

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 86/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri V.S Verma, Member

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Date of Hearing: 12.11.2013

Date of Order : 14.02.2014

In the matter of

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.

And

In the matter of

THDC India Limited
Pragatipuram, Bypass Road,
Rishikesh- 249201 (Uttarakhand)

...Petitioner

Vs

1. Chairman and Managing Director,
Punjab State power Corporation Limited,
The Mall,
Patiala-147001 (Punjab)
2. Chairman,
Haryana Power Utilities
Shakti Bhawan, Sector-6,
Panchkula- 134109 (Haryana)
3. Chairman & Managing Director,
Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14 Ashok Marg,



- Lucknow- 226001 (UP)
4. Chairman & Managing Director,
Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi- 110002
 5. Chief Executive Officer,
BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi- 110019
 6. Chief Executive Officer,
BSES Yamuna Power Limited,
3rd Floor, Shakti Kiran Building,
New Delhi- 110092
 7. Chief Executive Officer,
TATA Power Delhi Distribution Limited,
Hudson Lines, Kingsway Camp,
Delhi- 110009
 8. Engineering Deptt.,
Chandigarh Administration,
1st Floor, UT Seretariat,
Sector 9-D, Chandigarh- 160009
 9. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun- 248001
 10. HPSEB Limited,
Vidyut Bhawan, Shimla-171004
 11. Jaipur Vidyut Vitran Nigam Limited,
Ajmer Vidyut Vitran Nigam Limited,
Jodhpur Vidyut Vitran Nigam Limited,
Vidyut Bhawan,
Janpth, Jyotinagar,
Jaipur- 302005
 12. Power Development Department
Govt. of J&K ,
Civil Secretariat,
Jammu- 180001

.....Respondents



Following were present:

1. Shri M.G. Ramachandran, Advocate, THDCIL
2. Shri J.K. Hatwal, THDCIL
3. Shri Sarosh Majid Siddiqi, THDCIL
4. Shri Manoj Kumar Tyagi, THDCIL
5. Shri R.B. Sharma, Advocate, BRPL
6. Shri Padamjit Singh, PSPCL
7. Shri T.P.S. Bawa, PSPCL

ORDER

The petitioner, THDC India Limited (THDCIL) has filed this petition for reimbursement of 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 and Central Industrial Security Force (CISF) deployed at Tehri Hydro Electric Power Project Stage-I (4X250 MW) (generating station) from 22.9.2006 (COD of 1st unit) under Regulations 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as “the 2004 Tariff Regulations”).

2. The petitioner has submitted that the Commission vide order dated 16.4.2013 in Petition No. 250/2010 has approved the tariff of the generating station for the period from 22.9.2006 to 31.3.2009. The O&M expenses allowed in the said order were based on the Regulation 38 (iv) (c) of the 2004 Tariff Regulations. The petitioner has further submitted that the Commission notified the 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, O & M norms which included the employees



cost besides repair and maintenance, administrative and general expenses were specified in Regulation 38 (iv) (c). Regulation 38 (iv) (c) of the 2004 Tariff Regulations provides for O & M expenses to be allowed as part of the Annual Fixed Charges as under:

“38 (iv) (c). In case of the hydro electric generating stations declared under commercial operation on or after 1.4.2004, the base operation and maintenance expenses shall be fixed at 1.5 % of the actual capital cost as admitted by the Commission in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years”.

3. The petitioner has submitted that while providing for O&M norms for the period 2004-09, the Commission had considered O & M expenses for the hydro electric generating station declared under commercial operation on or after 1.4.2004, in a manner that the base O & M expenses shall be fixed at 1.5% of the actual capital cost as admitted by the Commission, in a year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years. The petitioner has further submitted that the Commission, however, did not have the occasion to consider the increase in the salary and wage revision due from 1.1.2006/1.1.2007. According to the petitioner, the expected increased CISF cost and employees cost with effect from 1.1.2006 and 1.1.2007 respectively due to revision in the salary and wages were to be taken into account upon such revision was given effect to.

