

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

**Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S. Verma, Member  
Shri M. Deena Dayalan, Member**

**Date of Hearing: 28.02.2012  
Date of Order : 5.12.2012**

**Petition No. 5/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Indian Reserve Battalion (IRBN) and Kendriya Vidyalaya (KV) staff for Teesta-V Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

**....Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd., Kolkata
  2. Damodar Valley Corporation, Kolkata,
  3. Department of Power, Govt of Sikkim, Gangtok
  4. Jharkhand State Electricity Board, Ranchi
  5. Bihar State Electricity Board, Patna
  6. Grid Corporation of Odisha Limited, Bhubaneswar
- ....Respondents**

**Petition No. 6/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Uri Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

**....Petitioner**



Vs

1. Punjab State Power Corporation Ltd., Patiala
2. Haryana Power Utilities, Panchkula
3. Uttar Pradesh Power Corporation Ltd., Lucknow
4. Engineering Deptt., UT of Chandigarh, Chandigarh
5. North Delhi Power Ltd., Delhi
6. BSES Yamuna Power Ltd., Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Ltd., New Delhi
9. Uttarakhand Power Corporation Ltd. Dehradun
10. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
11. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
12. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
13. Power Development Department, Govt. of J&K, Jammu
14. Himachal Pradesh State Electricity Board, Shimla ... **Respondents**

**Petition No. 7/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Tanakpur Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....**Petitioner**

Vs

1. Punjab State Power Corporation Ltd., Patiala
2. Haryana Power Utilities, Panchkula
3. Uttar Pradesh Power Corporation Ltd., Lucknow
4. Engineering Deptt.,UT of Chandigarh, Chandigarh
5. North Delhi Power Ltd., Delhi
6. BSES Yamuna Power Ltd., Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Limited, New Delhi
9. Uttarakhand Power Corporation Limited, Dehradun
10. Jaipur Vidyut Vitran Nigam Limited, Jaipur
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
13. Power Development Department, Govt. of Jammu & Kashmir, Jammu
14. Himachal Pradesh State Electricity Board, Shimla .... **Respondents**

**Petition No. 8/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF)/Indian Reserve Battalion (IRBN) and Kendriya Vidyalaya/Dayanand Anglo Vedic (KV/DAV) staff for Rangit Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....Petitioner

Vs

1. West Bengal State Electricity Distribution Company Limited, Kolkata
2. Damodar State Electricity Board, Kolkata
3. Jharkhand State Electricity Board, Ranchi
4. Bihar State Electricity Board, Patna
5. Department of Power, Govt of Sikkim, Gangtok ....        ..... **Respondents**

**Petition No. 9/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Dhauliganga Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....Petitioner

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula
3. Delhi Transco Limited, New Delhi
4. Uttar Pradesh Power Corporation Limited, Lucknow
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
6. Jaipur Vidyut Vitran Nigam Limited, Jaipur
7. Power Transmission Corporation of Uttaranchal Limited, Dehradun
8. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
9. Himachal Pradesh State Electricity Board, Shimla
10. Ajmer Vidyut Vitaran Nigam Limited, Ajmer
11. Engineering Department, UT of Chandigarh, Chandigarh
12. Power Development Department, Government of J & K, Jammu....**Respondents**

**Petition No. 10/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees and Kendriya Vidyalaya (KV) staff for Loktak Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....**Petitioner**

Vs

1. Assam State Electricity Board, Guwahati
2. Department of Power, Govt of Arunachal Pradesh, Ita Nagar
3. Electricity Department, Govt of Mizoram, Aizawal
4. Tripura State Electricity Corporation Limited, Agartala
5. Meghalaya State Electricity Board, Shillong
6. Electricity Department, Govt. of Manipur, Imphal,
7. Electricity Department, Govt. of Nagaland, Kohima .... **Respondents**

**Petition No. 11/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Salal Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....**Petitioner**

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula
3. Uttar Pradesh Power Corporation Limited, Lucknow
4. Engineering Department, Chandigarh
5. North Delhi Power Limited, Delhi
6. BSES Yamuna Power Limited, Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Limited, New Delhi
9. Uttarakhand Power Corporation Limited, Dehradun
10. Jaipur Vidyut Vitran Nigam Limited, Jaipur
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
13. Power Development Department, Govt of J&K, Jammu
14. Himachal Pradesh State Electricity Board, Shimla .... **Respondents**

**Petition No. 12/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Dulhasti Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....Petitioner

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula
3. Uttar Pradesh Power Corporation Limited, Lucknow
4. Engineering Department, Chandigarh
5. North Delhi Power Limited, Delhi
6. BSES Yamuna Power Limited, Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Limited, New Delhi
9. Uttarakhand Power Corporation Limited, Dehradun
10. Jaipur Vidyut Vitran Nigam Limited, Jaipur
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
13. Power Development Department, Govt of J & K, Jammu .... Respondents

**Petition No. 16/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay/wage revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff for Bairasiul Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....Petitioner

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula
3. North Delhi Power Limited, Delhi
4. BSES Yamuna Power Limited, Delhi
5. BSES Rajdhani Power Limited, New Delhi
6. Himachal Pradesh State Electricity Board, Shimla ... Respondents

**Petition No. 17/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay/wage revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV)/ Dayanand Anglo Vedic (DAV) staff for Chamera-I Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....**Petitioner**

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula
3. Uttar Pradesh Power Corporation Ltd, Lucknow
4. Engineering Department, Chandigarh
5. North Delhi Power Limited, Delhi
6. BSES Yamuna Power Limited, Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Limited, New Delhi
9. Uttarakhand Power Corporation Limited, Dehradun
10. Jaipur Vidyut Vitran Nigam Limited, Jaipur
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
13. Power Development Department, Govt of J&K, Jammu
14. Himachal Pradesh State Electricity Board, Shimla ..... **Respondents**

**Petition No. 18/MP/2012**

**In the matter of:**

Petition under Regulation 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional cost incurred consequent to pay/wage revision of Employees, Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV)/ Dayanand Anglo Vedic (DAV) staff for Chamera-II Power Station during 1.1.2006 to 31.3.2009.

**And in the matter of**

NHPC Limited, Faridabad

....**Petitioner**

Vs

1. Punjab State Power Corporation Limited, Patiala
2. Haryana Power Utilities, Panchkula

3. Uttar Pradesh Power Corporation Limited, Lucknow
4. Engineering Department, Union Territory of Chandigarh, Chandigarh
5. North Delhi Power Limited, Delhi
6. BSES Yamuna Power Limited, Delhi
7. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
8. BSES Rajdhani Power Limited, New Delhi
9. Uttarakhand Power Corporation Limited, Dehradun
10. Jaipur Vidyut Vitran Nigam Limited, Jaipur
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
13. Power Development Department, Govt of J&K, Jammu
14. Himachal Pradesh State Electricity Board, Shimla ... .. **Respondents**

**Parties Present:**

1. Shri Vivek Singh, Advocate, NHPC
2. Shri M.S. Babu, NHPC
3. Shri Amrik Singh, NHPC
4. Shri Vivek Singh, NHPC
5. Shri Jitendra Kumar Jha, NHPC
6. Shri R.B.Sharma, Advocate, BRPL
7. Shri Sanjay Srivastav, BRPL
8. Shri Naveen Chandra, BRPL
9. Shri Padamjit Singh, PSPCL
10. Shri T.P.S.Bawa, PSPCL

**ORDER**

The petitioner, NHPC Ltd., has filed these petitions seeking appropriate directions of the Commission to allow the petitioner to bill and recover the additional O & M expenditure due to increase in employee cost including pay revision of Indian Reserve Battalion (IRBN)/Central Industrial Security Force (CISF) and Kendriya Vidyalaya (KV) staff from the respondents as one time payment in proportion to their Capacity Charges in the respective years for the period from 2005-06 till 2008-09 under Regulations 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004. The petitioner has further prayed for liberty to approach the Commission for claiming the impact of Performance related Payments (PRP), effect of 4% annual rate of increment and

liability of employer's contribution to the pension funds as and when it actually arises.

2. The petitioner has submitted that the Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter "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. In accordance with Regulation 2 of 2004 Tariff Regulations, the regulations are applicable to all cases where tariff is determined by the Commission on the basis of the capital cost. Regulation 31(xviii) of 2004 Tariff Regulations defines the O&M expenses for hydro-generating station as "the expenditure incurred in operation and maintenance of the generating station, including part thereof, including the expenditure on manpower, repairs, spares, consumables, insurance and overheads". Further Regulation 38(iv) of 2004 Tariff Regulations provides for O&M expenses to be allowed as part of the Annual Fixed Charges as under:

"(c) In case of hydro electric generating stations declared under commercial operation on or after 1.4.2004, the base operation and maintenance expenses shall be fixed at 1.5% of the actual capital cost as admitted by the Commission, in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years."

The petitioner has submitted that the Commission has determined the tariff of the generating stations of the petitioner for the period 2004-09 wherein the computation of O&M expenses as part of the Annual Fixed Charges has been dealt with. The petitioner has submitted that the actual O&M expenses in NHPC stations are far in excess of the amount allowed under 2004 Tariff Regulations. The petitioner has submitted the following reasons for difference between the normative O & M expenses allowed by the Commission and the actual O & M expenses incurred:



- (a) Wage revision from 1.1.2007 for CPSU employees and from 1.1.2006 for Central/State security forces and KV staff deployed at the power stations;
- (b) Escalation rate of 4% only was allowed for arriving at the normative O&M expenses for the tariff period 2004-09 whereas the actual escalation was more than 5%.
- (c) O&M expenses allowed for the years 2007-08 and 2008-09 are insufficient as actual expenditures were much higher.

3. The petitioner has submitted that the Department of Public Enterprise (DPE) has issued Office Memorandum No. 2(70)/08-DPE (WC)-GL-XVI/08 dated 26.11.2008, 9.2.2009 and 2.4.2009 for revision of the pay with effect from 1.1.2007 for Board level executives, below Board level executives and non-unionised supervisors in the Central Public Centre Enterprises respectively. The petitioner being a Central Public Centre Enterprise is mandated to follow the DPE directions with regard to the revision of the pay scale of its employees. The petitioner has submitted that similar wage revision was effected by the petitioner for the supervisory and workmen category vide Office Orders No.11/2011 and 10/2011 dated 5.4.2011 respectively. The petitioner has submitted that in accordance with the DPE OMs dated 26.11.2008, 9.2.2009 and 2.4.2009, the wage revision of the employees in the executive cadre and other cadres have been implemented. The petitioner has further submitted that additional expenditure has been incurred on account of pay revision of personnel of Indian Reserve Battalion and CISF deployed and the staff of the Kendriya Vidyalayas employed at the power stations consequent to the implementation of recommendations of the Sixth Pay Commission report with effect from 1.1.2006.

4. The petitioner has submitted that while arriving at the O&M norms for the period 2004-09, the Commission had no occasion to consider the increase in O & M expenditure on account of wage revision of the employees of the generating stations from 1.1.2007 and pay revision of the security personal and KV staff with effect from 1.1.2006. The petitioner has submitted that at the time of fixing the norms for tariff for the period 2009-14, the Commission had recognized the fact that revision of salary and wages for the employees of the petitioner and other CPSEs shall be effective from 1.1.2007 and accordingly considered an increase of 50% in the employee cost component while fixing the norms for 2009-14.

5. The petitioner has submitted that the performance of NHPC during last 5 years shows that the return on net worth is 4.85%, 4.87%,5.59%, 5.81% and 5.98% respectively. It has been submitted that such low return on net worth is due to higher gestation period of hydro projects and high O&M expenditure than normative expenditure allowed. The petitioner has further submitted that it is clear from the definition of O&M expenses that the expenditure actually incurred in operation and maintenance of the generating stations be allowed in all cases where tariff is to be determined based on the capital cost. The petitioner has submitted that the normative O&M expenses allowed under Regulation 38(iv) of 2004 Tariff Regulations are a transitory provision till the actual expenditure is incurred and certified in the books of accounts. The petitioner has submitted the details of the additional expenditure incurred on account of employee cost for the years 2005-06, 2006-07, 2007-08 and 2008-09. The petitioner has prayed that additional O&M expenses already incurred due to increase in employee cost be allowed to be billed and recovered as an additional expenses under the O&M expenses from the

respondents as a one-time payment in proportion to their capacity charge in the respective years under Regulations 12 and 13 of 2004 Tariff Regulations.

6. Replies to the petitions have been filed by Punjab State Power Corporation Limited, BSES Rajdhani Power Limited and Assam State Electricity Board. The Petitioner has filed its rejoinders to the replies of the respondents.

7. The replies of the respondents are briefly discussed as under:

(a) Punjab State Power Corporation Limited (PSPCL) has submitted that tariff as per the 2004 Tariff Regulations is a complete package and cannot be reviewed in isolation as prayed for. If the Commission is inclined to review the tariff in isolation, then other parameters of tariff should also be reviewed on the basis of actual. PSPCL on the basis of a comparative statement of the annual fixed charges allowed to the generating stations of NHPC during 2004-09 period and 2009-14 period has submitted that the claim of the petitioner should be viewed in the light of the huge burden on the beneficiaries on account of the increase in annual fixed cost during 2009-14 period and the profitability of NHPC over the years. PSPCL has submitted that the petitioner should bear the extra expenses on account of pay revision out of its profits and it should not be booked to the beneficiaries.

(b) BSES Rajdhani Power Limited (BRPL) has submitted that the petitioner has ventured to reopen the past cases through the present petitions which is not permissible under law. BRPL has further submitted that 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 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. BRPL has submitted that tariff consists of a number of packages and each package needs 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. In view of the demand of this nature being raised by the petitioner, BRPL has suggested that the Commission may introduce the concept of triuing up exercise and undertake yearly revision of tariff based on the audited information so that all parties are assured that the cost of tariff is reasonable. BRPL 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 and relaxation in the regulations would disturb the balance and would result in unreasonable benefits to the petitioner which may not be allowed. Relying on the judgement of the Supreme Court in Civil Appeal No.1110/2007- NTPC Ltd vs UPPCL, it has been submitted that the Commission cannot be asked to revisit the tariff for 2004-09 when the period is already over.

(c) Assam State Electricity Board (ASEB) has taken a preliminary objection to the claim of the petitioner for pay revision of CISF in respect of Loktak HEP on the ground that the claim for expenditure on CISF is a premature claim as CISF has neither been deployed nor the CRPF has been withdrawn by the Government. ASEB has submitted that escalation of 4% over the base year expenses for determining the year wise norms for the five years period during 2004-09 would

cover any enhanced cost incurred including revision of salaries made subsequently. It has been submitted that since the impact of pay revision cannot be passed on to the end consumers with retrospective effect, the claim of the petitioner be negated. ASEB has submitted that there is no bar in the regulatory regime to allow revision of pay on the basis of collective bargaining between the employer and the employee but there seems to be no scope for recovery of such expenditure through tariff which otherwise should be met from the internal accruals of the company. Relying on para 5.3(h)(3) and (4) of the Tariff Policy, ASEB has submitted that the revenue requirement of the petitioner should have been established at the beginning of the control period for the convenience of all concerned including the end consumers so that uncontrollable costs are recovered speedily to ensure that future consumers are not burdened with past costs. ASEB has submitted that the petitioner has failed to register its timely claim in any of its petitions during 2004-09 by making budget provision for the likely increase of employees pay and other allowances. The respondent relying on the order of the Appellate Tribunal of Electricity dated 11.11.2011 in OP No.1/2011 has submitted that the tariff determination ought to be treated as a time bound exercise. It has been further submitted that the impact of pay revision for the last tariff block is substantial and if the petitioner's prayer is allowed at this stage, without considering the difficulties of the licensees like the respondent, the same would be contrary to the spirit of section 61(d) of the Act.

8. The petitioner has filled rejoinder to the replies of the respondents. The petitioner has denied that it is making exceptional profits but has submitted that it is getting the justified return as determined by the Commission. The petitioner has submitted that employee cost is part of O&M expenses and is allowed by the Commission as a pass through to the beneficiaries. The wage revision of the

petitioner's employees and other employees posted in the project is a subsequent development after formulation of the 2004 Tariff Regulations and the implementation of wage revision is mandatory in terms of GOI guidelines and is beyond the control of the petitioner. The Commission has not envisaged the revised employee cost on account of wage revision in the norms of 2004 Tariff Regulations and hence the O&M expenses allowed during 2004-09 period do not include the share of the increased employee cost due to wage revision applicable with effect from 1.1.2006 and 1.1.2007. Moreover, though the pay revision of security forces and KV staff was effective from 1.1.2006 and the wage revision of the employees of the petitioner company was effective from 1.1.2007, the orders for payment were issued in April 2011 after approval by the management of the petitioner's company. The petitioner has submitted that had the revised cost due to wage revision been paid during the tariff period 2004-09, its impact on O&M expenses and consequent effect on tariff would have been claimed during the same period. As regards the preliminary submission of ASEB, the petitioner has submitted that no claim has been made by the petitioner with regard to the CISF and therefore, averment of ASEB that the claim is premature is baseless. The petitioner has prayed that the claim of the petitioner for reimbursement of impact of wage revision be allowed under Regulation 12 and 13 of 2004 Regulations.

9. Before we proceed to the merit of the case of the petitioner, it is considered appropriate to deal with the objections of the respondents which can be grouped as under and have been dealt with in the subsequent paragraph:

- (a) Maintainability of the petitions under Regulations 12 and 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) Beneficiaries' financial difficulties and inability to pay

### **Maintainability**

11. 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 on an application made before it by an interested person.”

NHPC has submitted that Regulation 38(iv) of the 2004 Tariff Regulations does not factor in the increased salary and wages consequent to the wage revision of public sector enterprise's employees with effect from 1.1.2007 and pay revision of security forces and KV employees posted at its generating stations with effect from 1.1.2006. The recommendations of the Sixth Pay Commission and the decision of the Department of Public Enterprises, Government of India were implemented after the control period 2004-09 was over. Had the salary and wages been firmed up and implemented when the 2004 Tariff Regulations were notified, the Commission would have factored such increase in the O&M norms as has been done during the control period 2009-14. Accordingly, NHPC has sought reimbursement of actual expenditure on wage revision and salary revision by exercise of power by the Commission 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 when there is a subsequent development during the control period which makes the norms specified in the 2004 Tariff Regulations inadequate for the reasons not attributable to the generating company, a clear case for invoking power of the Commission for removal of difficulty and for relaxation of the provisions of the 2004 Tariff Regulations is made out.

12. We have considered the submissions of the petitioner and 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 at a specified percentage. The relevant portion of the order dated 29.3.2004 in Petition No. 67 of 2003 is extracted as under

“175. We take note of the apprehension of the hydro power utilities that operation and maintenance cost of a hydro power generating station is site-specific and any two hydro power generating stations of same capacity may not have same operation and maintenance cost. Apart from this, remote location of the hydro power generating stations together with siltation problems encountered by most of them are subject to higher operation and maintenance cost. Thus, normative operation and maintenance expenses as proposed in the draft regulations may not be adequate to maintain the operation and maintenance quality and may affect adversely the performance of hydro power generating stations. We have, therefore, decided that operation and maintenance expenses of hydro power generating stations shall be worked out in the following manner:

(a) The operation and maintenance expenses including insurance for the existing generating stations which have been in operation for 5 years or more in the base year of 2003-04 shall be derived on the basis of actual operation and maintenance expenses for the years 1998-99 to 2002-03, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, after prudence check by the Commission.

(b) The average of actual operation and maintenance expenses for the years 1998-99 to 2002-03 considered as operation and maintenance expenses for the year 2000-01 shall be escalated at the rate of 4 percent per annum to arrive at the operation and maintenance expenses for the base year 2003-04.



(c) The operation and maintenance expenses for the base year 2003- 04 shall be escalated further at the rate of 4 percent per annum to arrive at permissible operation and maintenance expenses for the relevant year.

(d) In case of new hydro power generating stations, which have not been in existence for a period of five years, the operation and maintenance expenses shall be fixed at 1.5 per cent of the capital cost as admitted by the Commission in the year of commissioning and shall be escalated at the rate of 4 percent per annum from the subsequent year to arrive at the operation and maintenance expenses for the base year 2003-04. The base operation and maintenance expenses shall be further escalated at the rate of 4 percent per annum to arrive at permissible operation and maintenance expenses for the relevant year.

176. For the generating stations commissioned during the tariff period (2004-05 to 2008-09), the base operation and maintenance expenses shall be fixed at 1.5 percent of the actual capital cost as admitted by the Commission in the year of commissioning and shall be subject to an annual escalation of 4 percent per annum for the subsequent years.”

13. It is apparent from the above that the pay revision with effect from 1.1.2006 and wage revision with effect from 1.1.2007 were never taken into account while fixing the norms for the hydrogenating stations for the period 2004-09. Had the pay revision or 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 NHPC 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 revision came into force w.e.f. 1.1.2006 in respect of security forces and KV personnel and w.e.f. 1.1.2007 in respect of the employees of NHPC. If the impact of pay revision or wage revision is denied, it would result in under recovery of cost of electricity by the

generating company. Therefore, in our considered 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**

14. The respondent PSPCL has argued that tariff is a complete package and if the Commission is inclined to review the tariff in isolation as prayed for, then the other parameters of tariff should also be reviewed on the basis of actual. BRPL has argued that tariff may consist of number of packages and each package need not be examined on the anvil of reasonability. As the tariff is a complete package, its reasonability is required to be examined in its totality. ASEB has submitted that the Commission has considered a 4% escalation factor to cover any increase. In some items there may be increase and in other items there may be decrease. The petitioner has rebutted the contention of the respondents.

15. We have considered the submissions of the petitioner and respondents. Similar objections were raised by the beneficiaries in Petition No.35/MP/2011 and other related petitions filed by NTPC. The Commission in order dated 12.10.2012 in the said petitions has decided the issue as under:

“11. ....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 an 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 generating company. 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.”

We dispose of the objection of respondent on the ground of tariff being a package in the light of the above observations.

### **Burdening the present consumers for the past dues**

16. The respondents have submitted that the expenditure on wage and pay revision pertain to the period 1.1.2006 to 31.3.2009 and 1.1.2007 to 31.3.2009 respectively. 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. BRPL has submitted that in view of the judgement of the Supreme Court dated 3.3.2009 in Civil Appeal No.1110 of 2007 and other related appeals, the claim is permissible only when the tariff is in force and not afterwards and accordingly, the claim of the petitioner could be considered by the Commission if the same was brought during the tariff period 2004-09. ASEB has submitted that that the State Regulators are normally reluctant to entertain such burden because of public outcry. Moreover, some consumers particularly commercial and industrial consumers migrate from one State to another in NER due to new government policy introduced from time to time. The respondent may face legal problems if such liabilities are passed on to the prospective consumers. The petitioner has submitted that since the wage revision and pay revision were implemented in 1010 and 2011, it has approached the Commission with the present petitions.

17. We have considered the objections of the respondents. Though the petitioner has not approached the Commission during 2004-09 period for its claim due to the impact of pay and wage revision, in our view the petitioner's claim in the present

petitions cannot be negated on that ground. The Commission has taken cognisance of the problem in its orders passed in the petitions filed by NTPC. The Commission in its order dated 5.2.2009 in Petition Nos.162/2008, 164/2008 and 165/2008 filed by NLC has made the following observation:

“9. ....However, the question raised in these petitions is in regard to revision of O&M expense for the period prior to 1.4.2009, primarily on account of revision of salaries and wages w.e.f. 1.1.2007. This is an issue which universally affects other central power sector utilities as well. Therefore, a holistic view needs to be taken in the matter in accordance with law and by involving all the stakeholders.....”

It is apparent from the above that the Commission considered it appropriate to attend to the claims of all central power sector utilities at the appropriate time which also includes the petitioner. In the RoP for the hearing dated 13.10.2011 in petition No. 35/MP/2011 and other related petitions, the Commission while admitting the petitions of NTPC had also directed other generating companies and inter-State transmission licensees whose tariff is being determined by the Commission under Section 62 of the Electricity Act, 2003 to file their submissions. Therefore, 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.

### **Beneficiaries' financial difficulties and inability to pay**

18. The respondents have raised the point that they have financial difficulties and would be further subject to additional liability on account of pay and wage revision if the petitions are allowed. ASEB has submitted that this would put the respondent in a worse financial state which is already running in deficit condition. We are aware

that the beneficiaries are facing financial difficulties to manage their affairs on account of non-revision of retail tariff by the State Commissions in many cases and huge T&D losses. However, financial difficulties cannot be a ground for not paying for the cost of power which is supplied to the consumers of the beneficiaries. The expenditure on the salary and wages of the generating company is a part of the cost of electricity and needs to be serviced in tariff. 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. By parity of reasoning, we are of the view that the petitioner should be suitably compensated for the pay revision from 1.1.2006 to 31.3.2009 and for the wage revision from 1.1.2007 to 31.3.2009.

19. In view of the above discussion, the objections of the respondents cannot be sustained. However, 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 generating company is not deprived of its legitimate dues while ensuring that it does not result in unmanageable tariff burden on the beneficiaries.

20. The petitioner has implemented the impact of pay revision during 2010 and 2011. Based on the expenditure incurred, the petitioner has submitted the claims as per the details given in table below in respect of its generating stations on account of pay revision/wage revision duly certified by the Chartered Accountant of the company.

(Rs. in Lakh)

Petition No.	Generating Station	Capacity (MW)	2005-06	2006-07	2007-08	2008-09	Total Amount
5/MP/2012	Teesta-V	510	10.19	120.19	328.79	579.76	1038.93
6/MP/2012	Uri -I	480	37.84	239.44	402.78	627.14	1307.21
7/MP/2012	Tanakpur	94.20	-	111.70	466.38	728.00	1306.07
8/MP/2012	Rangit	60	-	67.23	280.90	302.67	650.80
9/MP/2012	Dhauliganga	280	10.54	87.26	349.24	560.00	1007.03
10/MP/2012	Loktak	105	1.61	270.10	932.02	1237.33	2441.06
11/MP/2012	Salal	690	12.22	334.05	1075.07	1700.74	3122.07
12/MP/2012	Dulhasti	390	14.60	189.15	605.49	945.61	1754.84
16/MP/2012	Bairasiul	180	13.06	269.38	835.62	1131.33	2249.40
17/MP/2012	Chamera-I	540	12.14	233.40	722.07	1126.60	2094.21
18/MP/2012	Chamera-II	300	8.89	181.98	533.11	781.50	1505.48
					Grand Total	-	18477.10

21. The case as made out by the petitioner is similar to the case of impact of wage revision on the various thermal power stations of NTPC which has been decided by the Commission vide its order dated 12.10.2012. Relevant portion of the said order is extracted 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. The above decision will apply to the generating stations of the petitioner as well. Accordingly, we direct that the petitioner shall be entitled to recovery of the following from the beneficiaries:

- a) Actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 on account of 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) Actual increase in the salary of the security personnel posted at NHPC stations and the employees of Kendriya Vidyalaya attached to the generating stations for the period from 1.1.2006 to 31.3.2009 provided that the liability to pay their salary rests with the petitioner;
- c) The arrears shall be recovered from 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.

23. The petitioner has prayed to be allowed to approach the Commission for claiming the impact of Performance Related Payment (PRP), effect of 4% annual rate of increment and liability of employer's contribution towards pension fund, as per actual corresponding to the period up to 31.03.2009 when these liabilities are discharged. In this regard, it is clarified that PRP is not pass through to the beneficiaries as it has to be borne by the generating company out of the incentive earned by it for performing above the norms. As regards the increment and pension contribution, no direction can be issued in this regard at this stage. If the petitioner



approaches with such claims in future, the same will be considered in accordance with law and on its own merit.

24. The petitions are 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**