

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 30/MP/2013**

**Coram:**

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

**Date of Hearing: 22.5.2013**

**Date of Order : 09.9.2013**

**In the matter of:**

Miscellaneous petition under sub-section (4) of Section 28 of the Electricity Act, 2003 on account of additional cost incurred owing to revision of scale of pay for employees posted in ULD&C Schemes from 1.1.2007 to 31.3.2009 consequent to implementation of the revision w.e.f. 1.1.2007.

**And In the matter of:**

Power Grid Corporation of India Limited, Gurgaon

.....**Petitioner**

**Vs**

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Kolkata
3. Grid Corporation of Orissa Ltd., Bhubaneswar
4. Damodar Valley Corporation, Kolkata
5. Power Department, Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh
10. Power and Electricity Department, Government of Mizoram, Aizwal, Mizoram.
11. Electricity Department, Government of Manipur, Imphal, Manipur
12. Department of Power, Government of Nagaland, Kohima, Nagaland
13. Tripura State Electricity Corporation Ltd., Government of Tripura, Agartala, Tripura
14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
16. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
18. Himachal Pradesh State Electricity Board, Shimla
19. Punjab State Power Corporation Ltd., Patiala
20. Haryana Power Purchase Centre, Panchkula
21. Power Development Department, Govt. of Jammu & Kashmir, Jammu
22. Uttar Pradesh Power Corporation Ltd., Lucknow
23. Delhi Transco Ltd., New Delhi



24. Chandigarh Administration, Chandigarh
  25. Uttarakhand Power Corporation Ltd., Dehradun
  26. BSES Yamuna Power Ltd., New Delhi
  27. BSES Rajdhani Power Ltd., New Delhi
  28. North Delhi Power Ltd., New Delhi
  29. NDMC, New Delhi
  30. North Central Railway, Allahabad
  31. Karnataka Power Transmission Corporation Ltd., Bangalore
  32. Bangalore Electricity Supply Company Ltd. (BESCOM), Karnataka
  33. Gulbarga Electricity Supply Company Ltd., (GESCOM), Karnataka
  34. Hubli Electricity Supply Company Ltd. (HESCOM), Karnataka
  35. Mangalore Electricity Supply Company Ltd. (MESCOM), Karnataka
  36. Chamundeshwari Electricity Supply Corporation Ltd. (CESC), Karnataka
  37. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
  38. Eastern Power Distribution Company of Andhra Pradesh Ltd. (APEPDCL), Visakhapatnam, Andhra Pradesh
  39. Southern Power Distribution Company of Andhra Pradesh Ltd. (APSPDCL), Tirupati, Andhra Pradesh
  40. Central Power Distribution Company of Andhra Pradesh Ltd. (APCPDCL), Hyderabad, Andhra Pradesh
  41. Northern Power Distribution Company of Andhra Pradesh Ltd. (APNPDCL), Warangal, Andhra Pradesh
  42. Kerala State Electricity Board, Thiruvananthapuram
  43. Tamil Nadu Electricity Board, Chennai
  44. Electricity Department, Pondicherry
  45. Electricity Department, Panaji, Goa
  46. Madhya Pradesh Tradeco (Erstwhile Madhya Pradesh Electricity Board), Jabalpur
  47. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd., Indore
  48. M/s Jindal Powers Ltd., NOIDA
  49. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
  50. Gujarat Urja Vikas Nigam Ltd., Baroda
  51. Electricity Department, Administration of Daman & Diu, Daman
  52. Electricity Department, Administration of Dadra Nagar Haveli, Silvassa
  53. Chhattisgarh State Electricity Board, Chhattisgarh
- ... Respondents

**The following were present:**

1. Shri S. S. Raju, PGCIL
2. Shri M. M. Mondal, PGCIL
3. Shri R. B. Sharma, Advocate, BRPL

**ORDER**

The petitioner, Power Grid Corporation of India Limited has filed the instant petition seeking appropriate directions of the Commission to allow it to bill and recover the additional O&M cost component due to increase in



employee cost owing to revision of scale of pay of employees posted in Unified Load Despatch & Communication (ULD&C) Schemes from 1.1.2007 to 31.3.2009 from the respondents as a onetime payment in proportion to their shares in the central generating capacity allocation including allocation from unallocated portion from the Central Generating Stations.

