

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Petition No. : 101/2010

Coram: Dr. Pramod Deo, Chairperson
Shri S Jayaraman, Member
Shri V.S.Verma, Member
Shri M DeenDayalan

Petitioner Powergrid Corporation of India Ltd

Respondents: BSEB and 52 Others

Date of hearing: 15.6.2010

Subject: Miscellaneous petition under Regulations 12, “Power to remove difficulties” & Regulations 13 “Power to Relax” of the CERC (Terms and Conditions of Tariff) Regulations, 2004, on account of additional cost incurred owing to revision of scale of pay for Executives from 01.01.2007 to 31.03.2009 consequent to implementation of the revision w.e.f. 01.01.2007 as detailed in the petition Grid disturbance in Northern Region on 02.01.2010.

Parties present:

1. Shri M. G. Ramachandran, Advocate, PGCIL
2. Shri S.Sen, Power Grid
3. Shri W. K. Tyagi, Power Grid
4. Shri M. M. Mondal, Power Grid
5. Shri B. V. R. Mohan, Power Grid
6. Shri Rajiv Gupta, Power Grid
7. Shri Monish Garg, UPPCL
8. Shri R. B. Sharma, Advocate, BSEB

This Petition has been filed by Powergrid Corporation of India Ltd with the prayer to allow it to bill and recover additional O & M component due to increase in employee cost with respect to Board level and below Board level Executives as an additional component under O & M expense from the respondents as a onetime payment in proportion to their Annual Transmission Charges in respective years.

2. The learned counsel for the petitioner submitted that consequent to revision of pay in Central Public Sector Enterprises (CPSEs) for Board level and below Board level executives w.e.f. 1.1.2007, the component of employee cost incident on the petitioner increased for the years 2006-07, 2007-08 and 2008-09 during the tariff period 2004-09. The impact of this revision of employee cost has not been factored in / considered while arriving at the norms of O&M expenses in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter 2004 regulations). The learned counsel further submitted that the petitioner in its various tariff petitions for the tariff period 2004-09 has been raising this issue and the Commission in the respective tariff orders has observed that the petitioner may approach for relief in this regard at an appropriate stage in accordance with law. Accordingly the petitioner has approached the Commission for reimbursement of additional expenditure on employee cost. The learned counsel submitted that the expenses claimed by the petitioner on account of revision in pay are legitimate and should be allowed as one time expenditure to be billed to the constituents. Relying on the judgement of the Supreme Court in UPPCL v NTPC Ltd and others {(2009)6 SCC 235}, the learned counsel submitted that the Commission has the plenary power and inherent jurisdiction to revisit the tariff orders and allow these expenses as claimed by the petitioner. The learned counsel further submitted that this is a justifiable case where the originally considered O & M cost did not have the element of revision of employee cost which came into effect from 1.1.2007 and needs to be factored in. The learned counsel further submitted that as the payment on account of revision of senior employees has affected the cash flow, the Petitioner is asking for a one time payment. If the Commission desires to defer the realization, then the carrying cost may be allowed.

3. The representative for Haryana Power Purchase Committee (HPPC) submitted that the petitioner be directed to submit the following information before the matter is taken up:

- a) No. of persons employed as on 01.04.2004, 01.04.2005, 01.04.2006, 01.04.2007, 01.04.2008 and 01.04.2009 and corresponding data of transmission lines length and No. of bays maintained.
- b) The No. of persons looking after the works other the O&M activities.
- c) Actual expenditure incurred towards salary on yearly basis for 2008-09 and amount billed as per tariff allowed.

- d) Saving on salary account due to saving in man power in O&M on account of addition of new transmission elements during the period 2004-09.

4. The counsel for BSEB submitted that the “Power to Remove Difficulty” under Regulation 12 of the 2004 regulations cannot be invoked in this case as petitioner has not mentioned the difficulty encountered for giving effect to the regulations regarding O & M expenses. Similarly, the learned counsel argued, “Power to Relax” under Regulation 13 cannot be invoked in this case as it will disturb the delicate balance of consumer interests and reasonable recovery of cost as envisaged in section 61 of the Electricity Act, 2003 and ensured by the Commission through 2004 regulations. Power to relax can be exercised if the entire tariff is unreasonable. The learned counsel further emphasized that the O & M expenses under the 2004 regulations is norm based and is not on actuals. Any additional expenses in one component cannot be allowed and the whole spectrum of cost should be looked into, while considering the comparison of actual cost and the recovery based on norms.

