

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 121/MP/2011

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Shri A. S. Bakshi, Member

Date of Hearing: 05.08.2014

Date of Order : 10.04.2015

In the matter of

Petition under Regulation 44 of the CERC (Terms and Conditions of tariff) Regulation, 2009 read with Regulation 111 and other related Regulations of CERC (Conduct of Business) Regulation, 1999 for recovery of additional cost incurred due to abnormal increase in water charges at NTPC stations.

And

In the matter of

NTPC Ltd.
SCOPE Complex, Lodhi Road
New Delhi-100 003

Petitioner

Vs

- 1) Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 007
- 2) Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur- 302 005
- 3) Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bhata,
Jaipur Road,
Ajmer, Rajasthan
- 4) Jodhpur Vidyut Vitran Nigam Ltd.
400 kV GSS Building Ajmer Road,
Heerapaura,
Jaipur, Rajasthan



- 5) North Delhi Power Limited
Power Trading & Load Despatch Group,
Cennet Building, Adjacent to 66/11 kV
Pitampura-3, Grid Building,
Pitampura, New Delhi-110034
- 6) BSES Rajdhani Power Ltd.
BSE Bhawan, 2nd Floor,
B-Block, Behind Nehru Place Bus Terminal,
Nehru Place, New Delhi
- 7) BSES Yamuna Power Ltd.
2nd Floor, B Block,
Shakti Kiran Building,
Near Karkardooma Court, New Delhi
- 8) Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange,
Room No. 446, Top Floor,
Sector-6, Panchkula- 134 109
- 9) Punjab State Power Corporation Ltd.
The Mall, Patiala-147001
- 10) Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla
- 11) Power Development Dept.
Govt. of Jammu & Kashmir,
SLDC Building, 1st Floor,
Gladani Power House, Narwal, Jammu
- 12) Power Development
UT Chandigarh, Sector 9-D,
UT Chandigarh-160019
- 13) Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Near Balli Wala Chowk, Dehradun
- 14) Madhya Pradesh Power Transmission Company Ltd.
MPPTCL, Nayagaon,
Jabalpur-482008

- 15) Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra (East),
Mumbai-400051
- 16) Gujarat Energy Transmission Corporation Ltd.
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara-390007
- 17) Chhattisgarh State Power Transmission Co. Ltd.
Danganiya, Raipur-492013
- 18) Goa Electricity Department
Government of Goa,
Vidyut Bhawan, 3rd Floor,
Panaji, Goa
- 19) Electricity Department
Administration of Daman & Diu
Moti Daman, Daman & Diu
- 20) Electricity Department
Administration of Dadra Nagar Haveli,
Silvassa
- 21) West Bengal State Electricity Board
Vidyut Bhawan, Bidhan Hagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
- 22) Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800021
- 23) Jharkhand State Electricity Board
In front of Main Secretariat,
Doranda, Ranchi-834002
- 24) Gridco Ltd.,
Janpath, Bhubaneswar-751 022
- 25) Power Department,
Govt. of Sikkim, Kaji Road,
Gangtok-737101
- 26) Eastern Power Distribution Company Ltd.
P&T Colony, Seethmmadhara,

Vishakapatnam, Andhra Pradesh

- 27) Southern Power Distribution Company Ltd.
Srinivassa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta,
Tirupati- 517501
- 28) Northern Power Distribution Company Ltd.
Opp. NIT Petrol Pump, Chaitanapuri,
Kaize Warangal-506004
- 29) Central Power Distribution Company Ltd.
Mint Compound, Hyderabad-500063
- 30) Electricity Department,
Govt. of Pondicherry,
Pondicherry – 605 001.
- 31) Tamil Nadu Generation and Distribution Corporation Ltd.
NPKRR Maaligai,
144,Anna Salai,
Chennai-600 002
- 32) Kerala State Electricity Board
Vaidyuthi Bhavanam,
Pattom,
Trivandrum – 695 004, Kerala.
- 33) Bangalore Electricity Supply Company
K.R. Circle, Bangalore-506001
- 34) Mangalore Electricity Supply Company
Paradigm Plaza, AB Shetty Circle,
Mangalore-575001
- 35) Chamundeshwari Electricity Supply Corporation
#927, L J Avenue, GF,
New Kantharaj Urs Road,
Saraswatipuram, Mysore-570009
- 36) Gulbarga Electricity Supply Corporation
Station Road, Gulbarga, Karnataka
- 37) Hubli Electricity Supply Company
Navanagar, PB Road,
Hubli, Karnataka