2. The petitioner has submitted that consequent to the notification of the O&M norms for the period 2004-09 in the 2009 Tariff Regulations, the Department of Public Enterprises (DPE) issued Office Memorandum Nos. 2(70)/08-DPE (WC) dated 2.4.2009, 9.2.2009 and 26.11.2008 for revision of pay with effect from 1.1.2007 for the Board level and below Board level executives and non-unionised supervisors in the Central Public Sector Enterprises. The petitioner has submitted that being a Central Public Sector Enterprise it is mandated to follow the DPE as regards the revision of pay. Consequently, the component of employee cost incident on the petitioner has increased for the years 2006-07, 2007-08 and 2008-09 during the tariff period 2004-09. According to the petitioner, the impact of the revision of employee cost has not been factored/considered while arriving at the norms for O&M expenses during the tariff period 2004-09. Moreover, while arriving at the norms for O&M expenses for the tariff period 2004-09, no provision has been made for addressing the impact consequent to revision in the scale of pay of the employees which was due with effect from 1.1.2007.

3. The petitioner has submitted that it had filed separate petitions seeking



approval of RLDC Fees & Charges and additional capital expenditure for Unified Load Despatch & Communication Schemes (ULD&C Schemes) in all the five regions for the tariff block 2009-14. The Commission while approving the same has not allowed its claim of impact of wage revision. The petitioner has submitted that at the time of filing petitions for ULD&C Schemes, the wage revision in respect of only executives was completed and in respect of Supervisors and Workmen, wage revision was completed subsequently.

4. The petitioner has submitted that the Commission in its order dated 3.8.2011 in Petition No.48/2010 pertaining to ULD&C Scheme in Eastern Region observed that as the wage revision of Supervisors and Workmen has not been finalized, the expenditure on account of wage revision was not allowed and directed the petitioner to approach it with the consolidated expenditure on wage revision after finalization of the wage revision of Supervisors and Workmen. In case of the other four regions, the Commission, in separate orders, observed that the issue of wage revision impact for the years 2006-07 to 2008-09 is common in all the four regions and a common view would be taken in Petition No.101/2010 filed by the petitioner.

5. The petitioner has submitted that Commission, vide its order dated 1.1.2013 in Petition No.101/2010, has allowed the actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 on account of pay and wage revision to the extent of 50% of the salary and wages (Basic + DA) in case of employees of PGCIL. The petitioner has requested to give a similar



treatment and allow the additional employee cost due to the impact of wage revision of the employees in the ULD&C Schemes in all the five regions. The petitioner has worked out the total impact on account of wage revision for various ULD&C Schemes in the five regions and has claimed ₹ 1377.10 lakh as per the principle laid down in Petition No.101/2010. The details furnished by the petitioner are given hereunder:-

(₹ in lakh)

Name of the ULD&C Scheme	Total impact of wage revision on the ULD&C Scheme	Impact of wage revision limited to 50% of the salary and wages (Basic + DA) as on 31.12.2006
NR ULD&C Scheme	506.48	339.61
SR ULD&C Scheme	515.65	263.76
NER ULD&C Scheme	245.26	164.13
WR ULD&C Scheme	552.80	292.71
ER ULD&C Scheme	480.05	316.89
Total	2300.24	1377.10

6. The petitioner has requested to allow it to bill and recover the above expenditure as an additional component under O&M expenses from the respondents as a onetime payment. The petitioner has further submitted that the arrears shall be shared by the beneficiaries in proportion to their shares in the central generating capacity allocation including allocation from the unallocated portion from the Central Generating Stations.

