

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 202/MP/2019

Coram:

Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Date of Order: 25th November 2022

In the matter of

Increase in O&M Expenses on account of Pay/Wage revision and other pay hikes to Employees (Executives w.e.f. 1.1.2017, Non Executives & workmen w.e.f. 1.4.2014) of NLCIL's Power Stations & CISF security personnel w.e.f. 1.1.2016 including Gratuity ceiling limit increase- recovery from the beneficiaries of NLCIL Power Stations for the year 2014-19.

AND

IN THE MATTER OF

NLC India Limited
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600031,
Tamil Nadu, India

..... PETITIONER

Vs

1. Tamil Nadu Generation and Distribution Company Ltd., and others
2. The Chief Engineer (Commercial), APPCC
APTRANSCO, Vidyut Soudha,
Khairatabad, Hyderabad-500082.
3. The Managing Director,
Southern Power Distribution Company of A.P. Ltd. (APSPDCL)
D.NO:19-13-65/A
Srinivasapuram, Tiruchanoor Road
Tirupathi (AP)-517501.
4. The Managing Director,
Eastern Power Distribution Company of A.P. Ltd. (APEPDCL)
P&T Colony, Seetammadhara, Vishakapatnam (AP)-503013
5. The Chief Engineer (Commercial), TSPCC
TSTRANSCO,
Vidyut Soudha,



Khairatabad, Hyderabad-500082.

6. The Managing Director,
Northern Power Distribution Company of Telangana Ltd. (TS NPDCL)
H.No. 1 -1-504, Opp. NIT petrol Pump,
Chaityanayapuri colony, Hanmkonda,
Warangal (Telangana) - 506 004.
7. The Managing Director,
Southern Power Distribution Company of Telangana Ltd. (TS SPDCL)
2nd Floor, H.No.6-1-50, Mint Compound,
Hyderabad-500063.
8. The Director(Commercial)
Power Company of Karnataka Ltd,
KPTCL Complex, Kaveri Bhavan,
Bangalore - 560009.
9. The Managing Director,
Bangalore Electricity Supply Company Ltd(BESCOM)
Krishna Rajendra Circle
Bangalore - 560 001.
10. The Managing Director,
Mangalore Electricity Supply Company Limited (MESCOM)
Corporate Office, MESCOM Bhavana, Bejai, Kavour Cross Road,
Mangalore 575 004.
11. The Managing Director,
CESC Mysore (Chamundeshwari Electricity Supply Co. Ltd.)
Corporate Office No CA 29,
Vijayanagar 2nd Stage
Hinakal, Mysore -570017
12. The Managing Director,
GESCOM (Gulbarga Electricity Supply Company Ltd.)
Main road, Gulbarga, Gulbarga -585 102
Karnataka.
13. The Managing Director,
HESCOM (Hubli Electricity Supply Company Ltd.) Corporate office
P.B.Road, Navanagar, Hubli - 580 025.
14. The Chief Engineer (Commercial & Tariff)
Kerala State Electricity Board Ltd,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695004.
15. The Superintending Engineer I (HOD),



Puducherry Electricity Department,
137, NSC Bose Salai, Puducherry - 605 001.

16. The Managing Director,
Jodhpur Vidyut Vitaran Nigam Ltd.,
New Power House, Heavy Industrial Area,
Jodhpur, Rajasthan 342 003
17. The Managing Director,
Jaipur Vidyut Vitaran Nigam Ltd.,
Vidyut Bhavan, I Floor, Janpath,
Jaipur , Rajasthan- 302 005
18. The Managing Director,
Ajmer Vidyut Vitaran Nigam Ltd.,
Old Power House Hathi Bhata,
Jaipur Road,
Ajmer, Rajasthan 305 001
19. The Chief Executive Officer,
Rajasthan Urja Vihars Nigam Ltd,
Shed no.5/5, Vidyut Bhawan, Janpath,
Jaipur, Rajasthan - 302 005

.... RESPONDENTS

Parties present:

Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Shikha Sood, Advocate, NLCIL
Ms. Shrishti Khindaria, Advocate, NLCIL
Shri Nambirajan, NLCIL
Shri Anil Kumar Sahni, NLCIL
Shri A. Srinivasan, NLCIL
Shri Anand K Ganesan, Advocate, Rajasthan Discoms
Shri Amal Nair, Advocate, Rajasthan Discoms

ORDER

The petitioner, Neyveli Lignite Corporation India Limited (hereinafter referred to as NLCIL), has filed this petition seeking appropriate directions of the Commission to allow the Petitioner to increase and recover O&M expenses of NLC generating stations due to increase in employee cost on account of wage revision of employees (Non-Executives and Workmen) from 1.4.2014, posted in NLCIL's Power Stations and CISF security personnel



with effect from 1.1.2016 including Gratuity ceiling limit increase. The Petitioner has filed the petition with the following prayers:

- a. *To take on record the present petition filed by NLCIL in respect of the increase in the O&M expenses on account of Pay/Wage Revision to Executives with effect from 1.1.2017, Non Executives & workmen w.e.f. 1.4.2014 & CISF w.e.f. 1.1.2016 posted to NLCIL's Power Stations namely NLCIL TPS I (600 MW), NLCIL TPSII - Stage I (3X210 MW), NLCIL - TPSII - Stage II (4X210 MW), NLCIL TPS I Expn (2 x 210 MW), TSII Expn (2 X 250MW) and NLCIL Barsingsar Thermal Power Station (2x125 MW) and other hikes including terminal benefits like gratuity etc., for the period 1.4.2014 to 31.3.2019.*
- b. *To allow the recovery of increase in O&M Expenses from beneficiaries on account of Pay/Wage Revision to Executives with effect from 1.1.2017, Non Executives & workmen w.e.f. 1.4.2014 & CISF w.e.f. 1.1.2016 posted to NLCIL's Power Stations namely NLCIL TPS I (600 MW), NLCIL TPSII - Stage-I (3X210 MW), NLCIL - TPSII - Stage-II (4X210 MW), NLCIL TPS-I Expn (2 x 210 MW) TS-II Expn. (2 X 250MW) and NLCIL Barsingsar Thermal Power Station (2x125 MW) and other hikes including terminal benefits like gratuity etc., for the period 01.04.2014 to 31.3.2019 as per table 5 under power to relax (Regulation 54) and power to remove difficulties (Regulation 55) and*
- c. *To Pass such order(s) as deemed fit by the Hon'ble Commission.*

Submission of the Petitioner

2. The Petitioner is a generating company owned and controlled by the Central Government. The tariff for sale of electricity generated at the Petitioner's generating stations is regulated by the Commission in terms of clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The Commission approved Tariff orders on various dates for NLCIL's Power Stations (Formerly Neyveli Lignite Corporation Limited, Neyveli) namely NLCIL-TPS-I (600 MW), NLCIL TPSII - Stage I (3X210 MW), NLCIL - TPSII - Stage II (4X210 MW) NLCIL TPS I Expansion (2X210) MW and NLCIL Barsingsar Thermal Power Station (2X125) MW for the tariff period 2014-2019.

3. The Commission vide order dated 18.7.2018 had allowed the increase in O&M expenses due to wage revision impact for non-executives and workmen w.e.f. 1.1.2012 to 31.3.2014 in Petition No. 31/MP/2018.



4. The subsequent salary/wage revision of the Petitioner's employees was due from 1.1.2017. Wage revision to Employees (Non-executives/workmen of NLCIL) was implemented by the NLC vide wage revision order dated 9.3.2019, as per the guidelines of Department of Public Enterprise and Ministry of Coal.

5. The Petitioner in its submission has furnished the Station wise pay revision impact for Non Executives & workers, Executives, CISF and impact of gratuity for the period 2014-15 to 2018-19 and tabulated as under:-

(A) Non-Executives & Workers Wage Revision

(Amount in Rs)

Stations	2014-15	2015-16	2016-17	2017-18	2018-19	TOTAL
TPS I	64518331	80469047	174065032	368758412	317456674	1005267496
TPS I Expansion	18261353	21927154	49505435	106633079	101219125	297546146
TPS II ST I	49163927	62654546	142350158	305221482	287081142	84,641255
TPS II ST II	65551903	83539395	189800212	403111661	379212297	1121215468
TPS II Expansion	-	-	16239599	76074654	69621495	161935748
BTPP	3537744	7053449	13795796	37684861	41031643	103103493
Total	201033258	255643591	585756232	1297484149	1195622376	3535539606

(B) Executives Pay Revision

(Amount in Rs)

Stations	2016-17	2017-18	2018-19	TOTAL
TPS I	56027311	278970,274	270834201	605831786
TPS I EXP	25210817	124787699	117575709	267574225
TPS II ST I	37559539	19,54,68,165	194320914	427348618
TPS II ST II	50079385	260624220	259094551	569798156
TSII EXPN	26451952	138168154	139864890	304484996
BTPP	19792600	102938664	97442157	220173421
Total	215121604	1100957176	1079132422	2395211202

(C) CISF Pay Revision

(Amount in Rs)

Stations	2015-16	2016-17	2017-18	2018-19	TOTAL
TPS I	2348086	11321631	11482211	9384118	34536046
TPS I EXP	2297590	11078155	11235282	9182309	33793336



TPS II ST I	1157812	5582556	5661736	4627191	17029295
TPS II ST II	1543749	7443407	7548981	6169589	22705726
TSII EXPN	2625817	12660749	12840322	10494068	38620956
BTPP	2943513	12558559	15598484	18166046	49266602
Total	12916567	60645057	64367016	58023321	195951961

(D) Impact of Gratuity ceiling limit increase to Rs.20 lakhs and other Terminal benefits w.r.t. Executives and Non Executives.

(Amount in Rs)

Stations	2017-18
TPS I	447930361
TPS I EXP	163690328
TPS II ST I	347231937
TPS II ST II	462975916
TSII EXPN	164853977
BTPP	123097171
Total	1709779690

6. The total financial impact of increase in O&M Expenses for the tariff period 2014-19 and the total station and year wise expenditure on account of all the above aspects are tabulated below.

Total Financial Impact *(Amount in Rs)*

Stations	2014-15	2015-16	2016-17	2017-18	2018-19	TOTAL
TPS I	64518331	82817133	241413974	1107141258	597674993	2093565689
TPS I EXP	18261353	24224744	85794407	406346388	227977143	762604035
TPS II ST I	49163927	63812358	185492253	853583320	486029247	1638081105
TPS II ST II	65551903	85083144	247323004	1134260778	644476437	2176695266
TSII EXPN	-	2625817	55352300	391937107	219980453	669895677
BTPP	3537744	9996962	46146955	279319180	156639846	495640687
TOTAL	201033258	268560158	861522893	4172588031	2332778119	7836482459



7. The Petitioner in the instant petition in the facts and circumstances mentioned above, has submitted that the Commission may be pleased to consider and allow the recovery of increase in O&M Expenses considering Pay/wage revision and other benefits to Employees (Executives w.e.f. 1.1.2017, Non Executives & workers w.e.f. from 1.4.2014) & CISF security personnel w.e.f. 1.1.2016 posted to NLCIL TPS I, TPS II Stage I and Stage II, TPS I Expansion, TSII Expansion and BTPP.

8. Accordingly, the Petitioner under Regulation 54 Power to Relax and Regulation 55 Power to Remove difficulty of 2014 Tariff Regulations, has prayed to allow the recovery of the above mentioned expenses.

Reply filed by the Respondent TANGEDCO

9. The Respondent TANGEDCO in its reply dated 10.10.2019 has submitted that NLCIL has claimed the entire expenditure incurred towards pay/wage revision including gratuity ceiling limit impact. The expenditure claimed is without any ceiling. Even though, there is no provision for inclusion of gratuity ceiling limit impact, the Petitioner has included the Gratuity claim in the present petition. Therefore, the impact of gratuity ceiling limit increase is liable to be rejected.

10. The Respondent TANGEDCO has submitted that NLCIL has not furnished the statement showing the existing Basic Pay and the revised basic pay in respect of Non-Executives & workmen, Executives and CISF personnels, and has only furnished the yearwise impact of wage revision in respect of the above categories. The Respondent has requested the Commission to disallow the claims made apart from the revision of Basic and DA of Executives. Similarly, for the claim towards CISF, the Petitioner has not furnished the split up of the components and has only given the consolidated figure.

Reply filed by the Respondents RUVNL

11. The Respondents from 16 to 19 who are the Distribution Licensees in the State of Rajasthan vide affidavit dated 8.11.2019 have submitted that there has been subsequent delay in filing the petition from the due date and the claim is beyond the scope of the Tariff Regulations and thus, liable to be rejected in limine. The Respondents have submitted that



the entire purpose for providing normative expenses would be defeated if generating stations are allowed to seek additional recovery based on actual expenditure.

12. The Respondents have further submitted that the Pay Revision orders and the amendment to Payment of Gratuity Act, 1972, are in the nature of change in law events, which have to be separately looked into. The expenditure on account of these events cannot be claimed as matter of right and that too under the power to relax and power to remove difficulties. Further, there is no merit in the claim of the Petitioner and there being no difficulty or inconsistency in the Tariff Regulations, the claims of the Petitioner under Regulation 55 cannot be allowed by this Hon'ble Commission. Hence, all contentions and averments to the contrary are stated to be wrong and denied.

Rejoinders to the reply filed by TANGEDCO

13. The Petitioner vide rejoinder to the reply filed by TANGEDCO dated 2.1.2020, has submitted that the Gratuity ceiling limit has been increased due to notification dated 29.3.2018 issued by the Ministry of Labour and Employment, Government of India under the Payment of Gratuity Act, 1972. NLCIL, a Government of India Enterprise has to necessarily adhere to the Act and Rules of Government Of India. Hence, the contention raised by TANGEDCO is devoid of any merit.

14. The Petitioner in response to the contention of TANGEDCO regarding the difference in existing and revised basic pay has submitted that the data sought for by TANGEDCO is voluminous in nature. The same data as sought for by TANGEDCO has been verified and certified by Auditors of NLCIL and the same were furnished along with the Main petition. These certificates are once again furnished with this affidavit for verification for the sake of convenience.

15. The Petitioner has not filed any rejoinder to the reply filed by RUVNL.

16. The matter was last heard on 28.6.2022. The Commission directed the Petitioner to file additional information after serving copy on the Respondents. The Commission also directed the Respondents to file reply, with advance copy to the Petitioner, who may file its rejoinder. The Petitioner in compliance vide affidavit dated 22.8.2022 has submitted its response.



Analysis and Decision:

17. The instant petition has been filed by the Petitioner for wage revision for NLCIL Non Executives & workmen with effect from 1.4.2014, for NLCIL Executives which was due with effect from 1.1.2017 and wage revision of CISF security personnel deployed in the thermal stations that took place with effect from 1.1.2016. Further, the Petitioner has also claimed the impact of gratuity due to increase of the gratuity ceiling limit from Rs. 10 lakhs to Rs.20 lakhs vide, the Payment of Gratuity Act, 1972 dated 28.3.2018.

18. We have considered the submissions of the Petitioner and the Respondent and perused all the documents on record. The Petitioner has filed the instant petition under Regulation 54 and 55 of 2014 Tariff Regulations, which provides as under:

“54. 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.”

55. Power to Remove Difficulty:

If any difficulty arises in giving effect to the provisions of these regulations, the Commission may, by order, make such provision not inconsistent with the provisions of the Act or provisions of other regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations.”

19. The Petitioner has submitted that the Commission has the power to recover the above mentioned expenses on account of wage revision under power to relax Regulation 54 & under power to remove difficulties Regulation 55 of the Tariff Regulations, 2014.

20. The Respondent RUVNL has submitted that the power to relax is a discretionary power of the Commission and ought not to be used without there being sufficient reasons for the same. The Pay Revision orders and the amendment to Payment of Gratuity Act, 1972, are in the nature of change in law events, which have to be separately looked into. Power to remove difficulty is only to be invoked by this Hon'ble Commission if any infirmity or disability in its effectuation arises in giving effect to the provisions of the Tariff Regulations. The expenditure on account of these events cannot be claimed as matter of right and that too under the power to relax and power to remove difficulties.



21. The Respondent TANGDECO has submitted that, the Petitioner has not furnished the split up of the components and has only given the consolidated figure. Hence, the impact of gratuity ceiling limit increase is liable to be rejected. The Respondent has requested the Commission to disallow the claims made apart from the revision of Basic and DA of Executives.

22. The Petitioner has not submitted the rejoinder to the reply filed by RUVNL; however the Petitioner has filed the rejoinder to the reply filed by TANGEDCO. The Petitioner in its rejoinder to TANGEDCO, vide affidavit dated 2.1.2020 has submitted that the Gratuity ceiling limit has been increased due to notification dated 29.3.2018 issued by the Ministry of Labour and Employment, Government of India under the Payment of Gratuity Act, 1972. NLCIL , a Government of India Enterprise has to necessarily adhere to the Act and Rules of Government Of India. Hence, the contention raised by TANGEDCO is devoid of any merit. Further w.r.t. the contention of TANGEDCO regarding consideration of only basic and DA, the Petitioner has submitted that Normative O&M includes Pay, Allowances and other linked Services costs. Any increase in Pay, will have a consequent impact in the Allowances and other linked Services costs also. Thus the contention of TANGEDCO to exclude the components mentioned in its reply is liable to be rejected.

23. 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.

29.32 NLC suggested that the norms for Barsingsar TPS are not sufficient to cater to the O&M expenses of the stations as the plant was under warranty and therefore, the Repair & Maintenance expenses for the station was lower. The Commission has examined the data submitted for the station. As per data submitted, it has been observed that NLC has incurred around ` 13.69 Crore towards Repairs & Maintenance and consumption of stores for the station which works out to ` 5.48 lakh/MW, which in case of NLC TPS-II is ` 4.72 lakh/MW for FY 2012-13. These data indicate that there is substantial consumption of stores and at the same time, significant expenses have been incurred towards Repairs & Maintenance of Barsingsar TPS. Therefore, the contention of the generating station doesn't hold merit and hence, the Commission is of the view that there is no case for relaxation on the above premise.

29.33 As regards NLC's suggestion that the norms for TPS-I should be based on the actual expenses incurred by the generating station, it is clarified that norms have been determined on the basis of actual normalised O&M expenses and the norm so determined for FY 2014-15 is higher than the norms already specified for FY 2013-14. Further, the Commission is of the view that the Man:MW ratio of 2.62/MW in FY 2012-13 for the station is on the higher side, which indicates scope for reduction of O&M expenses through man power rationalisation, and the generating station is expected to rationalise its manpower by at least 25-30% during the Tariff Period 2014-19. Further, the station has very high heat rate and is in the process of being phased out, and the Commission is not inclined to incentivise such plants.

29.34 NLC has further submitted that the Commission should not restrict its corporate expenses and should allow the actual corporate expenses. In this context, it has been observed in the Explanatory Memorandum to the draft Regulations that the corporate expenses allocated to its generating station is very high, to the tune of around ` 8 lakh/MW for TPS-I owing to considerably higher manpower employed. Keeping in view the interest of the consumers, the Commission is of the view that actual corporate expenses in this case cannot be allowed and the methodology as adopted in the draft Regulations is justified, and the generating company should meticulously carry out manpower rationalisation to bring such expenses to normal levels.



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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.

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.

24. From the statement of reason above it is apparent that the pay revision with effect from 1.1.2016 and wage revision with effect from 1.1.2017, were not 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 Electricity 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 of Executives came into force w.e.f. 1.1.2017 & CISF w.e.f. 1.1.2016 posted to NLCIL's Power Stations and other hikes including terminal benefits like gratuity etc., for the period 1.4.2014 to 31.03.2019. 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.

25. Further, it is noticed that the Petitioner has claimed wage revision impact of Executives w.e.f. 1.1.2017, Non Executives & workmen w.e.f. 1.4.2014 of NLCIL's Power Stations & CISF security personnel w.e.f. 1.1.2016 including Gratuity ceiling limit increase. The wage revision of the Petitioner's workers and non-executives happens once in five years i.e 2007, 2012, 2017 etc. unlike the case of other power sector CPSUs such as NTPC, etc.

26. The Commission vide order dated 18.7.2018 in Petition No. 31/MP/2018 had allowed the increase in Operation and Maintenance expenses incurred by NLCIL's Thermal Power Stations on account of Wage Revision and other pay hikes with effect from 1.1.2012 to 31.3.2014 to Employees (Non-Executives & workmen) posted to NLCIL's Power Stations namely NLCIL TPS I (600 MW), NLCIL TPSII - Stage I (3X210 MW), NLCILTPS-II Stage-II (4X210 MW), NLCIL TPS I Expn (2 x 210 MW) and NLCIL Barsingsar Thermal Power Station (2x125 MW). Further, from the SOR of the Tariff Regulations 2014, it is observed that the normative O&M expenses for the period 2014-19 were based on the actual normalization of O&M expenditure of NTPC and NLCIL generating stations and the fact that the claim in this petition pertains to wage revision of non-executives of NLCIL, which happens once in 5 years unlike NTPC where wage revision is considered after every 10 years. As such, considering the fact that while deciding the norms for the period 2014-19, the data available for the period 2007-08 to 2012-13 were taken into consideration. Therefore, the wage



revision with effect from 1.4.2014 of non-executives and workmen working in generating stations of the Petitioner were not factored in the norms. Accordingly, the Petitioner is entitled for the impact of wage revision on the basis of actual expenditure over and above the escalation factored in the O&M norms. In our view, the claim of the Petitioner can be considered subject to verification that actual O&M expenditure for the period 2014-19 is in excess of normative O&M expenditure allowed to the various generating stations of NLCIL. In compliance to the direction of the Commission vide ROP of the hearing dated 28.6.2022, the Petitioner vide affidavit dated 22.8.2022 has furnished the station-wise actual O&M expenditure for the period 2014-19 as under:

Unit	TPS I (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M (A)	286.96	295.29	302.22	344.30	327.95	1556.72
O&M Norm(Rs.Lakhs/MW)	38.12	40.52	43.07	45.78	48.66	
Normative O&M (B)	228.72	243.12	258.42	274.68	266.5	1271.44
Difference (A-B)	58.24	52.17	43.80	69.62	61.45	285.28
Wage Revision claimed						
Non Executives	6.45	8.05	17.41	36.88	31.75	100.53
Executives			5.60	27.90	27.08	60.58
CISF		0.23	1.13	1.15	0.94	3.45
Gratuity				44.79		44.79
Total	6.45	8.28	24.14	110.71	59.77	209.36

Unit	TPS I E (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M (A)	116.08	127.60	133.62	149.58	177.00	703.88
O&M Norm	23.90	25.40	27.00	28.70	30.51	
Normative O&M (B)	100.38	106.68	113.4	120.54	128.1	569.14
Difference (A-B)	15.70	20.92	20.22	29.04	48.86	134.73
Wage Revision claimed						
Non Executives	1.83	2.19	4.95	10.66	10.12	29.75
Executives			2.52	12.48	11.76	26.76
CISF		0.23	1.11	1.12	0.92	3.38
Gratuity				16.37		16.37
Total	1.83	2.42	8.58	40.63	22.80	76.26



Unit	TPS II (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M (A)	473.86	499.01	492.32	629.51	638.99	2733.69
O&M Norm	23.90	25.40	27.00	28.70	30.51	135.51
Normative O&M (B)	351.33	373.38	396.9	421.89	448.5	1992.00
Difference (A-B)	122.53	125.63	95.42	207.62	190.50	741.70
Wage Revision claimed						
Non Executives	11.47	14.62	33.22	70.83	66.63	196.77
Executives			8.76	45.61	45.34	99.71
CISF		0.27	1.30	1.32	1.08	3.97
Gratuity				81.02		81.02
Total	11.47	14.89	43.28	198.78	113.05	381.48

Unit	TPS II E (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M (A)	0.00	64.74	81.11	147.13	171.76	464.75
O&M Norm	23.90	25.40	27.00	28.70	30.51	135.51
Normative O&M (B)	0	101	135	143.5	152.6	531.59
Difference (A-B)	0.00	-35.80	-53.89	3.63	19.21	-66.84
Wage Revision claimed						
Non Executives	0.00	0.00	1.62	7.61	6.96	16.19
Executives			2.65	13.82	13.99	30.45
CISF		0.26	1.27	1.28	1.05	3.86
Gratuity				16.49		16.49
Total	0.00	0.26	5.54	39.19	22.00	66.99

Unit	Rajasthan (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M (A)	108.67	79.14	100.11	136.37	130.27	554.57
O&M Norm	29.10	30.94	32.88	34.95	37.15	165.02
Normative O&M (B)	72.75	77.35	82.2	87.375	92.9	412.55
Difference (A-B)	35.92	1.79	17.91	49.00	37.40	142.02
Wage Revision claimed						
Non Executives	0.35	0.71	1.38	3.77	4.10	10.31
Executives			1.98	10.29	9.74	22.02
CISF		0.29	1.26	1.56	1.82	4.93
Gratuity				12.31		12.31
Total	0.35	1.00	4.61	27.93	15.66	49.56



27. The Petitioner has submitted that the Commission has determined the Tariff and issued orders on various dates for NLCIL's Thermal Power Stations for the tariff period 2014-2019. The previous wage revision for non-executives and workmen was implemented w.e.f. 1.1.2012 and the increase in O&M expenses thereof was allowed by the Commission for the period 1.1.2012 to 31.3.2014 vide order dated 18.7.2018 in petition 31/MP/2018. The subsequent Wage Revision for Non Executives and workmen, which was due w.e.f. 1.1.2017, was implemented by the NLCIL wage revision order dated 9.3.2019. The Pay revision to executives was due from 1.1.2017 and was implemented as per the guidelines of the Department of Public Enterprise dated 3.8.2017. The pay revision order for executives was issued by NLCIL on 21.2.2018. Further, the Payment of Gratuity Act, 1972 was amended on 28.3.2018 with an increase of the gratuity ceiling limit from Rs. 10 lakhs to Rs.20 lakhs. Other terminal benefits consequent to Pay/Wage revision have increased the O&M expenses of the petitioner and pay revision of CISF security personnel deployed in the thermal stations took place w.e.f. 1.1.2016. Accordingly, prayed the Commission to allow the recovery of increase in the O&M expenses.

28. From the above details submitted by the Petitioner, it is observed that the normative O&M expenditure allowed by the Commission for the period 2014-19 is less than the actual O&M Expenses. 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.*

29. 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 five years i.e. 2014-19 on a combined basis for each generating station separately, which is commensurate with the wage revision claim being spread over these five years.

30. First step is to compare the normative O&M expenses with the actual O&M expenses for the period from 2014-15 to 2018-19, commensurate to the period for which wage revision impact has been claimed. We have also considered the impact for the period 2014-15 due to the fact that the Wage Revision of NLCIL Workers and Non Executives happens once in 5 years unlike other power sector CPSUs and the Commission vide order dated 18.7.2018 in Petition No. 31/MP/2018 had allowed the increase in Operation and Maintenance expenses incurred by NLCIL's Thermal Power Stations on account of Wage Revision and other pay hikes with effect from 1.1.2012 to 31.3.2014 to Employees. For like to like comparison, the components of O&M expenses like productivity linked incentive, expenses on superannuated employees, expenditures on VRS, Ex-gratia and performance related pay, which were not considered while framing the O&M expenses norms for the 2014-19 tariff period, have been excluded from the yearly actual O&M expenses of the generating station as well as corporate center. Having brought the normative O&M expenses and actual O&M expenses at same level, if normative O&M expenses for the period 2014-19 are higher than actual O&M expenses (normalized) for the same period, the impact of wage revision (excluding PRP and ex-gratia) as claimed for the 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 2014-19 are less than the actual O&M expenses (normalized) for the same period, the wage revision impact (excluding PRP and ex-gratia) to the extent of under recovery or wage revision impact (excluding PRP and ex-gratia), whichever is lower, is required to be allowed as wage revision impact for the period 2014-19.



31. As stated, for a like to like comparison of the actual O&M expenses and normative O&M expenses, the expenditure against O&M expenses sub-heads as discussed above, has been excluded from the actual O&M expenses to arrive at the actual O&M expenses (normalized) for the instant generating station. Accordingly, the following table portrays the comparison of 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 period 2014-19 (on combined basis) commensurate with the wage revision claim being spread over these five years:

Unit	Thermal Power Station-I, Neyveli (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M expenditure for generating station (a)	286.96	295.29	302.22	344.30	327.95	1556.72
Actual O&M expenses (normalized) (b)	276.66	282.22	293.6	333.92	319.09	1505.49
Normative O&M (c)	228.72	243.12	258.42	274.68	266.5	1271.44
Under recovery (d) =(b)-(c)	47.94	39.1	35.18	59.24	52.59	234.05
Wage revision impact after normalization including impact of gratuity	6.45	8.28	24.14	110.71	59.77	209.35

Unit	Thermal Power Station-I Expansion, Neyveli (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M expenditure for generating station (a)	116.08	127.60	133.62	149.58	177.00	703.88
Actual O&M expenses (normalized) (b)	113.45	122.23	130.87	145.82	174.19	686.57
Normative O&M (c)	100.38	106.68	113.40	120.54	128.14	569.14
Under recovery (d) =(b)-(c)	13.07	15.55	17.47	25.28	46.05	117.43
Wage revision impact claimed including impact of gratuity	1.83	2.42	8.58	40.63	22.8	76.26

Unit	Thermal Power Station-II, Neyveli (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M expenditure for generating station (a)	473.86	499.01	492.32	629.51	638.99	2733.69
Actual O&M expenses (normalized) (b)	456.47	476.42	478.28	611.25	622.33	2644.76
Normative O&M (c)	351.33	373.38	396.90	421.89	448.50	1992.00
Under recovery (d) =(b)-(c)	105.14	103.04	81.38	189.36	173.84	652.76
Wage revision impact claimed including impact of gratuity	11.47	14.89	43.28	198.78	113.05	381.47



Unit	Thermal Power Station-II Expansion, Neyveli (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M expenditure for generating station (a)	0.00	64.74	81.11	147.13	171.76	464.75
Actual O&M expenses (normalized) (b)		59.83	78.93	143.42	168.99	451.17
Normative O&M (c)		100.54	135.00	143.50	152.55	531.59
Under recovery (d) =(b)-(c)		-40.71	-56.07	-0.08	16.44	-80.42
Wage revision impact claimed including impact of gratuity	0.00	1.00	4.61	27.93	15.66	49.20

Unit	Barsingsar Thermal Power Station (Rs.in crores)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Actual O&M expenditure for generating station (a)	108.67	79.14	100.11	136.37	130.27	554.57
Actual O&M expenses (normalized) (b)	106.27	77.37	98.12	133.28	128.11	543.14
Normative O&M (c)	72.75	77.35	82.20	87.38	92.88	412.55
Under recovery (d) =(b)-(c)	33.52	0.02	15.92	45.90	35.24	130.59
Wage revision impact claimed including impact of gratuity	0.35	1.00	4.61	27.93	15.66	49.56

32. From the above details, it is observed that during the period 2014-15 to 2018-19, except for the TPS-II expansion which is a new generating station, the normative O&M expenses allowed is lesser than the actual O&M expenses incurred and the under-recovery is to the tune of Rs.234.05 crore for TPS-I, Rs 117.43 crore for TPS-I Expansion, Rs 652.76 crore for TPS-II and Rs 130.59 crore for Barsingsar TPS. As such, in terms of methodology described above, the total wage revision impact (excluding PRP/incentive) is of Rs. 209.35 crore for TPS-I, Rs 76.26 crore for TPS-I Expansion, Rs 381.47 crore for TPS-II and Rs 49.56 crore for Barsingsar TPS (as calculated in the table above) is allowable. The wage revision impact for TPS-II Expansion is Rs 49.20 crore but considering the fact that the normative O&M expenses is more than the actual O&M expenses and there is more recovery than the impact claimed (i.e. Rs 80.42 crore), we are not inclined to allow the wage revision impact of TPS-II Expansion.

33. 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.”

34. Accordingly, we, in exercise of Power to relax under Regulation 54 of the 2014 Tariff Regulations hereby allow the reimbursement of total wage revision /pay revision impact Rs. 209.35 crore for TPS-I, Rs 76.26 crore for TPS-I Expansion, Rs 381.47 crore for TPS-II and Rs 49.56 crore for Barsingsar TPS, as additional O&M charges for the period 2014-19.

35. The arrears payments on account of the above allowed wage revision/pay revision impact is payable by the beneficiaries in twelve equal monthly installments, starting from December, 2022. Keeping in view the passage of time and in consumer interest, we, as an exceptional case, in exercise of our regulatory power, direct that no interest shall be charged by the Petitioner on the arrear payments on the wage/pay revision impact, as allowed in this order. This arrangement, in our view, will balance the interest of both, the Petitioner and the Respondents. Further, in view of the fact that wage/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.

36. Petition No. 202/MP/2019 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S.Jha)
Member

