

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 86/MP/2013

- Subject : Petition under regulation 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004 for recovery of additional cost incurred consequent to pay revision of employees and Central Industrial Security Force (CISF) for generating station of the petitioner- THDC India Limited during 22.9.2006 to 31.3.2009.
- Date of hearing : 12.11.2013
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri V.S Verma, Member
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
- Petitioner : THDC India Limited, Rishikesh
- Respondents : Uttar Pradesh Corporation Limited & others
- Parties present : Shri M.G. Ramachandran, Advocate, THDCIL
Shri J.K. Hatwal, THDCIL
Shri Sarosh Majid Siddiqi, THDCIL
Shri Manoj Kumar Tyagi, THDCIL
Shri R.B. Sharma, Advocate, BRPL
Shri Padamjit Singh, PSPCL
Shri T.P.S. Bawa, PSPCL

Record of Proceedings

At the outset, Learned counsel for the petitioner requested the Commission to allow the additional O & M cost due to increase in employee cost on account of wage revisions of its employees from 1.1.2007 and pay revision of the employees of Central Industrial Security Force deployed at Tehri Hydro Electric generating Station from 1.1.2006 in line with orders passed by CERC in NHPC, NTPC and PGCIL petitions.

2. The representative of PSPCL submitted as under:

- (a) The petitioner has not clarified whether CISF has been deployed for the multipurpose project such as irrigation, power or flood control and if

so, the proportionate number of CISF personnel deployed on power project.

(b) The recovery of cost of CISF deployed at the generating station is not justified. It should not be loaded on to the consumers especially when the State is getting 12% free power and the State is responsible for law and order.

(c) Security is a State subject. The cost of security of the generating station should be borne by the State Government especially when the State Government is a stakeholder in the generating station.

3. Learned counsel for BRPL submitted as under:

(a) The Commission's power to remove difficulties and power to relax under Regulations 12 and 13 of 2004 Tariff Regulations is not applicable in the present case as no difficulty has arisen to give effect to 2004 Tariff Regulations. Seeking relaxation under Regulation 13 would amount to disturbing the delicate balance between the interest of project developer and the consumers which the Commission has tried to maintain through 2004 Tariff Regulations.

(b) Since tariff is a complete package, its reasonability is required to be examined in its totality. Thus, the relaxation in the regulation would result in unreasonable benefit to the petitioner which should not be allowed.

(c) The Commission may introduce the concept of truing up from the next tariff period so that the petitioner does not face any loss and to balance the conflicting interest. He further submitted that 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.

(d) Hon'ble Supreme Court in its Judgment dated 3.3.2009 in Civil Appeal No. 1110 of 2007 has held that the claim is permissible only when the tariff is in force and not after wards. This clearly means that the claim of the petitioner could have been entertained by the Commission, had the petitioner filed the petition during the tariff period 2004-09.

(e) The claim at this belated stage is not justified as the utilities have already arranged their affairs.

4. In response, learned counsel for the petitioner submitted that where a project has been declared under commercial operation before the date of commencement of 2009 Regulations and whose tariff has not been finally determined by the Commission till that date, tariff in respect of such project for the period ending 31.3.2009 shall be

determined in accordance with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

5. Learned counsel for the petitioner submitted that Hon`ble Supreme Court Judgment`s dated 3.3.2009 in Civil Appeal No. 1110 of 2007 is not relevant to the present case. Hon`ble Supreme Court did not in principle question the admissibility of enhanced O & M expenses due to revision of salary of employees of NTPC with effect from 1.1.1997 in terms of the recommendation of High Level Committee. The only ground on which the revision was disallowed was on the ground of limitation. However, in the present case, the impact of recommendations of the 6th Pay Commission has arisen recently after the Petition No. 250/2010 relating to approval of tariff for the period 22.9.2006 to 31.3.2009 was disposed on 16.4.2013.

6. In support of the petitioner's claim, learned counsel for the petitioner relied upon the following judgments:

- (a) West Bengal Electricity Regulatory Commission V CESC Limited [(2002) 8 SCC 715]
- (b) Haryana Power Generation Corporation Limited v. Haryana Electricity Regulatory Commission Appellate Tribunal (Judgment dated 31.7.2009 in Appeal No.42 and 43 of 2008)
- (c) UP Power Corporation Limited v. Central Electricity Regulatory Commission (Judgment dated 24.5.2011 in Appeal No.100 and 103 of 2009)

7. After hearing, learned counsels for the petitioner, BRPL and representative of PSPCL, the Commission directed the petitioner to submit, on affidavit by 29.11.2013, the copy of the Board Resolution by which Board accorded its approval for implementation of 6th Pay Commission and clarification on para 3 of the Office Memorandum of Department of Public Enterprises dated 26.1.2008 regarding "affordability for implementation of pay revision" of the OM dated 26.11.2008 where the expenditure on account of revision of pay was to be borne by the concerned Central Public Enterprise.

8. Subject to above, the Commission reserved order in the petition.

By order of the Commission

Sd/-

**(T. Rout)
Chief (Law)**