38) Assam State Electricity Board
Bijulee Bhawan, Paltan Bazar,
Guwahati- 781 001

.....Respondents

Parties Present:

Shri M.G.Ramachandran, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri Ajay Dua, NTPC
Shri Nishant Gupta, NTPC
Shri Rajiv Kumar, NTPC
Shri R.B.Sharma, Advocate, BRPL & JSEB
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Anurag Naik, MPPMCL

ORDER

The petitioner, NTPC Limited has filed this petition under Regulation 44 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (2009 Tariff Regulations) to seek recovery of additional cost incurred due to increase in water charges for its generating stations in Eastern, Western and Northern Regions in relaxation of Operation and Maintenance Expenses (O&M Expenses) norms.

The petitioner has made the following prayers:

“(a) Allow the petitioner to bill and recover the additional cost incurred in respect of the increase in water charges over and above as allowed for O & M expenditure from the respondents as an additional component under O&M Expenses; and

(b) Pass any other order in this regard as the Hon`ble Commission may find appropriate in the circumstances mentioned above”.

2. By virtue of powers under Section 61 of the Electricity Act, 2003 (the Act), the Commission notified the terms and conditions for determination of tariff for the period 1.4.2009 to 31.3.2014 under Regulation 19 of the 2009 Tariff Regulations, which provides for recovery of O&M Expenses on normative basis. The normative O&M

Expenses cover expenditure incurred on the employees including payment of gratuity, CPF, medical expenses, education allowances, repair and maintenance expenses including stores and consumables, water charges, administrative expenses, consumption of capital spares not part of capital cost, security expenses, etc., at the generating stations, corporate office expenses apportioned to each generating station, but do not include the expenditure on fuel. O&M Expense norms specified based on escalation factor of 5.72% per annum under the 2009 Tariff Regulations are as under:

(₹ in lakh/MW)

| Year | 200/210/2 50 MW sets* | 300/330/3 50 MW sets* | 500 MW sets* | 600 MW sets and above* | Talcher TPS | Tanda TPS | Badarpur TPS |
|---------|-----------------------------|-----------------------------|-----------------|------------------------------|----------------|--------------|-----------------|
| 2009-10 | 18.20 | 16.00 | 13.00 | 11.70 | 32.75 | 26.25 | 31.35 |
| 2010-11 | 19.24 | 16.92 | 13.74 | 12.37 | 34.62 | 27.75 | 32.25 |
| 2011-12 | 20.34 | 17.88 | 14.53 | 13.08 | 36.60 | 29.34 | 33.17 |
| 2012-13 | 21.51 | 18.91 | 15.36 | 13.82 | 38.70 | 31.02 | 34.12 |
| 2013-14 | 22.74 | 19.99 | 16.24 | 14.62 | 40.91 | 32.79 | 35.09 |

* Do not include Talcher TPS, Tanda TPS and Badarpur TPS.

3. The petitioner has submitted that subsequent to the 2009 Tariff Regulations notified and effective from 1.4.2009, the State Governments of Odisha, Chhattisgarh, and Madhya Pradesh have increased water charges, substantially ranging from 94% to 718% and that the petitioner does not get compensated by the annual escalation of 5.72% allowed under the 2009 Tariff Regulations. The details of the water charges applicable in respect of the generating stations located in the above three States, as submitted by the petitioner, are given hereunder:

| Station | Date of Increase | Existing Water Charges | | Revised Water Charges | | Increase (%) | Annual Impact (₹ in crore) |
|---------|------------------|--------------------------|---------------------|--------------------------|---------------------|--------------|----------------------------|
| | | Rate (₹/M ³) | Annual (₹ in crore) | Rate (₹/M ³) | Annual (₹ in crore) | | |
| Korba | 1.5.2010 | 3.60 | 22.32 | 7.00 | 43.40 | 94 | 21.08 |

| | | | | | | | |
|------------------|----------------------|------|-------|------|-------|-----|-------|
| STPS I & II | | | | | | | |
| Sipat STPS II | 1.5.2010 | 3.60 | 12.96 | 7.00 | 25.20 | 94 | 12.24 |
| Talcher STPS I | 1.10.2010 | 0.55 | 1.96 | 4.50 | 16.07 | 718 | 14.11 |
| Talcher STPS II | 1.10.2010 | 0.55 | 3.93 | 4.50 | 32.14 | 718 | 28.21 |
| Talcher TPS | 1.10.2010 | 0.55 | 0.77 | 4.50 | 6.54 | 718 | 5.77 |
| Vindhyachal STPS | 1.1.2010 1.1.2011 | 2.00 | 28.56 | 4.50 | 64.26 | 125 | 35.70 |

4. The petitioner through the present petition seeks to recover the additional cost incurred/to be incurred on account of increase in water charges over and above those allowed under O&M Expenses norms.

5. During pendency of the present petition, the petitioner has placed on record a copy of the Department of Irrigation, Government of Uttar Pradesh Office Memorandum dated 15.7.2011 ordering 4 times increase in Royalty Rate and Water Tax. Through another affidavit, the petitioner informed that in the petition it had calculated the impact of increase in water charges by the State Government of Odisha from ₹0.50/M³ to ₹4.50/M³. However, subsequently by letter dated 29.8.2012, Irrigation Department, Government of Odisha informed the petitioner that it would be charged for water consumption at the rate of ₹5.60/M³.

6. The matter was heard after notice to the respondents. Reply to the petition has been filed by North Delhi Power Ltd. (NDPL), Uttar Pradesh Power Corporation Ltd., Jharkhand State Electricity Board (JSEB), Bihar State Electricity Board (BSEB), BSES Rajdhani Ltd (BRPL), GRIDCO, MP Power Management Company Ltd., Chhattisgarh State Power Distribution Co. Ltd. and Tamil Nadu Generation and Distribution Corporation Ltd.

7. The respondents, North Delhi Power Ltd, BSES Rajdhani Ltd, Bihar State Electricity Board and Uttar Pradesh Power Corporation (UPPCL) in their preliminary replies have opposed the petitioner's prayer. North Delhi Power Ltd has stated that the tariff is determined as a composite package and as such individual elements of tariff cannot be revised. BSES Rajdhani Ltd and Bihar State Electricity Board in their similarly worded replies have stated that the Commission while fixing O&M norms for the period 2009-14 has allowed substantial increase over O&M expenses norms for the period 2004-09 and as such there is no scope for allowing recovery of additional water charges, particularly when these charges are miniscule proportion of the total O&M Expenses allowed. It has further submitted that allowing additional water charges in exercise of 'Power to Relax' under Regulation 44 of the 2009 Tariff Regulations would disturb the delicate balance between safeguarding of the consumer's interest and at the same time ensuring recovery of cost in a reasonable manner mandated under clause (d) of Section 61 of the Electricity Act, 2003. UPPCL has taken a preliminary objection in regard to maintainability of the petition under Regulation 44 of the 2009 Tariff Regulations since, according to it the petition could be filed only under Regulation 38 (Deviation from norms) of these regulations. UPPCL has pointed out that the Commission had earlier disallowed the petitioner's request for revision of water charges for the years 1997-98 to 2000-01 and the Commission's decision was upheld by the Appellate Tribunal in its judgment dated 3.6.2010 in the appeals filed by the petitioner. UPPCL has further submitted that the petitioner has earned profit much beyond the Return on Equity allowed by the Commission and has not suffered any loss on account of levy of additional water charges. Lastly, UPPCL has submitted that the petitioner has

recovered/shall recover excess amount of ₹516,026/cusec per year over the period 1999-2014 and as such is not entitled to the relief claimed.

8. GRIDCO, in its reply dated 3.4.2014, has submitted that the increase in the O & M expenses allowed by the Commission during the tariff period 2009-14 has been quite substantial in comparison to the tariff period 2004-09 in actual terms and there is hardly any case for such an increase. GRIDCO has further submitted that tariff is a complete package, its reasonability is required to be examined in its totality and hence the issue related to increase in water charges is liable to be rejected. GRIDCO has further submitted that since the petitioner does not believe in the sanctity of the norms, the Commission may introduce the concept of truing up and undertake yearly revision of tariff based on the audited information so that all parties are assured that the cost of electricity is reasonable.

9. TANGEDCO in its replies dated 6.5.2014 and 7.7.2014 has submitted that since water charges are part of O&M expenses, separate claim for water charges should not be allowed. TANGEDCO has submitted that once tariff order has been passed, it cannot be re-opened by filing of the petition. TANGEDCO has further submitted that claim of the petitioner for payment of increase in water charges on actual would be inconsistent with the 2009 Tariff Regulations which mandates determination of tariff by the Commission on normative basis.

10. CSPDCL in its reply dated 3.6.2014 has submitted that since water charges are part of O&M charges which are increasing every year, therefore, the petitioner is

recovering water charges on account of escalation factor and retaining the same. Accordingly, the petitioner's claim is liable to be rejected.

11. MP Power Management Company Ltd. (MPPTCL) in its reply dated 6.5.2014 has submitted that O&M expense are escalated every year. Water charges are part and parcel of O&M expense being allowed on normative basis to the petitioner. During 2004-09, there was no increase in water charges but the escalation was provided in normative O & M, wherein water is also one of the components which was retained by the petitioner. MPPMCL has submitted that the petitioner is earning huge profit on account of plant availability factor by way of incentive which should be adjusted against additional water charges.

12. UPPCL in its replies dated 5.7.2014 and 27.9.2014 has submitted that the total expenses on account of water charges of 22 generating stations of the petitioner have increase from ₹90.67 crore in 2008-09 to ₹477.73 crore in the year 2012-13. UPPCL has requested the Commission to direct the petitioner to explain the reasons for abnormal variation of water charges.

13. The petitioner has filed rejoinders to the replies of UPPCL, JSEB, BRPL, GRIDCO, MP Power Management Company Ltd., Chhattisgarh State Power Distribution Co. Ltd. and Tamil Nadu Generation and Distribution Corporation Ltd. The petitioner in its rejoinders has submitted that water charges forming part of the normative O&M expenses was held to be a package and therefore, was not interfered with. The petitioner has further submitted that the norms of O&M expenses for the period 2009-14 are based on actual O&M expenditure for the period of 2004-05 to

2007-08. Water charges increased substantially at the rate of 100-300% and it cannot be taken care of by the normative escalation rate of 5.72% in O&M expenses during 2009-14 period. Since such abnormal increase was not envisaged by the Commission or by the petitioner, therefore was not considered in the norms. The petitioner has contended that additional expenditure is for the reasons beyond its control and therefore, it should be allowed to be recovered in just and fair manner.

14. The petitioner vide order dated 22.2.2014 was directed to file the information regarding type of cooling system-open cycle or closed cycle, designed capacity for makeup water system, designed capacity for the intake system in case of open cycle system and the State Govt. notifications for levy of water charges for actual consumption/colony consumption, if any. The petitioner vide its affidavit dated 10.5.2014 has filed the said information.

15. The petitioner by letter dated 5.4.2014 was directed to file the information regarding cooling tower makeup, DM water makeup, ash disposal, service water system, potable water system, coal dust suppression system and clarifier sludge. The petitioner vide affidavit dated 30.4.2014 has filed the information called for.

16. During the course of hearing on 5.8.2014, learned counsel for the petitioner 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 and inefficient or imprudent functioning if the utility incurs more than the normative parameters. The gain or loss on account of the above efficiency or inefficiency is completely on account of the utilities. Neither the utility can

claim the loss on account of the functioning under the normative parameters nor the beneficiaries can claim adjustment on the efficiency gain of the utilities in the working of the normative parameters. Such a course of adjusting normative parameters to actual is completely contrary to the basic tariff principles. In support of its contention, learned counsel relied upon the Appellate Tribunal's judgment dated 24.5.2011 in Appeal Nos. 100, 103 of 2009. Learned counsel appearing on behalf of GRIDCO, JSEB and BRPL submitted that the profit actually earned by the petitioner is higher than the Return on Equity (ROE) allowed by the Commission. He further submitted that since the tariff is a complete package, its reasonability has to be examined in its totality. Learned counsel for TANGEDCO submitted that the Commission's tariff orders 2009-14, includes the water charges in the O&M expenses. If the petitioner was aggrieved of the O&M expenses/water charges allowed under the tariff orders for the period 1.4.2009 to 31.3.2014, it should have filed a review petition or appeal at relevant point of time.

17. We have heard learned counsel for the parties. In the light of the pleadings and the prayers in the petition, the issue for our consideration is whether the petitioner is entitled for grant of relief by invoking power under Regulation 44 of the 2009 Tariff Regulations.

18. Regulation 44 of the 2009 Tariff Regulations, extracted hereunder, empowers the Commission to relax any provisions thereof in appropriate cases:

“44. Power to Relax.- The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.”

19. It is an established principle of law that the power to relax has to be strictly construed and is to be exercised judiciously and with caution. When and only when undue hardship is caused by the application of the rules or regulations, the power to relax is to be exercised. Yet the power is exercisable in a just and equitable manner.

20. The petitioner has submitted the details of the increase in water charges as under:

(₹ in lakh)

| Sr. No | Station | Increase effective from | Existing Water Charges | Revised water charges | % Increase |
|--------|---------------|-------------------------|------------------------|-----------------------|------------|
| 1 | Korba | 1.5.2010 | 3.60 ₹/m ³ | 7.00 ₹/m ³ | 94% |
| 2 | Sipat | 1.5.2010 | 3.60 ₹/m ³ | 7.00 ₹/m ³ | 94% |
| 3 | Talchar | 1.10.2010 | 0.55 ₹/m ³ | 4.50 ₹/m ³ | 718% |
| 4 | TTPS | 1.10.2010 | 0.55 ₹/m ³ | 4.50 ₹/m ³ | 718% |
| 5 | Vindhyachal | 1.1.2010 | 2.00 ₹/Cusec | 4.50 ₹/Cusec | 125% |
| 6 | Farakka | 1.2.2012 | 5.5 /5000 ₹/CFt | 5.2 /5000 ₹/Gallon | 294% |
| 7 | Badarpur | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |
| 8 | Dadri Thermal | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |
| 9 | Auraiya | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |
| 10 | Dadri Gas | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |
| 11 | Tanda | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |
| 12 | Unchahar | 15.7.2011 | 1.5 lakh/Cusec/year | 6.0 lakh/Cusec/year | 400% |

21. The petitioner, in support of its contention, has placed on record a copy of notifications issued by Government of Madhya Pradesh, Water Resource Department dated 21.3.2006, Govt. of Uttar Pradesh, Irrigation Department dated 15.7.2011 and Ministry of Water Resources, Govt. of India. The petitioner has submitted that increase in water charges is on account of the increase in rate of water charges by the respective State Governments, not on account of increase of water consumption.

According to the petitioner, the increase of the water charges is beyond 5.72% as allowed by the Commission in 2009 Tariff Regulations.

22. The details of water charges furnished by the petitioner in para 20 of the affidavit dated 30.7.2013 in respect of the following twelve generating stations are as under:

| (₹ in lakh) | | | | | | |
|-------------|---------------------|-------------|-------------|--------------|--------------|--------------|
| S.No. | Generating stations | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 |
| 1. | Korba | 1948 | 2051 | 4265 | 6507 | 7804 |
| 2. | Sipat | 464 | 1359 | 2418 | 3833 | 9188 |
| 3. | Talcher | 264 | 373 | 1853 | 3425 | 7231 |
| 4. | TTPS | 77 | 77 | 365 | 654 | 654 |
| 5. | Vindhyachal | 1115 | 2894 | 9199 | 6709 | 13693 |
| 6. | Farakka | 26 | 25 | 27 | 153 | 904 |
| 7. | Badarpur | 73 | 73 | 73 | 683 | 581 |
| 8. | Dadri Thermal | 45 | 39 | 65 | 278 | 351 |
| 9. | Auraiya | 23 | 24 | 24 | 66 | 145 |
| 10. | Dadri Gas | 22 | 23 | 24 | 69 | 88 |
| 11. | Tanda | 63 | 61 | 62 | 185 | 244 |
| 12. | Unchahar | 111 | 112 | 161 | 346 | 359 |
| | Total | 4231 | 7111 | 18536 | 22908 | 41242 |

23. The petitioner has quantified the annual impact with regard to allocated quantity of water. The petitioner has also furnished the similar data with regard to other ten generating stations where there is no impact of water charges.

24. The respondents have vehemently argued that the O&M expenses specified are on normative basis and adjustment in the O&M expenses on account of increase in water charges ignoring savings in other components of entire tariff package is deviation of the basic tariff principle. While finalizing the tariff regulations, the Commission had taken conscious decision to include water charges as part of O&M cost on the basis of variation of historical data. In the Statement of Reason to the tariff regulations, the Commission clarified that the utilities should manage their expenses on O&M as

admissible on normative basis in accordance with the Regulations. The relevant portion of the Statement of Reasons is extracted as under:

“19.11 NTPC and NLC have pleaded to allow water charges separately as per actual as is done in case of taxes and duties as the State Governments have been frequently enhancing the water charges. The Commission is not inclined to accept that the water charges should be allowed as a pass through on the similar line as taxes and duties. O & M expenses of which water charge is a part has been specified on normative basis. There may be increase in actual expenses in some components and decrease in some other components of O&M. Therefore, the utilities should manage their expenses on O & M as admissible on normative basis in accordance with the regulations.”

Based on the submissions of NTPC and NLC, the Commission decided that utilities should manage their expenses on O&M as admissible on normative basis as per the tariff regulations. It may be noted that generating companies are expected to manage their O&M expenses within the normative level as specified in the 2009 Tariff Regulations.

25. The petitioner has relied upon the decision of the Commission dated 12.10.2012 in Petition No. 35/MP/2011 with regard to pay revision and has submitted that revision of water charges should be allowed. It is clarified that the case of wage revision is distinguishable from the case of revision of water charges. In case of wage revision which came into effect from 1.6.2006/1.7.2007, the same were not factored while making the regulations for the period 2004-09. The petitioner raised the issue of wage revision in many of its petitions. The Commission had acknowledged the impact of wage revision and had decided to deal with the case separately. The Commission in its order dated 12.10.2012 in Petition No. 35/MP/2011 and other related petitions had observed as under:

"11. We have considered the submissions of the petitioner and respondents. The judgment relied upon by the respondents pertains to the reimbursement of additional water charges on account of settlement of the pending dispute by NTPC with the State Authorities. At the time of fixation of the norms for O&M Expenses, NTPC did not claim that there would be an impact of additional water charges after settlement of pending dispute with the State Government. The Commission fixed the normative water charges based on actual expenditure of NTPC for the base year. During the control period, NTPC claimed that it had settled the dispute with State Authorities and had to pay higher water charges. Under the circumstances it was held that water charges forming part of the O&M Expenses was a package and could not be interfered with as NTPC has not been able to show that it has suffered any loss. 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. However, during the tariff period 2004-09, the petitioner had raised the issue in various tariff petitions. The Commission in its order dated 9.5.2006 in Petition No. 157/2004 relating to Singrauli STPS held as under:

"39. The petitioner has submitted that the wage revision of its employees is due w.e.f. 1.1.2007. Therefore, O&M Expenses should be subject to revision on account of revision of employee cost from that date. In the alternative, it has been prayed that the increase in employee cost due to wage revision be allowed as per actual for extra cost to be incurred consequent to wage revision. We are not expressing any view, as this issue does not arise for consideration at this stage. The petitioner may approach for a relief in this regard at an appropriate stage in accordance with law".

Accordingly, the petitioner has approached by way of the present petition for allowing the impact of the pay revision 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 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 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. In case of O & M expenses, all factors including the water charges have been taken into consideration while fixing the norms for the period 2009-14. O&M expenses allowed under the 2009 Tariff Regulations are a complete package and water charges are just one element of the package. It is possible that under-recovery of one element

may be offset against over-recovery of another element. Therefore, any one element of O&M charges cannot be considered in isolation.

27. The petitioner has vide its affidavit dated 30.7.2013 has submitted the year-wise under recovery of O & M expenses for all generating stations from 2009-10 to 2012-13. The petitioner has compared the expenses allowed by the Commission in tariff on normative basis and actual O & M expenses incurred by NTPC. The petitioner has worked out the under-recovery to the extent of ₹496 crore, ₹1245 crore, ₹1187 crore and ₹1533 crore for the years 2009-10, 2010-11, 2011-12 and 2012-13 respectively. The actual O & M expenses as per books of account relied upon comprises of various expenses which are not allowable for the purpose of the working out normative O & M in tariff such as PRP expenses, incentives (ex-gratia), donations and loss of stock, etc. The actual O & M expenses also include the additional cost on account of wage revision over and above normative O & M expenses as allowed separately by the Commission. Therefore, stated under recovery of O & M expenses cannot be a ground to grant water charges on actual basis by relaxing the norms.

28. If the submission of the petitioner for reimbursement of the water charges on actual basis is accepted, it will amount to allowing the O&M charges on the basis of normative or the actual whichever is higher. Such a dispensation would evoke similar demands from the beneficiaries for reimbursement of expenditure in tariff not at the normative levels but at the lower of the normative and actual. In our view, once the tariff has been fixed on the basis of normative parameters, the same should not be reopened even if there is any variation between normative and actual. During the 2009-14 period,

some of the State Governments have enhanced the water charges. It is pertinent to mention that the Commission in due recognition of the escalation of the water charges by some of the State Governments has excluded water charges as a component of normative O&M expenses in the tariff regulation for the period 2009-14 and water charges have been allowed as a pass through during the tariff period 2014-19. Therefore, the impact of enhancement of water charges by some of the State Governments is confined to the period 2009-14 only. In our view, the petitioner should absorb the additional expenditure on account of water charges by offsetting the same against the savings made by the petitioner during the 2009-14 tariff period under other normative parameters including the operating norms.

29. The petitioner has relied upon the following cases of the Hon`ble Supreme Court and Hon`ble Appellate Tribunal for Electricity to substantiate its case:

- (i) Hon`ble Supreme Court judgment in UP Power Corporation Ltd Vs National Thermal Power Corporation Ltd. [(2009) 6 SCC 235];
- (ii) Appellate Tribunal for Electricity`s judgment dated 31.7.2009 in Appeals No. 42 and 43 of 2008 in Haryana Power Generation Corporation Ltd. Vs Haryana Electricity Regulatory Commission;
- (iii) Appellate Tribunal for Electricity`s judgment dated 18.1.2013 in Appeal No. 57 of 2012 in Maharashtra State Power Generation Company Ltd Vs Maharashtra State Electricity Distribution Company Ltd.;

(iv) Appellate Tribunal for Electricity`s judgment dated 14.11.2006 in Appeals No. 94 and 96 of 2005 in National Thermal Power Corporation Ltd Vs Central Electricity Regulatory Commission and others;

(iv) Appellate Tribunal for Electricity`s judgment dated 24.5.2011 in Appeals No 100 and 103 of 2009 in UP Power Corporation Ltd Vs Central Electricity Regulatory Commission and others.

30. We have very carefully considered the judgments and are of the view that these judgments do not support the case of the petitioner.

31. For the foregoing reasons, reliefs sought by the petitioner cannot be granted. The petition is accordingly disposed of.

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson