

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram:
Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 19.3.2013
Date of Order: 12.7.2013**

Petition No. 277/MP/2013

In the matter of:

Petition for approval of additional cost incurred owing to revision of scale of pay for the employees of North Eastern Electric Power Corporation Ltd. (NEEPCO) and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 for Agartala Gas Turbine Plant (84 MW).

Petition No. 278/MP/2012

In the matter of:

Petition on account of additional cost incurred owing to revision of scale of pay for the employees of NEEPCO and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 in respect of Ranganadi Hydro Electric Project (405 MW).

Petition No. 279/MP/2012

In the matter of:

Petition on account of additional cost incurred owing to revision of scale of pay for the employees of NEEPCO and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 in respect of Khandong Power Station (50 MW).



Petition No. 280/MP/2012

In the matter of:

Petition for approval of additional cost incurred owing to revision of scale of pay for the employees of NEEPCO and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 in respect of Kopili Stage II (25 MW).

Petition No. 281/MP/2012

In the matter of:

Petition for approval of additional cost incurred owing to revision of scale of pay for the employees of NEEPCO and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 in respect of Kopili Hydro Electric Project (20 MW).

Petition No. 282/MP/2012

In the matter of:

Petition on account of additional cost incurred owing to revision of scale of pay for the employees of NEEPCO and the Meghalaya Home Guard on deputation to NEEPCO from 1.1.2007 to 31.3.2009 in respect of Assam Gas Based Power Project (219 MW)

And

In the matter of:

North Eastern Electric Power Corporation Ltd., Shillong

....**Petitioner**

Vs

- 1.Assam Power Distribution Company Limited, Guwahati
- 2.Meghalaya Energy Corporation Limited, Shillong
- 3.Tripura State Electricity Corporation Limited, Agartala
- 4.Power and Electricity Department, Mizoram,Aizwal
- 5.Electricity Department, Govt. of Manipur, Imphal
- 6.Department of Power, Govt. of Arunachal Pradesh



7.Department of Power, Govt. of Nagaland, Kohima
8.North Eastern Regional Power Committee, Shillong
9.North Eastern Regional Load Despatch Centre, Shillong .. Respondents

Following were present:

Ms. Debjani Dey, NEEPCO
Ms. Elizabeth Pyrbot, NEEPCO
Shri Rana Boase, NEEPCO
Shri P.K.Sarma, APDCL
Shri K.Goswami, APDCL

ORDER

The petitioner, North Eastern Electric Power Corporation Ltd (hereinafter referred to as "NEEPCO") 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 with effect from 1.1.2007 and pay revisions of the Meghalaya Home Guard deployed at NEEPCO stations with effect from 1.1.2007 as an additional expense from the respondents as a one time payment in proportion to their share in the capacity charges during the respective years in accordance with Regulations 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter "2004 Tariff Regulations").

2. The petitioner has submitted that the Commission notified the 2004 Tariff Regulations on 26.3.2004 providing for the norms and parameters for tariff determination to be applicable during the period 1.4.2004 to 31.3.2009. The



O&M norms of the thermal generating stations were specified under Regulation 21(iv)(a) of the 2004 Tariff Regulations. The petitioner has submitted that in arriving at the norms specified in Regulation 21(iv)(c) for gas stations and normative O & M expenses as per methodology specified in Regulation 38 (iv) for hydro stations, the Commission had considered the O&M expenses for the periods 1995-96 to 1999-2000 and 1998-99 to 2002-03 for gas stations and hydro stations, respectively, normalizing the annual O&M expenses and thereafter escalating them at specified percentage. 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 1.1.2007. 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. The petitioner has submitted that the Commission vide its order dated 20.2.2008 in Petition No. 135/2005 pertaining to Agartala Gas Turbine Power Station and in other stations of NEEPCO had not considered the impact of wage revision of its employees.

3. The petitioner has submitted that based on the Government of India, Department of Public Enterprises Office Memorandum No. 2 (70)/08-DPE(WC) dated 26.11.2008, it has revised the pay scales of its employees with effect from 1.1.2007. The petitioner has further submitted that NEEPCO has also revised the pay scales of the Meghalaya Home Guard deployed at the



NEEPCO` stations with effect from 1.1.2007 vide office order No. 4203 dated 17.2.2012.

4. NEEPCO has prayed for the following

"(a) Consider the instant application and allow the petitioner to bill and recover the additional O&M cost due to wage revision as stated in the petition as an additional O&M expenses from the Respondents as one-time payment in proportion their capacity allocation in the respective year in terms of the Regulations 12 & 13 of the Tariff Regulations, 2004.

(b) Pass any such further order or orders as the Hon`ble Commission may deem just and proper in the circumstances of the case."

5. Reply to the petitions has been filed by the Assam Power Distribution Company Limited (APDCL). The petitioner has filed its rejoinder to the reply of the respondent. The reply of APDCL is briefly discussed as under:

(a) The petitioner has filed petition under Regulations 12 and 13 of the 2004 Tariff Regulations which has already expired. There was no such provision for recovery of additional O & M cost due to increase in employee cost on account of wage revision in the 2004 Tariff Regulations. Since the petitioner did not raise this issue during the existence of the Tariff Regulations, 2004, therefore, the petitions are not maintainable.

(c) The impact of pay revision has already been factored by the Commission by providing 50% increase in employee cost on account of



pay revision under the CERC (Terms and Conditions of Tariff) Regulation, 2009.

(d) The State Regulatory Commission has already fixed the tariff in the State of Assam for the years up to 2012-13 and even truing up has also been completed up to 2009-10. Therefore, after a period of 4 to 5 years, there is no scope for the respondent to pass on the impact of pay revision to the ultimate consumers.

(e) As the petitioner has already revised pay scale of its employees and disbursed the expenditure by transferring funds from profit & loss account and IEDC of the corresponding years, there is no difficulty on the part of the petitioner to absolve the impact of additional employee cost.

(f) Seeking relaxation on any account whatsoever amounts to disturbing this delicate balance which the Commission has tried to maintain through 2004 Tariff Regulation and relaxation of the regulations would result in unreasonable benefits to the petitioner.

6. The petitioner in its rejoinder has refuted the objections of APDCL.



7. First we consider the objections of the APDCL on the ground of maintainability.

8. NEEPCO has filed its petitions under Regulations 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.”

9. NEEPCO has submitted that Regulation 21(iv)(c) and 38 (iv) of the 2004 Tariff Regulations did not factor in the impact of increased salary and wages consequent to the wage revision of its employees and pay revision of Meghalaya Home Guard on deputation with effect from 1.1.2007. The recommendations of the Sixth Pay Commission and the decision of the Department of Public Enterprises, Government of India were implemented after expiring of the control period 2004-09. However, had the salary and wages been firmed up and implemented when the 2004 Tariff Regulations were framed and notified, the Commission would have factored such increase in the O&M norms as has been done during the control period 2009-14. Since the impact of wage revision and pay revision has not been factored in the 2004 Tariff Regulations, NEEPCO 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 respondent has 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. On the contrary, 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.

10. We have considered the submissions of the petitioner and respondent. 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 years 1995-96 to 1999-2000 and 1998-99 to 2002-03 for gas stations and hydro stations, respectively, 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 evident from the above that the pay 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 NEEPCO 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. 1.1.2007 in respect of employees of the NEEPCO and Meghalaya Home Guard deployed at NEEPCO stations. If the impact of pay revision or wage revision is denied, it would result in under recovery of cost of electricity generation 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.

11. APDCL has further submitted that as the petitioner has already revised pay scale and disbursed the expenditure by transferring funds from profit & loss account and IEDC of corresponding years, there is no difficulty on the part of the petitioner to absolve the impact of employee cost. To this, the petitioner has submitted that the petitions relate to the generating stations of NEEPCO which are under operation during the period 2004-09. Accounting transaction through IEDC relates to the projects under construction. The petitioner has submitted that expenditure mentioned under the heads of salary and wages do not necessary indicate that the same has been disbursed in totality. The petitioner has submitted that actual disbursement of the liability has been made in due course after the period 2004-09 on finalization of pay structure of NEEPCO's employees.

12. 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. Accordingly, the petitioner has approached by way of the present petition for allowing the impact of pay 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 the sanctity of the norms 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.

13. The respondent has submitted that the expenditure on wage and pay revision pertains to the period 1.1.2007 to 31.3.2009 and State Regulatory Commission has also fixed the tariff in the State of Assam for the years up to 2012-13 and even truing up has also been completed up to the year 2009-10. Therefore, after a period 4 to 5 years, there is no scope for the respondent to pass on impact of pay revision to the ultimate consumers. Consequently, the present consumers will have to bear the burden of the wage revision.

14. We have considered the objections of the respondent. O &M expenditure of which the employee cost is a part have been incurred for running the generating station to produce electricity for supply to the distribution companies including respondents. In respect of wage revision and pay revision, though it pertains to the previous tariff period, but it has been actually incurred during

2009-14 period. In our view, a legitimate expenditure cannot be denied to the petitioner because the claim could not be made during the 2004-09 period. Therefore, the objections of the respondent cannot be sustained. 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 NEEPCO on account of pay revision/wage revision. The station-wise details provided by NEEPCO are as under:

(₹ in lakh)

S.No.	Station	Capacity (MW)	2006-07	2007-08	2008-09	Total
1.	Agartala Gas Turbine Project	84	52.33	208.30	207.27	469.90
2.	Ranganadi Hydro Electric Project	405	51.12	196.76	344.76	592.64
3.	Khandong Power Station	50	19.38	74.28	86.90	180.56
4.	Kopili Stage-II	25	9.69	37.13	43.46	90.28
5.	Kopili Hydro Electric Project	200	77.49	297.13	347.63	722.25
6.	Assam Gas Based Power Project	291	77.20	302.69	328.48	708.37

16. The revision of the salary and wages of the Meghalaya Home Guard deployed in the different projects was implemented w.e.f. 1.1.2007. Though the actual payment was made in the year 2009-10, the debit was raised on average as in the year. The revision of the salary and wages of the

Executive/Supervisor/Workman categories deployed at the different stations of NEEPCO have been implemented from 1.1.2007 but actual payments were made in the year 2009-10.

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

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

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

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

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

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

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

18. We are inclined to decide the claim of the petitioner in the light of our decision in the case of NTPC Ltd as extracted above. 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 shall be allowed, 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 Meghalaya Home Guard personnel posted at NEEPCO stations is concerned, the increase in salary shall be on actual basis and shall be a pass through to the beneficiaries.

19. 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 NEEPCO as additional O&M charges. However, the arrears shall be paid by the beneficiaries in twelve equal monthly instalments starting from the month of August



during the year 2013-14 in addition to the O&M charges as per the 2009 Tariff Regulations. However, we direct 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 the petitioner as well as the beneficiaries.

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

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V. S. Verma)
Member

