enterprise's employees with effect from 1.1.2007. The petitioner has reasoned that had such revision been available and implemented at the relevant time when the 2004 Tariff Regulations were notified and even if the revision of salary and wages were to be paid effective from 1.1 2007, the 2004 Tariff Regulations would have appropriately factored the said increase. The petitioner has submitted that the expenditure on account of revision of salary and wages is a necessary expenditure incurred by the petitioner and is required to be serviced through tariff in a capital cost based tariff determination provided for in section 62 of the Act read with 2004 Tariff Regulations. It has been further submitted that the Commission has taken such increased salary and wages for determining the base year O&M expenses for the next control period 2009-14 and it clearly supports the fact that the Commission would have considered the same if such increase was firmed up when the 2004 Tariff Regulations were notified. Accordingly, the petitioner has sought reimbursement of actual expenditure on wage revision and salary revision by exercising power under Regulation 12 and 13 of the 2004 Tariff Regulations. The respondents have submitted that the Commission's power to remove difficulties and power to relax under Regulation 12 and 13 of 2004 Regulations are not applicable in the present case as no difficulty has arisen to give effect to 2004 Tariff Regulations. In response, the petitioner has submitted that Regulation 12 dealing with power to remove difficulties and Regulation 13 dealing with power to relax have been incorporated in the 2004 Tariff Regulations precisely for a situation similar to the one which have arisen in the present case i.e. when there is a subsequent development during the control period which makes the norms specified in the regulations inadequate for the reasons not attributable to PGCIL. The petitioner has submitted that such a situation is clearly a difficulty which has arisen in giving effect to 2004 Tariff Regulations, namely, the Regulations if given effect

to on its own terms in relation to O&M expenses will not enable the recovery of the entire legitimate cost and expenses incurred by PGCIL. The petitioner has further submitted that the Commission has the inherent power under Regulations 111, 113 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 to issue any directions in the interest of justice. The petitioner has also submitted that the nature of jurisdiction exercised by the Commission is regulatory in nature which carries with it the power to do all things in the interest of justice. In this connection, the petitioner in its written submission has relied upon the following judgments:-

- (i) Premium Granites & Anr V. State of Tamil Nadu & Ors {(1994)2 SCC 691}
- (ii) Hindustan Paper Corporation Limited V. Government of Kerala {(1986)3 SCC 398}
- (iii) V.S. Rice and Oil Mills V. State of A.P. {(1964)7 SCR 456}
- (iv) Deepak Theatres V. State of Punjab { 1992 Supp (1) SCC 684}
- (v) State of U.P. V. Maharaja Dharamander Prasad Singh {(1989)2 SCC 505}
- (vi) Hotel & Restaurant Association V. Star India (P) Ltd {(2006) 13 SCC 753}
- (vii) K Ramanathan V. State of Tamil Nadu {(1985) 2 SCC 116}
- (viii) Uttar Pradesh Power Corporation Limited V. National Thermal Power Corporation Limited {(2009) 6 SCC 235}

The Petitioner has submitted that in the circumstances, the Commission has the full powers and jurisdiction to deal with the impact of salary and wages during the control period 2004-09 with effect from 1.1.2007 and exercise its power of relaxation or removal of difficulties for allowing higher O&M expenses.

11. We have considered the submissions of the petitioner and the respondents. The Commission while deciding the norms applicable for the period 1.4.2004 to 31.3.2009

had considered the O&M expenses for the year 1998-99 to 2002-03, normalized the O&M expenses and thereafter escalated them @ 4% per annum to arrive at the norms at 2002-03 price level which was further escalated @4% to arrive at the norms for each of the five years of the 2004-09 period. While deciding the norms for the period 2004-09, the pay and wage revisions of the employees with effect from 1.1.2007 were never taken into account. Had the pay and wage revision taken place at the time the norms were decided, the Commission would certainly have taken into account its impact while fixing the norms. In other words, the legitimate expenditures incurred by PGCIL on account of pay and wage revisions are not being serviced as the same have not been factored in the norms. Section 61(d) of the Act provides that one of the guiding factors for determination of the terms and conditions of tariff is to safeguard consumer interest while ensuring recovery of the cost of electricity in a reasonable manner. Pay and allowances are mandatory expenditures and are a necessary input to determine cost of electricity. The said expenditure could not be factored at the time of determination of the norms since the pay and wage revision came into force w.e.f. 1.1.2007 in respect of the employees of PGCIL. If the impact of pay and wage revision is denied, it would result in under recovery of cost of electricity by the petitioner. Therefore, in our view, a clear case has been made out to remove the difficulty arising out of non-consideration of the impact of wage revision in the O&M norms for the period 2004-09.