4. The petitioner has submitted that the Commission in similar petitions filed by NTPC Ltd, Power Grid Corporation of India Limited and NHPC Limited has allowed additional O & M expenses due to increase in the employees cost from 1.1.2007 and CISF deployed at their generating stations from 1.1.2006. Accordingly, the petitioner

has sought reimbursement of actual expenditure on wage revision and salary revision by exercising power under Regulations 12 and 13 of the 2004 Tariff Regulations.

5. The petitioner has submitted that the Department of Public Enterprise (DPE) has issued Office Memorandum No. 2(70)/08-DPE (WC)-GL-XVI/08 dated 26.11.2008, 9.2.2009 and 2.4.2009 for revision of the pay with effect from 1.1.2007 for Board level executives, below Board level executives and non-unionised supervisors in the Central Public Centre Enterprises respectively. The petitioner has submitted that additional expenditure of ` 27.69 crore and ` 1.18 crore has been incurred on account of pay revision of employees and the personnel of CISF deployed at the power station consequent to the implementation of recommendations of the Sixth Pay Commission report. The petitioner has submitted that the justification for consideration of increased salary and wages effective from 1.1.2007 has been fully factored and given effect to while determining the O & M expenses for the control period 2009-14 in the 2009 Tariff Regulations.

6. The petitioner has submitted that the additional expenditure incurred during the financial years 2006-07, 2007-08 and 2008-09 on account of the above mentioned wage revisions in respect of the employees of generating station and CISF are as under:

(` in lakh)

Year	Amount of arrears paid to CISF	Amount of arrears paid to employee
2006-07	19.00 (22.9.2006 to 30.3.2007)	364.31 (1.1.2007 to 31.3.2007)
2007-08	44.19	1547.17
2008-09	55.24	857.99
Total	118.43	2769.47

7. Accordingly, the petitioner has made following prayers:

(a) Allow an amount of ₹ 28.879 crore incurred by the petitioner towards additional employees and CISF cost pursuant to the implementation of the 6th Pay Commission revision;

(b) Direct recovery of the amount in terms of the orders dated 12.10.2012, 5.12.2012 and 1.1.2013 of the Hon`ble Commission (Quoted in the petition); and

(c) Pass any such further order(s) as deemed fit in the facts and circumstances of the case."

8. The petitioner has submitted that the justification for consideration of increased salary and wages admissible to THDCIL is clear from the fact that the increased salary and wages effective from 1.1.2006/1.1.2007 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.

9. 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.

10. Replies to the petition have been filed by Uttar Pradesh Power Corporation Limited, BSES Yamuna Power Limited and BSES Rajdhani Power Limited. The petitioner has filed its rejoinders to the replies of the respondents.

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

(a) Uttar Pradesh Power Corporation Limited (UPPCL) in its replies dated 31.5.2013 and 7.9.2013 has requested the Commission to direct the petitioner to submit the certificate of the statutory auditors in respect of the claim for arrears of pay for the employees and CISF staff during 2006-09 and to justify the claim of ` 28.87 crore for arrears of pay for the employees and CISF against ` 77.91 crore earned as increment in O &M during 2006-09. UPPCL has further submitted that the provision of increment in O & M is to cover the contingent and unforeseen expenditure. The total provision of increment is ` 77.91 crore which should cover the contingent expenditure of ` 28.87 crore in respect of pay revision.

(b) BSES Rajdhani Power Limited (BRPL) has submitted that 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. It has been 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. BRPL has submitted that tariff consists of a number of packages and each

package needs 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. In view of the demand of this nature being raised by the petitioner, BRPL has suggested that the Commission may introduce the concept of truing up exercise and undertake yearly revision of tariff based on the audited information so that all parties are assured that the cost of tariff is reasonable. BRPL 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 and relaxation in the regulations would result in unreasonable benefits to the petitioner which may not be allowed. Relying on the judgement of the Supreme Court in Civil Appeals No.1110/2007 with 1138,1152, 1327 and 111 of 2007, it has been submitted that the Commission cannot be asked to revisit the tariff for 2004-09 when the period is already over.