7. Replies to the petition have been filed by BSES Rajdhani Power Limited (BRPL) and MP Power Management Company Limited (MPPMCL). The

petitioner has filed its rejoinder to the reply filed by BRPL. The replies filed by the respondents and the rejoinder by the petitioner are discussed hereunder:-

(a) BRPL has submitted that the Commission has already considered the impact of pay revision of the employees posted in the ULD&C Schemes while framing 2009 Tariff Regulations and the present increase in the employee cost on account of revision of pay has already been covered in the O&M norms for the year 2009-10 by rationalizing the O&M norms by 50% increase for increase in employee cost. BRPL has also submitted that the claim for recovery of additional cost incurred consequent to pay revision of employees 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 dated 3.3.2009 in Civil Appeals No. 1110, 1138, 1152, 1327 and 1112 of 2007.

(b) MPPMCL has submitted, in its reply dated 20.5.2013, that the Commission's order dated 1.1.2013 in Petition No.101/2013 allowing part of the additional cost on account of impact of wage revision should not be considered as binding in the instant case as an Appeal has been filed before the Hon'ble Appellate Tribunal for Electricity (the 'Tribunal'). The directions of DPE regarding revision of pay scale with effect from 1.1.2007 are to be implemented by the CPSEs, including the petitioner, only if the concerned CPSE is in a position to afford the increase on its



own and it cannot be recovered from the beneficiaries at this belated stage. MPPMCL has submitted that the petitioner made huge profits during the period 2006-07 to 2011-12 and the present impact of wage revision of ₹ 1377.10 lakh could be easily met by the petitioner from its profits and it should not be passed on to the beneficiaries. MPPMCL has also submitted that the present petition does not warrant exercise of power provided under Regulations 12 and 13 of the 2004 Tariff Regulations and has placed reliance on various judgements of the Tribunal and the Hon'ble Supreme Court. MPPMCL has also submitted that the tariff cannot be revised retrospectively as laid down by the Hon'ble Supreme Court in UPPCL vs NTPC, (2009) 6 SCC 235. The Tariff Regulations are sacrosanct and its sanctity should be maintained and it cannot be reopened to consider the actual cost.

8. In response to the objections raised by BRPL, the petitioner has clarified that impact of the wage revision of the employees posted in ULD&C Schemes was not considered while fixing the O&M rates for transmission tariff. The petitioner has further clarified that the petitions for revised RLDC Fees and Charges of ULD&C Schemes were filed during the tariff period 2004-09. However, the Commission did not allow the additional employee cost on account of wage revision in those petitions and directed that the issue of wage revision is a common issue and would be dealt in Petition No.101/2010. The petitioner has submitted that the Commission, vide its order dated 1.1.2013 in Petition No.101/2010, has partly allowed the



additional employee cost claimed. Since the issue of impact of wage revision has already been decided by the Commission, the petitioner has referred that the additional employee cost due to impact of wage revision under various ULD&C Schemes be also decided on the principle finalized in the order dated 1.1.2013 in Petition No.101/2010. The petitioner has not filed any rejoinder to the reply filed by MPPMCL.

9. We have heard the parties and perused the documents on record. Before we proceed to the merit of the case of the petitioner, we would deal with the objections of the respondents. The objections raised by BRPL and MPPTCL have been dealt with in the subsequent paragraphs.

10. As regards BRPL's submission that the impact of pay revision has already been taken care in the 2009 Tariff Regulations, we would like to clarify that the impact of pay revision for the period 1.1.2007 to 31.3.2009 has not been factored in the 2009 Tariff Regulations. The Commission while deciding the norms applicable for the period 1.4.2004 to 31.3.2009 had considered the O&M expenses for the year 1998-99 to 2002-03, normalized the O&M expenses and thereafter escalated them @ 4% per annum to arrive at the norms at 2002-03 price level which was further escalated @4% per annum to arrive at the norms for each of the five years of the 2004-09 period. While deciding the norms for the period 2004-09, the pay and wage revision of the employees with effect from 1.1.2007 were never taken into account. Had the pay and wage revision taken place at the time the norms were



decided, the Commission would have taken into account its impact while fixing the norms. In other words, the legitimate expenditure incurred by PGCIL on account of pay and wage revision 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 and wage revision came into force w.e.f. 1.1.2007 in respect of the employees posted in ULD&C Schemes for the period from 1.1.2007 to 31.3.2009. If the impact of pay and wage revision is denied, it would result in under recovery of cost of electricity by the petitioner. Therefore, in our 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.

