

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 221/MP/2019

Coram:

**Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member
Shri Pravas Kumar Singh, Member**

Date of order: 13th November, 2021

In the matter of

Petition for recovery of the impact of wage revision of employees' and deputed employees of Kendriya Vidyalaya (KV) and Central Industrial Security Force (CISF), in respect of Dulhasti Hydroelectric Project of NHPC during the period from 1.1.2016 to 31.3.2019.

And

In the matter of

NHPC Limited,
NHPC Office Complex, Sector-33,
Faridabad – 121 003.

.....**Petitioner**

Vs

1. Punjab State Power Corporation Limited,
The Mall, Near Kali Badi Mandir,
Patiala - 147 001 (Punjab).
2. Haryana Power Purchase Centre,
Shakti Bhawan, Sector – 6,
Panchkula-134 109 (Haryana).
3. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019.
4. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkardooma,
Delhi-110 072.
5. Tata Power Delhi Distribution Limited,
33 kV sub-station building, Hudson Lane, Kingsway Camp,
New Delhi-110 009.
6. Uttar Pradesh Power Corporation Limited,
Shakti Bhavan, 14, Ashok Marg,
Lucknow - 226 001 (Uttar Pradesh).



7. Ajmer Vidyut Vitaran Nigam Limited,
Old Power House, Hatthi Bhatta, Jaipur Road,
Ajmer - 305 001 (Rajasthan)

8. Jaipur Vidyut Vitaran Nigam Limited,
Jaipur - 302 005.

9. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial area,
Jodhpur - 342 003 (Rajasthan)

10. Uttaranchal Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun – 248 001 (Uttarakhand).

11. Engineering Department,
1st Floor, UT Secretariat, Sector 9-D,
Chandigarh – 160 009

12. Power Development Department,
New Secretariat,
Jammu - 180 001 (J&K)

.....**Respondents**

Parties present:

Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Shri M. G. Gokhale, NHPC
Shri Piyush Kumar, NHPC
Shri Mahesh Kumar Sharma, NHPC
Shri Vikram Singh, UPPCL
Shri Brijesh Kumar Saxena, UPPCL
Shri R.B.Sharma, Advocate, BRPL
Ms. Megha Bajpeyi, BRPL
Shri Sanjiv Kumar Bansal, RUVNL

ORDER

The Petitioner, NHPC India Limited, owns and operates the Dulhasti Hydro Electric Project (3 x 130 MW) (in short, 'the generating station') located in the Union Territory of Jammu & Kashmir. The generating station, purely of run-of-river type, was declared under commercial operation on 7.4.2004.

2. Petition No. 231/GT/2014 was filed by the Petitioner for determination of tariff for the generating station for the 2014-19 tariff period, based on the Central Electricity



Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations') and the Commission, by order dated 30.8.2016, determined the tariff of the generating station for the said period. In the said order, the O&M expenses, approved in terms of Regulation 29(3)(a) of the 2014 Tariff Regulations were as under:

<i>(Rs. in lakh)</i>				
2014-15	2015-16	2016-17	2017-18	2018-19
13746.97	14660.32	15634.36	16673.10	17780.86

3. The Petitioner has filed Petition No.146/GT/2020 for truing-up of tariff for the 2014-19 tariff period and for determination of tariff for the 2019-24 tariff period in respect of this generating station and the Commission has reserved its order in this petition on 27.7.2021.

Present petition

4. The Petitioner has filed the present petition (Petition No.221/MP/2019) for recovery of the impact of wage revision of employees and deputed employees of Kendriya Vidyalaya (KV) and Central Industrial Security Force (CISF) in respect of the generating station, during the period from 1.1.2016 to 31.3.2019 and has made the following submissions:

Submissions of the Petitioner

5. The Petitioner has mainly submitted the following:

- a) The normative O&M expenses, have been fixed by the Commission, after normalizing and averaging the actual expenses incurred by hydro generating stations, for the five-year period from 2008-09 to 2012-13. In the normative O&M expenses, there is significant under-recovery of expenses in case of NHPC power stations, primarily due to the implementation of pay revision of employees of the Petitioner {including that of Kendriya Vidyalaya (KV) staff and Central Industrial Security Force (CISF) personnel, deployed in the power



stations} and on account of implementation of Goods & Service Tax (GST). A comparison of the actual O&M expenses vs the O&M expenses allowed in case of the generating station for the 2014-19 tariff period is tabulated below:

(Rs. in crore)

Year	Normative O&M Expenditure allowed	Actual O&M Expenses	Difference
	(a)	(b)	(a-b)
2014-15	137.47	206.98	(-) 69.51
2015-16	146.60	203.81	(-) 57.21
2016-17	156.34	269.11	(-) 112.77
2017-18	166.73	245.96	(-) 79.23
2018-19	177.81	256.72	(-) 78.91
Total	784.95	1182.58	(-) 397.63

b) In terms of paragraph 33.2 of the Statement of Objects and Reasons (SOR) issued for the 2014 Tariff Regulations, the impact of wage revision shall be allowed, when the O&M expense norms are inadequate/ insufficient, to cover all justifiable O&M expenses of the Petitioner. From the table above, it is clear that the actual O&M expenses incurred by the generating station, is substantially higher than the normative O&M expenses allowed in terms of the 2014 Tariff Regulations. Further, it is also clear that the Commission has not factored the impact of pay revision of employees in the normative O&M expenses allowed for the 2014-19 tariff period.

c) The decision of the Government of India on the recommendations of 7th Central Pay Commission (in short 'the 7th CPC'), was notified by the Department of Expenditure, Ministry of Finance vide Resolution No. 1-2/2016-IC dated 25.7.2016. Subsequently, the Department of Expenditure, Ministry of Finance vide OM No. 1-5/2016-IC dated 29.7.2016, issued instructions for the implementation of pay scales of Central Government employees, effective from 1.1.2016. Accordingly, additional cost has been incurred by the Petitioner on account of the pay revision of CISF and KV staff deployed in the generating station.

d) The Department of Public Enterprises ('DPE') vide Office Memorandum No. W-02/0028/2017-DPE(WC)-GL-XIII/17 dated 3.8.2017, O.M No. W-02/0028/2017-DPE (WC)-GL-XIV/17 dated 4.8.2017 and O.M No. W-02/0028/2017-DPE (WC)-GL-XVI/17 dated 7.9.2017, issued guidelines for the



revision of pay scales and allowances of Board level executives, below Board level executives and non-unionized supervisors of Central Public Sector Enterprises (CPSEs) w.e.f. 1.1.2017.

e) Based on the DPE guidelines, the Presidential directive was issued by Ministry of Power (MOP), GOI, vide letter dated 15.5.2018. The Petitioner, being a CPSE, under the administrative control of the MOP, GOI, is mandated to follow the DPE guidelines, with regard to revision of pay scales of its employees.

f) The pay revision proposal of Board level and below Board level executives, were approved by the Board of Directors of the Petitioner, in its 414th meeting held on 28.5.2018 and the same has been implemented w.e.f. 1.1.2017, vide office order dated 30.5.2018. The pay revision proposal of workmen and supervisors were also approved by the Board of Directors of the Petitioner, in its 423rd meeting held on 15.3.2019 and the same has also been implemented w.e.f. 1.1.2017 by the Petitioner vide office order dated 25.3.2019.

g) Due to implementation of pay revision of CISF and KV staff w.e.f. 1.1.2016 and pay revision of NHPC employees w.e.f. 1.1.2017, the Petitioner has incurred additional O&M expenses. In addition to this, the Petitioner has also incurred additional expenses on account of increase in the ceiling of gratuity from Rs 10 lakh to Rs 20 lacs w.e.f. 1.1.2017, as per clause 12.1 of DPE guidelines on 3rd Pay Revision Committee. The impact due to enhancement of the gratuity ceiling is covered under Regulation 3(9) read with Regulation 8(3)(ii) of the 2014 Tariff Regulations ie. "Change in law". The year-wise impact due to implementation of pay revision, as per Auditor's certificate, is as under:



(Rs. in crore)

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level and below Board level executives, workmen and supervisors of the generating station w.e.f. 01.01.2017	-	3.49	13.86	11.69
Impact of pay revision of CISF/ Security Staff w.e.f. 01.01.2016	0.54	2.12	2.23	2.74
Impact of pay revision of KV Staff w.e.f. 01.01.2016	0.04	0.20	0.21	0.23
Impact of wage revision of Corporate Office/ Regional Office Employees allocated to Power Station (3 rd PRC)		2.74	9.38	9.66
Impact of enhancement of ceiling of gratuity as per provisions of 3 rd PRC		17.07	3.89	0.00
Total	0.59	25.61	29.57	24.31

h) When the pay revision of CISF & KV staff and NHPC employees were implemented w.e.f. 1.1.2006 and 1.1.2007 respectively, the Petitioner had approached the Commission for reimbursement of additional expenses vide Petition No. 12/MP/2012 and the same was allowed by order dated 5.12.2012. The findings in order dated 5.12.2012 holds good for the present case also.

i) The Commission while notifying the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2019 (in short, 'the 2019 Tariff Regulations') applicable for the 2019-24 tariff period, has also not factored the impact of wage revision and the same is evident from paragraph 10.7.4 of SOR issued with the 2019 Tariff Regulations. The note appended to Regulation 35(2)(a) of the 2019 Tariff Regulations provides that "the impact in respect of revision of minimum wage, pay revision and GST, if any, will be considered at the time of determination of tariff."

j) Thus, it is clear that the intent of the regulatory provision is to allow separate reimbursement of O&M expenses on account of pay revision in case of hydro-generating stations.

k) Under Regulation 55 of the 2014 Tariff Regulations, the Commission is vested with the power to remove difficulty in implementing the said regulations



and under Regulation 54 of the 2014 Tariff Regulations; it has the powers to relax the provisions of regulations. Accordingly, the present petition has been filed under Regulations 54 and 55 of the 2014 Tariff Regulation, for reimbursement of the additional O&M expenses incurred due to implementation of wage revision of NHPC employees, KV & CISF personnel. A separate petition (Petition No. 133/MP/2019) has been filed seeking recovery of additional impact due to implementation of GST.

6. Based on the above submissions, the Petitioner has sought the following relief(s):

“(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to Rs.80.08 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of CISF and KV staff w.e.f. 01.01.2016 & NHPC employees w.e.f. 01.01.2017.

(b) Allow the additional O&M expenses as stated above to be recovered from the Respondents in proportion to their allocated capacity shares in the respective years of tariff period 2014-19.

(c) Pass such further order or orders as may be deemed fit and proper in the facts and circumstances of the case.”

7. Reply has been filed by the Respondent UPPCL (vide affidavit dated 3.9.2019), Respondent BRPL (vide affidavit dated 11.10.2019) and the Respondents, AVVNL, JVVNL and JoVVNL (through Rajathan Urja Vikas Nigam Limited vide affidavit dated 5.11.2019). The Petitioner has filed its common rejoinder to the replies of the Respondents (in this petition and other similar pending petitions), vide affidavits dated 30.11.2019 and 4.12.2019 respectively.

8. This petition, along with Petition No.235/MP/2019 (filed by Petitioner seeking similar reliefs in respect of Chamera-I Hydroelectric Project for the period from 1.1.2016 to 31.3.2019) were heard on 17.3.2021, and the Commission, after directing the Petitioner to furnish certain additional information vide ROP, reserved orders in these petitions. However, as these petitions could not be disposed of, prior to one



Member of the Commission demitting office, these petitions were re-heard on 29.6.2021, and the Commission, after directing the Petitioner to submit certain additional information, reserved its order in these petitions.

9. The Petitioner, in terms of the directions of the Commission vide ROPs, has filed the additional information vide affidavits dated 14.11.2019, 21.6.2021 and 22.7.2021, after serving copy to the Respondents. Taking into consideration the submissions of the Petitioner and the Respondents, we proceed to examine the reliefs sought by the Petitioner, in the present petition, on prudence check, as stated in the subsequent paragraphs.

Reply of Respondent UPPCL

10. The Respondent UPPCL vide reply affidavit dated 3.9.2019, has submitted that the prayer of the Petitioner for recovery of additional O&M expenses due to wage revision is not maintainable for the following reasons:

(a) Tariff is a complete package governed by various factors and cannot be reviewed in isolation as prayed by the Petitioner. If the tariff is reviewed in isolation, then other parameters of tariff should also be reviewed on the basis of actuals. The claim of the Petitioner should be viewed in the light of huge burden on the beneficiaries on account of increase in annual fixed charges. The Petitioner may be directed to bear the expenses due to pay revision, out of its profits.

(b) The Commission has already factored the impact of pay revision during the 2009-14 tariff period by allowing 50% of the impact to be borne by the beneficiaries and the same has adversely impacted the stressed financial position of the beneficiary. The power to remove difficulties and power to relax under Regulations 54 and 55 of the 2014 Tariff Regulations are not applicable as no difficulty has arisen to give effect to the said regulations.



(c) As per judgment dated 3.3.2009 of the Hon'ble Supreme Court in Civil Appeal No. 1110/2007 (NTPC v UPPCL & ors), the Commission cannot be asked to revisit the tariff when the period is already over. In the said judgment, the Hon'ble Court has also prohibited recovery of tariff of past consumers from new consumers.

(d) The claim of the Petitioner for pay revision of CISF for this generating station is a premature claim, as CISF has neither been deployed nor has been withdrawn by the Government. Since the impact of pay revision cannot be passed on to the consumers with retrospective effect, the claim of the Petitioner is not maintainable. There is also no bar to allow the revision of pay on the basis of collective bargaining between the employer and employee, but there is no scope for recovery of such expenditure through tariff, which otherwise should be met from internal accruals of the company.

(e) In terms of sections 5.1(h), (3) and (4) of the Tariff Policy, the revenue requirement of the Petitioner should have been established at the beginning of the control period so that uncontrollable costs are recovered speedily to ensure that future customers are not burdened with past costs. The Petitioner has failed to register its timely claim in its petitions for the 2014-19 tariff period, by making budgetary provisions for likely increase of employees pay and other allowances.

(f) The prayer of the Petitioner, if allowed, at this stage, without considering the difficulties of the Respondent, would be contrary to the spirit of section 61(d) of the Electricity Act, 2003 (the 'Act').

(g) The additional O&M expenses on account of the increase in ceiling of gratuity, due to change in law, as an uncontrollable factor, may be considered at the time of truing up of tariff of the generating station in terms of Regulation 8(3) of the 2014 Tariff Regulations.

Reply of Respondent BRPL

11. The Respondent BRPL vide its reply affidavit dated 11.10.2019 has mainly submitted as follows:



(a) The request of the Petitioner seeking relaxation under Regulations 54 and 55 should be limited to parameters laid down by the Hon'ble Supreme Court in Mahadeva Upendra Sinai v UOI & ors (1975 AIR 797) as otherwise, no sanctity in the norm based tariff, under cost-plus mechanism of tariff determination will be left.

(b) Paragraph 33.2 of SOR to the 2014 Tariff Regulations provides the view of the Commission and the conditionalities prescribed on the impact of wage revision. The data furnished by the Petitioner does not support the critical examination on all the conditionalities mentioned therein. The Petitioner has included the impact of increase in ceiling of gratuity in its proposal, while the Commission has provided only for increase in employee expenses in wage revision.

(c) The impact of wage revision of corporate/ regional offices is 74.96% of the impact of wage revision of the generating station, which gives the impression where major amount includes indirect cost of corporate/ regional offices, which merely are support functions.

(d) As noted in paragraph 30.21 of SOR to the 2014 Tariff Regulations, there is huge over-staffing not only at corporate/ regional offices, but also at the power station level and, accordingly, the overall impact at the macro level would not be sustainable. The Petitioner may be requested to provide the benchmark of man vs MW ratio of industry with pyramid of employee cost, distributing the employee cost from top management to lower cadre with its comparison to stations individually to support its claim.

(e) The petition is also silent as to whether the reimbursement of the wage revision also included the wage revision of employees engaged in other activities like the consulting, planning and designing of national/ inter-national projects. If these employees are included, the wage revision of these employees is required to be deleted, as they are in no way connected to generation from existing projects.



(f) The Auditor's certificate, in its current form is too vague and accordingly, the reimbursement of wage revision must be taken from the "Due Drawn Statement' of the employees engaged in generation of power.

Reply of Respondents, AVVNL, JVVNL and JoVVNL

12. The Respondents, AVVNL, JVVNL and JoVVNL, through RUVNL, vide reply affidavit dated 5.11.2019, have submitted the following:

(a) From the definition of 'Project' in Regulation 3(46) of the 2014 Tariff Regulations, it is clear that O&M expenses is for maintenance of the project i.e. for all components of generating facility such as dam, intake water conductor system, power generating station and units of the scheme etc. Any O&M expenses on facilities other than this, may not be admissible.

(b) The details submitted by the Petitioner are insufficient for the Respondent to check, as data like number of employees etc., are not available. The Petitioner should submit the segregation of increased impact in terms of increase in basic salaries, allowances, bonuses etc. due to pay revision.

(c) Services availed for security etc. should be borne out by the company from its own internal resources and RoE allowed and may not be passed on to the consumers. Similarly, for impact of wage revision of KV/DAV staff, such allowances should be borne by the Petitioner itself through provisions of ROE and should not be passed on to the end consumers.

(d) The details of how the final figures with regard to impact of wage revision of corporate/ regional office employees allocated to the generating station have been arrived at, has not been furnished by the Petitioner. The Commission may prudently check the expenses claimed by the Petitioner before taking them into consideration.

(e) Regarding the calculations for impact of increase in gratuity ceiling, the Petitioner may be directed to furnish details in order to conclude the final impact on the generating station.



(f) The Commission may take a prudent view before deciding on the additional O&M expenses for the Petitioner. Also, the recovery of the same may be staggered over a span of period without any interest, to be paid by the beneficiary, so as to minimize the burden on consumers.

Rejoinder of the Petitioner to replies of Respondents

13. In response to the replies of the Respondents above, the Petitioner vide its rejoinder affidavits dated 30.11.2019 and 4.12.2019 has mainly clarified the following:

Rejoinder to the reply of UPPCL

(a) The Commission while finalizing the norms for the 2014-19 tariff period has not factored the impact of pay revision of the employees of NHPC, CISF and KV as is evident from paragraph 33.2 of SOR to the 2014 Tariff Regulations. Any expenditure which has not been 'factored in' while framing the regulations, if claimed at a later stage, should not be considered as re-opening of norms. The Commission in its order dated 5.12.2012 in Petition No. 5/MP/2012 had deliberated this issue and based on the findings, the impact of wage revision as claimed over and above the normative O&M expenses were allowed.

(b) The actual O&M expenses incurred by the generating station are largely on a higher side compared to the normative O&M expenses allowed during the 2014-19 tariff period. The claim of the Petitioner is genuine and cannot be negated on the ground that it will result in huge burden on the beneficiaries.

(c) As regards reference to judgement of the Hon'ble Supreme Court in C.A.No.1110/2007, the Commission in its order dated 5.12.2012 in Petition No. 5/MP/2012 had considered the same and observed that legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the end consumers. Accordingly, the Petitioner, in the absence of any specific provision, has invoked Regulations 54 and 55 of the 2014 Tariff Regulations, for recovery of the additional expenses on account of pay revision etc.

(d) Pay and allowances are part of 'O&M expenses' which is essential input for determination of cost of electricity. Accordingly, if the same is denied, it will



result in under-recovery of cost of electricity, which is against the intent of Section 61(d) of the Act.

(e) In terms of the directions of the Commission in paragraph 33.2 of SOR to the 2014 Tariff Regulations, that the impact of wage revision shall be given only after seeing the impact of one full year, the Petitioner was not in a position to claim the impact of wage revision at the time of submission of tariff petitions for the 2014-19 tariff period (in August 2014). The Petitioner has implemented the wage revision of the employees w.e.f. 1.1.2017, during May 2018 for executives and March 2019 for supervisors and workmen.

(f) The increase in ceiling of gratuity as per the Payment of Gratuity (Amendment) Act, 2018 is covered under change in law. Being part of wage revision of employees w.e.f. 1.1.2017, the Petitioner has claimed the impact of enhancement of ceiling of gratuity as additional O&M expenses only and not under 'additional capitalization'.

Rejoinder to the reply of BRPL

(g) Regulations 54 and 55 of the 2014 Tariff Regulations are to remove difficulties in order give effect to the objectives of the Tariff Regulations, if it is not inconsistent with the provisions of the Act. The claim of the Petitioner under similar circumstances has already been upheld by the Commission in its previous wage revision order dated 5.12.2012 in Petition No. 5/MP/2012. The claim of the Petitioner for recovery of wage revision impact is consistent with Section 61(d) of the Act, as the same is only to ensure the reasonable recovery of the cost of electricity.

(h) The increase in the ceiling of gratuity from Rs.10 lakh to Rs.20 lakh is part of the DPE guidelines dated 3.8.2017 for implementation of pay scales, w.e.f. 1.1.2017. Gratuity being an integral part of superannuation benefit, is to be provided to employees as per DPE guidelines as an employee expense, which is to be paid by the Petitioner company.

(i) The various divisions of the Petitioner company viz., planning division, design division, centralised O&M division, commercial division, cost engineering



division, project monitoring and support group, centralised HR, finance and IT divisions etc., are located in corporate office. Further, regional offices have been established at select locations to ease out the working of various power stations/ projects located in the region and for coordination with corporate office. For efficient operation of power stations, various employees (posted in different divisions of Corporate office/ Regional office & power stations) are engaged with the power station, right from planning, designing, coordinated operation and maintenance, billing of energy generated, realisation of bills, other statutory compliances and various other allied works. The allocation of expenses of the employees posted in these divisions and in regional offices to the employee cost of power station is being done based on the services rendered by these divisions to various power stations, which is as per accounting policy of the Petitioner company.

(j) The Petitioner has claimed the impact of wage revision in case of Central Government employees (CISF and KV) w.e.f. 1.1.2016 and in respect of NHPC employees w.e.f. 1.1.2017 and has submitted the year-wise audited bifurcation of employee cost before wage revision and after wage revision and its reconciliation along with break-up between KV employees, CISF employees and NHPC employees. The Petitioner has also submitted all necessary supporting documents viz., MOF notification dated 29.7.2016, Resolution dated 25.7.2016 in support of implementation of the 7th CPC, DPE guidelines dated 3.8.2017 and MOP, Presidential directive dated 15.5.2018 in support of the implementation of 3rd PRC, Board resolution and NHPC office orders for pay revision of NHPC employees.

(k) The man:MW ratio is slightly higher in case of hydro-generating stations with lower MW capacity, which is due to the fact that deployment of manpower is not proportionally related to capacity of the hydro-generating station. This fact has been acknowledged by the Commission, in SOR to the 2014 Tariff Regulations, by providing differential O&M expense norms for hydro-generating stations.



Rejoinder to the reply of RUVNL

(l) The wage revision impact claimed by the Petitioner includes the impact of increase in Basic Pay, Dearness Allowance, House Rent Allowance, Cafeteria allowance, location based compensatory allowance and the impact of increase in ceiling of gratuity in respect of NHPC employees and wage revision of CISF/KV staff. The impact of wage revision of corporate office and regional office has been allocated to the power stations as per accounting policy of NHPC. The audited financial impact submitted by the Petitioner does not include any incentives including PRP/PLGI, as the same is being paid from the profit/ROE of the Petitioner company.

(m) The hydro-power projects are located at far flung/ remote areas and strategic locations which are vulnerable to law and order problems. In order to ensure proper security and safety of the plant and employees of the Petitioner posted in respective power stations, security personnel are deployed and are integral part of power plants. The intent of the Commission to allow expenses on 'security' as part of O&M expenses is very much clear from Regulation 35(2)(C) of the 2019 Tariff Regulations, wherein, separate reimbursement of 'security expenses' under the head 'O&M expenses' is allowed. Similarly, to provide quality education to children of employees posted in power stations (located in remote areas), KV/DAVs are set up in these locations, which are an integral part of the power stations. Therefore, the staff of CISF and KV/DAVs form essential part of power plants and contribute towards the efficient operation of power stations. Accordingly, the expenses related to wages of CISF/KV and DAVs are essential components of O&M expenses.

Analysis and Decision

14. The Petitioner has filed this petition under Regulations 54 and 55 of the 2014 Tariff Regulations which provides as under:

“54. 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.

55. 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.”

15. The Petitioner has submitted that Regulation 29(3)(a) of the 2014 Tariff Regulations has not factored in the impact of revision in salary and wages of public sector enterprise's employees (with effect from 1.1.2017) and pay revision of CISF and KV employees (with effect from 1.1.2016) posted at its generating station. It has submitted that the recommendations of the Seventh Pay Commission and the decision of the Department of Public Enterprises, Government of India were implemented after the notification of the 2014 Tariff Regulations and, hence, the impact of pay revision of the employees of the Petitioner, CISF and KV were not 'factored in' while framing the said regulations. Accordingly, the Petitioner has sought recovery of the actual expenditure incurred towards wage revision and salary revision, by exercise of the power by the Commission, under Regulations 54 and 55 of the 2014 Tariff Regulations. The Respondents (UPPCL and BRPL) have submitted that the Commission's power to remove difficulties and power to relax are not applicable in the present case, as no difficulty has arisen to give effect to provisions of the 2014 Tariff Regulations and that any relief to the Petitioner will burden the customers. In response, the Petitioner has submitted that legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the end consumers. The Petitioner has stated that in the absence of any specific provision, it has invoked Regulation 54 and Regulation 55 of the 2014 Tariff Regulations, for recovery of the additional expenses on account of pay/wage revision.

16. We have considered the submissions of the parties. The Commission, while deciding the O&M expense norms applicable for the 2014-19 tariff period, had considered the comments/ suggestions of the stakeholders, including the Petitioner



herein, with regard to the recovery of additional impact of wage/ pay revision, on actual basis, and vide SOR to the 2014-19 Tariff Regulations, observed the following:

“29.26 Some of the generating stations have suggested that the impact of pay revision should be allowed on the basis of actual share of pay revision instead of normative 40% and one generating company suggested that the same should be considered as 60%. In the draft Regulations, the Commission had provided for a normative percentage of employee cost to total O&M expenses for different type of generating stations with an intention to provide a ceiling limit so that it does not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission would however, like to review the same considering the macroeconomics involved as these norms are also applicable for private generating stations. In order to ensure that such increase in employee expenses on account of pay revision in case of central generating stations and private generating stations are considered appropriately, the Commission is of the view that it shall be examined on case to case basis, balancing the interest of generating stations and consumers.

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30.18 In response to the suggestions of the generators to recover additional impact of pay revisions on actual basis, it is clarified that the Commission in the draft Regulations had provided a normative percentage of employee cost to total O&M expenses for different type of generating stations with an intention to provide a ceiling limit so that the same should not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission, however, would like to review the same considering the macroeconomics involved as these norms are also applicable for private generating stations. In order to ensure that such increase in employee expenses on account of pay revision in case of central generating stations and private generating stations is justified, the Commission is of the view that it shall examine the increase on case to case basis and shall consider the same if found appropriate to ensure that overall impact at the macro level is sustainable and justified.

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Commission's Views

33.2 The draft Regulations provided for a normative percentage of employee cost to total O&M expenses for generating stations and transmission system with an intention to provide a ceiling limit so that the same should not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission shall examine the increase in employee expenses on case to case basis and shall consider the same if found appropriate, to ensure that overall impact at the macro level is sustainable and thoroughly justified. Accordingly, clause 29(4) proposed in the draft Regulations has been deleted. The impact of wage revision shall only be given after seeing impact of one full year and if it is found that O&M norms provided under Regulations are inadequate/insufficient to cover all justifiable O&M expenses for the particular year including employee expenses, then balance amount may be considered for reimbursement”

17. It is apparent from the above that the pay revision with effect from 1.1.2016 and wage revision with effect from 1.1.2017, were never taken into consideration while fixing the O&M expense norms for the generating station under the 2014 Tariff



Regulations. 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 expenditure incurred by the Petitioner is 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 CISF and KV personnel and w.e.f. 1.1.2007 in respect of the employees of the Petitioner. 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 the non-consideration of the impact of wage/ pay revision in the O&M expense norms for the 2014-19 tariff period.

18. Before we proceed to examine the merits of the prayer of the Petitioner, it is considered appropriate to deal with some of the objections of the Respondents, namely, (a) tariff is a package and norms should not be reopened, (b) present consumers cannot be burdened with past dues, and (c) the financial difficulties of the respondents and their inability to pay should be considered.

(a) Tariff is a package and norms should not be reopened

19. The Respondent UPPCL has submitted that tariff is a complete package governed by various factors and cannot be reviewed in isolation as prayed by the



Petitioner. It has also submitted that if the Commission is inclined to review the tariff in isolation, then other parameters of tariff should also be reviewed on the basis of actuals. The Petitioner has however submitted that the submissions of the Respondent cannot hold good as the impact of wage revision was never factored in by the Commission, while framing the 2014 Tariff Regulations. It has also referred to the Commission's order dated 5.12.2012 in Petition No.5/MP/2012 rejecting the submissions of the Respondents therein, on the said issue and has submitted that the impact of wage revision as claimed may be allowed.

20. The matter has been examined. It is noticed that similar objections were raised by some of the Respondents in Petition No.35/MP/2011 and batch petitions filed by NTPC for recovery of additional cost incurred consequent to pay revision of employees and CISF and KV staff for Farakka STPS and other generating stations, for the period from 1.1.2006 to 31.3.2009 and the Commission by its order dated 12.10.2012 had 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 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."

21. Further, the same objections (tariff as a package) raised by some of the Respondent Discoms in Petition No.5/MP/2012 & batch petitions filed by the Petitioner herein, for recovery of additional cost incurred consequent to pay revision of employees for its generating stations, Indian Reserve Battalion (IRBN) and KV staff



during 1.1.2006 to 31.3.2009 were also rejected by the Commission vide its order dated 5.12.2012, in line with the earlier decision dated 12.10.2012 in Petition No.35/MP/2011 above.

22. It is pertinent to mention that in Appeal No. 55/2013 and batch appeals, filed by some of the Respondent distribution companies before the Appellate Tribunal for Electricity (in short 'APTEL'), against the orders of the Commission, in various petitions, including the above order dated 12.10.2012 in Petition No.35/MP/2011, allowing the recovery of pay revision/ wage revision to generating companies, the APTEL vide its judgment dated 24.3.2015, had rejected the contentions of the Respondent Discoms that tariff is a package and that each component of tariff cannot be looked at in isolation. The relevant portion is extracted hereunder:

“26.08. On Issue No. D, relating to failure of the Central Commission to take note of the fact that tariff is a package and it cannot be amended in a piecemeal manner by modifying its individual components, we hold and observe that in view of the liberty granted to the power generating companies by the Central Commission vide order dated 09.05.2006 in Petition No. 160 of 2004 , the learned Central Commission, in the facts and circumstances of the present matters, legally, correctly and justly allowed the petitioners/respondents- power generation corporations like NTPC, NHPC & SJVNL to recover additional costs incurred towards the pay revision of the respective employees as the power generating corporations like NTPC etc. could not be denied their legitimate claim on the hyper-technical grounds. Once the employees cost is recognized as part of the O & M expenses to be allowed, there cannot be any reason to object to the employees cost including the increase in employees cost to be allowed as a pass through in the tariff. In the matter of NTPC, since the impact of pay revision of employees during 2006-07 and 2007-08 which had not been accounted for while fixing the tariff for 2009-14, in the 2009 Tariff Regulations, there was no option for the Central Commission except to pass the appropriate orders like the impugned orders under Regulations 12 and 13 of 2004 Tariff Regulations. Therefore, we find that there was no error in claiming such O & M expenses after the completion of control period 2004-09. The consideration of the increased salary effective from 01.01.2007 was not there at the time when the 2004 Tariff Regulations were notified, on account of the increase in the salary and wages having not been finalized and given effect to. Subsequently, the increase in the salary and wages of the employees of NTPC etc., were given effect pursuant to the decision of the Department of Public Enterprises (DPE), Government of India and implemented by the generating companies like NHPC etc. with actual payment of the increased salary and wages to the respective employees. Thus, the recommendations of the Sixth Pay Commission and office memorandums of DPE were implemented by the NHPC at the relevant time and in accordance therewith, the learned Central Commission passed the impugned orders along with increase in employees cost under O & M expenses.”



Accordingly, the objection of the Respondent UPPCL on the ground of tariff being a package and norms should not be reopened is disposed of in the light of the aforesaid decisions.

(b) Present consumers cannot be burdened with past dues

23. The Respondent BRPL has submitted that as per the judgement of the Hon'ble Supreme Court dated 3.3.2009 in Civil Appeal No.1110 of 2007, the Commission cannot be asked to revisit the tariff when the tariff period is already over. It has also submitted that the Hon'ble Court in the said judgment has also prohibited the recovery of tariff of past consumers from the new consumers. Per contra, the Petitioner has submitted that the issue has already been deliberated in detail by the Commission in its order dated 5.12.2012 in Petition No. 5/MP/2012 & batch petitions and, therefore, the contentions of the Respondent are not tenable.

24. The matter has been considered. It is observed that similar objections raised in Appeal No. 55/2013 and batch appeals, filed by some of the Respondent Discoms were rejected by APTEL, observing that the facts in the said case (Civil Appeal No.1110 of 2007) were distinguishable and not applicable to the facts in the batch appeals filed by the Discoms. The relevant portion of the judgment dated 24.3.2015 is extracted below:

“18.11. So far as the proposition of law as laid down by the Hon'ble Supreme Court of India in Uttar Pradesh Power Corporation Ltd. Vs NTPC Ltd. & Ors. (2009) 6 SCC 235 relied upon by the appellants is concerned, the Hon'ble Supreme Court did not grant the relief to NTPC as the NTPC did not claim amount in the first instance though NTPC was entitled to claim. The facts of the reported case are quite distinguishable and are not applicable to the instant matters because in the present matters, the power generators NTPC etc. had made the claim in the first available instance and at that time the Central Commission vide its order dated 09.05.2006 deferred the consideration of the same to a later stage. The appellants did not challenge the said deferment granted in its order dated 09.05.2006 in Petition No. 160 of 2004 of the Central Commission at that relevant time and now the appellants cannot raise this issue of deferment at this stage.”

25. In the present case, the Petitioner has claimed the impact of wage revision/ pay revision, with effect from 1.1.2016 and 1.1.2017 respectively, pursuant to the



observations of the Commission in paragraph 33.2 of SOR (supra) and after implementation of the pay revision of the employees of the Petitioner, with effect from 1.1.2017, and wage revision of CISF/KV staff, with effect from 1.1.2016, based on the decision of the Central Government on the 7th CPC recommendations during 2016, the DPE guidelines dated 3.8.2017 and the Presidential directive issued by MOP, GOI on 15.5.2018 (in support of implementation of 3rd PRC) and subsequent office orders of the Petitioner. This is not the case in Civil Appeal No.1110 of 2007, wherein, NTPC had not claimed the amount at the first instance, though it was entitled to. Thus, the facts in the said civil appeal are distinguishable from the facts in the present case of the Petitioner and, hence, not applicable. Therefore, the findings of APTEL in the aforesaid judgment dated 24.3.2015, is squarely applicable to the present case. It is pertinent to mention that the Commission, while determining the tariff of some of the generating stations of NTPC and NEEPCO for the 2014-19 tariff period had, in its orders, had granted liberty to file appropriate application for recovery of impact of salary/ wage revision, subject to the implementation of pay revision as per DPE guidelines. Thus, all parties including the Respondents herein were aware that appropriate orders with regard to the impact of pay revision/ wage revision of central power sector utilities, would 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 past dues.

26. In view of the above discussions, the objections raised by the Respondent on the ground that present consumers cannot be burdened with past dues stand rejected.



(c) Financial difficulties of the Respondents and their inability to pay

27. The Respondent UPPCL has submitted that the prayer of the Petitioner, if allowed at this stage, without considering the difficulties of the Respondent, would be contrary to the spirit of Section 61(d) of the Act. RUVNL has submitted that the Commission may take a prudent view before deciding on the additional O&M expenses for the Petitioner. Also, the recovery of the same may be staggered in a span of period, without any interest, to be paid by the beneficiary so as to minimize the burden. Per contra, the Petitioner has submitted that the actual O&M expenses incurred by the generating station are largely on a higher side as compared to the normative O&M expenses allowed during the 2014-19 tariff period. The Petitioner has also submitted that the claim is genuine and cannot be negated on the ground that it will result in huge burden on the beneficiaries. The Petitioner has added that the claim for recovery of wage revision impact is consistent with Section 61(d) of the Act, as the same is only to ensure the reasonable recovery of the cost of electricity.

28. The matter has been considered. Admittedly, the 2014 Tariff Regulations notified by the Commission for the 2014-19 tariff period, has not factored in the impact of revision in salary and wages of employees of the Petitioner, with effect from 1.1.2017 and pay revision of CISF and KV/DAV employees, posted at the generating station of the Petitioner, with effect from 1.1.2016. In our view, the additional expenditure incurred on salary and wages of the generating company form part of the cost of electricity and needs to be serviced. The financial difficulties of the Respondents cannot be a ground for not paying for the cost of power which has been supplied to the Respondent beneficiaries. By parity of reasoning, we are of the considered view that the Petitioner should be suitably compensated for the wage



revision/ pay revision from 1.1.2016/ 1.1.2017 till 31.3.2019. The Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission v CESC Limited (2002) 8 SCC 715, has observed that employees' cost prudently incurred, needs to be reimbursed to the utility.

29. In view of the above discussions, the objections of the Respondents on the ground of financial difficulties and their inability to pay cannot be sustained.

30. However, the Commission has the mandate to balance the interest of the consumers and ensure recovery of the cost of electricity in a reasonable manner. Therefore, the Commission is required to find out an equitable solution so that the generating company is not deprived of its legitimate dues, while ensuring that the tariff burden on the beneficiaries and consumers are minimised.

Additional O&M expenses on account of impact of Pay revision of Executives, Supervisors and Workmen and CISF employees

31. The Petitioner has implemented the wage revision of its employees with effect from 1.1.2017 - for executives (during May 2018) and for supervisors and workmen (during March 2019) as per office orders enclosed. The Petitioner has also submitted its claim for reimbursement of the impact of wage revision of CISF/KV staff with effect from 1.1.2016 on the ground that the normative O&NM expenses allowed to the generating station were inadequate to cover the said impact of wage revision/ pay revision, in line with the directions of the Commission. Based on the expenditure incurred on account of pay revision/ wage revision, the Petitioner has submitted the claims as per details given in table below:



(Rs. in lakh)

Particulars	2015-16	2016-17	2017-18	2018-19	Total
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f. 1.1.2017	0.00	349.00	1386.00	1169.00	2904.00
Impact of pay revision of CISF/ Security staff w.e.f.1.1.2016	54.00	212.00	223.00	274.00	763.00
Impact of pay revision of KV staff w.e.f.01.01.2016	4.00	20.00	21.00	23.00	68.00
Impact of wage revision of Corporate office / Regional office employees allocated to power station (3 rd PRC)	0.00	274.00	938.00	966.00	2178.00
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 rd PRC	0.00	1707.00	389.00	0.00	2096.00
Total	58.00	2561.00	2957.00	2431.00	8007.00

32. The Commission vide ROP of the hearing dated 17.10.2019, directed the Petitioner to furnish additional information, as under:

- (a) Year-wise audited employee cost before wage revision along with breakup between KV employees, CISF employees and NHPC employees;
- (b) Year-wise audited employee cost after wage revision along with breakup between KV employees, CISF employees and NHPC employees;
- (c) Reconciliation of above two with wage revision impact claimed;
- (d) PRP/Incentive included in the wage revision impact claimed (year-wise details duly certified by the Auditor);
- (e) xxxx
- (f) Certification regarding effective date of increase in gratuity limit.

33. Thereafter, vide ROP of the hearing dated 17.3.2021, the Petitioner was directed to furnish additional information as follows:

- (a) The detailed break-up of the actual O&M expenses for the tariff period 2014-19 under various sub-heads (as per Annexure- A) after including the claimed wage revision impact for employees of the Petitioner and employees of KV/DAV/CISF.
- (b) The similar break up of actual O&M expenses including wage revision impact for Corporate Centre/other offices (as per Annexure- B) shall be provided for the tariff period 2014-19 along with the allocation of the total O&M expenses to various stations under construction, operational stations along with basis of allocating such expenditure.
- (c) Any other information deemed necessary by the Petitioner in justification of the claimed wage revision impact.



34. Subsequently, vide ROP of the hearing dated 29.6.2021, the Petitioner was directed to furnish additional information as follows:

(a) Break-up of the pay revision impact claimed in respect of employees of the Petitioner & Security Personnel stationed at the generating station and Corporate Centre/other offices employee cost allocated to the generating station (as per Annexure-C enclosed).

35. In compliance to the above directions, the Petitioner has filed the additional information vide affidavits dated 14.11.2019, 21.6.20021 and 22.7.2021 respectively, after serving copies on the Respondents.

36. The Petitioner has submitted that the Commission has not factored the impact of pay revision of employees in the normative O&M expenses allowed for the generating station for the 2014-19 tariff period. The Petitioner has claimed the impact of pay revision of the employees of the Petitioner, with effect from 1.1.2017, and wage revision of CISF/KV staff, with effect from 1.1.2016. The Petitioner has pointed out to paragraph 10.7.4 of SOR to the 2019 Tariff Regulations, wherein it has been depicted that the impact on O&M expenses on account of pay revision, escalation in minimum wages and GST, will be considered for each hydro generating station separately, at the time of determination of tariff for the 2019-24 tariff period. The Petitioner has also submitted that as the 2014 Tariff Regulations, does not specifically provide for the reimbursement of expenses on account of wage revision/ pay revision, the same may be allowed under Regulation 54 and Regulation 55 of the 2014 Tariff Regulations. The claim of the Petitioner does not, however, include the impact on account of the payment of additional PRP/ex-gratia to its employees, consequent upon wage revision.

37. As regards the recovery of impact of wage revision by a generating company, the Statement of Reasons (SOR) to the 2014 Tariff Regulations provides as under:



"29.26 Some of the generating stations have suggested that the impact of pay revision should be allowed on the basis of actual share of pay revision instead of normative 40% and one generating company suggested that the same should be considered as 60%. In the draft Regulations, the Commission had provided for a normative percentage of employee cost to total O&M expenses for different type of generating stations with an intention to provide a ceiling limit so that it does not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission would however, like to review the same considering the macro economics involved as these norms are also applicable for private generating stations. In order to ensure that such increase in employee expenses on account of pay revision in case of central generating stations and private generating stations are considered appropriately, **the Commission is of the view that it shall be examined on case to case basis, balancing the interest of generating stations and consumers.**

33.2 The draft Regulations provided for a normative percentage of employee cost to total O&M expenses for generating stations and transmission system with an intention to provide a ceiling limit so that the same should not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission shall examine the increase in employee expenses on case to case basis and shall consider the same if found appropriate, to ensure that overall impact at the macro level is sustainable and thoroughly justified. Accordingly, clause 29(4) proposed in the draft Regulations has been deleted. **The impact of wage revision shall only be given after seeing impact of one full year and if it is found that O&M norms provided under Regulations are inadequate/insufficient to cover all justifiable O&M expenses for the particular year including employee expenses, then balance amount may be considered for reimbursement."**

38. The methodology indicated in SOR as above, suggests a comparison of the normative O&M expenses with the actual O&M expenses, on a year to year basis.

However, in this respect, the following facts need consideration:

- a) The norms are framed based on the averaging of the actual O&M expenses of past five years to capture the year on year variations in sub-heads of O&M;
- b) Certain cyclic expenditure may occur with a gap of one year or two years and as such adopting a longer duration i.e. five years for framing of norms also captures such expenditure which is not incurred on year to year basis;
- c) When generating companies find that their actual expenditure has gone beyond the normative O&M in a particular year put departmental restrictions and try to bring the expenditure for the next year below the norms.

39. In consideration of above facts, the Commission finds it appropriate to compare the normative O&M expenses with the actual O&M expenses for a longer duration, so as to capture the variation in the sub-heads due to above-mentioned facts. Accordingly, it is decided that for ascertaining that the O&M expense norms



provided under the 2014 Tariff Regulations are inadequate/ insufficient to cover all justifiable O&M expenses, including employee expenses, the comparison of the normative O&M expenses and the actual O&M expenses incurred shall be made for four years i.e. 2015-19 on a combined basis, which is commensurate with the wage revision claim being spread over these four years.

40. The Petitioner has furnished the detailed breakup of the actual O&M expenses incurred during the 2014-19 tariff period in respect of the generating station. It is noticed that the total O&M expenses incurred is more than the normative O&M expenses recovered during each year of the 2014-19 tariff period. As stated earlier, the impact of wage revision/ pay revision could not be factored by the Commission while framing the O&M expense norms under the 2014-19 Tariff Regulations, as the pay revision/ wage revision came into effect from 1.1.2016 (CISF & KV employees) and 1.1.2017 (employees of the petitioner) respectively. As such, in terms of SOR as quoted above, the following approach has been adopted for arriving at the allowable impact of pay revision:

- (a) Comparison of the normative O&M expenses with the actual O&M expenses incurred for the period from 2015-16 to 2018-19, commensurate to the period for which wage revision impact has been claimed. For like to like comparison, the components of O&M expenses like productivity linked incentive, Performance related Pay, Medical expenses on superannuated employees, CSR, Rebate to customers, provision for interest to beneficiary and petition fee which were not considered while framing the O&M expense norms for the 2014-19 tariff period, have been excluded from the yearly actual O&M expenses. Having done so, if the normative O&M expenses for the period 2015-19 are higher than the actual O&M expenses (normalized) for the said period, then the impact of wage revision (excluding PRP) as claimed for the said period is not admissible/allowed as the impact of pay revision gets accommodated within the normative O&M expenses. However, if the normative O&M expenses for the period 2015-19 are lesser than the actual O&M expenses (normalized) for the same period, the wage revision impact (excluding PRP) to the extent of under recovery or wage revision impact



(excluding PRP), whichever is lower is required to be allowed as wage revision impact for the period 2015-19.

41. The comparison of the actual O&M expenses incurred and the wage revision impact (excluding PRP) for the generating station are as under:

<i>(Rs. in lakh)</i>		
Year	Actual O&M expenses (A)	Wage revision impact claimed
2014-15	17220.62	0.00
2015-16	20381.00	58.00
2016-17	26911.00	2561.00
2017-18	24596.00	2957.00
2018-19	25672.00	2431.00
Total		8007.00

42. As a first step, the expenditure against sub-heads of O&M expenses, as indicated above, have been excluded from the actual O&M expenses incurred to arrive at the actual O&M expenses (normalized) for the generating station. Further, the expenditure pertaining to salaries, wages and allowance of corporate employees have been considered as per Annexure-III. Accordingly, the comparison of the normative O&M expenses versus the actual O&M expenses (normalized) along with wage revision impact claimed by the Petitioner for the generating station for the 2015-19 tariff period is as follows:

<i>(Rs. in lakh)</i>						
Sl. No.		2015-16	2016-17	2017-18	2018-19	Total for 2015-19
1	Actual O&M expenditure for generating station (a)	20381.00	26911.00	24596.00	25672.00	97560.00
2	Actual O&M expenses (normalized) (b)	17634.73	22928.44	22084.13	23765.08	86412.39
3	Normative O&M expenses (c)	14660.32	15634.36	16673.10	17780.86	64748.64
4	Under recovery (d) = (b)-(c)	2974.41	7294.08	5411.03	5984.22	21663.75
5	Wage revision impact claimed including impact of gratuity (excluding PRP/ ex-gratia)	58.00	2561.00	2957.00	2431.00	8007.00



43. It is observed that for the wage revision impact during the period 2015-19, the normative O&M expenses is lesser than the actual O&M expenses (normalized) and under-recovery is to the tune of Rs.21663.75 lakh. Also, the enhancement in gratuity limit from Rs.10 lakh to Rs.20 lakh is due to amendment of the Payment of Gratuity Act, 1972 on 28.3.2018, and the expenditure booked during the financial year forms part of actual expenses incurred by the Petitioner. As such, in terms of the methodology described above, the wage revision impact including the impact of gratuity (excluding PRP/ incentive) of Rs.8007.00 lakh is allowable for this generating station. The APTEL in the case of NTPC V MPSEB (2007 ELR APTEL 7) has held as under:

“It must be held, that the power comprised in Regulation 13 is essentially the “power to relax”. In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations.”

44. Accordingly, we, in exercise of the power under Regulation 54 of the 2014 Tariff Regulations, relax Regulation 29(3)(a) of the 2014 Tariff Regulations in respect of O&M expenses for this generating station and allow the reimbursement of the wage revision/ pay revision impact and also impact on account of increase in gratuity limit claimed by the Petitioner, as additional O&M expenses, for the period 2015-19.

45. Based on the above, the additional O&M expenses due to impact of pay revision of employees of Petitioner’s company and wage revision of CISF (security expenses)/ KV staff for this generating station, is summarised as under:



(Rs. in lakh)

Particulars	2015-16	2016-17	2017-18	2018-19	Total
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f. 1.1.2017	0.00	349.00	1386.00	1169.00	2904.00
Impact of pay revision of CISF/ Security Staff w.e.f.1.1.2016	54.00	212.00	223.00	274.00	763.00
Impact of pay revision of KV Staff w.e.f.1.1.2016	4.00	20.00	21.00	23.00	68.00
Impact of wage revision of Corporate Office/ Regional Office Employees allocated to Power Station (3rd PRC)	0.00	274.00	938.00	966.00	2178.00
Impact of enhancement of ceiling of gratuity as per provisions of 3 rd PRC	0.00	1707.00	389.00	0.00	2096.00
Total	58.00	2561.00	2957.00	2431.00	8007.00

46. The arrears on account of the impact of the wage revision/ pay revision including the increase in gratuity limit, shall be payable by the beneficiaries in twelve equal monthly instalments starting December 2021. Keeping in view the passage of time and consumers' interest, we, as an exceptional case, in exercise of our regulatory power, hereby direct that no interest shall be charged by the Petitioner on such arrear payments on account of the wage revision/ pay revision impact, as allowed in this order. This arrangement, in our view, will balance to a large extent the interest of both, the Petitioner and the Respondents. Further, in view of the fact that wage revision/ pay revision impact has been allowed in exercise of the power to relax, these expenses shall not be made part of the O&M expenses and consequent annual fixed charges for this generating station for the 2014-19 tariff period.

47. Petition No. 221/MP/2019 is disposed of in terms of above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(I.S.Jha)
Member

Sd/-
(P.K.Pujari)
Chairperson