(c) BSES Yamuna Power Limited (BYPL) in its reply dated 13.6.2013 has submitted that since the petitioner in the present petition has not identified any particular regulation(s) where the petitioner is encountering difficulty in giving effect to such regulation(s), the provisions of Regulations 12 and 13 of the 2004 Tariff Regulations are not applicable in the present case. The petitioner has never pointed any difficulty in implementation of 2004 Tariff Regulations. BRPL

has further submitted that necessary condition for any consideration by Central Commission for payment of 'increase in salary based on actual' would require 'deviation in norms' provided in Regulation 11 of the 2004 Tariff Regulations. 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 same is inconsistent with the 2004 Tariff Regulations which mandates determination of tariff by the Commissions on normative basis. The principal that 'the tariff is a composite package and any element cannot be seen as isolation' is well established. Tariff determined on normative basis needs to be compared with expenditure actually incurred and individual elements cannot be seen in isolation. Relying on the judgment of the Supreme Court in Civil Appeal No. 1110 of 2007 (NTPC Ltd Vs. UPPCL), it has been submitted that the present consumers cannot be billed for power consumed by past consumers.

12. The petitioner has filed rejoinders to the replies of the respondents. The petitioner in its response to UPPCL has submitted that the amount against O & M expenses as allowed by the Commission vide order dated 16.4.2013 in Petition No. 250/2010 was in regard to the amount of O & M expenses claimed in tariff petition. However, in the claimed amount of ` 4400.89 lakh, ` 9796.79 lakh and ` 10157.15 lakh, additional cost incurred consequent to pay revision of employees and CISF staff during 2006-09 was not included which is being claimed in the present petition. Therefore, the contention of UPPCL is misplaced.

13. The petitioner in its response to BYPL has submitted that normative parameters laid down in the 2004 Tariff Regulations are not absolute and the Commission has the power under Regulation 11 to deviate from the norms subject to the limitation prescribed therein. Relying on the judgment of the Appellate Tribunal for Electricity in Appeal Nos. 42 and 43 of 2008 (Haryana Power Generation Corporation Limited Vs. Haryana Electricity Regulatory Commission), 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. The plea of adjusting normative parameters to actual is contrary to the basic tariff principles. The recommendations of the Sixth Pay Commission and the decision of the Department of Public Enterprises, Government of India was 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.

14. During the course of hearing on 12.11.2013, the representative of the Punjab State Power Corporation Limited (PSPCL) submitted that the petitioner has not clarified whether CISF has been deployed for the multipurpose project such as irrigation, power or flood control, as a whole and if so, what is the proportionate number of CISF personnel deployed on power project. The representative of PSPCL further submitted that 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. He submitted that security is a State subject and 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.

15. Learned counsel for BRPL reiterated submissions made in the reply. He submitted that 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. Learned counsel further submitted that as per para 3 of the Office memorandum of Department of Public Enterprises dated 26.1.2008, expenditure on pay revision is to be borne by the petitioner out of its own profit.

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

(a) West Bengal Electricity Regulatory Commission Vs CESC Limited [(2002) 8 SCC 715]

(b) Haryana Power Generation Corporation Limited Vs Haryana Electricity Regulatory Commission Appellate Tribunal (Judgment dated 31.7.2009 in Appeal No.42 and 43 of 2008)

(c) UP Power Corporation Limited Vs Central Electricity Regulatory Commission (Judgment dated 24.5.2011 in Appeal No.100 and 103 of 2009).

17. After hearing, learned counsels for the petitioner, BRPL and representative of PSPCL, the Commission directed the petitioner to submit the copy of the Board Resolution by which Board accorded its approval for implementation of wage revision. The petitioner was also directed to submit 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.

18. The petitioner vide its affidavit dated 6.12.2013 has submitted the copy of Board Resolution for implementation of Revised pay scales w.e.f 1.1.2007. With regard to para 3 of the Office memorandum of Department of Public Enterprises dated 26.1.2008, the petitioner has clarified that in the case of regulated entities, namely THDCIL, NTPC, NHPC, Power Grid, NEEPCO, SJVNL etc. the regulated return or profit itself is derived through mechanics of capital cost based tariff, namely, after meeting all the legitimate cost and expenses, the regulated entities should earn a return of specified percentage (post tax). Accordingly, the issue of regulated entities earning profit based on the market conditions does not apply. Para 3 of the Pay Commission recommendations is in relation to those entities whose revenues are dependent on the market conditions and not dependent on the regulated tariff which deals with affordability and reduction in the profit of 20%.

