

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 229/MP/2019**

along with

**Petition No. 230/MP/2019**

**Petition No. 286/MP/2019**

**Petition No. 227/MP/2019**

**Petition No. 222/MP/2019**

**Petition No.223/MP/2019**

**Petition No.237/MP/2019**

**Petition No. 238/MP/2019**

**Coram:**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 30<sup>th</sup> December, 2022**

**Petition No. 229/MP/2019**

**IN THE MATTER OF**

Petition for recovery of impact of wage revision of its employees and deputed employees of Kendriya Vidyalaya (KV) & Central Industrial Security Force (CISF) in TLDP-III Hydropower station during the period from 1.1.2016 to 31.3.2019.

**AND**

**Petition No. 230/MP/2019**

**IN THE MATTER OF**

Petition for recovery of impact of wage revision of its employees and deputed employees of Central Industrial Security Force (CISF) in TLDP-IV Hydro power station 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**

West Bengal State Electricity Distribution Company Ltd,  
Vidyut Bhawan (8<sup>th</sup> Floor) Block-DJ, Sector-II, Salt Lake,  
Kolkata – 700 091 (West Bengal)

**....Respondent**

**AND**



**IN THE MATTER OF**

**Petition No. 237/MP/2019**

Petition for recovery of impact of wage revision of its employees and deputed employees of Central Industrial Security Force (CISF) in Chamera-III Hydropower station during the period from 1.1.2016 to 31.3.2019.

**AND**

**Petition No. 227/MP/2019**

**IN THE MATTER OF**

Petition for recovery of impact of wage revision of its employees and deputed employees of Kendriya Vidyalaya (KV) & Central Industrial Security Force (CISF) in Uri-II Hydro power station during the period from 1.1.2016 to 31.3.2019.

**AND**

**IN THE MATTER OF:**

**Petition No. 238/MP/2019**

Petition for recovery of impact of wage revision of its employees and deputed employees of Central Industrial Security Force (CISF) in Parbati-III Hydro power station 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 Ltd,  
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 Ltd.,  
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. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,



Shimla - 171 004 (Himachal Pradesh)

7. Uttar Pradesh Power Corporation Limited,  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow - 226 001 (Uttar Pradesh)

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

9. Jaipur Vidyut Vitaran Nigam Limited  
Vidyut Bhawan, Janpath,  
Jaipur - 302 005 (Rajasthan)

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

11. Uttaranchal Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun - 248 001 (Uttarakhand)

12. Engineering Department,  
1<sup>st</sup> Floor, UT Secretariat, Sector 9-D,  
Chandigarh - 160 009.

13. Power Development Department,  
New Secretariat, Jammu -180001 (J&K)

.... Respondents

**AND**

**IN THE MATTER OF**

**Petition No. 223/MP/2019**

Petition for recovery of impact of wage revision of its employees and deputed employees of J&K Police in Chutak Hydropower station during the period from 1.1.2016 to 31.3.2019.

**AND**

**Petition No. 222/MP/2019**

**IN THE MATTER OF**

Petition for recovery of impact of wage revision of its employees and deputed employees of J&K Police in Nimoo Bazgo hydropower station 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



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

..... Respondents

**AND**

**Petition No. 286/MP/2019**

**IN THE MATTER OF**

Petition for recovery of impact of wage revision of its employees and deputed employees of Central Industrial Security Force (CISF) in Kishanganga Hydropower station during the period from 18.5.2018 to 31.3.2019.

**AND**

**IN THE MATTER OF**

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

..... Petitioner

Vs

1. Power Development Department,  
New Secretariat, Jammu -180001 (J&K)
2. Uttar Pradesh Power Corporation Ltd.,  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow - 226 001 (Uttar Pradesh)
3. Engineering Department,  
1<sup>st</sup> Floor, UT Secretariat, Sector 9-D,  
Chandigarh - 160 009.

..... Respondents

**Parties Present:**

Shri Rajiv Shankar Dvivedi, Advocate, NHPC  
Shri R.B. Sharma, Advocate, BRPL  
Shri Mohit Mudgal, Advocate, BYPL  
Shri Sachin Dubey, Advocate, BYPL/ BRPL  
Shri Ajay Shrivastava, NHPC  
Shri S.K. Meena, NHPC  
Ms. Megha Bajpeyi, BRPL  
Shri Prashant Kumar Das, GRIDCO  
Shri Mahfooz Alam, GRIDCO

**ORDER**

The Petitioner, NHPC Limited, has filed these petitions, seeking the recovery of impact of wage revision of its employees and deputed employees of Kendriya Vidyalaya/ Dayanand Anglo Vedic and Central Industrial Security Forces/Indian Reserve Battalion/ J & K Police, as the case may be, for its various Hydropower



stations, during the period 2014-19. Accordingly, the prayers of the Petitioner in the aforesaid petitions, are extracted hereunder:

**Petition No.229/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹25.32 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. 1.1.2016 & NHPC employees w.e.f. 1.1.2017;

(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.

**Petition No.230/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹39.33 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of CISF staff w.e.f. 1.1.2016 & NHPC employees w.e.f. 1.1.2017;

(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.

**Petition No.237/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹ 32.69 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of CISF staff w.e.f. 01.01.2016 & NHPC employees w.e.f. 1.1.2017;

(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.

**Petition No.223/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹ 10.62 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of J&K Police Staff w.e.f. 1.1.2016 & NHPC employees w.e.f. 1.1.2017;

(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.



### **Petition No.222/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹12.32Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of J&K Police 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.

### **Petition No.227/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹ 31.74 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.

### **Petition No.286/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹ 18.35 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of CISF 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.

### **Petition No.238/MP/2019**

(a) Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations, 2014 to bill and recover the additional O&M expenses amounting to ₹ 28.92 Cr as given in para-10 above, from the respondents due to increase in employee cost on account of pay revision of CISF 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.



2. Since the submissions/issues raised by the Petitioner in all the aforesaid petitions are based on similar set of facts and law, these petitions have been bunched together for convenience of discussion. We have taken submissions made in Petition No. 229/MP/2019 and the same is being considered for the purpose of analysis and decision.

### **Submissions of the Petitioner**

3. The Petitioner, in Petition No. 229/MP/2019, has made the following submissions:

(a) TLDP-III Power Station ('the generating station) is located in the State of West Bengal and is supplying power to WBSEDCL since, its commercial operation on 1.4.2013. The Petitioner had filed Petition No. 320/GT/2018 in respect of TLDP-III Power Station for the period 2014-19, in terms of Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations') and the Commission vide its order dated 9.1.2020 had disposed of the same Accordingly, the O&M expense allowed by the said order dated 9.1.2020 is as under:

<i>(Rs. in crore)</i>				
<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
40.15	42.81	45.66	48.69	51.62

(b) The expenditure on manpower deployed in the power station (including deputed staff in Kendriya Vidyalaya (KV) & Central Industrial Security Force (CISF)) is part of the aforesaid O&M expenses as per definition of O&M expenses provided under Regulation 3(42) of the 2014 Tariff Regulations. The normative O&M expenses allowed by Commission vide its order dated 9.1.2020 in Petition No.320/GT/2018 and O&M expenses actually incurred by the Petitioner during the 2014-19 tariff period is as under:

<i>(Rs. in crore)</i>			
	<b>Normative O&amp;M Expenses as allowed</b>	<b>Actual O&amp;M Expenses</b>	<b>Difference</b>
	<b>(a)</b>	<b>(b)</b>	<b>(a-b)</b>
2014-15	40.15	70.91	(-)30.76
2015-16	42.81	74.23	(-)31.42
2016-17	45.66	94.01	(-)48.35
2017-18	48.69	101.12	(-)52.43
2018-19	51.62	95.15	(-)43.53
<b>Total</b>	<b>228.90</b>	<b>435.42</b>	<b>(-)206.49</b>





(c) The major reasons for the difference between the actual O&M expenses vs the allowed O&M expenses, are due to implementation of pay revision of employees of the petitioner (including KV & CISF personal deployed in the power station and implementation of Goods & Service Tax (GST).