11. BRPL has further contended that the petitioner's claim for recovery of additional cost during 2004-09 period has been made after the tariff period and the tariff cannot be revised retrospectively and hence it should not be allowed. We have considered the submission of the BRPL and the petitioner. It is observed that the petitioner filed individual petitions for determination of RLDC fees and charges for ULD&C Schemes in all the five regions. However, the impact of wage revision was not allowed in those respective

petitions as the common issue of wage revision was being considered by the Commission in other petitions. The Commission has not decided the issue of admissibility of enhanced employee cost in any of its orders passed in the different petitions filed by the petitioner for determination of tariff but has directed the petitioner to approach the Commission for relief at the appropriate stage in accordance with law. Since the issue of enhanced employee cost has not been finally decided, the plea that the Commission has become functus officio to deal with the issue cannot be sustained.

12. MPPTCL has submitted in its reply that the Commission's order dated 31.1.2012 in Petition No.101/2010 cannot be precedent for the present case, especially when an Appeal has been filed against it before the Tribunal. The said order of the Commission has not been stayed by the Hon'ble Tribunal. We would like to further clarify that 50% of the actual increase in employee cost of PGCIL during 1.1.2007 to 31.3.2009 was allowed by the Commission's in its order in Petition No.101/2010 and we do not have reason for not granting such a relief in the instant case. Not granting such a relief to the petitioner to meet the additional cost incurred on its employees posted in ULD&C Scheme would lead to under recovery of its cost, as said in Paragraph No.10 above, and denying the petitioner its legitimate cost.

13. As regards MPPTCL's objection that the directions of DPE regarding revision of pay scale are to be implemented by the petitioner only if the petitioner can afford from its own resources, we would like to clarify that in a



cost plus regime, all legitimate costs of the petitioner are to be borne by the beneficiaries. Since the impact of pay and wage revision of its employees as per the DPE directives is a legitimate cost incurred by the petitioner for providing transmission services to the beneficiaries, the expenditure on this account must be borne by the beneficiaries.

14. MPPTCL has further submitted that the present petition does not warrant exercise of power by the Commission under Regulation 12 and 13 of the 2004 Tariff Regulations. The petitioner has not made any prayer for exercise of power under Regulation 12 and 13 of the 2004 Tariff Regulations by the Commission. It appears that this objection has been raised by the petitioner inadvertently.

15. As regards MPPTCL's objection that the Tariff Regulations are sacrosanct and its sanctity should be maintained and it cannot be reopened to consider the actual cost, we are of the view that the tariff norms have been specified after extensive consultations with the stakeholders and in keeping in view the provisions of the Act, National Electricity Policy and Tariff Policy and its sanctity should be maintained. Normally, no deviation in the tariff norms should be allowed. However, when a particular major expenditure has not been factored while arriving at the norms, a 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 transmission licensee. 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 needs to be considered over and above the norms specified in the 2004 Tariff Regulations.

16. In view of the above discussion, the objections of the respondents to allow the impact of pay and wage revision to be passed on through tariff 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 with due prudence so that the petitioner is not deprived of its legitimate dues while ensuring that it does not result in a tariff shock to the beneficiaries.

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 decide the claim of the petitioner in the light of our decision in case of NTPC as extracted above. Accordingly, we direct that the petitioner shall be entitled to recover the following from the beneficiaries on account of pay and wage revision of its employees with effect from 1.1.2007:

- (a) Actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 on account of pay and 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) No interest on the arrears shall be charged from the beneficiaries keeping in view the interest of the consumers.

(c) The arrears shall be recovered from the beneficiaries in twelve equal monthly instalments during the year 2013-14 in addition to the O&M charges in accordance with Regulation 33 of the 2009 Tariff Regulations.

**Sharing of charges:**

19. Since the additional impact of wage revision pertains to the period prior to coming into force of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010, the arrears shall be shared in proportion to their shares in the central generating capacity allocation including allocation from unallocated portion from the central generating stations.

20. This order disposes of Petition No. 30/MP/2013.

sd/-  
(M. Deena Dayalan)  
Member

sd/-  
(V.S. Verma)  
Member

