

**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 : 11.12.2012

Petition No. 201/MP/2011

In the matter of

Increase in Operation and Maintenance expenses on account of wage revision from 1.1.2007 in respect of NLC TPS I Expansion 2 x 210 MW and impact on capacity charges thereof.

And in the matter of

Neyveli Lignite Corporation Limited, Chennai

....Petitioner

Vs

1. Tamil Nadu Generation & Distribution Company Limited, Chennai
 2. State Power Purchase Co-ordination Centre, Bangalore
 3. Kerala State Electricity Board, Thiruvananthapuram
 4. Pondicherry Electricity Department, Pondicherry
-Respondents

Petition No. 202/MP/2011

In the matter of

Increase in Operation and Maintenance expenses on account of Wage Revision from 01.01.2007 in respect of NLC TPS II- Stage I (3x210 MW), NLC- TPS II- Stage II (4X210 MW) and impact on capacity charges thereof.

And in the matter of

Neyveli Lignite Corporation Limited, Chennai

....Petitioner

Vs

1. Tamil Nadu Generation & Distribution Company Limited, Chennai
2. State Power Purchase Co-ordination Centre, Bangalore
3. Kerala State Electricity Board, Thiruvananthapuram
4. Puducherry Electricity Department, Puducherry
5. Transmission Corporation of Andhra Pradesh, Hyderabad



.....Respondents

Petition No. 203/MP/2011

In the matter of

Increase in Operation and Maintenance expenses on account of Wage Revision from 01.01.2007 in respect of NLC TPS I (600 MW) and impact on capacity charges thereof

And in the matter of

Neyveli Lignite Corporation Limited

....Petitioner

Vs

Tamil Nadu Generation & Distribution Company Limited, Chennai

....Respondent

Parties Present:

1. Shri N. Rathinasabapathy, NLC
2. Shri R.C.Natarajan, NLC
3. Shri S.Balaguru, TANGEDCO

ORDER

The petitioner, NLC Ltd., has filed these petitions seeking appropriate directions of the Commission for revision of the Annual Fixed Charges of its generating stations due to increase in O&M expenses on account of wage revision and other pay hikes during the period from 2005-06 to 2008-09.

2. The petitioner has submitted that the Commission has specified the norms for O & M expenses in respect of the generating stations of NLC for the period 2004-09 in Regulation 21(iv)(d) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter "2004 Tariff Regulations"). The petitioner has submitted that while fixing the O&M norms for the tariff period 2004-09 in respect of the generating stations

of the petitioner, the Commission has not taken into account the factors prior to 1.1.2007 and after 1.1.2007 as their payments related to later developments but these expenditures are now required to be considered by the Commission. The petitioner has submitted that additional expenditures incurred prior to 1.1.2007 included grant of two increments with effect from 1.1.2006 and ex-gratia to all workmen following announcement of the same by Minister for Coal, Government of India on the occasion of Golden Jubilee Celebration of NLC; enhanced conveyance allowance consequent to rise of fuel cost effective from 1.1.2005; payment of enhanced wages with effect from 28.3.2004 in terms of the award of Central Government Industrial Tribunal; and implementation of the recommendations of the 6th Central Pay Commission in respect of the CISF personnel deployed at the generating stations and mines of NLC. The petitioner has further submitted that the additional expenditures from 1.1.2007 included merger of 50% of Dearness Allowance with the basic pay with effect from 1.1.2007 on account of the implementation of the recommendations of 2nd Pay Revision Committee and implementation of pay revision/wage revision of the employees of CPSE with effect from 1.1.2007.

3. The petitioner has submitted that as the norms of O&M expenses for the period 2004-09 did not account for the expected employee cost increase due to salary/wage revision, the petitioner filed Petition Nos. 162/2008, 164/2008 and 165/2008 in which the petitioner has sought upward revision of O&M expenses and the annual fixed charges already approved. The petitioner has

submitted that the Commission in its order dated 5.2.2009 in the said petitions issued the following directions:

"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. For this reason, the present petitions are considered premature".

4. The petitioner has submitted that subsequently the wage/pay revision was implemented as per the guidelines of Department of Public Enterprises and Ministry of Coal which has resulted in substantial increase in employee cost. The petitioner has prayed for revision of O&M expenses norms due to increase in employee cost and consequent increase of Annual Fixed Charges for the generating stations of the petitioner for the years 2005-06,2006-07,2007-08 and 2008-09. The petitioner has further submitted that the Commission has considered 50% increase in employee cost for wage revision and 5.72% escalation every year while deciding the norms for O&M expenses for the period 2009-14 which is insufficient to meet the annual increments and dearness allowance of the employees of the petitioner.

5. The Petitioner has submitted that the Commission has power under Regulation 12 to remove difficulty and under Regulation 13 the power to relax any of the provisions of the 2004 Tariff Regulations. The petitioner has prayed that the additional O&M cost on account of pay/wage revision may be allowed under Regulations 12 and 13 of the 2004 Tariff Regulations.

6. Replies to the petitions have been filed by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Kerala State Electricity Board (KSEB). The Petitioner has filed its rejoinders to these replies of the respondents. The replies of the respondents are briefly discussed as under:

(a) TANGEDCO in its reply has submitted that the present petition of the petitioner for relaxation of the regulations for the 2004-09 tariff period is not maintainable since the claim through 2004 Tariff Regulations is settled one which the petitioner is seeking to reopen after a period of four years and hence is barred by res judicata. The respondent has submitted that the petitioner being a PSU and a Navratna Company can meet out the expenditures from its internal resources since there is steady increase in the Net Operating Profit after Tax (NOPAT) as reflected in the P&L A/c Statements for the financial year ending 2006-07 till 2010-11. The respondent has submitted that the percentage of pay revision with reference to income for the years 2006-07, 2007-08 and 2008-09 is 0.73%, 2.73% and 2.59% respectively and therefore, the contention of the petitioner that wage revision of its employees increased its employee cost substantially is incorrect and not tenable. TANGEDCO has further submitted that the petitioner's claim to pass on the burden of expenditure incurred due to impact of wage revision on the SEB's is not justifiable since the SEB's cannot pass on the same to the end consumers with retrospective effect. The respondent has prayed before the Commission to negate the claims of the petitioner.

(b) KSEB in its reply has submitted that the beneficiaries are not against allowing revision of pay and other allowances to its employees but are against the recovery of entire additional liabilities from the beneficiaries due to several reasons. Firstly, 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 actuals of other components of O&M expenses. Secondly, there is no provision in the 2004 Tariff Regulations to allow increase in O&M cost due to wage revision. Thirdly, while finalizing the 2004 Tariff Regulations, the Commission has not considered it appropriate to provide due consideration for increase in O&M costs due to wage revision. Fourthly, the Commission in para 19.9 of the Statement of Reasons to the 2009 Tariff Regulations has made it clear that the excessive increase in O&M expenses has been provided mainly 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 further submitted that the State Commission has already trued up the accounts up to 2009-10 and that 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. KSEB has prayed for rejection of the claims of the petitioner.

7. The petitioner in its rejoinder to the affidavit of TANGEDCO has submitted that in line with the directions of the Commission in order dated 5.2.2009 in Petition No. 162/2008, the petitioner has approached the Commission after the implementation/revision of pay. The petitioner has prayed that objection of TANGEDCO regarding maintainability of the petition be rejected. The petitioner has submitted that TANGEDCO has considered income of the company as a whole but the pay revision impact only for thermal employees. The petitioner has submitted that income from sale of lignite to IPPs, external sales and other income has to be deducted from the company income to compare the real wage revision impact. The petitioner has submitted that the total under recovery of O&M expenses of the generating stations of the petitioner for the years 2006-07, 2007-08 and 2008-09 work out to ₹ 359.23 crore which is not a small amount. The petitioner in its rejoinder to the affidavit of KSEB has submitted that the expenditure on wage revision and pay revision which was to be necessarily incurred by the petitioner and which was not factored in the normative parameters in the 2004 Tariff Regulations was due to a subsequent event beyond the control of the petitioner and should be allowed as part of petitioner's employee cost. Referring to para 19.9 of the Statement of Reasons to 2009 Tariff Regulations, the petitioner has submitted that the Commission has never stated that any increase in O&M expenses over the approval during the previous period can be compensated from the excessive increase allowed on normative basis during 2009-14 period.

8. During the hearing of the petition, similar points as noted above were raised by the learned counsel for TANGEDCO and were refuted by the representative of NLC.

9. We heard the parties and perused the documents on record. 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 paragraphs:

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

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.”

12. NLC has submitted that Regulation 21(iv)(d) 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 CISF personnel 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, NLC 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. Learned counsel for TANGEDCO during hearing submitted that the 'Power to relax' envisaged under regulation 12 of the 2004 Tariff Regulations pertains to determination of tariff for the period 2004-09 and the petitioner is barred from reopening the same in these petitions as these petitions have attained finality. TANGEDCO in its affidavit has submitted that the claim of the petitioner should be negated as it is barred by res judicata.

13. 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 to the generating stations of NLC had not considered the impact of pay revision of CISF personnel that was to take effect from 1.1.2006 and wage revision of its employees from 1.1.2007. Had the pay revision/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

NLC are not being serviced as the same have not been factored in the norms. Accordingly, the wage revision/pay revision was not earlier considered while determining the tariff. Therefore, the issue of impact of wage/pay revision has not been conclusively settled between the parties and the consideration of the impact of wage revision/pay revision would not be barred by res judicata as contended by TANGEDCO. 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 personnel of CISF and w.e.f. 1.1.2007 in respect of the employees of NLC. 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 KSEB has submitted that it is not appropriate to revise the O&M expenses considering the wage revision alone without appreciating the actuals of other components of O&M expenses. KESB has submitted that there may be other heads in O&M expenses where actual expenses may be less than the normative expenses specified by the Commission and such

savings are not passed on to the beneficiaries. The petitioner has submitted that since the norms did not factor in the expenditure on account of wage/pay revision, the petitioner has approached the Commission by way of the present petitions.

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 overrule the objections of the respondent KSEB that wage revision cannot be considered without appreciating the actual of other components of O & M expenses in the light of the above observation.

Burdening the present consumers for the past dues

16. TANGEDCO has submitted that SEB’s cannot pass on the burden of extra cost involved due to pay revision to the end consumers with

retrospective effect since the issue pertains to past and may lead to tariff shock. KSEB has submitted that its accounts up to financial year 2009-10 has already been audited and certified by CAG. Further, the State Commission has already tried up the accounts of KSEB upto the financial year 2009-10. It has been further submitted that revising the O&M cost with retrospective effect will lead to a huge revision in power purchase cost and may result in revision of tariff of end consumers with retrospective effect which is not practical to collect from them.

17. We have considered the objections of the respondents. The petitioner had approached the Commission in Petition Nos. 162/2008, 164/2008 and 165/2008 for consideration of additional expenditure arising out of wage/pay revision. The Commission in its order dated 5.2.2009 in the said petitions 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 including 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.

18. 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.

19. The petitioner has implemented the impact of pay revision during 2010. 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.

Petition No.	Station of NLC	Increase in salary and wages
201/MP/2011	TPS-I	7806.69
202/MP/2011	TPS-II Stage-I	5318.52
202/MP/2011	TPS-II Stage-II	7091.34
203/MP/2011	TPS-I Exp.	2218.38
	Total	22434.93

20. 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 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 views 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 the further 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.

16. 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 12 equal monthly instalments 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 charges on the arrear which will benefit the consumer. In our view, this arrangement will protect the interest of both the petitioner and the beneficiaries".

21. 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 NLC 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.

22. The petitions are disposed of in terms of the above.

sd/-	sd/-	sd/-	sd/-
(M. Deena Dayalan)	(V.S. Verma)	(S. Jayaraman)	(Dr. Pramod Deo)
Member	Member	Member	Chairperson