Tariff as a package

12. The respondents have argued that tariff is a complete package and if the increase in the salary and wages as a part of O&M expenses are to be considered, the Commission should reopen all other norms and parameters and decide on whether PGCIL has savings in other norms and adjust such savings against the increased O&M

expenses. The respondents have relied upon the judgment of the Appellate Tribunal dated 3.6.2010 in Appeal No.134, 140 etc of 2008. To this, the petitioner has submitted that such a plea is misconceived and shows lack of understanding of the regulatory jurisdiction of the Commission and determination of tariff on normative parameters. The petitioner has submitted that once the normative parameters are set, the functioning of the Utility qua such normative parameters would amount to efficient functioning if the utility is able to save on the normative parameters and inefficient or imprudent functioning if the utility incurs more than the normative parameters. The gain or loss on account of the above efficiency or inefficiency is completely on account of the utilities. Neither the utility can claim the loss on account of the functioning under the normative parameters nor the beneficiaries can claim adjustment on the efficiency gain of the utilities in the working of the normative parameters. The petitioner has relied upon the following two judgments of the Appellate Tribunal in support of its contention that the course of adjusting the normative parameters to actual is contrary to the basic tariff principles:

- (a) Judgment dated 31.7.2009 in Appeal No.42&43 of 2008 (Haryana Power Generation Corporation Limited v. Haryana Electricity Regulatory Commission);
- (b) Judgment dated 14.11.2006 in Appeal Nos.94&96 of 2006 (NTPC Ltd vs CERC & Others).

13. We have considered the submissions of the petitioner and respondents. The judgment relied upon by the respondents pertains to the reimbursement of additional water charges on account of settlement of the pending dispute by NTPC with the State Authorities. At the time of fixation of the norms for O&M Expenses, NTPC did not claim

that there would be an impact of additional water charges after settlement of pending dispute with the State Government. The Commission fixed the normative water charges based on actual expenditure of NTPC for the base year. During the control period, NTPC claimed that it had settled the dispute with State Authorities and had to pay higher water charges. Under the circumstances it was held that water charges forming part of the O&M Expenses was a package and could not be interfered with as NTPC has not been able to show that it has suffered any loss. In the present case, the impact of pay and wage revision was not factored as the same were not available on the date of determination of the norms. However, during the tariff period 2004-09, the petitioner had raised the issue in various tariff petitions. The Commission in its order dated 9.4.2009 in Petition No. 127/2008 relating to transmission tariff of 400 kV S/C Vindhyachal-Korba Ckt-II alongwith associated bays associated bay equipment at Vindhyachal and Korba Switch Yards in Western Region from 1.6.2007 to 31.3.2009 held as under:

“34. The petitioner has submitted that the wage revision of its employees is due with effect from 1.1.2007. Therefore, O&M expenses should be subject to revision on account of revision of employee cost from that date. In the alternative, it has been prayed that the increase in employee cost due to wage revision be allowed as per actuals for extra cost to be incurred consequent to wage revision. We are not expressing any view, as this issue does not arise for consideration at this stage. The petitioner may approach for a relief in this regard at an appropriate stage in accordance with law.”

Accordingly, the petitioner has approached by way of the present petition for allowing in tariff the impact of the pay and wage revision of its employees after the same has been implemented. In our view, norms of tariff have been specified in the terms and conditions of tariff after extensive stakeholder’s consultation and keeping in view the provisions of the Act, National Electricity Policy and Tariff Policy and its sanctity should be maintained. Normally a party should not be allowed any charge in deviation of the norms. However, when a particular expenditure has not been factored while deciding the

norms, in that case the claim for such expenditure cannot be said to result in reopening of norms. The claim has to be considered in addition to the norms after due prudence check as regards its reasonability. Otherwise this will result in under-recovery of the cost of expenditure of the transmission licensee. In our view, the principle that tariff is a package based on the norms and cannot be reopened on account of additional actual expenses is not applicable in this case since, the impact of wage revision and pay revision was never factored in the norms and hence was never part of the package. Therefore, the impact of wage and pay revision need to be considered over and above the norms specified in the 2004 Tariff Regulations.