(d) The Commission in the Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations, has mentioned that 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. The Commission has also observed that the impact of wage revision shall only be given after seeing the impact of one full year and if it is found that O&M norms provided under the regulations are inadequate/ insufficient to cover all justifiable O&M expenses, for the particular year, including employee expenses, then the balance amount may be considered for reimbursement.

(e) The pay revision of the employees of the Petitioner (including CISF & KV staff) has been implemented in the following manner:

- (i) The decisions of the Government on the recommendations of 7<sup>th</sup> Central pay Commission was notified by the Department of Expenditure; Ministry of Finance vide Resolution dated 25.07.2016. Subsequently, Department of Expenditure, Ministry of Finance vide Office Memorandum dated 29.07.2016 has issued instructions for implementation of pay scales of Central Government Employees which was effective from 1.1.2016.
- (ii) Department of Public Enterprises (DPE) vide Office Memorandum dated 3.8.2017, O. Ms. No. dated 4.8.2017 & O. 7.9.2017.
- (iii) Based on DPE guidelines, the presidential directive was issued by Ministry of Power (MoP) vide letter dated 15.05.2018. The petitioner being a Central Public Sector Enterprise under the administrative control of Ministry of Power is under the mandate to follow DPE guidelines as regard to revision of pay scales of its employees.
- (iv) The pay revision proposal of board level & below board level executives was approved by the NHPC Board of Directors (BOD) in its 414<sup>th</sup> meeting held on 28.5.2018. Further, the pay revision proposal of Workmen & Supervisors was approved by the NHPC BOD in its 423<sup>rd</sup> Board meeting held on 15.3.2019.
- (v) The pay revision proposal approved by BOD in respect of board level & below board level executives w.e.f 1.1.2017 has been implemented by the petitioner vide office order no. 30/2018 dated 30.5.2018.





(vi) Similarly, the pay revision proposal approved by BOD in respect of Workmen & Supervisors w.e.f 1.1.2017 has also been implemented by the petitioner vide office orders dated 25.3.2019 and 25.3.2019.

(f) Due to implementation of the pay revision of CISF/KV Staff w.e.f 1.1.2016 & pay revision of Petitioner's employees w.e.f 1.1.2017, the Petitioner has incurred additional expenses for payment to its employees. In addition to this, it has also incurred additional expenses on account of increase in the ceiling limit of gratuity from Rs.10 lakh to Rs. 20 lakh w.e.f. 1.1.2017, as per provision 12.1 of the DPE Guidelines on 3<sup>rd</sup> PRC and the impact of enhancement of ceiling limit of gratuity is also covered under Regulation 3(9) and Regulation 8(3)(ii) of the 2014 Tariff Regulations under 'change in law' w.e.f. 29.3.2018, which has resulted in the substantial increase in O&M expenses in case the power stations w.e.f 2015-16.

(g) Accordingly, the year-wise impact of the implementation of pay revision is tabulated below:

	<i>(Rs. in crore)</i>			
	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f. 1.1.2017	-	1.17	4.27	4.41
Impact of pay revision of CISF / Security Staff w.e.f.01.01.2016	0.12	0.45	0.47	0.37
Impact of pay revision of KV Staff w.e.f.1.1.2016	0.02	0.09	0.08	0.09
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	-	0.47	3.78	3.97
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	-	4.38	0.98	0.00
<b>Total</b>	<b>0.14</b>	<b>6.76</b>	<b>9.59</b>	<b>8.83</b>

(h) Under similar circumstances when the pay revision of CISF/KV Staff & NHPC employees were implemented w.e.f 1.1.2006 & 1.1.2007 respectively, the Petitioner had approached the Commission, for reimbursement of additional expenses through tariff. The Commission vide its order dated vide 5.12.2012 observed that 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.



(i) Further, the Commission while notifying the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2019 (in short '2019 Tariff Regulations) applicable for the 2019-24 tariff period, has also not factored the impact of wage revision. The Commission has decided that the impact on O&M expenses on account of pay revision, escalation in minimum wages & GST shall be considered for each hydro generating stations, separately at the time of determination of tariff n for the period 2019-24.

(j) Accordingly, the Commission has allowed the impact of pay revision, minimum wages & GST under Regulation 35(2)(a) of the 2019 Tariff Regulations. The intent of regulatory provisions is to allow the separate reimbursement of O&M expenses, on account of pay revision in case of hydro generating stations.

(k) The 2014 Tariff Regulations do not specifically provide for the reimbursement of expenses on account of impact of pay revision. However, as per Regulation 55 of the 2014 Tariff Regulations, the Commission is vested with the powers to remove difficulty (if any) in implementing the provisions of said regulations and also under Regulation 54 has the powers to relax the same.

(l) Accordingly, the Commission may allow reimbursement of above expenses to be billed and recovered as additional component under O&M expenses from the Respondents in proportion to their allocated capacity shares in the years 2015-16, 2016-17, 2017-18 and 2018-19 respectively under Regulation 54 and Regulation 55 of the 2014 Tariff Regulations.

4. Similarly, the year-wise impact of the implementation of pay revision as claimed by the Petitioner in other petitions are as under:

**Petition No. 230/MP/2019 (TLDP-IV Power Station)**

Year	(Rs. in crore)		
	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f.01.01.2017	1.40	5.92	6.13
Impact of pay revision of CISF / Security Staff w.e.f.01.01.2016	0.00	4.88	6.76
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power	0.99	3.32	3.58



Station (3rd PRC)			
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	5.39	0.96	0.00
<b>Total</b>	<b>7.78</b>	<b>15.09</b>	<b>16.47</b>

**Petition No. 286/MP/2019 (Kishanganga Power Station)**

(Rs. in crore)

Year	2018-19 (w.e.f. 18.5.2018)
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f 1.1.2017	5.76
Impact of pay revision of CISF / Security Staff w.e.f.1.1.2016	4.43
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	8.16
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	0.00
<b>Total</b>	<b>18.35</b>

**Petition No. 227/MP/2019 (URI-II Power Station)**

(Rs. in crore)

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f.1.1.2017	-	1.32	5.22	5.01
Impact of pay revision of CISF / Security Staff w.e.f.1.1.2016	0.17	0.95	1.56	2.25
Impact of pay revision of KV Staff w.e.f.1.1.2016	0.02	0.06	0.08	0.07
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	-	1.23	3.82	4.04
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	-	4.26	1.68	0.00
<b>Total</b>	<b>0.19</b>	<b>7.82</b>	<b>12.36</b>	<b>11.37</b>

**Petition No. 222/MP/2019 (Nimoo Bazgo Power Station)**

(Rs. in crore)

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f. 01.01.2017	-	0.57	2.18	2.27



Impact of pay revision of J&K Police / Security Staff w.e.f.01.01.2016	0.05	0.19	0.20	0.26
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	--	0.44	1.82	1.81
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC		1.94	0.59	0.00
<b>Total</b>	<b>0.05</b>	<b>3.13</b>	<b>4.79</b>	<b>4.35</b>

**Petition No. 223/MP/2019 (Chutak Power Station)**

(Rs. in crore)

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f.01.01.2017	-	0.43	1.79	2.18
Impact of pay revision of J&K Police / Security Staff w.e.f.01.01.2016	0.05	0.22	0.25	0.16
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	-	0.39	1.62	1.62
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	-	1.38	0.54	0.00
<b>Total</b>	<b>0.05</b>	<b>2.42</b>	<b>4.20</b>	<b>3.96</b>

**Petition No. 237/MP/2019 (Chamera-III Power Station)**

(Rs. in crore)

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f.01.01.2017	-	1.59	6.18	6.27
Impact of pay revision of CISF / Security Staff w.e.f.01.01.2016	0.08	0.38	0.44	0.49
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	-	0.69	3.86	4.09
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	-	7.35	1.28	0.00
<b>Total</b>	<b>0.08</b>	<b>10.01</b>	<b>11.76</b>	<b>10.84</b>



**Petition No. 238/MP/2019 (Parbati-III Power Station)***(Rs. in crore)*

Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f.01.01.2017	0.00	1.37	5.48	5.72
Impact of pay revision of CISF / Security Staff w.e.f.01.01.2016	0.17	0.71	0.79	0.85
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	0.00	1.10	3.54	4.35
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	0.00	3.77	1.06	0.00
<b>Total</b>	<b>0.17</b>	<b>6.96</b>	<b>10.86</b>	<b>10.93</b>

**Hearing dated 17.10.2019**

5. These Petitions were listed for hearing on 'admission' on 17.10.2019. During the hearing, the learned counsel for the Petitioner made detailed oral submissions in the matter and prayed that the reliefs sought for in these petitions, as in paragraph 1 above, may be allowed. The Commission, after hearing the learned counsel for the Petitioner 'admitted' the Petition and issued notice to the Respondents, with directions to the Petitioner to file certain additional information. However, Petition No. 286/MP/2019 was admitted on 5.3.2021 and the Commission, after hearing the leaned counsel for the Petitioner, directed the Petitioner to file additional information. In response, the Petitioner, has filed the additional information vide affidavit dated 14.11.2019 and 26.5.2021 (Petition No. 286/MP/2019). Reply to the petitions have been filed by the Respondent UPPCL, Respondent BRPL and Respondent RUVNL and the Petitioner has filed its rejoinder to the said replies.

**Hearing dated 30.6.2022**

6. The matter was heard through virtual hearing, on 30.6.2022. During the hearing, the learned counsel for the Petitioner submitted that it has filed the requisite



information vide ROP of hearings dated 17.10.2019 and 5.3.2021(in Petition No. 286/MP/2019). The Commission, after hearing the parties, directed the Petitioner to file certain additional information and accordingly, reserved its order, in these petitions. In compliance to the directions, the Petitioner has filed the additional information vide affidavit dated 18.7.2022.

### **Reply of the Respondents**

7. As stated, the Respondents UPPCL, BRPL and RUVNL have filed their replies in these petitions, mainly as stated under:

### **Reply of the Respondent, UPPCL**

8. The Respondent, UPPCL vide its reply affidavit has mainly submitted as under:

(a) Tariff is complete package governed by the various factors and cannot be reviewed in isolation as prayed by the petitioner. If the Commission is inclined to review the tariff in isolation, then other parameters of tariff should also be reviewed on the basis of actual.

(b) The Commission has already factored the impact of pay and wages revision during the control period 2009-2014 by allowing 50% of the impact to be borne by the beneficiaries has already adversely impacted the beneficiaries.

(c) The Commission's power to remove difficulties and power to relax is not applicable as no difficulty has arisen due to 2014 Tariff Regulations.

(d) As per Hon'ble Supreme Court judgment in NTPC Ltd v UPPCL in Civil Appeal No.1110/2007, the Commission cannot be asked to revisit the tariff for when the period is already over. The said judgment also prohibits the recovery of tariff of past consumers from the new consumers.

(e) The Petitioner's claim for expenditure on CISF is premature as CISF has neither been deployed nor the CRPF has been withdrawn by the Government. Since the impact of pay revision cannot be passed on to the end consumers with retrospective effect, the claim of the Petitioner is not maintainable.

(f) As per Para 5.11 (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 for convenience of all including the end consumers so that uncontrollable costs are recovered speedily to ensure that future consumers are not burdened with past costs.



(g) As per Regulation 8 of the 2014 Tariff Regulations, the Commission shall consider the impact of change in law as an uncontrollable factor at the time of truing up of the generating station.

***Reply of the Respondent Rajasthan Discoms***

9. The Respondent, Rajasthan Discoms vide common reply affidavit dated 5.11.2019 has submitted as under:

(a) From the definition of Project, it is clear that O&M expenses is for maintenance of the Project which as per definition for a hydro generating station is for all components of generating facility such as dam, intake water conductor system, power generating station and generating units of the scheme etc. Any O&M expenses incurred on facilities other than related to as mentioned above in definition should not be admissible by the Commission.

(b) The Commission in its SOR to the 2014 Tariff Regulations, has observed that “the Commission shall examine the increase in employees’ 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 & thoroughly justified. Accordingly, Regulation 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 employees’ expenses, then balance amount may be considered for reimbursement.”

(c) The Petitioner in these petitions have submitted an overall impact for 2016-17 to 2018-19. The Petitioner has submitted the supporting documents, DPE guidelines, HR policies showcasing grade-wise existing & revised pay scales and net impact duly certified by Auditor. However, the details submitted are insufficient for a respondent to check, as data like number of employees etc. are not available. Hence, without such details it is not feasible to verify the final impact as submitted by the petitioner.

(d) The Petitioner should submit segregation of increased impact in terms of increase in basic salaries, allowances, bonuses etc. due to pay revision. Such segregation would help to understand which all components should be allowed in pay revision. Increase in bonuses/ special one-time payments should be carried out from the ROE of the Petitioner and should not be passed on to the end Consumers.

(e) Impact of wage revision of CISF staff executive pay revision: The pay revision for CISF personnel was effective from 1.1.2016. The services availed for security etc. should be borne by the Company from its own internal resources and ROE allowed and may not be passed on to the consumers.





(f) **Impact of wage revision of KV/DAV staff:** For KV/DAV staff, the manpower expenses incurred for the Project should only be allowed and the manpower associated with KV/ DAV etc. should not be directly considered in the overall O&M expenses of the plant. The facilities such as KV/DAV are important for the employees and are to be extended by the Petitioner, through provisions of ROE and should not be passed on to end consumers.

(g) **Impact of wage revision of corporate office/ regional office Employees allocated to Power Station:** As per Annexure-9, the net impact of wage revision of Corporate office/ Regional office employees allocated to Power Station has been submitted by the Petitioner, but the details of how these final figures have arrived is not furnished by the Petitioner. The Respondent seeks more clarification on the above-mentioned details and request the Commission to prudently check on the expenses claimed by the Petitioner before taking them into consideration.

(h) **Increase in Gratuity ceiling limit:** The Petitioner has submitted the details of impact of increase in gratuity ceiling limit, but the details of how these calculations have been worked out has not been furnished by the Petitioner and needs to be furnished in order to conclude the final impact on the stations. The Respondent seeks more clarification on the above-mentioned details and request the Commission to prudently check the expenses claimed by the Petitioner before taking them into consideration.

(i) The overall burden due to increase in O&M expenses would have to be borne by the Respondents in the share of contracted capacity and will eventually be passed on to the consumers, thereby further burdening the end consumers. Hence, considering the consumers' interests, the Respondent request the Commission to take a prudent view, on the additional O&M expenses for the Petitioner. Also, the recovery of the same should be staggered in a span of period, without any interest to be paid by beneficiary, so as to minimize the burden.

### ***Reply of the Respondent BRPL***

10. The Respondent, BRPL in its reply affidavit dated 3.3.2020 has submitted the following:

(a) The Hon'ble Supreme Court in Mahadeva Upendra Sinai etc. Vs Union of India has laid down the scope of the exercise of power to remove difficulty provided in a statute. As per the said judgment, the power to remove difficulty can be exercised to the extent it is necessary for applying or giving effect to the legislation and in doing so, the authority exercising the power to remove difficulty may slightly tinker with the legislation to round off angularities, or smoothen joints or remove minor obscurities to make it workable, without doing violence to the basic structure and primary features of the regulations. Further,



under the guise of removing difficulties, the scheme and essential provisions of the legislations cannot be changed. Accordingly, the request of the Petitioner seeking relaxation under Regulations 54 & 55 should be limited to parameters laid down by the Hon'ble Supreme Court, as otherwise, no sanctity in the norm-based tariff, under cost plus mechanism, of tariff determination will be left. The Petitioner has sought additional O&M expenses, for which there is no provision.

(b) Para 33.2 of the SOR to the 2014 Tariff deals with the view of the Commission and the conditionalities prescribed on the impact of wage revision, which are as under:

- i. Increase in employee expenses would be examined on case to case basis;
- ii. It would be examined and if found appropriate, sustainable at the macro level and thoroughly justified then it would be considered by the Commission;
- iii. The impact of wage revision shall only be given after observing the impact of one full year;
- iv. Examination if the O&M norms are inadequate/insufficient to cover all justifiable expenses;
- v. The balance amount, if any, may be considered for reimbursement;
- vi. The amount of reimbursement can vary from zero to increase in employee expense.

(c) The data furnished by the Petitioner does not support the critical examination on all the conditionalities mentioned above. It is noted that the Petitioner has also included the Impact of enhancement of ceiling limit of gratuity in their proposal whereas the Hon'ble Commission has provided only for increase in employee expenses in the wage revision only. It is also noted that the impact of wage revision of Corporate/regional office is 62.71% of the impact of wage revision of this power station which gives the impression of burdening of power station where major amount includes indirect cost of corporate/regional offices which merely are support functions only. Further, the implementation of the wage revision is yet to complete one full year. Thus, it may be noted that the petition is premature besides inadequacy of information.

(d) Further the Commission in Para 30.21 of the SOR to the 2014 Tariff Regulations has also raised the issue of high Man: MW ratio which almost for all the generating stations of the Petitioner is very high.

(e) There is huge overstaffing not only at the Corporate/regional offices of the Petitioner, but also at the power station level and accordingly the overall impact at the macro level would not be sustainable. The Commission has already recognized this fact in SOR that Man vs. MW ratio of most of the stations is very high and there is scope for further man power rationalization.

(f) The Commission has already notified the O&M expenses of each hydro stations in the 2014 Tariff Regulations specifically, which takes care of any increase in employee cost also. Further, the Petitioner is 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 with Petitioner's stations individually to support its claim.

(g) The petition is also silent whether the reimbursement of wage revision also include the wage revision of employees engaged in other activities like Consulting, Planning and Designing of the national/inter-national projects. The Petitioner is required to clarify the entire issue on affidavit and if these employees are also included, then the wage revision of these employees is required to be deleted as they are not in any way connected with the generation from the existing projects.

(h) The exact amount of wage revision in respect of reimbursement of wage revision for the generation employees of the Petitioner can easily be worked out from the "due drawn statement" of the employees engaged in generation of power from this project and accordingly it is necessary for the Petitioner to file the Auditor's Certificate in respect of payments made to the generation employees. The Auditor's Certificate, in its current form, is too vague and accordingly, the expenditure for re-imbusement of wage revision, be taken from the "due drawn statement" of the employees engaged in generation of power.

(i) Safeguarding of consumer's interest and yet at the same time, recovery of the cost of electricity in a reasonable manner is an important consideration while framing the terms and conditions for the determination of tariff through regulations as per Section 61(d) of the Electricity Act, 2003. Seeking relaxation on any accounts whatsoever amounts to disturbing this delicate balance, which the Commission had tried to maintain through the 2014 Tariff Regulations, Thus, the relaxation in the regulation would only result in unreasonable benefit to the petitioner which may not be allowed by the Hon'ble Commission.

### **Rejoinders of the Petitioner**

11. The Petitioner in its rejoinders to the reply of the Respondents have mainly submitted the following:

#### ***Rejoinder to reply of Respondent UPPCL***

(a) The Commission while finalizing the tariff norms for the period 2014-19 has not factored the impact of pay revision of the employees of NHPC, CISF and KV as evident from Para 33.2 of Statement of Reasons (SOR) to CERC Tariff Regulations, 2014. This aspect has also been highlighted at para 7 and 8 of the original petitions. Petitioner is of the view that any expenditure which has not been "factored in" while framing the regulations, if claimed at a later stage, should not be considered as reopening of norms. Accordingly, the argument of the respondent that Tariff is a package and cannot be reopened in isolation does not hold good in the instant case as the impact of wage revision was never "factored in" in the Tariff Regulations for the period 2014-19 by the Hon'ble Commission.



(b) The Commission in its order dated 5.12.2012 (in Petition No.5/MP/2012) has already deliberated this issue in detail and has taken a view that *normally a party should not be allowed any charge in deviation of the norms but when a particular expenditure has not been factored while deciding the norms, in that case the claim for such an expenditure cannot be said to result in reopening of norms.*

(c) The actual O&M expenses incurred by the respective power station(s) were largely on the higher side compared to normative O&M expenses allowed by the Commission during the period 2014-19. This has already been highlighted by the Petitioner in paras-5 and 6 of the original petition(s). Accordingly, the claim of the Petitioner is genuine and legitimate and cannot be negated on the ground that it will result in huge burden on the beneficiaries. The Commission in its order dated 5.12.2012 (in Petition No 5/MP/2012) has already observed that a legitimate expenditure cannot be denied to the petitioner on the ground that it will burden the end consumers.

(d) The Respondent has further argued that the petitioner should bear the extra expenses on account of pay revision out of its profit, which is not logical. The petitioner would like to submit that expenses incurred by the petitioner on account of pay revision are part of the 'O&M expenses', which is a direct input to determine the cost of electricity. O&M Expenses as defined under Regulation 3(42) of the 2014 Tariff Regulations means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads.

(e) Further, the Commission in its order dated 5.12.2012 had already observed that "pay and allowances are mandatory expenditures and are a necessary input to determine cost of electricity. The said expenditure cannot be factored at the time of determination of the norms since the pay revision came into force w.e.f. 1.1.2006 in respect of security forces and KV personnel and w.e.f. 1.1.2007 in respect of the employees of NHPC. 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.

(f) The Commission has not factored the impact of wage revision while framing the tariff regulations for the period 2014-19. Further, the actual O&M expenses incurred by the petitioner were on the higher side than the normative O&M expenses allowed, mainly due to implementation of pay revision. Accordingly, the Petitioner has invoked the provisions of Regulations 54 and Regulation 55 i.e. 'power to remove difficulty' and 'power to relax' in the absence of a specific provision for recovery of additional burden on account of pay revision in the Tariff regulations, 2014.

(g) The claim of the Petitioner under similar circumstances has already been upheld by the Commission in its order dated 5.12.2012. CISF has been



deployed in these power station(s) and hence, the contention of the respondent is absolutely baseless.

(h) The Respondent has contended that the petitioner has failed to register its timely claim in its petitions for the control period 2014-19 by quoting the provisions of Tariff Policy. In this regard, it is stated that the Petitioner was not in a position to claim the impact of wage revision at the time of submission of tariff petitions for the control period 2014-19 (submitted during Aug'2014). The petitioner has implemented wage revision of its employees w.e.f. 01.01.2017 during May'2018 (executives) & March'2019 (Supervisors & Workmen). The petitioner has submitted its claim for reimbursement of impact of wage revision (including the impact of wage revision of CISF / KV Staff w.e.f. 01.01.2016) as the allowed normative O&M expenses were inadequate to cover up the same in line with the directions of Commission quoted above. Accordingly, the argument of the respondent that the petitioner failed to register its timely claim in petitions for the period 2014-19 is baseless.

(i) The Respondent is trying to mislead the Commission by wrongly interpreting the provisions of Section 61(d) of Electricity Act'2003 to establish that the claim of the petitioner is not maintainable. While safeguarding the consumer interest, the Section 61(d) of Electricity Act' 2003 also protects the interest of the generator by way of ensuring recovery of cost of electricity in a reasonable manner. As claimed by the respondent, if the impact of wage revision of NHPC, CISF & KV Staff are denied, it will result in under recovery of cost of electricity by the petitioner. Accordingly, the contention of the respondent is not acceptable.

(j) The increase in ceiling limit of gratuity from 10 lakh to 20 lakh form part of the DPE guidelines dated 3.8.2017 (Ref: Annexure-II of original petitions) for implementation of pay scales w.e.f. 1.1.2017. Subsequently, Ministry of Law & Justice had amended 'The Payment of Gratuity Act, 1972' and notified 'The Payment of Gratuity (Amendment) Act, 2018' on 28.03.2018 after incorporating the above changes. Accordingly, the increase in ceiling limit of gratuity is also covered under 'change in law'. The Petitioner has not claimed the impact of enhancement of ceiling limit of gratuity under 'additional capitalization'. Being part of the wage revision of employees w.e.f 01.01.2017, the Petitioner has claimed the impact of enhancement of ceiling limit of gratuity as additional O&M expenses, only as evident from para-10 of original petition(s).

### ***Rejoinder to reply of Respondent Rajasthan Discoms***

(k) The limiting of the purview of operation and maintenance expenses to only the maintenance of the project, is not true. O&M expenses as defined under Regulation 3(42) of the 2014 Tariff Regulations, means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads;





(l) The Commission in its order dated 5.12.2012 (in Petition No 5/MP/2012) had already decided that Pay and Allowances are mandatory expenditures and are a necessary input to determine the cost of electricity. Accordingly, the Petitioner has claimed the impact of pay revision of its employees and associated employees of KV/DAV and CISF in these petitions, as additional O&M expenses being part of the expenditure on man power.

(m) The Petitioner has submitted year-wise audited bifurcation of employee cost before wage revision, after wage revision & its reconciliation along with breakup between KV employees, CISF employees and NHPC employees in the original petition and subsequent compliance dated 14.11.2019. Further, the Petitioner has also submitted all necessary supporting documents viz. Ministry of Finance Office memorandum dated 29.7.2016 and Resolution dated 25.7.2016 in support of implementation of 7<sup>th</sup> CPC, DPE guidelines dated 3.8.2017 and MOP Presidential directive dated 15.5.2018 in support of implementation of 3<sup>rd</sup> PRC, Board resolution and NHPC office orders in support of pay revision of NHPC Employees. Hence the contention of the respondent that submitted information is insufficient is not tenable.

(n) The wage revision impact claimed by the petitioner includes impact of increase in Basic Pay, Dearness Allowance (DA), House Rent Allowance (HRA), Cafeteria Allowance, Location based compensatory allowances and impact of increase in ceiling limit of gratuity in respect of NHPC employees and impact of increase in wage revision of CISF / KV Staff. The impact of wage revision of Corporate Office and regional Office employees have been allocated to the power stations as per accounting policy being followed in the Corporation. Further, the financial impact of wage revision has been duly certified by the auditors. 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.

(o) The Hydropower Projects are generally located in 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 in power station(s) and are integral part of the power plants. The intent of the Commission to allow expenses on 'Security' as part of O&M expenses is also very much clear from the Regulation 35(2)(c) of the 2019 Tariff Regulations, wherein, the Commission has allowed separate reimbursement of expenses on Security' under the head 'Operation & Maintenance Expenses' during the period 2019-24.

(p) Similarly, to provide quality education to children of employees posted in power station(s) (being located in remote areas), KV/DAV(s) are set up in these locations which are also integral part of the power station(s). Therefore, it can be construed that the staff of CISF and KV/DAV are essential part of the power



plants and are contributing towards the efficient operation of power stations in one way or another. Accordingly, the expenses related to wages of CISF (security) and KV/DAV staff are essential components of O&M expenses of the power stations. Hence, the contention of the respondent that these expenses should be met out of its own internal resources and ROE is not justified and cannot be agreed to.

(q) The Petitioner has claimed impact of wage revision of its employees, associated employees of KV/DAV and CISF and impact of increase in limit of gratuity which were not considered by the Commission while fixing the O&M Expenses for the tariff period 2014-19. The actual O&M Expenses incurred by the power station(s) were largely on the higher side compared to the normative O&M expenses allowed by the Commission during the period 2014-19. Accordingly, the claim of the Petitioner is genuine and legitimate. The Commission in its previous wage revision order dated 5.12.2012 had observed that a legitimate expenditure cannot be denied to the petitioner on the ground that it will burden the end consumers.

#### ***Rejoinder to reply of Respondent BRPL***

(r) The Respondent has tried to limit the purview of Regulations 54 and Regulation 55 of the 2014 Tariff Regulations, by quoting the extract of observations made by Hon'ble Supreme Court in one of the cases. The Respondent is also of the view that Regulations 54 and 55 of the 2014 Tariff Regulations, are to remove difficulty in order to give effect to the objectives of the Tariff Regulations, if it is not inconsistent with the provisions of the Electricity Act, 2003. In this regard, it is submitted that the Commission while framing the 2014 Tariff Regulations has not factored the impact of wage revision under O&M Expenses. Further, the actual O&M expenses incurred by the petitioner were on the higher side than the normative O&M expenses allowed by the Commission during the period 2014-19, mainly due to implementation of pay revision. Accordingly, the Petitioner has invoked the provisions of Regulations 54 and 55 i.e. 'power to relax' and 'power to remove difficulty' in the absence of specific provision for claiming the impact of additional O&M Expenses on account of pay revision in the Tariff Regulations, 2014.

(s) The claim of the Petitioner under similar circumstances has already been upheld by the Commission in its order dated 5.12.2012 (in Petition no 5/MP/2012). Para-13 of said order is reproduced below for ready reference: -

*“.....It is apparent from the above that the pay revision with effect from 1.1.2006 and wage revision with effect from 1.1.2007 were never taken into account while fixing the norms for the hydrogenating stations for the period 2004-09. Had the pay revision or wage revision taken place at the time the norms were decided, the Commission would certainly have taken into account its impact while fixing the norms. In other words, the legitimate expenditures incurred by NHPC are not being serviced as the same have not been factored in the norms. Section 61(d) of the Act provides that one of the guiding factors for determination of the terms and conditions of tariff is to safeguard consumer interest while ensuring recovery of the cost of electricity in a reasonable manner. Pay and allowances are mandatory expenditures and are a necessary input to determine cost of electricity. The said expenditure could not be factored at the time of determination of the norms since the*





*pay revision came into force w.e.f. 1.1.2006 in respect of security forces and KV personnel and w.e.f. 1.1.2007 in respect of the employees of NHPC. If the impact of pay revision or wage revision is denied, it would result in under recovery of cost of electricity by the generating company. Therefore, in our considered view, a clear case has been made out to remove the difficulty arising out of non-consideration of the impact of wage revision in the O&M norms for the period 2004-09”*

(t) The Petitioner has invoked the provisions of Regulations 54 and 55 of the 2014 Tariff Regulations, to remove the difficulty arising out of non-consideration of the impact of wage revision in the O&M norms for the period 2014-19. Also, the claim of the petitioner is consistent with the provisions of Section 61(d) of Electricity Act, 2003, as the Petitioner has claimed the impact of wage revision only to ensure reasonable recovery of cost of electricity.

(u) The increase in ceiling limit of gratuity from 10 lakh to 20 lakh form 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 to be provided to employees as per DPE guidelines is an employee expense, which is to be paid by the Petitioner Company.

(v) Various divisions of Petitioner Company viz Planning Division, Design Division, Centralized O&M Division, Commercial Division, Cost Engineering Division, Project Monitoring and Support Group, Centralized 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 coordination with Corporate Office. 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. Hence, the impression of top-heavy organization expressed by the respondent is not logical.

(w) The Petitioner has claimed the impact of wage revision in case of central government employees (CISF and KV/DAV) w.e.f 1.1.2016 and in respect of NHPC employees w.e.f. 1.1.2017. Hence, the claim of the respondent that petition is premature is not correct. Further, the Petitioner has submitted year-wise audited bifurcation of employee cost before wage revision, after wage revision & its reconciliation along with breakup between KV employees, CISF employees and its employees in the original petition and subsequent ROP Compliance dated 15.11.2019. Apart from above, the petitioner has also submitted all the necessary supporting documents viz. Ministry of Finance Office memorandum dated 29.07.2016 and Resolution dated 25.07.2016 in support of implementation of 7th CPC, DPE guidelines dated 03.08.2017 and MOP Presidential directive dated 15.5.2018 in support of implementation of 3rd PRC, Board resolution and NHPC office orders in support of pay revision of NHPC Employees. As such, it is clear that the petitioner has submitted all the requisite information and all the supporting documents along with the original petition. Hence, the contention of the respondent that the submitted information is insufficient is not tenable.



(x) 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 (MW) of the hydro generating station. Commission in its SOR dated 24.4.2014 has already acknowledged the same fact by providing differential norms for O&M expenses for hydro generating stations of different capacity.

(y) In Corporate / Regional offices, there are various divisions as mentioned in para-5 above and the employees posted in these divisions render various services which are directly or indirectly related to the efficient operation of generating stations. It is clarified that the expenditure of employees engaged in other activities is allocated to the project with which the employee is associated based on the services rendered, in line with the accounting policy of the Petitioner Company and is not booked in the expenses of Power stations.

(z) Generation of power is only a single aspect which the respondent has considered. For efficient operation of power stations, various employees (posted at different Divisions of Corporate Office / Regional Office & Power Stations) are engaged with the power station, right from its planning, designing, coordinated operation and maintenance, billing of energy generated, realization of bills, other statutory compliances and various other allied works. The expenses on these employees are also allocated to O&M expenses of Power station based on the services rendered by them as per accounting policy. Accordingly, the contention of respondent that expenditure for reimbursement of wage revision be taken from the due drawn statement of the employees engaged in power station is not logical.

(aa) The detailed audited impact of wage revision has been submitted by the Petitioner along with the original petition. The Petitioner has claimed impact of wage revision of NHPC employees, associated employees of KV/DAV and CISF and impact of increase in ceiling limit of gratuity which were not considered by the Commission while fixing the O&M expenses for the period 2014-19. It is also to mention that actual O&M expenses incurred by the power station(s) were broadly on the higher side compared to normative O&M expenses allowed by the Commission during the period 2014-19.

12. The Commission vide ROP of the hearing dated 17.10.2019 and 5.3.2021

(Petition No. 286/MP/2019) had directed the Petitioner to file the following information:

- 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) Audited wage revision impact w.r.t Tanakpur Hydro Power Station (Petition No. 228/MP/2019; and

f) Certification regarding effective date of increase in gratuity limit.

13. The Petitioner in Petition No. 229/MP/2019 had submitted the following information:

<i>(in Rs.)</i>						
SI No.	Particulars	2015-16 *	2016-17 **	2017-18	2018-19	Total
1	2	3	4	5	6	7
<b>A</b>	<b>Impact of wage revision of NHPC employees (w.e.f. 01.01.2017) - 3rd PRC</b>					
(i)	Employee cost of power station in the revised scale	-	72550449	252295547	308429115	633275111
(ii)	Employee cost of power station in the pre-revised scale	-	60891562	209594254	264360696	534846512
<b>(iii)</b>	<b>Impact of wage revision [(i) - (ii)]</b>	<b>-</b>	<b>11658887</b>	<b>42701293</b>	<b>44068419</b>	<b>98428599</b>
<b>B</b>	<b>Impact of wage revision of CISF Staff (w.e.f. 01.01.2016)</b>					
(i)	Employee cost of CISF personal deployed in the Power Station in the revised scale	13435039	50309954	52322242	41285769	157353005
(ii)	Employee cost of CISF personal deployed in the Power Station in the pre-revised scale	12231463	45802944	47634962	37587190	143256559
<b>(iii)</b>	<b>Impact of wage revision [(i) - (ii)]</b>	<b>1203576</b>	<b>4507010</b>	<b>4687280</b>	<b>3698579</b>	<b>14096445</b>
<b>C</b>	<b>Impact of wage revision of KV Staff (w.e.f. 01.01.2016)</b>					
(i)	Employee cost of KV Staff deployed in the Power Station in the revised scale	3366328	11244119	9477238	12989424	37077109
(ii)	Employee cost of KV Staff deployed in the Power Station in the pre-revised scale	3177192	10334296	8675506	12127115	34314109
<b>(iii)</b>	<b>Impact of wage revision [(i) - (ii)]</b>	<b>189136</b>	<b>909823</b>	<b>801732</b>	<b>862309</b>	<b>2763000</b>
<b>D</b>	Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station (3rd PRC)	-	6701893	37830448	39665362	84197703
<b>E</b>	Additional expenditure due to enhancement of ceiling limit of gratuity w.e.f. 01.01.2017 (3rd PRC)	-	43823714	9842004	-	53665718



<b>F</b>	<b>Total impact of wage revision (A(iii)+B(iii)+C(iii)+D+E)</b>	<b>1392712</b>	<b>67601327</b>	<b>95862757</b>	<b>88294670</b>	<b>253151466</b>
----------	---	----------------	-----------------	-----------------	-----------------	------------------

**Note:** \* Impact of pay revision (7<sup>th</sup> CPC for Central Govt employees) has been considered for the period w.e.f. 01.01.2016 to 31.03.2016 during FY 2015-16. \*\* Impact of pay revision (3<sup>rd</sup> PRC for CPSUs) has been considered for the period w.e.f. 01.01.2017 to 31.03.2017 during FY 2016-17.

14. In addition to the above, the Petitioner has submitted the following:

(a) PRP/Incentive included in the wage revision impact claimed (year-wise details duly certified by the Auditor: The wage revision impact claimed by the petitioner includes impact of increase in basic pay, Dearness Allowance (DA), House Rent Allowance (HRA), Cafeteria Allowance, Location based compensatory allowances and impact of increase in ceiling limit of gratuity in respect of NHPC employees. Further, it also includes impact of increase in wage revision.

(b) The audited wage revision impact w.r.t Tanakpur Hydro Power Station (Petition No. 228/MP/2019).

(c) The certification regarding effective date of increase in gratuity limit: Point no. 12.1 of DPE Office Memorandum dated 03.08.2017 states that "The ceiling of gratuity of the executives and non-unionized supervisors of the CPSUs would be raised from Rs. 10 lakh to Rs. 20 lakh w.e.f. 01.01.2017. Subsequently, Ministry of Law & Justice has amended 'The Payment of Gratuity Act, 1972' and notified 'The Payment of Gratuity (Amendment) Act, 2018' on 28.03.2018. Accordingly, DPE vide its office memorandum dated 10.07.2018 has issued a clarification regarding the effective date of enhancement of ceiling of gratuity. The point no. 2 of said office memorandum reads as under:

*"2. This Department has received various representations from different stakeholders seeking clarification on the effective date of the enhancement of ceiling of gratuity. Accordingly, the issue has been considered and clarified as follows:*

*a) The payment of gratuity under DPE guidelines dated 03.08.2017, is subject to affordability of the CPSEs concerned effective for the period from 01.01.2017 till 28.03.2018, in respect of executives and non-unionized Supervisors of CPSEs on IDA pay pattern, where, pay has been revised w.e.f. 01.01.2017.*

*b) Whereas, on and after 29.03.2018, the payment of gratuity of Rs 20 lakhs is mandatory for all the CPSEs irrespective of their affordability as it is a statutory provision in light of the amendment in the Payment of Gratuity Act, 1972. This provision is applicable to all employees of all CPSEs.*

*c) Xxx*

(d) As the Petitioner has revised the pay in respect of executives and non-unionized Supervisors w.e.f. 01.01.2017, the effective date of implementation of ceiling limit of gratuity is 01.01.2017 as evident from clarification issued by DPE.

15. The Commission vide ROP of the hearing dated 30.6.2022 had directed the Petitioner to file the following information as under:



a) Breakup of actual O&M expenditure for the period 2014-19 under various subheads (as per Annexure-A enclosed) after including the pay revision impact (employees, Kendriya Vidyalaya/Dayanand Anglo Vedic and Central Industrial Security Forces/Indian Reserve Battalion/ J & K Police), wage revision impact (minimum wages) and impact of pay regularization in the employee cost (MS Excel and PDF format);

b) Break-up of the actual O&M expenses including pay revision impact for Corporate Centre/other offices & breakup of claimed wage revision impact on employee cost, expenses on corporate centre and on salaries of Kendriya Vidyalaya/Dayanand Anglo Vedic and Central Industrial Security Forces/Indian Reserve Battalion/ J & K Police employee of the generating station (as per enclosed Annexure-B and Annexure- C, respectively) for the period 2014-19 along with allocation of the total O&M expenditure to various generating stations under construction, operational stations and any other offices along with basis of allocating such expenditure(in MS Excel and PDF format);

c) Certificate to the effect that the employee cost and any other cost booked to IEDC has not been indicated as a part of the actual O&M expenses; and

d) Comparative statement of the normative O&M expenses allowed to the generating station versus the actual audited O&M expenses for the period from 2014-15 to 2018-19, clearly stating that the impact of wage revision claimed is part/ not part of the above actual O&M expenses:

16. The Petitioner vide its affidavit dated 18.7.2022 has submitted above information, in respect of the petitions for all other generating stations. Based on the documents available on record (in all these petitions) and the reply filed by the parties, we proceed to examine the prayers, in the petition, based on prudence check, as stated in the subsequent paragraphs.

### **Analysis and Decision**

17. Before proceeding, we deal with some of the objections raised by the Respondents, namely, (a) tariff is a package and norms should not be reopened, (b) present consumers not to be burdened with past dues, and (c) financial difficulties of the respondents and their inability to pay should be considered, as under:

### ***Tariff is a package and norms should not be reopened***



18. 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.

19. 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."*

20. 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. 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.”*





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

***Present consumers not to be burdened with past dues***

22. 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.

23. 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.”*

24. 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 seventh pay 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 third 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 Hon'ble APTEL in the aforesaid judgment dated 24.3.2015, is squarely applicable to the present case.

***Financial difficulties of the Respondents and inability to pay***

25. 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. The Respondent 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.



26. 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.

27. In view of the above discussion, the objections of the Respondents cannot be sustained. However, the Commission has the mandate to balance the interest of the consumers and 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 at the same time that the tariff burden on the beneficiaries and consumers are minimized.

28. We observe that in Petition No.320/GT/2018 filed by the Petitioner for determination of tariff in respect of TLDP-III Power Station for the period 2014-19, based on the 2014 Tariff Regulations, the same was disposed of by order dated 9.1.2020. In the said order, the following normative O&M expenses, were allowed to the Petitioner:



<i>(Rs. in crore)</i>				
2014-15	2015-16	2016-17	2017-18	2018-19
40.15	42.81	45.66	48.69	51.62

29. It is noted that that the Petitioner has submitted that there is significant under recovery of expenses in case of its Power stations. A comparison of actual vs allowed O&M expenses in case of TLDP-III Power Station for the tariff period 2014-19 is tabulated below:

<i>(Rs. in crore)</i>			
Year	Normative O&M expenses Allowed by Commission	Actual O&M Expenses	Difference
	(a)	(b)	(a-b)
2014-15	40.15	70.91	(-)30.76
2015-16	42.81	74.23	(-)31.42
2016-17	45.66	94.01	(-)48.35
2017-18	48.69	101.12	(-)52.43
2018-19	51.62	95.15	(-)43.53
<b>Total</b>	<b>228.90</b>	<b>435.42</b>	<b>(-)206.49</b>

30. The Petitioner has submitted that the major reasons for the large gap between the actual vs allowed O&M expenses are due to implementation of pay revision of employees of the petitioner (including KV & CISF personal deployed in the Power Station) and implementation of Goods & Service Tax (GST). The Petitioner has submitted that due to implementation of pay revision of CISF/KV Staff w.e.f 01.01.2016 & pay revision of its employees w.e.f 01.01.2017, it has incurred additional expenses for payment to its employees and additional expenses on account of increase in ceiling limit of gratuity from Rs 10 lacs to Rs 20 lacs w.e.f. 1.1.2017 as per provision 12.1 of DPE Guidelines on 3<sup>rd</sup> PRC. Accordingly, the year-wise impact of implementation of pay revision has been furnished by the Petitioner as under:

<i>(Rs. in lakh)</i>				
Year	2015-16	2016-17	2017-18	2018-19
Impact of pay revision of Board level & below Board level executives, workmen & supervisors of power Station w.e.f. 1.1.2017	-	116.59	427.01	440.68
Impact of wage revision of Corporate Office / Regional Office Employees allocated to Power Station w.e.f. 1.1.2017	-	67.02	378.30	396.65



Impact of pay revision of CISF / Security Staff and KV Staff w.e.f. 1.1.2016	13.93	54.17	54.89	45.61
Impact of enhancement of ceiling limit of gratuity as per provisions of 3 <sup>rd</sup> PRC	-	438.24	98.42	0.00
<b>Total</b>	<b>13.93</b>	<b>676.01</b>	<b>958.63</b>	<b>882.95</b>

31. The Petitioner has also filed the year-wise impact of implementation of pay revision in respect of its other generating stations, as shown in paragraph 4 above.

32. As regards the recovery of impact of wage revision by a generating company, the Statement of Objects and Reasons 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.*

33. The methodology indicated in the SOR as above, suggests a comparison of the normative O&M expenses with the actual O&M expenses, on a year to year basis (including the norms for new generating stations). 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.

34. 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.

35. The Petitioner has furnished the detailed break-up of the actual O&M expenses incurred during the period 2014-19 in respect of the generating stations. 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.