19. 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 paragraph:

(a) Maintainability of the petition under Regulations 12 and 13 of 2004 Tariff

Regulations;

(b) Tariff is a package and its reasonability is required to be examined in its totality;

(c) Burdening present consumers for the past dues; and

(d) Miscellaneous issues.

Maintainability

20. The petitioner has filed the present petition 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.”

21. The petitioner has submitted that the recommendations of the Sixth Pay Commission and the decision of the Department of Public Enterprises, Government of India were implemented after expiry 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, THDCIL has sought reimbursement of actual expenditure on wage revision and salary revision by exercise of power of the Commission under Regulations 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 Regulations 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.

22. 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 1998-99 to 2002-03 for hydro stations, 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:

“175. We take note of the apprehension of the hydro power utilities that operation and maintenance cost of a hydro power generating station is site specific and any two hydro power generating stations of same capacity may not have same operation and maintenance cost. Apart from this, remote location of the hydro power generating stations together with siltation problems encountered by most of them are subject to higher operation and maintenance cost. Thus, normative operation and maintenance expenses as proposed in the draft regulations may not be adequate to maintain the operation and maintenance quality and may affect adversely the performance of hydro power generating stations. We have, therefore, decided that operation and maintenance expenses of hydro power generating stations shall be worked out in the following manner:

(a) The operation and maintenance expenses including insurance for the existing generating stations which have been in operation for 5 years or more in the base year of 2003-04 shall be derived on the basis of actual operation and maintenance expenses for the years 1998-99 to 2002-03, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, after prudence check by the Commission.

(b) The average of actual operation and maintenance expenses for the years 1998-99 to 2002-03 considered as operation and maintenance expenses for the year 2000-01 shall be escalated at the rate of 4 percent per annum to arrive at the operation and maintenance expenses for the base year 2003-04.

(c) The operation and maintenance expenses for the base year 2003- 04 shall be escalated further at the rate of 4 percent per annum to arrive at permissible operation and maintenance expenses for the relevant year.

(d) In case of new hydro power generating stations, which have not been in existence for a period of five years, the operation and maintenance expenses shall be fixed at 1.5 per cent of the capital cost as admitted by the Commission in the year of commissioning and shall be escalated at the rate of 4 percent per annum from the subsequent year to arrive at the operation and maintenance expenses for the base year 2003-04. The base operation and maintenance expenses shall be further escalated at the rate of 4 percent per annum to arrive at permissible operation and maintenance expenses for the relevant year.

176. For the generating stations commissioned during the tariff period (2004-05 to 2008-09), the base operation and maintenance expenses shall be fixed at 1.5 percent of the actual capital cost as admitted by the Commission in the year of commissioning and shall be subject to an annual escalation of 4 percent per annum for the subsequent years.”

23. It is evident from the above that the pay and wage revision with effect from 1.1.2006/1.1.2007 was never taken into account while fixing the norms for the hydro generating stations 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 THDCIL 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 security forces and w.e.f. 1.1.2007 in respect of the employees of THDCIL. 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

24. The respondent BRPL has argued that since the tariff is a complete package, its reasonability is required to be examined in its totality. The petitioner has rebutted the contention of BRPL.

25. 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.”

26. We dispose of the objection of respondent on the ground of tariff being a package in the light of the above observations.

Burdening the present consumers for the past dues

27. The respondents have submitted that the expenditure on wage and pay revision pertain to the period 22.9.2006 to 31.3.2009 and 1.1.2007 to 31.3.2009 respectively. Since, the claim at this stage is not justified and the Commission cannot be requested to revisit the tariff. BRPL has submitted that in view of the judgment of the Supreme Court dated 3.3.2009 in Civil Appeal No.1110 of 2007 and other related appeals, the claim is permissible only when the tariff is in force and not afterwards and accordingly, the claim of the petitioner could be considered by the Commission if the same was brought during the tariff period 2004-09.

28. We have considered the objections of the respondents. Though the petitioner has not approached the Commission during 2004-09 period for its claim due to the impact of pay and wage revision, in our view the petitioner's claim in the present petition cannot be negated on that ground. 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.

29. 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.

Miscellaneous issues

30. PSPCL has submitted that security is a State subject and therefore, the expenditure on deployment of CISF should be borne by the State Govt., especially when the State Govt. is getting 12% free power. In this connection, it is clarified that since the generating station is a Central Industrial Establishment, CISF has been deployed in order to secure the plant and equipment of the generating station as per the policy of the Central Govt. Moreover, allocation of 12% free power for the hydro generating station is governed by the policy of the Central Govt. to compensate the home State for the distress like submergence, dislocation of population, etc. is caused due to setting up of the project at the specific site. Allocation of free power to the home State cannot be a ground for denial of the O & M expenses on account of deployment of CISF personnel which is essential for maintenance of safety and security of the generating station. As regards the PSPCL's submission that Tehri being a multipurpose project, CISF has been deployed for irrigation and flood control in addition to the generation of power, we direct the petitioner to ensure that the expenditure on CISF deployed only in the power component of the project are billed to the beneficiaries.

31. Now, we consider the claim of THDCIL on account of pay revision/wage revision. A comparative statement showing the O & M expenditure allowed in Petition No. 250/2010 and actual O & M incurred during the period 2006-07 to 2008-09 is as under:

(` in lakh)

Details		22.9.2006 to 31.3.2007	2007-08	2008-09	Total
Total O&M allowed (Petition No. 250/2010)	(a)	2283.00	9045.00	10064.00	21392.00
Actual O & M as per books less provisions made in the year 2008-09	(b)	4684.90	17151.22	14420.35 (15621.35 -1201)	36256.47
Certified Wage revision arrears claimed which are not included in above actual O&M	(c)	383.31	1591.36	913.23	2887.90
Actual O&M after wage revision	(d) =(b)+(c)	5068.21	18742.58	15333.58	39144.37
Under recovery	(e)=(d)-(a)	2785.21	9697.58	5269.58	17752.37

It is noted that actual O & M expenses after wage revision is more by ` 17752.57 lakh in comparison to the O & M expenditure allowed for the period 2006-09.

32. For new hydro generating stations, O & M expenses allowed in 2004 Tariff Regulations were based on 1.5% of capital cost which has resulted in under recovery of O & M expenses in a number of hydro stations commissioned during 2004-09. Considering the same, the Commission revised the O & M expenses for new hydro generating stations to 2% of capital cost after excluding R & R cost for the tariff period 2009-14.

33. UPPCL has submitted that the increment provided in the O & M expenses is ₹ 77.91 crore and the same shall cover the wage revision impact. It is clarified that UPPCL is comparing part year O&M expenditure of three units i.e ₹ 2283.00 lakh (48 days for one unit, 142 days for two units and two days for three units) allowed during year 2006-07 with the annual O&M expenditure of ₹ 10064.00 lakh for four units allowed in tariff during the year 2008-09. Therefore, the incremental value as derived by UPPCL is not correct. In fact, an annual increment of only 4% has been allowed in O&M expenses to cover the annual inflation which does not cover the wage revision during the tariff period.

34. The case as made out by the petitioner is similar to the case of impact of wage revision on the various thermal and hydro power stations of NTPC, NHPC and SJVNL. The Commission in its order dated 12.10.2012 in Petition No. 35/MP/2011 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."

35. The claim of the petitioner is squarely covered in terms of our decision in the case of NTPC Ltd as extracted as above. Accordingly, we direct that for the period from 1.1.2007 to 31.3.2009, the recovery of actual increase in employee cost on account of wage revision is 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 CISF employees is concerned, the actual increase in the salary of the security personnel deployed for power component is allowed provided that the liability to pay their salary rests with the petitioner.

36. 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 THDCIL and salary of CISF employees attached to the generating station as additional O & M charges. However, the arrears shall be paid by the beneficiaries in twelve equal monthly instalments starting from March, 2014 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.

37. The petition is disposed of in terms of the above.

Sd/-

sd/-

sd/-

sd/-

(A.K.Singhal)
Member

(M Deena Dayalan)
Member

(V.S.Verma)
Member

(Gireesh B.Pradhan)
Chairperson