Burdening the present consumers for the past dues

14. The respondents have submitted that the expenditure on wage and pay revision pertain to the period 1.1.2007 to 31.3.2009. Since, the State Commissions have approved the ARR for the said period, the impact of the pay and wage revision cannot be passed on to the consumers retrospectively. Consequently, the present consumers will have to bear the burden of the wage revision. The respondents have relied on the judgment of the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Limited vs. National Thermal Power Corporation Limited and Others [(2009) 6 SCC 235]. In that case, Hon'ble Supreme Court has held that NTPC had not approached the Commission for revision of tariff on account of the implementation of the wage revision even though it was aware of the implementation of the pay revision on the date of filing the application. However, the present case is distinguishable from the other case in the sense that the petitioner had approached the Commission during the 2004-09 period to consider the impact of the pay and wage revision. The Commission had also directed that the claim would be dealt with in accordance with law at the appropriate point of time. In other

words, all the parties including respondents are aware that the Commission is seized with the issue and appropriate order will follow in due course of time. In our view, a legitimate expenditure cannot be denied to the petitioner on the ground that it will burden the new consumers with the past dues.

Other Miscellaneous pleas

15. UPPCL has contended that the dues of enhanced employee cost on account of pay and wage revision of the employees of PGCIL were due from 1.1.2007 and since the same has not been claimed within two years from becoming due, the enhanced employee cost is not recoverable in terms of provisions of section 56(2) of the Act. We have considered the submission of UPPCL. Section 56(2) of the Act reads as under:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The above provision bars a distribution licensee to recover an amount from the consumer after a period of two years it first becomes due unless the same has been shown as recoverable continuously as arrear of charges. In our view, the enhanced employee cost on account of pay and wage revision of the employees of PGCIL does not become due to be recovered by the distribution licensee from its consumers unless and until the same is allowed by this Commission to be recovered from the distribution licensee. Therefore, the bar under section 56(2) of the Act is not attracted in this case as recovery of the impact of enhanced employee cost on account of pay and wage revision is being allowed through this order.

16. BRPL has submitted that the petitioner through this petition has ventured to reopen all past cases. Since the Commission has issued the tariff orders in respect of the transmission system of PGCIL for the tariff period 2004-09 which have attained finality, the Commission has become functus officio and cannot alter the orders and modify the O&M expenses in order to allow the impact of enhanced employee cost due to pay/wage revision. The petitioner in its written submission has submitted that such a plea is misconceived and is contrary to the decision of the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Ltd. v National Thermal Power Corporation Ltd. {(2009) 6 SCC 235}. We have considered the submission of the respondent BRPL and the petitioner. The Commission has not finally decided the issue of admissibility of enhanced employee cost in any of its orders passed in the different petitions filed by the petitioner for determination of tariff but has directed the petitioner to approach the Commission for relief at the appropriate stage in accordance with law. Since the issue of enhanced employee cost has not been finally decided, the plea of Commission being functus officio to deal with the issue cannot be sustained.

18. MPPTCL and UPPCL have submitted that as per para 16 of the DPE Office Memorandum dated 26.11.2008, the CPSE concerned has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided. Further, para 4 of the Office Memorandum dated 26.11.2008 provides that the CPSEs which are not able to adopt revised pay scales with effect from 1.1.2007, may give lower fitment of 10% or 20% depending on their affordability with the approval of their Ministry/Department. MPPTCL has submitted that since the petitioner has considered hike of 70% to its employees, it implies that the petitioner company is in a position to sustain the additional impact on its own and

therefore, the impact of pay revision should not be passed on to the beneficiaries. The petitioner in its written submission has submitted that there is no merit in the allegation of MPPTCL in view of the fact that PGCIL has no budgetary support to meet the increased salary and wages and also in view of the mandate of section 61 of the Act that tariff should be decided on the basis of commercial principles. BSEB in its reply has submitted that any increase in the employee cost due to wage revision should be taken care of by improvement in the productivity levels by the petitioner company so that the beneficiaries are not unduly burdened on this account. We have considered the submission of the respondents and the petitioner. In a cost plus regime, all legitimate costs of the transmission licensee are borne by the beneficiaries. Since impact of pay and wage revision of its employees as per the DPE directives is a legitimate cost incurred by the petitioner for providing transmission services to the beneficiaries, the expenditure on this account must be borne by the beneficiaries.

19. In view of the above discussion, the objections of the respondents to allow the impact of pay and wage revision to be passed on through tariff cannot be sustained. It needs to be pointed out that the Commission has the mandate to balance the interest of the consumers and recovery of the cost of electricity in a reasonable manner. Therefore, the Commission is required to find out an equitable solution to the problem so that the petitioner is not deprived of its legitimate dues while ensuring that it does not result in a tariff shock to the beneficiaries.