36. The comparison of the actual O&M expenses incurred and the wage revision impact for the generating station are as under:

<i>(Rs. in lakh)</i>		
<b>Year</b>	<b>Actual O&amp;M expenses</b>	<b>Wage revision impact claimed</b>
2014-15	7091	0.00
2015-16	7423	13.93
2016-17	9401	676.01
2017-18	10112	958.63
2018-19	9515	882.95
	<b>43542</b>	<b>2531.52</b>

37. 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 this generating station (TLDP-III) for the 2015-19 tariff period is as follows:

<i>(Rs. in lakh)</i>					
	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total for 2015-19</b>
Actual O&M expenditure for generating station <b>(a)</b>	7423.00	9401.00	10112.00	9515.00	<b>36451.00</b>
Actual O&M expenses (normalized) <b>(b)</b>	6986.09	8668.02	8873.53	9132.70	<b>32801.87</b>
Normative O&M <b>(c)</b>	4281.49	4565.78	4868.95	5192.25	<b>18908.47</b>
Under recovery <b>(d) = (b)-(c)</b>	<b>2704.60</b>	<b>4102.24</b>	<b>4004.58</b>	<b>3940.45</b>	<b>13893.40</b>
Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)	<b>13.93</b>	<b>676.01</b>	<b>958.63</b>	<b>882.95</b>	<b>2531.52</b>





38. It is observed that during the period from 2015-16 to 2018-19, 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. 13893.40 lakh. As such, in terms of methodology described above at paragraph 34 above, the total wage revision impact (excluding PRP/ incentive) is worked out as Rs. 2531.52 lakh.

39. 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.”*

40. Therefore, we in exercise of the power under Regulation 54 of the 2014 Tariff Regulations, relax Regulation 29(3)(c) of the 2014 Tariff Regulations, in respect of O&M expenses for the generating station of the Petitioner, and allow the reimbursement of the Rs.2531.52 lakh, as wage revision/ pay revision impact including impact on account of increase in gratuity limit as additional O&M expenses, for the period 2015-19.

41. Accordingly, in line of above methodology and analysis and based on prudence check, as discussed above, the wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for the other seven generating stations of the Petitioner (as covered in order) are as under:

**Petition No. 230/MP/2019  
(TLDP-IV Power Station)**

	2015-16	2016-17	2017-18	2018-19	Total for 2015-19 (Rs in lakh)
Actual O&M expenses for the generating station (a)	0.00	8147.00	10602.00	12321.00	<b>31070.00</b>
Actual O&M expenses (normalized) (b)	0.00	7364.52	9540.51	11591.51	<b>28496.54</b>
Normative O&M expenses (c)	0.00	5547.08	7224.37	7704.07	<b>20475.52</b>
<b>Under recovery (d) =(b)-(c)</b>	0.00	<b>1817.44</b>	<b>2316.14</b>	<b>3887.44</b>	<b>8021.02</b>



<b>Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)</b>	<b>NA</b>	<b>778.06</b>	<b>1508.61</b>	<b>1646.71</b>	<b>3933.38</b>
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					<b>3933.38</b>

**Petition No. 286/MP/2019**  
**(Kishanganga Power Station)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total for 2018-19 (Rs in lakh)</b>
Actual O&M expenses for the generating station (a)	0.00	0.00	0.00	14522.00	<b>14522.00</b>
Actual O&M expenses (normalized) (b)	0.00	0.00	0.00	13088.69	<b>13088.69</b>
Normative O&M expenses (c)	0.00	0.00	0.00	8486.87	<b>8486.87</b>
<b>Under recovery (d) =(b)-(c)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>4601.82</b>	<b>4601.82</b>
<b>Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1835.43</b>	<b>1835.43</b>
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					<b>1835.43</b>

**Petition No. 227/MP/2019**  
**(URI-II Power Station)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total for 2015-19 (Rs in lakh)</b>
Actual O&M expenses for the generating station (a)	9209.00	12812.00	11622.00	17046.00	<b>50689.00</b>
Actual O&M expenses (normalized) (b)	7936.00	11277.41	9781.91	15292.68	<b>44288.00</b>
Normative O&M expenses(c)	5151.40	5493.45	5858.22	6247.20	<b>22750.27</b>
<b>Under recovery (d) =(b)-(c)</b>	<b>2784.60</b>	<b>5783.96</b>	<b>3923.69</b>	<b>9045.48</b>	<b>21537.73</b>
<b>Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)</b>	<b>18.66</b>	<b>781.81</b>	<b>1236.46</b>	<b>1137.33</b>	<b>3174.26</b>
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					<b>3174.26</b>

**Petition No. 222/MP/2019**  
**(Nimoo Bazgo Power station)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total for 2015-19 (Rs in lakh)</b>
Actual O&M expenses for the generating station (a)	3793.00	4927.00	4971.00	4545.00	<b>18236.00</b>
Actual O&M expenses (normalized) (b)	3559.64	4502.11	4303.45	4159.51	<b>16524.71</b>
Normative O&M expenses (c)	2372.94	2530.51	2717.97	2923.90	<b>10545.32</b>
<b>Under recovery (d) =(b)-(c)</b>	<b>1186.70</b>	<b>1971.60</b>	<b>1585.48</b>	<b>1235.61</b>	<b>5979.39</b>
<b>Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)</b>	<b>4.65</b>	<b>313.42</b>	<b>479.38</b>	<b>434.75</b>	<b>1232.20</b>
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					<b>1232.20</b>



**Petition No. 223/MP/2019  
(Chutak Power Station)**

	2015-16	2016-17	2017-18	2018-19	Total for 2015-19 (Rs in lakh)
Actual O&M expenses for the generating station (a)	3575.00	4338.00	4493.00	4580.00	16986.00
Actual O&M expenses (normalized) (b)	3394.43	3970.32	3858.22	4195.11	15418.08
Normative O&M expenses (c)	2121.22	2262.07	2412.27	2572.45	9368.01
Under recovery (d) =(b)-(c)	1273.21	1708.25	1445.95	1622.66	6050.07
Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)	4.73	241.99	419.85	395.78	1062.35
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					1062.35

**Petition No. 237/MP/2019  
(Chamera-III Power Station)**

	2015-16	2016-17	2017-18	2018-19	Total for 2015-19 (Rs in lakh)
Actual O&M expenses for the generating station (a)	7117.00	10683.00	10103.00	10068.00	37971.00
Actual O&M expenses (normalized) (b)	6601.27	9741.60	10098.82	9233.04	35674.72
Normative O&M expenses (c)	4810.78	5130.22	5470.86	5834.13	21245.99
Under recovery (d) =(b)-(c)	1790.49	4611.38	4627.96	3398.91	14428.73
Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)	8.10	1000.34	1175.86	1084.29	3268.59
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					3268.59

**Petition No. 238/MP/2019  
(Parbati-III Power Station)**

	2015-16	2016-17	2017-18	2018-19	Total for 2015-19 (Rs in lakh)
Actual O&M expenses for the generating station (a)	7966.00	9884.00	10040.00	12556.00	40446.00
Actual O&M expenses (normalized) (b)	7497.19	9942.20	10042.14	10160.84	37642.37
Normative O&M expenses (c)	7152.00	7627.00	8133.00	8673.00	31585.00
Under recovery (d) =(b)-(c)	345.19	2315.20	1909.14	1487.84	6057.37
Wage revision impact claimed including impact of gratuity (excluding PRP/ex-gratia)	16.92	695.52	1086.29	1092.80	2891.53
Wage revision impact including impact of gratuity (excluding PRP/incentive) allowed for this generating station.					2891.53

42. The arrears payments on account of the impact of the wage revision/ pay revision including the increase in gratuity limit, as above, are payable by the Respondent beneficiaries of the respective generating stations, in twelve equal monthly



installments starting from January, 2023. However, keeping in view the passage of time and in 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.

43. Petition No. 229/MP/2019, Petition No. 230/MP/2019, Petition No. 237/MP/2019, Petition No. 223/MP/2019, Petition No. 222/MP/2019, Petition No. 227/MP/2019, Petition No. 286/MP/2019 and Petition No. 238/MP/2019 are disposed of in terms of above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I. S. Jha)**  
**Member**