5. The representative of UPPCL submitted that the basis of determination of O&M expenses in 2004 regulations is that for the period 2004-05, modal values of O&M/km for line and O&M /bay was arrived at by taking actual values of O & M for the period 1998-99 to 2002-03. This was sub-divided into two parts- 33% as O & M of line and 67% as O&M of bays. The modal values of these parameters were escalated @ 4% to arrive at the figures of O & M/km and O&M/bay for the financial year 2004-05 to 2008-09. He also submitted that as admitted by the petitioner in its response to Petition No.67/2003, the employee cost in O & M is about 60%. The annual increment in salary is about 3%. The representative further submitted that the actual increase in wage revision is Rs.89.33 crores and this expenditure pertains to Board level and below Board level which is in the nature of fixed cost. He submitted that analysis of the above facts showed that the recovery was on variable cost basis per km and per bay as per the regulations whereas the increase in expenditures is in the absolute and fixed cost basis. He also submitted that the Petitioner has not indicated in the petition what is the actual increase per km and per bay on account of pay revision. During the period, the length of lines and number of bays have also increased. The representative of UPPCL submitted that there should be a

comparison between norms and actual expenditure on line basis and bay basis, before the increase in employee cost is allowed.

6. The counsel for petitioner in his rejoinder submitted that the main issue raised by the respondents is comparison between norms and actual expenditure. Learned counsel further submitted that the respondents have proceeded on the basis which is fundamentally against the principle of electricity laws and the practice allowed by the Commission. The learned counsel further submitted that as provided in section 61 of the Act, the Commission has framed the 2004 regulations for determination of tariff on the basis of norms. Once norms are fixed, there is no question of going back to the actual. In support of this contention, the learned counsel relied upon para 34 of the judgement of the Appellate Tribunal dated 31.7.2009 in Appeal Nos. 42 and 43 of 2008. The learned counsel also submitted that the 4% escalation in norms in 2004 regulations had been considered for normal increase in employee salary and did not account for the impact of revision of pay on the basis of Justice Jagannath Rao Committee recommendations. The learned counsel clarified that the petitioner has approached the Commission for consideration to factor in the same percentage of increase in employee cost as a result of revision of pay in the norms of the 2004 regulations. The learned counsel submitted that the impact of pay revision has been factored in the tariff regulations for 2009-14 period and there is no reason as to why the norms in 2004 regulations should not be adjusted to factor in the impact of pay revision to arrive at a fair settlement. On a query by the Commission whether the issue of revision of pay had been mentioned in the norms of 2004-09, the counsel for the petitioner clarified that there was no mention of these issues because the report for pay revision had not come at that time. On the query by the Commission about the consideration of actual expenses for only one component while the tariff has many components, the counsel for petitioner submitted that since the basis for norms of other components in the 2004 regulations has not changed, other components should not be considered while allowing the actual expenses in one component.

7. The Commission has directed the petitioner to submit through affidavit the details of expenditure with regard to O&M expenses on the format enclosed by 10.7.2010 after serving copies on the respondents. Subject to above, the order in the petition is reserved.

sd/-
(T Rout)
Jt. Chief(Law)

Information to be Submitted by PGCIL

Table-1

| Sl. No. | Particulars | Annual Transmission Charges | | | O & M charges | | |
|---------|------------------------------|--------------------------------------|---------|---------|---|---------|---------|
| | | 2006-07 (01.01.07 to 31.03.07) | 2007-08 | 2008-09 | 2006-07 (01.01.07 to 31.03.07) | 2007-08 | 2008-09 |
| A | REGION | | | | | | |
| 1 | Asset1 | | | | | | |
| 2 | Asset2 | | | | | | |
| 3 | Asset3 | | | | | | |
| 4 | Asset4 | | | | | | |
| 5 | | | | | | | |
| | SUB TOTAL(A) | | | | | | |
| B | REGION | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | SUB TOTAL(B) | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | TOTAL (A+B+C+...) | | | | | | |

Note: Details pertaining to assets added during respective year may also be included in the corresponding year column.

Information to be Submitted by PGCIL

Table-2

| Sl. No. | Particulars | 2006-07 (01.01.07 to 31.03.07) | 2007-08 | 2008-09 | Particulars | 2006-07 (01.01.07 to 31.03.07) | 2007-08 | 2008-09 | Particulars | 2006-07 (01.01.07 to 31.03.07) | 2007-08 | 2008-09 |
|---------|--|---|---------|---------|---|---|---------|---------|---|---|---------|---------|
| 1 | Total No. of Employees during the year | | | | Employee Cost As per Balace sheet as on.. | | | | Arrears received in respect of Pay revision | | | |
| 2 | Less: Employees for: | | | | Less: Employee Cost attributable to: | | | | Less: arrears attributable to: | | | |
| 3 | APDRP | | | | APDRP | | | | APDRP | | | |
| 4 | RLDC | | | | RLDC | | | | RLDC | | | |
| 5 | Telecom | | | | Telecom | | | | Telecom | | | |
| 6 | Consultancy | | | | Consultancy | | | | Consultancy | | | |
| 7 | Other(Pl. specify) | | | | Other(Pl. specify) | | | | Other(Pl. specify) | | | |
| 8 | Employee for core Transmission Business | | | | Employee Cost attributable to core Transmission Business | | | | Arrears received in respect of Pay revision attributable to core Transmission Business | | | |