20. Next we consider the claim of the petitioner on account of pay and wage revision of its employees since 1.1.2007. The region-wise details of additional employee cost of only the Board level and the below Board level executives related to transmission as

provided by in the petition has been extracted in para 4 of this order. Subsequently, the petitioner has submitted, vide affidavit dated 11.4.2011, the details of expenditure incurred on payment of arrears to Board level and below Board level executives and non-executive employees of PGCIL on account of the pay and wage revision with effect from 1.1.2007 as under:-

(₹ in crore)							
Particulars	2006-07 (1.1.2007 to 31.3.2007)	2007-08	2008-09	Particulars	2006-07 (1.1.2007 to 31.3.2007)	2007-08	2008-09
Employee cost as Balance Sheet	84.72	519.05	643.89	Arrears received in respect of pay revision	22.26	139.48	190.45
Less: employee cost attributable to				Less: employee cost attributable to			
APDRP	0.00	0.00	0.00	APDRP	0.00	0.00	0.00
RLDC	6.95	38.82	0.00	RLDC	1.91	8.35	12.74
TELECOM	2.91	19.66	0.00	TELECOM	0.42	1.97	2.19
Consultancy	11.59	66.11	0.00	Consultancy	1.60	6.87	10.56
Others (Please specify)	0.00	0.00	0.00	Others (Please specify)	0.00	0.00	0.00
Employee cost attributable to core transmission business	63.26	394.44	476.59	Arrears received in respect of pay revision attributable to core transmission business	18.33	122.30	164.96
				Total			305.59 crore

21. The Commission in order dated 12.10.2012 in Petition No.35/MP/2011 and other related matters pertaining to the employees of NTPC Ltd, has decided the issue of pay and wage revision as under:

"17. The Commission has allowed the benefit of wage revision in the O & M norms for 2009-14 considering increase in salary and wages to the extent of 50%. The relevant provision in the Statement of Reasons to the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2009 dated 3.2.2009 is extracted as under:

"19.10 The CPSU regulated by us were asked to make their estimation of hike on account of revision of scales of pay. The hikes on account of revision of scales of pay estimated by some of the CPSU's are as follows:

NTPC	56%
Power Grid	70%
NLC	73%
NEEPCO	70%

The estimates submitted by NLC and NEEPCO were not supported by the calculations. The estimates of NTPC and Power Grid were however, gone into and it was observed that the increase includes PRP and allowances in excess of 50% of the basic. Further certain facilities like school, hospital facilities etc. at site were not monetized. On all these consideration, estimates of CPSU's appears to be on higher side. Commission after due consideration of various aspects covered in the implementation of pay revision has come to a conclusion that a uniform normative increase of 50% in employee cost would be just and reasonable for all CPSU's."

It is noted that the Commission had allowed only normative increase of 50% of the employee cost for all PSUs during the 2009-14 period. We are of the view that it would be just and reasonable if the same principle is adopted to consider the increase in salary and wages of CPSUs including the petitioner. Accordingly, we direct that for the period 1.1.2007 to 31.3.2009, the actual increase in employee cost on account of wage revision is allowed which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006. In so far as increase in the salary of the CISF personnel posted at NTPC stations and the employees of Kendriya Vidyalaya are concerned, the increase in salary shall be on actual basis and shall be a pass through to the beneficiaries.

18. In exercise of our power to remove difficulty under Regulation 12 of the 2004 Tariff Regulations, we allow the above increase in the employee cost of NTPC as additional O&M charges. However, the arrears shall be paid by the beneficiaries in twelve equal monthly installments during the year 2013-14 in addition to the O&M charges as per the 2009 Tariff Regulations. Keeping in view of the distance of time we order that as a special case, no interest shall be charged on the arrear which will benefit the consumers. In our view, this arrangement will protect the interest of both the petitioner and the beneficiaries."

22. We decide the claim of the petitioner in the light of our decision in case of NTPC Ltd as extracted above. Accordingly, in exercise of our power under Regulation 12 of the 2004 Tariff Regulations, we direct that the petitioner shall be entitled to recover the following from the beneficiaries on account of pay and wage revision of its employees with effect from 1.1.2007:

(a) Actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 on account of pay and wage revision which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006.

(b) No interest on the arrears shall be charged from the beneficiaries keeping in view the interest of the consumers.

(c) The arrears shall be recovered from the beneficiaries in twelve equal monthly instalments during the year 2013-14 in addition to the O&M charges in accordance with Regulation 33 of the 2009 Tariff Regulations.

(d) For clearance of doubt, it is clarified that the beneficiaries of the transmission systems of the petitioner company prior to coming into force of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010 shall be liable to pay the arrears in proportion to their shares in the annual transmission charges during the respective years.

23. Accordingly, the petition is disposed of in terms of the above.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson