

**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: 31.01.2012
Date of Order : 12.10.2012**

Petition No. 35/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force(CISF) and Kendriya Vidyalaya staff for Farakka Super Thermal Power Station (1600 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd., Kolkata
 2. Bihar State Electricity Board, Patna
 3. Jharkhand State Electricity Board, Ranchi
 4. GRIDCO Ltd, Bhubaneswar
 5. Damodar Valley Corporation, Kolkata
 6. Power Department, Sikkim
 7. TANGEDCO, Chennai
 8. Electricity Department, Union Territory of Pondicherry, Pondicherry
 9. Uttar Pradesh Power Corp. Ltd., Lucknow
 10. Power Development Department (J&K), Srinagar
 11. BSES Rajdhani Power Ltd, New Delhi
 12. BSES Yamuna Power Ltd, Delhi
 13. North Delhi Power Ltd, North Delhi
 14. Power Department, Chandigarh
 15. Madhya Pradesh Power Trading Company Ltd., Jabalpur
 16. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 17. Gujarat Urja Vikas Nigam Ltd., Baroda
 18. Electricity Department, Daman
 19. Electricity Department, Silvassa
-Respondents



Petition No. 36/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force(CISF) and Kendriya Vidyalaya staff for Talcher Super Thermal Power Station (2X500 MW) Stage-I during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd., Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. GRIDCO Ltd, Bhubaneswar
5. Damodar Valley Corporation, Kolkata
6. Power Department, Sikkim
7. TANGEDCO, Chennai
8. Electricity Department, Union Territory of Pondicherry, Pondicherry
9. Uttar Pradesh Power Corp. Ltd., Lucknow
10. Power Development Department (J&K), Srinagar
11. BSES Rajdhani Power Ltd, New Delhi
12. BSES Yamuna Power Ltd, Delhi
13. North Delhi Power Ltd, North Delhi
14. Power Department, Chandigarh
15. Madhya Pradesh Power Trading Company Ltd., Jabalpur
16. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
17. Gujarat Urja Vikas Nigam Ltd., Baroda
18. Electricity Department, Daman
19. Electricity Department, Silvassa

.....Respondents

Petition No. 38/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Vindhyachal Super Thermal Power Station Stage I (1260 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Co. Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Co. Ltd, Mumbai

3. Gujarat Urja Vikas Nigam Ltd., Baroda
 4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 5. Government of Goa, Panaji, Goa
 6. Electricity Department, Daman
 7. Electricity Department, Silvassa
-Respondents

Petition No. 39/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Vindhyachal Super Thermal Power Station Stage II (1000 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
 2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 3. Gujarat Urja Vikas Nigam Ltd., Vadodara
 4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 5. Government of Goa, Panaji, Goa
 6. Electricity Department, Daman
 7. Electricity Department, Silvassa
-Respondents

Petition No. 40/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Korba Super Thermal Power Station (2100 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
 2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 3. Gujarat Urja Vikas Nigam Ltd., Vadodara
 4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 5. Government of Goa, Panaji, Goa
 6. Electricity Department, Daman
 7. Electricity Department, Silvassa
-Respondents

Petition No. 41/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Rajiv Gandhi Combined Cycle Power Project Kayamkulam Stage I (359.58 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Kerala State Electricity Board, Thiruvanthapuram
2. Tamil Nadu Generation & Distribution Corporation, Chennai

....Respondents

Petition No. 42/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Talcher Super Thermal Power Station Stage II (4X500 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Transmission Corporation of Andhra Pradesh, Hyderabad
2. AP Eastern Power Distribution Company Ltd., Visakhapatnam
3. AP Southern Power Distribution Company Ltd., Tirupathi
4. AP Northern Power Distribution Company Ltd, Chatianyapuri, Warangal
5. AP Central Power Distribution Company Ltd., Hyderabad
6. Tamil Nadu Generation and Distribution Company, Chennai
7. Karnataka Power Transmission Corporation Ltd, Bangalore
8. Bangalore Electricity Supply Company Ltd., Bangalore
9. Mangalore Electricity Supply Company Ltd., Mangalore
10. Chamundeshwari Electricity Supply Corporation Ltd., Mysore
11. Gulbarga Electricity Supply Company Ltd, Gulbarga
12. Hubli Electricity Supply Company Ltd, Hubli
13. Kerala State Electricity Board, Thiruvananthapuram
14. Electricity Department, Pondicherry
15. Gridco Limited, Bhubaneswar

.....Respondents

Petition No. 43/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Ramagundam Super Thermal Power Station Stage I & II (2100 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. APPCC, Transmission Corporation of Andhra Pradesh, Hyderabad
2. AP Eastern Power Distribution Company Ltd., Visakhapatnam
3. AP Southern Power Distribution Company Ltd., Tirupati
4. AP Northern Power Distribution Company Ltd, Chaitanyapuri, Warangal
5. AP Central Power Distribution Company Ltd., Hyderabad
6. Tamil Nadu Generation and Distribution Company, Chennai
7. Karnataka Power Transmission Corporation Ltd, Bangalore
8. Bangalore Electricity Supply Company Ltd., Bangalore
9. Mangalore Electricity Supply Company Ltd., Mangalore
10. Chamundeswari Electricity Supply Corporation Ltd., Mysore
11. Gulbarga Electricity Supply Company Ltd, Gulbarga
12. Hubli Electricity Supply Company Ltd, Hubli
13. Kerala State Electricity Board, Thiruvananthapuram
14. Electricity Department, Pondicherry
15. Electricity Department, Panaji, Goa

....Respondents

Petition No. 44/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Ramagundam Super Thermal Power Station Stage III (1X500 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Transmission Corporation of Andhra Pradesh, Hyderabad
2. AP Eastern Power Distribution Company Ltd., Visakhapatnam
3. AP Southern Power Distribution Company Ltd., Tirupathi
4. AP Northern Power Distribution Company Ltd, Chatianyapuri, Warangal
5. AP Central Power Distribution Company Ltd., Hyderabad
6. Tamil Nadu Generation and Distribution Company, Chennai
7. Karnataka Power Transmission Corporation Ltd, Bangalore

8. Bangalore Electricity Supply Company Ltd., Bangalore
 9. Mangalore Electricity Supply Company Ltd., Mangalore
 10. Chamundeshwari Electricity Supply Corporation Ltd., Mysore
 11. Gulbarga Electricity Supply Company Ltd, Gulbarga
 12. Hubli Electricity Supply Company Ltd, Hubli
 13. Kerala State Electricity Board, Thiruvananthapuram
 14. Electricity Department, Pondicherry
-Respondents

Petition No. 45/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Simhadri Super Thermal Power Station Stage-I (2x500 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
 2. AP Eastern Power Distribution Company Ltd., Visakhapatnam
 3. AP Southern Power Distribution Company Ltd., Tirupati
 4. AP Northern Power Distribution Company Ltd, Chaitanyapuri, Warangal
 5. AP Central Power Distribution Company Ltd., Hyderabad
- ...Respondents

Petition No. 48/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Talchar Thermal Power Station (460 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

Gridco Limited, Bhubaneswar

....Respondent

Petition No. 49/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff

and Kendriya Vidyalaya staff for Kahalgaon Super Thermal Power Station Stage I (840MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd., Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. GRIDCO Ltd, Bhubaneswar
5. Damodar Valley Corporation, Kolkata
6. Power Department, Sikkim
7. Union Territory of Pondicherry, Electricity Department, Pondicherry
8. Tamil Nadu Electricity Board, Chennai
9. Uttar Pradesh Power Corporation Ltd, Lucknow
10. Power Development Department (J&K), Srinagar
11. Power Department, Chandigarh
12. Madhya Pradesh Power Trading Company Ltd., Jabalpur
13. Gujarat Urja Vikas Nigam Ltd., Baroda
14. Electricity Department, Daman
15. Electricity Department, Silvassa
16. BSES Rajdhani Power Ltd, New Delhi
17. BSES Yamuna Power Ltd, Delhi
18. North Delhi Power Ltd, North Delhi
19. Maharashtra State Electricity Distribution Co. Ltd., Mumbai

....Respondents

Petition No. 50/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Kahalgaon Super Thermal Power Station Stage II (2x500 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd., Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. GRIDCO Ltd, Bhubaneswar
5. Power Department, Sikkim
6. Madhya Pradesh Power Trading Company Ltd., Jabalpur
7. Maharashtra State Electricity Distribution Company Limited, Mumbai
8. Gujarat Urja Vikas Nigam Ltd., Baroda

9. Uttar Pradesh Power Corporation Ltd, Lucknow
 10. Power Development Department (J&K), Srinagar
 11. Power Department, Union Territory of Chandigarh, Chandigarh
 12. Punjab State Power Corporation Ltd, Patiala
 13. Himachal Pradesh State Electricity Board Ltd, Shimla
 14. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
 15. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
 16. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
 17. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 18. Haryana Vidyut Prasaran Nigam Ltd., Haryana
 19. BSES Rajdhani Power Ltd, New Delhi
 20. BSES Yamuna Power Ltd, New Delhi
 21. New Delhi Power Ltd, New Delhi
 22. Uttarakhand Power Corporation Ltd, Dehradun
 23. Electricity Department, Silvassa
 24. Electricity Department, Daman
-Respondents

Petition No. 51/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Jhanor-Ghandhar GPS (657.39 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
 2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 3. Gujarat Urja Vikas Nigam Ltd., Vadodara
 4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 5. Government of Goa, Panaji, Goa
 6. Electricity Department, Daman
 7. Electricity Department, Silvassa.
-Respondents

Petition No. 52/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Vindhayachal Super Thermal Power Station Stage III (1000MW) from the date of COD of Unit-I i.e. during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
3. Gujarat Urja Vikas Nigam Ltd., Vadodara
4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
5. Government of Goa, Panaji, Goa
6. Electricity Department, Daman
7. Electricity Department, Silvassa

....Respondents

Petition No. 53/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) for Kawas GPS (656.20 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
3. Gujarat Urja Vikas Nigam Ltd., Vadodara
4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
5. Government of Goa, Panaji, Goa
6. Electricity Department, Daman
7. Electricity Department, Silvassa

....Respondents

Petition No. 54/MP/2011

In the matter of

Petition for recovery of additional cost incurred consequent to pay revision for Sipat TPS Stage-II (1000 MW) from the date of COD of 1st Unit i.e. 20.6.2008 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs



1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
 2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
 3. Gujarat Urja Vikas Nigam Ltd., Vadodara
 4. Chhattisgarh State Power Distribution Co. Ltd, Raipur
 5. Government of Goa, Panaji, Goa
 6. Electricity Department, Daman
 7. Electricity Department, Silvassa
-Respondents

Petition No. 59/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Rihand Super Thermal Power Station Stage I (1000 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
 2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
 3. Ajmer Vidyut Vitran Nigal Ltd, Ajmer
 4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
 5. North Delhi Power Ltd., Delhi
 6. BSES Rajdhani Power Ltd, New Delhi
 7. BSES Yamuna Power Ltd, Delhi
 8. Haryana Power Purchase Centre, Haryana
 9. Punjab State Power Corporation Ltd, Patiala
 10. Himachal Pradesh State Electricity Board Ltd, Shimla
 11. Power Development Department (J&K), Jammu
 12. Electricity Department (Chandigarh), Chandigarh
 13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun
- ...Respondents

Petition No. 60/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Singrauli Super Thermal Power Station (2000 MW) during 1.1.2006 to 31.3.2009.

And in the matter of



NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
 2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
 3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
 4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
 5. North Delhi Power Ltd., Delhi
 6. BSES Rajdhani Power Ltd, New Delhi
 7. BSES Yamuna Power Ltd, Delhi
 8. Haryana Power Purchase Centre, Haryana
 9. Punjab State Power Corporation Ltd, Patiala
 10. Himachal Pradesh State Electricity Board Ltd, Shimla
 11. Power Development Department (J&K), Jammu
 12. Electricity Department (Chandigarh), Chandigarh
 13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun
- ...Respondents

Petition No. 61/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Faridabad Gas Power Stations (431.59 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

Haryana Power Purchase Centre

....Respondent

Petition No. 62/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Auraiya Gas Power Station (663.36 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow

2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla
11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun

...Respondents

Petition No. 63/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for National Capital Thermal Power Station, Dadri Stage I (840 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corp. Ltd., Lucknow
2. North Delhi Power Ltd, Delhi
3. BSES Rajdhani Power Ltd, New Delhi
4. BSES Yamuna Power Ltd, Delhi
5. New Delhi Municipal Council, New Delhi

...Respondents

Petition No. 64/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Rihand Super Thermal Power Station Stage-II (1000 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla
11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun ...Respondents

Petition No. 65/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Anta Gas Power Station (419.33 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla
11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun ...Respondents

Petition No. 66/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff

for Firoze Gandhi Unchahar Thermal Power Station Stage I (420 MW) during 1.1.2006 to 31.3.2009.

And in the matter of
NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla
11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun

...Respondents

Petition No. 67/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff for Dadri Gas Power Station (829.78 MW) during 1.1.2006 to 31.3.2009.

And in the matter of
NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla

11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun

...Respondents

Petition No. 74/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Firoze Gandhi Unchahar Thermal Power Station Stage III (210 MW) during 1.1.2007 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd., Delhi
6. BSES Rajdhani Power Ltd, New Delhi
7. BSES Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Haryana
9. Punjab State Power Corporation Ltd, Patiala
10. Himachal Pradesh State Electricity Board Ltd, Shimla
11. Power Development Department (J&K), Jammu
12. Electricity Department (Chandigarh), Chandigarh
13. Uttarakhand Power Corporation Ltd, (UPCL), Dehradun

...Respondents

Petition No. 75/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Tanda Thermal Power Station (440 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

Uttar Pradesh Power Corporation Limited

...Respondents



Petition No. 76/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff for Firoze Gandhi Unchahar Thermal Power Station (440 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
 2. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
 3. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
 4. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
 5. North Delhi Power Ltd., Delhi
 6. BSES Rajdhani Power Ltd., New Delhi
 7. BSES Yamuna Power Ltd., Delhi
 8. Haryana Power Purchase Centre, Haryana
 9. Punjab State Power Corporation Ltd., Patiala
 10. Himachal Pradesh State Electricity Board Ltd., Shimla
 11. Power Development Department, Jammu
 12. Electricity Department, Union Territory, Chandigarh
 13. Uttarakhand Power Corporation Ltd., Dehradun
-Respondents

Petition No. 77/MP/2011

In the matter of

Petition under Regulation 12 and 13 of the CERC (Terms and Condition of Tariff) Regulations, 2004, for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) staff and Kendriya Vidyalaya staff Badarpur Thermal Power Station (705 MW) during 1.1.2006 to 31.3.2009.

And in the matter of

NTPC Limited

....Petitioner

Vs

1. North Delhi Power Ltd, Delhi
 2. BSES Rajdhani Power Ltd, New Delhi
 3. BSES Yamuna Power Ltd, Delhi
 4. New Delhi Municipal Council, New Delhi
 5. Chief Engineer (MES), New Delhi
- ...Respondents

Parties present:-

1. Shri M.G Ramachandran, Advocate,NTPC
2. Ms. Swapna Seshadri, Advocate, NTPC
3. Shri C. K Mondol, NTPC
4. Shri Ajay Dua, NTPC
5. Shri Rohit Chhabra, NTPC,
6. Shri S. S. Raju, PGCIL
7. Shri R. B Sharma,Advocate, BSES, JSEB, GRIDCO, BRPL
8. Shri Sanjay Shrivastav, BRPL
9. Shri Satpal Tomar, BRPL
10. Shri Deepak Shankar, BRPL
11. Shri Prashant Dua, BRPL
12. Shri S. Vallinayagam, TANGEDCO
13. Shri S. Balaguru,Advocate, TANGEDCO
14. Shri Manoj Dubey, MPPTCL
15. Shri Meenu Mishra, BYPL
16. Shri Dushyant Minocha, BYPL
17. Shri Manish Garg, UPPCL
18. Ms. Sonia Dogra, SJVNL
19. Shri Ashok Kumar, SJVNL
20. Ms. Suparna Shrivastava, CSPDCL
21. Shri M. K. Adhikary, APDCL
22. Shri B. M. Saikia, APDCL

ORDER

The petitioner, NTPC Ltd., has filed these petitions 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 on account of wage revision of its employees from 1.1.2007 and pay revision of the employees of the Central Industrial Security Force deployed at NTPC stations and the staff of Kendriya Vidyalaya employed at NTPC stations from 1.1.2006 as an additional expense from the respondents as one time payment in proportion to their capacity charge in the respective years under Regulation 12 and 13 of

the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

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 the 2004 Tariff Regulations, the O&M norms which included the employee cost besides repair and maintenance, administrative and general expenses were specified under Regulation 21(iv)(a). The petitioner has submitted that in arriving at the norms specified in Regulation 21(iv)(a), the Commission had considered the O&M expenses for the years 1995-96 to 1999-2000, normalizing the annual O&M expenses and thereafter escalating them at specified percentage. The methodology adopted for arriving at the norms has been explained in para 103 of the order dated 29.3.2004 in Petition No.67 of 2003. 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 salary and wage revision due from 1.1.2006/1.1.2007. The expected increase in the employee cost with effect from 1.1.2007 due to revision in salary and wages were to be taken into account upon such revision being given effect to. In this connection, the petitioner has relied upon the following observation of the Commission in order dated 9.5.2006 in Petition No. 157/2004 pertaining to Singrauli STPS and similar observation in the tariff orders in respect of other stations of NTPC:

“39. The petitioner has submitted that wage revision of its employees is due with effect from 1.1.2007. Therefore, O&M expenses should be subject to the 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 actual 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.”

The Petitioner has submitted that had such revision been available and implemented at the relevant time when the 2004 Tariff Regulations were notified and even if the revision in the salary and wages were to be paid effective from 1.1.2007, the regulations would have appropriately factored the said increase. The petitioner has submitted that the revision in salary and wages effective from 1.1.2006/1.1.2007 is a necessary expenditure to be incurred by NTPC and is therefore required to be serviced through tariff in a capital cost based tariff determination provided in section 62 of the Electricity Act, 2003 (the Act). The petitioner has submitted that the justification for consideration of increased salary and wages admissible to NTPC is clear from the fact that the increased salary and wages effective from 1.1.2007 has been duly factored and given effect to while determining the O&M expenses for the control period 2009-14 in the 2009 Tariff Regulations and the Commission would have considered the same if such increase was firmed up when the 2004 Tariff Regulations were notified.

3. The Petitioner has submitted that Regulation 12 of the 2004 Tariff Regulations dealing with power to remove difficulty and Regulation 13 of the said Regulations dealing with the power to relax have been incorporated in the 2004 Tariff Regulations precisely for a situation similar to the one which

has arisen in the present case, namely, when there is a subsequent development during the control period which makes the norms specified in the regulations inadequate for reasons not attributable to the generating company. The Petitioner has submitted that if the power to remove difficulty is not exercised in implementation of the regulation relating to O&M expenses, it would affect the fundamental basis of the capital cost based tariff wherein it is intended that all cost and expenses rationally incurred are to be serviced. The Petitioner has submitted that the power to relax is very appropriate to be exercised in the facts and circumstances of the case if the Commission comes to the conclusion that there is justification to allow the increased O&M cost. Accordingly, the petitioner has prayed that the 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.

4. Replies to the petitions have been filed by Uttar Pradesh Power Corporation Ltd, BSES Rajdhani Power Limited, Bihar State Electricity Board, Madhya Pradesh Power Trading Corporation Limited, Gujarat Urja Vikas Nigam Limited, Grid Corporation of Odisha Limited, Kerala State Electricity Board, Tamil Nadu Generation and Distribution Company Limited, Transmission Corporation of Andhra Pradesh and Distribution Companies of Andhra Pradesh, and Punjab State Power Corporation Limited. The Petitioner has filed its rejoinder to the replies of the respondents.

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

(a) Bihar State Electricity Board has submitted that there is no difficulty in implementing the 2004 Tariff Regulations and further the power to relax cannot be used to modify Regulation 21 which deals with O&M expenses. 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 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. Further BSEB has submitted that the claim for recovery of additional cost incurred consequent to pay revision of employees of CISF and KV staff is belated and has been made after the tariff period is over. In this connection, reliance has been placed on the judgement 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.

(b) BSES Rajdhani Limited has made similar submissions as have been by BSES which are not being repeated.

(c) Madhya Pradesh Trading Company Limited has submitted that as per the Government of India, Ministry of Public Enterprise OM dated 26.1.2008, adoption of revised pay is subject to the affordability of the company concerned to pay the same from its resources and therefore, the impact of the pay revision should be loaded on the petitioner's Return on Equity for the last tariff block and should not be passed on to the beneficiaries. The petitioner has failed to make clear as to how the expenses towards salary for CISF and KV staff forms part of the O&M expenses of the generating station. 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, it will upset the whole tariff of the current tariff period and consequently the retail tariff, contrary to the spirit of section 61(d) of the Act.

(d) Grid Corporation of Odisha has submitted on the similar line as that of BSES and accordingly, the submissions are not being repeated.

(e) Gujarat Urja Vikas Nigam Limited has submitted that the norms for O&M expenses in the 2004 Tariff Regulations are a complete package that takes care of all expenses that are to be incurred and factored accordingly.

Further, 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 further submitted that the O&M expenses allowed in 2004 Tariff Regulations in itself being a complete package compensate for shortfall of recovery under one head by allowing over recovery under another head. GUVNL has further submitted that any relaxation of the norms shall have significant implication on consumer at large by way of fixed cost burden and will have additional financial burden and hence should not be allowed.

(f) Uttar Pradesh Power Corporation Limited in its reply has submitted that the request of the petitioner to allow it to bill and recover the additional O&M cost due to increase in the employee cost on actual cannot be entertained by the Commission as the Commission is mandated to specify the terms and conditions of tariff in respect of the generating companies covered under clauses (a) and (b) of sub-section (1) of section 79 of the Act and inter-State transmission of electricity based on norms and not on actual. In this connection, UPPCL has relied upon para 3.8 of the Statement of Reasons to 2009 Tariff Regulations and has submitted that in the light of the observations of the Commission therein, the claim of the petitioner for payment of "increase in salary on actual" would be inconsistent with 2004 Tariff Regulations which mandates determination of tariff by the Commission on normative basis. UPPCL has further submitted that the demand for additional O&M cost due to increase in employee cost is on similar lines as the petitioner's demand for additional water charges for the year 1997-98 to 2000-2001 which was

disallowed by the Commission. The Appellate Tribunal for Electricity has disallowed the claim 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. UPPCL has placed on record its own computation of the ROE allowed by the Commission and the return actually earned by the Petitioner during the tariff period 2004-09 in respect of the 15 stations from which it is drawing power and has submitted that the profit actually earned by the Petitioner is much higher than the ROE earned/allowed by the Commission and even after accounting for the payment of increase in salary, the actual profits of the petitioner are much higher. UPPCL has further submitted that since the tariff for the period 2004-09 has been determined, billed and recovered from the consumers, no supplementary demand can be made to consumers with retrospective effect. Any increase in tariff can be recovered prospectively and UPPCL faces a challenge in this respect as it cannot recover the tariff from future consumers for the power consumed by the past consumers as decided by the Hon'ble Supreme Court in its judgement dated 3.3.2009 in Civil Appeal No.1110/2007.

(g) Kerala State Electricity Board in its reply has submitted that employee cost is one of the components of O&M expenses. Since the Commission has allowed better norms, the actual O&M expenses under other heads are likely to be less than the normative values approved by the Commission. It is not appropriate to revise the O&M expenses considering the wage revision alone without appreciating the actual of other components of O&M expenses. It has been further submitted that in para 19.9 of the Statement of Reasons to the

2009 Tariff Regulations, the Commission has made it clear that the excessive increase in O&M expenses has been provided for accounting the increase in O&M expenses on account of wage revision. Accordingly, any increase on the O&M expenses over the approval during the previous period can be compensated from the excessive increase allowed on normative basis for the current tariff period. KSEB has submitted that the State Commission has already trued up the accounts upto 2009-10 and it may be very difficult for KSEB to pass on the past liabilities to the consumers through the tariff during the current financial year after a gap of four years.

(h) Tamil Nadu Generation and Distribution Corporation Ltd has submitted that tariff is a complete/composite package, its reasonability is required to be examined in its totality and hence the prayers of the petitioner for additional O&M expenses by exercising power to remove difficulties or power to relax are liable to be rejected. It has been submitted that the claim for additional cost incurred consequent to the pay revision of the employees of CISF and KV and its own employees is belated which has been made after a gap of five years. Relying on the Supreme Court judgement dated 3.3.2009 in Civil Appeals No. 1110/2007 and other related appeals, TANGEDCO has submitted that the claim of the petitioner is permissible if it is brought before the Commission during the tariff period 2004-09 and not afterwards. 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.

(i) The Transmission Corporation of Andhra Pradesh Ltd and the four distribution companies of Andhra Pradesh in a common affidavit have

submitted that the Commission has specified the norms for O&M expenses during the period 2004-09 duly considering the escalation factor in every year keeping in view of increment in the employee cost and the petitioner will have to meet the O&M expenses within the norms only. The respondents have sought a direction to the petitioner to furnish the details of O&M payment utilization during the period in case of Simhadri Stage I in order to find out the justification for the claim.

(j) Punjab State Power Corporation Limited 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. It has been submitted that it will be in the interest of the consumers to review all the parameters on the basis of actual or norms whichever is lower. It is not justified to adopt a policy of pick and choose and claim tariff increases on specific parameters while gains and profits on other parameters are retained.

6. The petitioner has filed rejoinders to the replies of the respondents.

7. 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:

(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) Beneficiaries' financial difficulties and inability to pay

The objections have been dealt with in subsequent paragraphs.

Maintainability

8. 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.”

NTPC has submitted that Regulation 21(iv)(a) of the 2004 Tariff Regulations did 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 CISF and KV employees 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. If the salary and wages were 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, NTPC 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. Per contra, the petitioner has submitted that 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 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. Moreover, 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. Further, 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 judgements:

- (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 Dharmander 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 the Commission has the full power to deal with the impact of salary and wages and exercise its power of relaxation or removal of difficulties in allowing higher O&M expenses.

9. 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 1995-96 to 1999-2000, 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:

"103. For determining the operation and maintenance cost norms for coal based generating stations in this category, the following methodology was used at the time of preparing draft regulations:

- 1. Actual operation and maintenance expenses as given by NTPC for its stations for the period 1995-96 to 1999-2000 was normalized;*
- 2. After normalization, simple average of the series was obtained which represents the average normalized expenditure during the mid year, 1997-98.*
- 3. Escalation factor of 10% for the years 1998-99 and 1999-2000 and 6% for the year 2000-01 was used to arrive at the base year (2000-01) O&M Expenses.*
- 4. The base year O&M Expenses, thus arrived were escalated @ of 4% for determining, year-wise, norms for the five year period 2004-09".*

It is obvious 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 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 NTPC 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 CISF and KV personnel and w.e.f. 1.1.2007 in respect of the employees of NTPC. 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, 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

10. 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 NTPC 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. NTPC 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).

11. 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 revision 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 9.5.2006 in Petition No. 157/2004 relating to Singrauli STPS held as under:

"39. The petitioner has submitted that the wage revision of its employees is due w.e.f. 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 actual 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 the impact of the pay revision and wage revision in tariff. 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.

Burdening the present consumers for the past dues

12. 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. 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.

Beneficiaries' financial difficulties and inability to pay

13. 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. The petitioner has submitted that this cannot be ground for not allowing the just cost of expenses incurred by NTPC in accordance with the principle of cost plus tariff. 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 and wage revision during the period 1.1.2007 to 31.3.2009.

14. 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 a tariff shock to the beneficiaries.

15. Next we consider the claim of NTPC on account of pay revision/wage revision. The station wise details provided by NTPC are as under:

S. No	Station	Capacity (MW)	2005-06	2006-07	2007-08	2008-09	Total
	Coal Stations						(₹ in lakh)
1	Singrauli	2000	42.28	906.77	3328.44	10419.11	14696.60
2	Korba	2100	51.50	954.20	3459.80	10729.83	15195.33
3	Ramagunda m-Stg. I&II	2100	23.61	787.75	3535.43	9199.44	13546.23
4	Ramagunda m-Stg. III	500	5.62	187.56	841.77	2190.34	3225.29
5	Farakka	1600	54.30	897.53	3130.77	9329.30	13411.90
6	Rihand – Stg-I	1000	16.72	368.37	1311.60	3702.36	5399.05
7	Rihand – Stg-II	840	16.72	368.37	1311.60	3702.36	5399.05
8	National Capital TPS	840	17.41	554.16	2125.41	6730.66	9427.64

9	Vindhachal – Stg.-I	1260	156.83	423.04	1600.26	4189.48	6229.61
10	Vindhachal – Stg.-II	1000	13.35	335.74	1270.05	3324.98	4944.12
11	Vindhachal – Stg.-III	1000	0.00	55.69	1087.22	3324.98	4467.89
12	F.G. Unchahar Stg.-I	420	9.39	237.22	902.66	2563.34	3712.61
13	F.G. Unchahar Stg.-II	420	14.06	237.22	902.66	2563.34	3717.28
14	F.G. Unchahar Stg.-III	210	0.00	108.46	451.33	1281.67	1841.46
15	Kahalgaoon Stg.-I	840	62.95	695.16	2093.52	4183.40	7035.03
16	Kahalgaoon Stg.-II	1000	0.00	0.00	0.00	2176.85	2176.85
17	Simhadri	1000	9.64	371.92	1434.99	4380.85	6197.40
18	Sipat	1000	0.010	0.00	0.00	3113.52	3113.52
19	Talcher –Stg-I	1000	9.51	222.39	841.84	2645.69	3719.43
20	Talcher –Stg-II	2000	19.02	444.78	1683.68	2591.38	7438.86
21	Tanda	440	58.99	437.73	1180.11	3265.02	4941.85
22	TTPS	460	41.56	539.06	2512.74	5913.75	9007.11
23	Badarpur	750	15.05	795.95	3321.93	9790.53	13923.46
	Total Coal	23895	498.51	9929.07	38327.81	114012.18	162767.57
	Gas stations						
1	Anta GPS	419.33	20.94	205.99	681.52	1766.58	2675.03
2	Auraiya GPS	663.36	14.61	234.84	789.14	1916.03	2954.62
3	Dadri GPS	829.78	17.22	219.59	769.90	1172.18	2178.89
4	Faridabad GPS	431.59	5.43	139.98	661.05	1510.65	2317.11

5	Kawas GPS	656.20	11.06	258.15	1118.28	1951.80	3339.29
6	J Gandhar GPS	657.39	17.93	243.72	814.93	1691.67	2768.25
7	RG CCPP (Kayamkulam)	359.58	6.56	155.08	766.42	1504.17	2432.23
	Total Gas Station	4017	93.75	1457.35	5601.24	11513.08	18665.42
	Total Coal + Gas Stations	27912	592.26	11386.42	43929.05	125525.26	181432.99

16. The pay revision of the salary and wages of the CISF personnel and KV employees deployed in the different projects were implemented w.e.f. 01.01.2006. The actual payment was made in the year 2008-09. The revision of the salary and wages of the Executive/Supervisor/workman categories deployed in the different stations of NTPC have been implemented as under:

Pay Revision	Category	Effective Date of Implementation	Date of Circular issued in NTPC
2007	Executive	1.1.2007	16.9.2009
	Supervisor	1.1.2007	17.8.2010
	Workman	1.1.2007	7.7.2010

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.

19. 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