

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.123/MP/2021**

**Coram:**

**Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 16<sup>th</sup> March, 2023**

**In the matter of:**

Petition for recovery of additional cost incurred consequent on the pay and wage revision of SJVN Employees, Central Industrial Security Forces (CISF) and also impact of revision in Minimum Wages and Implementation of GST Act, in respect of Rampur Hydro Power Station(RHPS).

**And**

**In the matter of**

SJVN Limited,  
Shakti Sadan, Shanan,  
Shimla-171006 (H.P)

..... **Petitioner**

Vs

1. Power Development Department  
Government of J&K, New Secretariat,  
Jammu – 180 001
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector 6,  
Panchkula – 134 109
3. Punjab State Power Corporation Limited,  
The Mall, Secretariat Complex,  
Patiala – 147 001
4. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Road,  
Lucknow – 226 001
5. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019
6. BSES Yamuna Power Limited,  
BSES Bhawan, Nehru Place, New Delhi – 110019



7. Tata Power Delhi Distribution Limited,  
33 KV Sub-station, Hudson Lane, Kingsway Camp  
New Delhi – 110 009

8. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur – 302 205

9. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur – 302 205

10. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur – 342 003

11. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hatthi Bhatta,  
Jaipur Road, Ajmer – 305 001

12. Uttarakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun – 248 001

13. Engineering Department,  
Union Territory of Chandigarh, Sector 9D,  
Chandigarh – 160 009

.....**Respondents**

**Parties Present:**

Shri M.G. Ramachandran, Advocate, SJVNL  
Ms. Anushree Bardhan, Advocate, SJVNL  
Shri Anukirat Singh, Advocate, SJVNL  
Shri Aneesh Bajaj, Advocate, SJVNL  
Shri Aman Katoch, SJVNL  
Shri Naveen Yadav, SJVNL  
Shri Sanjay Kumar, SJVNL  
Shri Mohit K. Mudgal, Advocate, BRPL  
Shri Sachin Dubey, Advocate, BRPL

**ORDER**

The Petitioner, SJVNL has filed this petition seeking recovery of the impact due to pay revision of its employees from 1.1.2007 and the employees of Central Industrial Security Force (CISF) from 1.1.2016, the implementation of revision of minimum wages of outsourced manpower (from 1.4.2017) and implementation of Goods & Service Tax



(GST) from 1.7.2017, with respect to Rampur Hydro Power Station (in short 'the generating station'). Accordingly, the Petitioner has prayed for the following relief(s);

(a) To kindly allow reimbursement of additional expenditure for RHPS as a result of pay revision (Salaries / wage revisions) on account of 1997 and 2017 Pay scales finalization w.e.f.01.01.2007 and 01.01.2017 respectively for SJVN/RHPS employees, implementation of the 7<sup>th</sup> Central Pay Commission of CISF w.e.f. 01.01.2016, minimum wage revision of outsourced manpower (Contract & HIMPESCO) w.e.f. 01.04.2017 and implementation of GST Act w.e.f. 01.07.2017. as detailed below:

<b>Sr.No.</b>	<b>Particulars</b>	<b>Rs in lakh</b>
1.	Impact of revision in salaries & wages paid to employees on account of finalization of 1997 Pay Scales w.e.f. 1.1.2007 to 31.3.2014	779.70
3.	Impact of revision in salaries & wages paid to employees during the period 2014-19 on account of finalization of 1997 Pay scales w.e.f. 1.1.2007	592.88
4.	Impact of revision in salaries & wages paid to RHPS employees during the period 2014-19 on account of finalization of 2017 Pay scales w.e.f. 1.1.2017	2628.00
5.	Impact of revision in salaries & wages paid to CISF employees w.e.f. 1.1.2016 during the period 2014-19	178.56
5.	Impact of revision in minimum wages paid to HP Ex-Servicemen Corporation staff and Outsourced Manpower during the period 2014-19 w.e.f. 1.4.2017	807.59
6.	Additional impact of GST on taxable services due to implementation of GST act w.e.f. 1.7.2017 during the period 2014-19.	134.10
<b>Total:</b>		<b>5120.82</b>

(b) To allow the impact of Interest on Working Capital amounting to Rs.282.90 lakh for the tariff period 2014-19 consequent to additional O&M expenses;

(c) To allow revision of O&M expenses considering the revised salary of HPSEB Employees on Deputation w.e.f. 01.01.2016 as and when finalized in view of submission made in this petition.

(d) To pass such order and further order / orders as are deemed fit and proper in the facts and circumstances of the case.

2. The generating station is located on the river Satluj in the State of Himachal Pradesh and is developed as a tail race extension of upstream project (Nathpa Jhakri) and is to be run in tandem with it. The project was sanctioned by the Ministry of Power (MOP), GOI on 25.1.2007, at an estimated cost of Rs.2047.05 crore, including Interest During Construction (IDC) and Financing Charges (FC) for Rs.260.41 crore and



Rs. 1.46 crore respectively, at March, 2006 Price Level, with a completion schedule of 60 months. The dates of commercial operation of the units of the generating station are as under:

Units	Actual COD
I	13. 5.2014
II	13. 5.2014
III	8. 8.2014
IV	18. 6.2014
V	13. 5.2014
VI	16.12.2014

### **Submissions of the Petitioner**

3. The Petitioner, in this Petition, has made the following submissions:

- (a) Petition No. 315/GT/2018 was filed for approval of tariff of the generating station, for the period from actual COD of the first Unit (13.5.2014) till 31.3.2019 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations') and the Commission, vide its order dated 26.6.2019 had approved the generation tariff for the period 2014-19. In the said order, the Commission, had observed that the prayer of Petitioner for enhancement of O&M expenses due to pay/salary revision, may be examined, on a case-to-case basis, subject to the implementation of pay revision as per DPE guidelines and the filing of an appropriate application by the Petitioner.
- (b) Petition No. 29/GT/2020 was filed for revision of tariff of the generating station for the period from actual COD of first Unit i.e., 13.5.2014 to 31.3.2019. Petition has already been admitted by Commission and order is reserved, where in, prayer was made for enhancement of O&M expenses due to salary/wage revision of employees of the Petitioner w.e.f. 1.1.2017 and for HPSEB employees on deputation, DAV School staff and Central / State Security forces deployed at the power stations from 1.1.2016. (*Petition has since been disposed of on 4.6.2021 granting liberty to the Petitioner in line with the earlier order dated 26.6.2019*).
- (c) The Petitioner is filing this petition for recovery of additional expenditure incurred consequent to the following:
- (i) Pay Revision (Salaries/wage revisions):
- Finalization and implementation of 1997 Pay scales of SJVN/RHPS employees w.e.f. 1.1.2007 vide SJVN office circular dated 29.3.2019.



- Finalization and implementation of 2017 Pay scales of SJVN/RHPS employees w.e.f. 1. 1.2017 vide SJVN office circular dated 6.6.2018, 11. 2.2019, 2.8.2019.
  - Implementation of the 7<sup>th</sup> Central Pay Commission of CISF w.e.f. 1.1.2016.
- (ii) Implementation of Minimum wage revision of outsourced manpower (Contract & HIMPESCO) w.e.f. 1.4.2017 and
- (iii) Implementation of GST Act w.e.f. 1.7.2017.

(d) However, the pay/wage revisions of HPSEB employees on deputation, has not been finalized till date, which was due from 1.1.2016, and therefore, the total financial implication on account of salary/wage revision of HPSEB employees cannot be determined at this stage. The Petitioner craves liberty of the Commission to seek enhancement in O&M expenses w.e.f. 1.1.2016, towards increase in salary on account of salary/wage revision, based on actual payments, whenever paid to HPSEB employees, on Deputation.

**A. Pay Revision (Salaries/wage revision) on account of finalization and implementation of 1997 Pay scales of SJVN/RHPS employees w.e.f. 1.1.2007 to 31.3.2014:**

(e) The COD of the first unit of the generating station was achieved on 13.5.2014 and COD of project was achieved on 16.12.2014. Hence, the O&M charges comes into picture only after COD of the first unit. The O&M expenses of the generating station, for the period after COD, has been allowed by in terms of Regulation 29 (3)(d) of the 2014 Tariff Regulations.

(f) The Petitioner has incurred additional expenses amounting to Rs.779.70 lakh on account of finalization and implementation of 1997 Pay scales of Petitioners employees w.e.f. 1.1.2007 vide SJVN Office circular dated 29.3.2019, in pursuance to the MOP, GOI letter No. F No 2/1/2014-H. I (Pt) dated 29.1.2019, for the period 1.1.2007 to 31.3.2014.

(g) During the period (1.1.2007 to 31.3.2014), the station was under pre-construction and construction activities and the Petitioner had no occasion to envisage or consider the impact of increase in the salary/ wages, on account of 1997 Pay scale finalization, in respect of its employees (for Rs.779.70 lakh) of the generating station, which was commissioned on 16.12.2014, as the liability comes in focus during 2018-19, i.e. around 5 years after the COD of the project.

(h) In view of the above circumstances, the Commission may allow the recovery of additional cost, due to increase in employee cost, on account of the 1997 Pay scale finalization, in respect of the Petitioners employees of the generating station, (for Rs.779.70 lakh) w.e.f. 1.1.2007 to 31.3.2014. The said costs are not on account of any failure, in-efficiency or imprudence attributable to the generating station. Hence, the Petitioner prays to allow the reimbursement of this



expenditure, as part of capital cost of generating station, or for one-time reimbursement as O&M expenses in terms of Regulation 12 and Regulation 13 of the 2004 Tariff Regulations and Regulation 44 of the 2009 Tariff Regulations.

**B. Pay Revision (Salaries/wage revisions) of SJVN/RHPS & CISF employees during the period 2014-19:**

(i) The Commission had no occasion to consider the impact of increase in salary /wage w.e.f. 1.1.2017 (for SJVN/RHPS employee) and w.e.f. 1.1.2016 (for CISF employees) along with the impact of pay/wages revision on account of the 1997 Pay scale finalization in respect of its employee w.e.f. 1.4.2014 to 31.3.2019, while arriving the O&M expense norms for the period 2014-19. The Commission while framing the 2014 Tariff Regulations, could not factor in, the impact of such increase in employee cost, in the normative O&M expense norms specified under Regulation 29 of the 2014 Tariff Regulations. Therefore, it is apparent that the implementation of the recommendations of 7<sup>th</sup> Pay Commission/OM of the Department of Public Enterprises (DPE) and the 1997 Pay scale finalization are subsequent events, which has led to the salary/wage revision thereby leading to the increase in O&M expenses of the Petitioner.

(j) In view of the above circumstances, the Commission may allow the Petitioner to recover the additional O&M expenses, due to the increase in employee cost. The said costs are not on account of any failure, in-efficiency or imprudence attributable to RHPS. RHPS has sought for such payment of the increased O&M expenses in terms of Regulations 54 and 55 of the 2014 Tariff Regulations.

(k) The pay revision of employees of the generating station, has been implemented by the Petitioner in the following manner:

(i) MOP, GOI vide letter dated 29.1.2019 has regularized the pay scales of Below Board Executives w.e.f. 1.1.1997.

(ii) DPE vide OM dated 3.8.2017, O.M. dated 4.8.2017, O.M. dated 7.9.2017, O.M. dated 18.4.2018 and O.M. dated 24.12.2012 has issued guidelines for revision of pay scales and allowances of Board Level and below Board level executive and Non-executives of Central Public Sector Enterprises (CPSEs) w.e.f. 1.1.2017.

(iii) The pay revision has been approved by the Board of Directors of the Petitioner's Company, in its 265<sup>th</sup>, 271<sup>st</sup> and 274<sup>th</sup> Board meeting held on 28.5.2018, 8.2.2019 and 11.2.2019, respectively.

(iv) DPE Memorandum dated 10.7.2018 of Department of Public Enterprises.

(v) Petitioner's Corporate Human Resource Circular No.103/2008, 227/2011, 607/2018, 635/2019, 634/2019, 644/2019, 671/2019.

(vi) The decisions of the Government on the recommendations of 7<sup>th</sup> Central Pay Commission were notified by the Department of Expenditure (DOE), Ministry of Finance (MOF), GOI vide Resolution dated 25.7.2016. Subsequently, the DOE, MOF, vide OM dated 29.7.2016, issued instructions for the implementation of pay scales of Central Government employees, which was effective from 1.1.2016. Accordingly, the



expenses was incurred on account of Pay revision of CISF employees deployed in generating station.

(vii) Accordingly, the impact of the pay revision of employees, CISF employees of the generating station of the Petitioner, claimed is as under:

		<i>(Rs In lakh)</i>
1	Impact of revision in salaries & wages paid to employees on account of finalization of 1997 Pay Scales w.e.f. 1.1.2007 to 31.3.2014	779.70
2	Impact of revision in salaries & wages paid to employees during the period 2014-19 on account of finalization of 1997 Pay scales w.e.f. 1.1.2007	592.88
3	Impact of revision in salaries & wages paid to RHPS employees during the period 2014-19 on account of finalization of 2017 Pay scales w.e.f. 1.1.2017	2628.00
4	Impact of revision in salaries & wages paid to CISF employees w.e.f. 1.1.2016 during the period 2014-19	178.56

### **C. Revision in Minimum Wages & Implementation of Goods & Service Tax Act (GST):**

(l) The normative parameters including O&M expenses for the period 2014-19 as specified under the 2014 Tariff Regulations, were based on past actuals, for the period from 2008-09 to 2012-13. During the period 2014-19, there has been certain enactments/promulgation of law, GOI Notifications etc., that have resulted in changes in input cost, required for O&M of the power plants, namely:

- (i) Minimum wages revision w.e.f. 1.3.2017.
- (ii) Enactment of GST, that came into effect from 1.7.2017.

#### **Minimum Wage Revision**

(m) The Petitioner is a generating company owned and controlled by the Government of India and the Government of Himachal Pradesh. Accordingly, for payments of wages to various categories of contractual/outsourced workers (unskilled/semi-skilled/skilled) engaged by the Petitioner, for carrying out various activities related to power generation, are governed by the rates declared by the Central Government through Ministry of Labour and Employment.

(n) As per the orders dated 20.4.2017, 3.4.2018 and 28.9.2018 of the Chief Labour Commissioner (C), after the gazette Notification 188 (E) dated 19.1.2017, there was substantial upward revision of the minimum wages, to be paid to the workers, under different categories, effective from 1.4.2017. Such gazette notification by the GOI, constitutes a change in law.

(o) The revision of minimum wages through gazette notification, constitutes "change in law" over which the Petitioner, has no control. It is prayed that the impact of minimum wage revision, for Rs 807.59 lakh, may be allowed under change in law, as additional O&M expenses.



## **GST Act**

(p) GST Act was enacted by the Parliament, which came into force w.e.f. 1.7.2017. With this enactment, many taxes/cess/duties, such as Central Excise Duty, Service Tax, Value Added Tax, Sales Tax etc., got subsumed in GST, with changes in the rate of tax, to be paid to the vendors, for various activities carried out for generation of electricity, by the Petitioner. This change in tax regime, had positive as well as negative impact i.e., taxes to be paid on certain services/goods increased, whereas, on certain services/goods decreased. However, the overall impact due to change in tax regime, was that the net taxes paid by the Petitioner increased for carrying out O&M activities, such as sourcing goods/material from vendors /OEMs, etc.

(q) Further, the O&M expense norms allowed to the Petitioner as per the 2014 Tariff Regulations, was based on the actual O&M expenses for the period (2008-13), where the total taxes, duties etc. paid by the Petitioner, was less as compared to the GST. Accordingly, the Petitioner has incurred increased expenditure, due to increased taxes w.e.f. 1.7.2017. Further, the Commission in its various orders had declared the promulgation of GST w.e.f. 1.7.2017, is a change in law event.

(r) GST Act constitutes change in law, over which the Petitioner has no control. The additional financial burden of Rs 134.10 lakh, due to GST w.e.f. 1.7.2017, may be allowed under change in law, as additional O&M expenses

## **D. Interest on Working Capital**

(s) The impact of pay & wage revision, minimum wage revision, implementation of GST being additional O&M expenses, forms part of the working capital. Accordingly, it is prayed to allow the impact of interest on working capital for ₹282.90 lakh for the period 2014-19 consequent to the above additional O&M expenses. The year-wise details of the impact of interest on working capital, is as under:

*(Rs in lakh)*

<b>Sl. No.</b>	<b>Year</b>	<b>Interest on working capital on account of additional O&amp;M expenses</b>
1.	2014-15	75.83
2.	2015-16	0.00
3.	2016-17	23.86
4.	2017-18	99.37
5.	2018-19	83.84
	<b>Total</b>	<b>282.90</b>



Accordingly, the Petitioner has filed the present petition, with the prayers as stated in paragraph 1 above.

## **Reply of the Respondents**

### ***Submissions of the Respondent MPPMCL***

4. The Respondent MPPMCL vide reply affidavit dated 23.6.2021 has mainly submitted as under:

(a) It is evident from memorandum dated 3.8.2017 of the Ministry of Heavy Industries & Public Enterprise, that the Petitioner, has to bear the financial implications on its own and the Respondents are not liable to bear the burden on this count.

(b) Proviso to Regulation 29(3)(b)(ii) of the 2014 Tariff Regulations, allow escalation of O&M expenses @ 6.64% per annum for the period 2014-19. This escalation is sufficient to cope up to kinds of increase in the O&M expenses. Therefore, the Petitioner's claim for increase in O&M expenses may be disallowed.

(c) The Commission allows 'deviation from norms' under the Tariff Regulations, if actual parameters are better than the norms. The request of Petitioner to allow additional O&M expenses, due to the increase in employee cost, on actuals, should not be allowed. The principal that 'the tariff is a composite package and any element cannot be seen as isolation' is well established. The tariff determined on normative basis, needs to be compared with expenditure actually incurred and individual elements cannot be seen in isolation. In view of above, if employee expenses have to be allowed over and above the normative O&M expenses, then all other normative parameters, will also be required to be examined, to assess the overall loss/gain to the Petitioner, for arriving at a reasonable and justifiable proposition.

(d) There is no provision under the 2014 Tariff Regulations, for revision of O&M expenses. On this ground alone, the claim of Petitioner to include wage revision under O&M expenses is liable to be rejected.

(e) The high O&M rates will ultimately be over burdening to the end consumer, which is not consistent with the provision of the Electricity Act 2003.

(f) The Petitioner has also claimed impact of GST in 2017-18 and 2018-19 without providing proper documents /supporting statements. On perusal of the profit & loss statement, it is seen that during the whole tariff period, the taxes paid by the Petitioner, was 'nil'. Moreover, the Petitioner has already earned pre-tax ROE despite 'nil' taxes liability. Therefore, the same may be disallowed.



## ***Submissions of the Respondent, UPPCL***

5. The Respondent, UPPCL vide reply vide affidavit dated 8.2.2022, has mainly submitted as under:

### **Claims during the period from 1997 to 15.12.2014 due to 1997- Pay Revision**

(i) The construction of the project started from 1.1.2007 and the project commissioned on 16.12.2014. As such, the provisions of the 2004 and 2009 Tariff Regulations, would not apply in the present case of the Petitioner, since these Regulations stood repealed, prior to commissioning of the project on 16.12.2014. Therefore, the provisions of the 2014 Tariff Regulations, will apply.

### **Disallowable claims for the period from 1.1.1997 to 31.12.2006**

(ii) As the construction of the project started on 1.1.2007, any expense incurred by the Petitioner, on account of pay revision from 1.1.1997 to 31.12.2006, cannot be claimed by the Petitioner, for this generating station and the same may be dismissed. The Petitioner may be directed to submit the actual amount payable during the said period, and subtract the same from total claim amount of Rs.779.70 lakh. to arrive at impact during the construction of the project i.e., 1.1.2007 to 15.12.2014.

### **Allowable claims during the construction period from 1.1.2007 to 15.12.2014**

(iii) The actual employee expenses incurred during the period of construction from 1.1.2007 to 15.12.2014, cannot be allowed to the Petitioner, in addition to the O&M expenses already allowed by order dated 26.6.2019 in Petition No. 315/GT/2018 in terms of the provisions of the 2014 Tariff Regulations. It could only be claimed by the Petitioner through capitalization in the capital cost of the project, as on 15.12.2014.

### **Allowable O&M expenses claim during the period from 16.12.2014 to 2019 due to 'pay scale-1997 revision**

(iv) The decision of the MOP, GOI came only on 29.1.2019, just before the expiry of the 2014 Tariff Regulations. Therefore, the payments on account of the said revision, have been computed or paid by the Petitioner during the period 2019-24. In respect of this generating station, the O&M expenses have also been specified under Regulation 35(2)(a) of the 2019 Tariff Regulations. The 'Note' to the said Regulation provides that in respect of revision of minimum wages and GST, if any, the same shall be considered at the time of determination of tariff. Hence, it is evident from the foregoing submissions, that the impact of pay revision of below Board Level employees during the period 2019-24, has already been considered by the Commission, under Regulation 35(2) (a) of the 2019 Tariff Regulations, As such claim for Rs. 592.88 lakh, on actual basis, is not admissible to the Petitioner, in



addition to the O&M expenses allowed for the period 2014-19 vide order dated 26.6.2019 in Petition No. 315/GT/2018.

(v) The Commission in the Statement of Objects and Reasons (SOR) and other orders, had observed, that the impact of pay revision shall be considered on case-to-case basis. Since, the generating station, was commissioned on 16.12.2014, after capitalization of expenses during commissioning, as such, the O&M expenses could only be re-calculated, based on 2.5% of the original project cost (excluding cost rehabilitation & resettlement works) for the first year and subjected to annual escalation of 6.64% per annum, for the subsequent years, as per Regulation 29(d) of the 2014 Tariff Regulations.

(vi) Therefore, the claim for Rs.592.88 lakh, on actual basis, may not be allowed. However, the O&M expenses during the period 2014-19 can only be revised after capitalization of the expenditure incurred on account of 'Pay scale-1997 revision' during the period from 1.1.2007 to 15.12.2014 in the capital cost of the project, as per provisions of the 2004 Tariff Regulations. Further, the impact of revision of minimum wages and GST can be considered only during the period 2019-24, in terms of Regulation 35(2)(a) of the 2019 Tariff Regulations, on a separate petition to be filed by the Petitioner.

**Revision of IWC in 2014-19 due to revision of O&M Expenditure on account of 'Pay Scale-1997 Revision' during 16.12.2014 to 2019**

(vii) Since Interest on Working Capital (IWC), is incidental to the revision of O&M expenses, the incidental revision in IWC during the period 2014-19, may be considered, based on revised O&M expenses determined after capitalization of the impact of 'Pay Scale-1997 revision' during period of construction from 1.1.2007 to 16.12.2014, as per provisions of the 2014 Tariff Regulations.

**Allowable claims during the period 2014-19 due to impact of employee Pay Scale revision-2017, CSIF pay revision-2016, Minimum Wage revision, 2017 and GST, 2017:**

(viii) The generating station was commissioned after the commencement of the 2014 Tariff Regulations and the O&M expenses has been specified under Regulation 29(d) of the 2014 Tariff Regulations and in the order dated 26.6.2019 in Petition No 315/GT/2018.

a) The period from 16.12.2014 (COD) to 31.3.2019 has expired and the Petitioner has computed the actual expenses, for the said period now. Since the actual O&M expenses incurred during the period 2014-19 are available with the Petitioner, as such, the Commission may consider to allow the said expenses, in the truing-up Petition No. 29/GT/2020, based on the methodology adopted by the Commission for determination of normative O&M expenses for other hydropower projects, under Regulation 29(4)(a) of the 2014 Tariff Regulations, as an exception. Any spike in



O&M expenses in any year may be smoothed, based on the overall average over the control period.

**Revised salary of HPSEB employees on deputation**

(ix) The Petitioner has not been able to compute the impact of revision of salary of HPSEB employees effective from 1.1.2016 and has prayed to allow the same as and when it gets finalized. All the claims of the Petitioner may be considered together at one point of time in the truing-up Petition. After, the truing-up Petition is decided; the Petitioner might not be allowed to seek any claim on account of HPSEB employees during the period 2019-24. As such, the Petitioner may be directed to file its claim on this account in Petition No. 29/GT/2020, along with other claims. Or otherwise, the same may not be allowed.

**Rejoinder of the Petitioner to the replies of the Respondents**

6. The Petitioner vide affidavits dated 12.7.2021 and 9.3.2022 has filed its rejoinders to the replies of the Respondents MPPMCL and UPPCL as under:

***Rejoinder to reply of the Respondent MPPMCL***

(i) The tariff of the generating station for the period 2014-19, was determined by the Commission, in terms of the provisions of the 2014 Tariff Regulations. The Petitioner had claimed O&M expenses in line with Regulation 29 (3)(d) of the 2014 Tariff Regulations. However, the salary and wage revisions were notified subsequent to the 2014 Tariff Regulations and therefore, the Petition for the same has been filed separately (*refer para 30 of the SOR to the 2014 Tariff Regulations*).

(ii) Further, in order dated 26.6.2019 in Petition No.315/GT/2018, the prayer of the Petitioner for enhancement of O&M expenses due to pay/salary revision, was disposed of by the Commission, observing that the same may be examined, on a case-to-case basis, subject to the implementation of pay revision as per DPE guidelines and the filing of an appropriate application by the Petitioner in this regard. Also, the Commission, vide its order dated 4.6.2021 in Petition No.29/GT/2020, had granted liberty to the Petitioner, to approach the Commission, after finalization of pay revision, along with all relevant details.

(iii) The Petitioner has also claimed the additional impact of GST on taxable services due to implementation of GST w.e.f. 1.7.2017 as per provisions of the 2014 Tariff Regulations, along with necessary documents and details attached with forms duly audited by Statutory Auditors. Further, the Petitioner is paying Income tax, as per the provisions of the Income Tax Act, which may be verified from the Statement of Profit & Loss of the Company, instead of Statements of Profit & Loss of this generating station.



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

(iv) The tariff of the generating station was determined by this Commission for the period 2014-19, in terms of the relevant provisions of the 2014 Tariff Regulations. The Petitioner had claimed O&M expenses in line with Regulation 29(3)(d) of the 2014 Tariff Regulations, for hydro generating stations, wherein, the O&M expenses, have been derived at 2.5% of the original project cost (excluding cost of rehabilitation and resettlement works) for the first year of commercial operation, and subject to escalation of 6.64% per annum for subsequent years.

(x) During the period (1.1.2007 to 15.12.2014), the generating station, was under pre-construction and construction activities and therefore, the Petitioner, had no occasion to consider the impact of increase in salary /wages, on account of the 1997 pay scale revision, in the completion cost of this generating station, which was commissioned on 16.12.2014, as the liability comes in focus in 2018-19, i.e., around 5 years after the COD of the project and therefore, the impact has been claimed separately.

(xi) The pay scales of 1997 have been finalized by the Petitioner on 29.3.2019, w.e.f. 1.1.2007, pursuant to the MOP, GOI letter dated 29.1.2019 and the Corporate HR circular dated 29.3.2019 as enclosed in Petition No 123/MP/2021. Further, the 2004 Tariff Regulations and the 2009 Tariff Regulations, were not repealed and the Commission, in the past has, in terms of provisions of 'power to relax' had allowed allow the impact of pay & wage revision.

(xii) In view of above circumstances, the Commission may allow the recovery of additional costs to this generating station, on account of failure to recover the 1997 pay scales finalized in respect of its employees w.e.f. 1.1.2007. Hence, the additional cost may be allowed as a part of the capital cost or as one-time reimbursement as O&M expenses.

(xiii) The working capital for hydro generating stations, is derived from the O&M expenses for the period. The Petitioner has incurred additional O&M expenses as a result of pay revision (salaries / wage revisions) on account of the 1997 and 2017 pay scales finalization w.e.f. 1.4.2014 and 1.1.2017 respectively, for the employees of the generating station, implementation of the 7th Central Pay Commission of CISF w.e.f. 1.1.2016, minimum wage revision of outsourced manpower (contract & HIMPESCO) w.e.f. 1.4.2017 and the implementation of GST Act w.e.f. 1.7.2017 amounting to Rs.5120.82 lakh.

(xiv) In view of above, the impact of pay & wage revision, minimum wage revision, implementation of GST being additional O&M expenses, forms the part of working capital. Accordingly, it is prayed to allow the impact of interest on working capital amounting to Rs.282.90 lakh for the period 2014-19, consequent upon the additional O&M expenses incurred.



(xv) The Commission has granted liberty to the Petitioner to claim the enhancement of O&M expenses, due to pay revision in order dated 26.6.2019 in Petition No 315/GT/2018 for the period 2014-19. The implementation of minimum wages revision and GST constitutes “change in law” over which the generating station, had no control. It is prayed that the impact of minimum wage and GST may be allowed under change in law, as additional O&M expenses.

(xvi) The pay/wage revision of HPSEB employees, on deputation, has not been finalized till date, which was due from 1.1.2016. Therefore, the total financial implication of salary/wage revision of the said employees cannot be determined at this stage. The Petitioner craves liberty of the Commission to seek enhancement in the O&M expenses w.e.f. 1.1.2016, towards increase in salary on account of salary/wage revision, based on actual payments, whenever paid to HPSEB employees, on Deputation. The Commission may allow the same in accordance with the Tariff Regulations.

### **Hearing dated 15.2.2022**

7. This Petition was heard along with Petition No.84/MP/2021 (*Petition for recovery of the impact of salary/wage revision in respect of Nathpa Jhakri HEP*), through virtual conferencing on 15.2.2022. During the hearing, the learned Senior counsel for the Petitioner made detailed oral submissions, in the matter, in line with the submissions made in the petition. The Commission, after hearing the learned Senior counsel, ‘admitted’ the petition and ordered notice on the Respondents. The Petitioner was also directed to furnish the following additional information, after serving copies on the Respondents:

a) *Breakup of actual O&M expenditure for the tariff period 2014-19 under various sub-heads (as per Annexure-A enclosed) after including the pay revision impact (employees, CISF and KV), wage revision impact (minimum wages) and impact of pay regularization in the employee cost. (To be provided in both MS Excel and PDF format);*

b) *Break-up of 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 CISF & KV 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 both 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;*
- d) *Basis and rationale for claim on account of impact due to revision of minimum wages & Impact of revision in salaries & wages paid to employees on account of finalization of 1997 Pay Scales w.e.f. 01.01.2007 to 31.03.2019. Further, a certificate to the effect that the above impact was not part of actual O&M expenses for this project for the period 2007-19, based on which normative O&M expenses is allowed by Commission;*
- e) *With regard to claim on account of pay regularization for financial years from 2007 to 2019, reference of the Petition(s) for the period prior to 2014-19 in which the Petitioner has raised the issue for consideration of the Commission and order of the Commission, if any, in which such liberty to consider the claim, as and when finalized by the Petitioner, has been granted by the Commission;*
- f) *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.*

In response to the above directions, the Petitioner has filed the additional information on 15.3.2022, after serving copies on the Respondents.

### **Hearing dated 18.10.2022**

8. During the hearing of this petition, on 18.10.2022, the learned Senior counsel for the Petitioner made detailed oral arguments in the matter. The Commission, at the request of the learned senior counsel, permitted the Petitioner to upload the 'note on arguments' in the web portal of the Commission, after serving copy to the Respondents. Accordingly, order in the petition was reserved.

### **Analysis and Decision**

9. We have heard the submissions of the parties and examined the documents on record. Before we proceed to examine the prayers of the Petitioner, we deem it fit to deal with some of the objections of the Respondents, as stated below:

#### ***Tariff as a composite package***

10. The Respondent MPPCL has submitted that tariff is a composite package and any element cannot be seen in isolation. It has further submitted if employee expenses have to be allowed over and above the normative O&M expenses, then all other normative



parameters, will also be required to be examined, to assess the overall loss/gain to the Petitioner, for arriving at a reasonable and justifiable proposition.

11. The matter has been examined. It is noticed that in Petition No.35/MP/2011 & batch cases, 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, similar arguments (as raised above by Respondent MPPMCL) were raised by some of the Respondents discoms therein, and the Commission by its order dated 12.10.2012 disposed of the same, 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.”*

12. Further, in Petition No.5/MP/2012 & batch petitions filed by NHPC for recovery of additional cost incurred due to pay revision of employees for its generating stations, Indian Reserve Battalion (IRBN) and KV staff during 1.1.2006 to 31.3.2009, similar submissions, made by the Respondent beneficiaries, as above, was rejected by the Commission vide its order dated 5.12.2012 (in line with the 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.”*

13. Accordingly, the objection of the Respondent, MMPCL that tariff being a package and any element cannot be seen in isolation norms, is not acceptable and is therefore rejected.

### **Other issues**

14. The Respondent MPPMCL has submitted that the additional O&M expenses, will ultimately over burden the end consumer, which is not consistent with the provision of the Electricity Act 2003. The Respondent UPPCL has submitted that the provisions of



the 2004 and 2009 Tariff Regulations, would not apply in the present case of the Petitioner, since these Regulations stood repealed, prior to commissioning of the project on 16.12.2014. Therefore, it has submitted that the provisions of the 2014 Tariff Regulations, will only apply. Per contra, the Petitioner has stated that the prayer of the Petitioner for enhancement of O&M expenses, in Petition No. 315/GT/2018, and Petition No.29/GT/2020, were disposed of by this Commission, vide its orders dated 26.6.2019 and 4.6.2021 respectively, wherein, liberty was granted to the Petitioner to claim the same, after finalization of pay revision, by filing separate application with all relevant details. It has further stated that the 2004 Tariff Regulations and the 2009 Tariff Regulations, were not repealed (as submitted by Respondent UPPCL) and the Commission, in the past, has, in terms of provisions of 'power to relax' under the Tariff Regulations, allowed the impact of pay & wage revision.

15. We notice from records that the Petitioner, in Petition No. 315/GT/2018 had sought liberty of the Commission to seek enhancement in O&M expenses for increase in salary on account of salary revision based on actual payments, whenever paid to employees. Accordingly, the Commission vide its order dated 26.6.2019, disposed of the same as under:

*"94. As regards the prayer of Petitioner for enhancement of O&M expenses due to pay/salary revision, the same may be examined by the Commission, on a case-to-case basis, subject to the implementation of pay revision as per DPE guidelines and the filing of an appropriate application by the Petitioner in this regard.*

16. Thereafter, in Petition No.29/GT/2020 filed by the Petitioner for truing up of tariff for the period 2014-19, the Petitioner sought liberty of the Commission to seek enhancement in O&M expenses for increase in salary from 1.1.2017/ 1.1.2016, on account of wage revision, based on actual payments, whenever paid to employees.



This prayer of the Petitioner was also disposed of the Commission vide order dated 4.6.2021 as under:

*88. In view of the above, the Petitioner is granted further liberty to approach the Commission after finalization of the pay revision along with all relevant details, which will be considered in accordance with law.*

17. Since, the present petition for enhancement of O&M expenses due to wage revision has been filed by the Petitioner, in terms of the liberty granted above, we find no reason to reject the claims, without examining the same on merits. Also, the contention of the Respondent UPPCL that the provisions of the 2004 and 2009 Tariff Regulations, had been repealed, cannot, be accepted, keeping in view that the claims of the Petitioner for enhancement of O&M expenses, due to implementation of salary/wage revision for its generating station, with effect from 1.1.2007 to 31.3.2014 are required to be examined in the backdrop of the O&M expense norms notified by the Commission, for the said periods. In this regard, the observations of the APTEL in its judgment dated 24.3.2015 (quoted in para 12 above) extracted hereunder, is noteworthy.

*“.... 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.”*

18. In line with the above decisions, the submissions of the Respondents deserve no merit for consideration. 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. By parity of reasoning, we are of the considered view that the Petitioner should be suitably compensated for the wage/pay revision. 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.

**Claim for additional O&M expenses due to impact of salary/wages of employees**

19. As stated, the Petitioner has claimed total additional O&M expenses for Rs.779.70 lakh towards impact of revision in salaries & wages paid to employees, on account of finalization of 1997 Pay scales w.e.f. 1.1.2007 to 31.3.2014, Rs.592.88 lakh as impact of revision in salaries & wages paid to employees, during the period 2014-19, on account of finalization of 1997 Pay scales w.e.f. 1.1.2007, and Rs. 2628.00 lakh for impact of revision in salaries & wages paid to its employees during the period 2014-19 on account of finalization of 2017 Pay scales w.e.f. 1.1.2017. The year-wise details of the amounts claimed by the Petitioner are as under:

*(Rs in lakh)*

Period	Year wise impact of revision in Salaries & Wages paid to employees during the Period 2006-14 (Construction period of RHPS) on account of 1997 Pay Scales finalization w.e.f. 1.1.2007	Year wise impact of revision in Salaries & Wages paid to employees during the Tariff Period 2014-19 on account of 1997 Pay Scales finalization w.e.f. 1.1.2007	Year wise impact of revision in salaries & wages paid to RHPS employees w.e.f. 1.1.2017 during the Tariff Period 2014-19 on account of Pay scale finalization.
2006-07	10.27		
2007-08	46.71		
2008-09	75.34		
2009-10	97.96		
2010-11	107.51		
2011-12	124.63		
2012-13	131.81		
2013-14	151.27		
2014-15 (pre-COD)	34.21		
2014-15 (post-COD)		91.08	
2015-16		102.96	
2016-17		129.92	360.19
2017-18		162.48	1246.67
2018-19		106.43	1021.14
<b>Total</b>	<b>779.70</b>	<b>592.88</b>	<b>2628.00</b>

20. It is evident from the above that the Petitioner has claimed total expenditure of Rs. 779.70 lakhs in respect of the generating station for the period from 2006-07 to 2013-14 (pre-COD) when the same was under construction, Rs. 592.88 lakh for the period from



2014-15 to 2018-19 (post-COD) after the project was commissioned towards impact of salaries and wages paid during the period 2006-14 on account of the 1997 pay scale finalization w.e.f.1.1.2007 and Rs.2628.00 lakh for the period 2014-19, on account of finalization and implementation of revised pay scales with effect from 1.1.2017. As stated, the generating station was under construction during the tariff periods 2004-09, 2009-14 and around 9 months during 2014-19 tariff period, as the generating station achieved COD on 16.12.2014. Since the COD was on 16.12.2014 all expenses up to the period till 16.12.2014 (pre-COD), would have formed part of the capital cost, of the generating station, based on which the normative O&M expenses of 2.5% of the original project cost for the first year of commercial operation with annual escalation of 6.64% p.a. for the subsequent years was allowed as per Clause 29(3)(d) of the 2014 tariff regulations.

21. In response to the directions vide ROP dated 15.2.2022, the Petitioner, has admitted to the fact that since 1.1.1997 (the due date of pay revision), it had, in line with the DPE guidelines dated 25.6.1999, revised the pay scales of its employees, in line with those of other PSU viz., NTPC, after obtaining approval of the Petitioner's Board of Directors (BOD) in its 89<sup>th</sup> meeting. However, the implementation of these revised pay scales was not approved by the MOP, GOI.

22. Thereafter, MOP, GOI vide its letter dated 27.12.2013 had directed the Petitioner that the revised pay scales fixed w.e.f.1.1.1997, shall not be regularized. However, it directed that no recovery shall be made for the excess pay drawn w.e.f.1.1.1997 onwards, considering the difficulties in effecting recovery and that the same will demotivate the staff, and that the pay scales w.e.f. 1.1.2007, should be fixed only after correcting the aberrations in pay scales fixed w.e.f. 1.1.1997. In other words, it is clear that though the pay fixation w.e.f. 1.1.1997 was implemented by the Petitioner vide



order dated 23.5.2008, the same was not approved by MOP, GOI, but the petitioner was directed not to make any recovery of the said pay, from the staff/employees.

23. Thereafter, in line with the DPE OM dated 26.11.2008 for revision of pay scales w.e.f.1.1.2007 and the MOP, GOI letter dated 27.12.2013, the pay scales w.e.f.1.1.2007 were fixed, after removal of aberrations in the earlier pay scales w.e.f.1.1.1997. So the claim of Rs.779.70 lakh and Rs.592.88 lakh have now arisen due to the impact in pay revision which was done w.e.f.1.1.2007 in line with the MOP directions dated 27.12.13 and the pay fixation which was implemented by the Petitioner vide order dated 29.3.2019, after approval of the same by the Union Cabinet and MOP, GOI. This amount of Rs.779.70 lakh and Rs.592.88 lakh will also be dealt together with the Petitioners claim for pay revision w.e.f.1.1.2017, implemented during the period 2014-19.

**Impact of revision in salaries & wages paid to CISF employees w.e.f. 1.1.2016**

24. The Petitioner has claimed total additional O&M expenses of Rs.178.56 lakh for the period 2014-19, towards impact of the wage revision of employees of CISF personnel (with effect from 1.1.2016). The year-wise details furnished by the Petitioner, are as under:

<b>Impact of wage revision of CISF Staff at Project</b>					<i>(Rs in lakh)</i>	
<b>S.N.</b>	<b>Particulars</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total</b>	
(i)	Employees cost of the Project in the pre-revised scale	1.33	753.80	971.15	1726.28	
(ii)	Less: Provisions for wage revision	0.00	0.00	0.00	0.00	
(iii)	Net= (i)-(ii)	1.33	753.80	971.15	1726.28	
(iv)	Employee cost of the Project in the revised scale w.e.f.1.1.2016	3.20	880.20	1021.44	1904.85	
	<b>Difference (iv-iii) impact of salary/wage revision</b>	<b>1.87</b>	<b>126.40</b>	<b>50.29</b>	<b>178.56</b>	



25. The Petitioner vide affidavit dated 11.3.2022, has submitted the claims on account of the pay revision of CISF Personnel, as under:

(Rs in lakh)

Component	2016-17			2017-18		
	Pre-Revision	Post Revision	Wage Revision	Pre-Revision	Post Revision	Wage Revision
CISF Personnel	1.33	3.20	1.87	753.80	880.20	126.40
Component	2018-19			Total		
	Pre-Revision	Post Revision	Wage Revision	Pre-Revision	Post Revision	Wage Revision
CISF Personnel	971.15	1021.44	50.29	1726.28	1904.85	<b>178.56</b>

26. The Petitioner has furnished the detailed break-up of the actual O&M expenses incurred by it during the period 2014-19 in respect of the generating station. The Petitioner has also submitted that the generating station was under pre-construction/ construction activities and the Petitioner had no occasion to envisage/consider the impact of increase in salary/wages, on account of the 1997 pay scale finalization in respect of its employees, as the generating station was commissioned on 16.12.2014, while the liability came in focus during FY 2018-19. Since the liability arose during FY 2018-19, the claims of the Petitioner are examined in terms of the 2014 Tariff Regulations.

27. As regards the recovery of impact of pay/wage revision by a generating company, the SOR to the 2014 Tariff Regulations provides as under:

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



*shall be examined on case to case basis, balancing the interest of generating stations and consumers.*

*xxxx*

*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.”*

28. Admittedly, the 2014 Tariff Regulations, notified by the Commission, for the period 2014-19, had ‘not factored in’ the impact of revision in salary/wage revision of the employees of the Petitioner, with effect from 1.1.2017 and pay revision of CISF Personnel, posted at the generating station of the Petitioner, with effect from 1.1.2016 as evident from the SOR of the 2014 Tariff Regulations. In our view, the additional expenditure incurred on salary/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 towards the impact due to retrospective revision/ regularization of pay scales.

29. The methodology indicated in aforesaid SOR suggests a comparison of the normative O&M expenses with the actual O&M expenses, on a year-to-year basis as well as case to case basis balancing the interest of generating staff and consumers. In this respect, the following facts are considered:

- a) The norms framed are 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) Generators when they 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.

30. As such, in terms of the SOR to the 2014 Tariff Regulations, 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 2014-19.*

31. It is pertinent to mention that the Commission in its tariff orders for the various generating stations (both hydro and thermal) for the period 2014-19, had adopted the above methodology for allowing the recovery of additional O&M expenses due to impact of pay revision, by comparing the normative O&M expenses allowed to a generating station, with the actual normalized O&M expenses. Similar methodology was adopted by the Commission, in its orders pertaining to claim for additional O&M expenses due to impact of pay revision etc., by NHPC in separate petitions filed for its hydro generating stations. Accordingly, in the present case, the normative O&M expenses allowed for the generating station has been compared with the actual



normalized O&M expenses incurred by the Petitioner for the period 2014-19, commensurate with the period for which wage revision impact has been claimed.

32. For comparison, the components of O&M expenses like Productivity linked incentive, Performance Related Payment (PRP), Medical expenses on superannuated employees, CSR Expenses, FERV and Filing Fees (separately recoverable) which were not considered while framing the O&M expenses norms for the period 2014-19, have been excluded from the yearly actual O&M expenses of the generating station as well as corporate center. Having brought the normative O&M expenses and actual O&M expenses at same level, if the normative O&M expenses for the period 2014-19 are higher than actual O&M expenses (normalized) for the same period, the impact of wage revision (excluding PRP) as claimed for the period is not admissible/ allowed as the impact of pay revision gets accommodated within the normative O&M expenses. However, if the normative O&M expenses for the period 2014-19 are 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 2014-19.

33. As stated, for a like to like comparison of the actual O&M expenses and normative O&M expenses, the expenditure against O&M expenses sub-heads as discussed above, has been excluded from the actual O&M expenses to arrive at the actual O&M expenses (normalized) for this generating station. Accordingly, the following table portrays the comparison of normative O&M expenses versus the actual O&M expenses (normalized) along with wage revision impact claimed by the Petitioner for the



generating station for period 2014-19 (on combined basis) commensurate with the wage revision claim being spread over these five years:

(Rs in lakh)

<b>Actual O&amp;M expenses</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total</b>
A. Employee Remuneration & Benefits	3,033.24	4,044.28	4,732.88	4,698.58	6,663.64	23,172.62
B. General Expenses	1,807.31	2,670.44	3,401.02	4,401.54	4,645.01	16,925.32
C. Other Expenses	332.31	625.18	455.16	575.42	577.73	2,565.80
D. Apportioned CO/RO Expenses	2,448.45	3,597.29	4,485.91	4,934.36	6,260.25	21,726.26
E. Total O&M Expenses(A=B+C+D)	7,621.32	10,937.19	13,074.97	14,609.90	18,146.63	64,390.00
G. Exclusions	1009.09	1850.79	2328.39	2679.79	4382.35	12,250.41
H Normalized O&M Expenses (E-G)	<b>6612.23</b>	<b>9086.40</b>	<b>10746.58</b>	<b>11930.10</b>	<b>13764.28</b>	<b>52139.60</b>

(Rs in lakh)

	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Total</b>
Normative O&M expenses allowed in Petition no. 29/GT/2020 dated 4.6.2021 <b>(A)</b>	6310.66	10746.61	11460.18	12221.14	13032.62	53771.21
Actual O&M expenses (normalized) <b>(B)</b>	6612.23	9086.40	10746.58	11930.11	13764.28	52139.60
<b>Difference (A-B)</b>	<b>(-) 301.57</b>	<b>1660.21</b>	<b>713.60</b>	<b>291.03</b>	<b>(-) 731.66</b>	<b>1631.61</b>

34. From the above discussions , it is evident that the total normalized actual O&M expenses ( including the impact of Pay revision of petitioners employees and CISF employees ) incurred by the Petitioner is lesser than the total normative O&M expenses allowed by the Commission during the period 2014-19, by Rs 1631.61 lakh. Thus, the impact of the salary/wage revision of the Petitioners employees and CISF personnel, can be met from the normative O&M allowed to the generating station of the Petitioner. In this background, we find no reason to allow the impact of salary/wage revision of Petitioner's employees and the CISF Personnel, amounting to Rs 4179.14 lakh, as additional O&M expenses, as claimed by the Petitioner, in this petition. Prayer (a) of the Petitioner, stands disposed of as above.



### **Impact of Interest on Working Capital**

35. The Petitioner has also prayed to allow the impact of working capital for Rs 282.90 lakh for the period 2014-19, consequent upon the additional O&M expenses considered due to impact of salary/wage revision of its employees and CISF Personnel above. Since the claim of the Petitioner for additional O&M expenses due to impact of salary/wage revision, has not been allowed, as in paragraph 32 above, there is no impact on the working capital. Accordingly, the prayer of the Petitioner for revision of the Interest on Working Capital is not considered/allowed. Prayer (b) is disposed of accordingly.

### **Revision of O&M expenses considering the revised salary of HPSEB employees on Deputation w.e.f. 1.1.2016**

36. The Petitioner, in this petition, has also prayed to allow revision of O&M expenses considering the revised salary of HPSEB Employees on Deputation w.e.f. 1.1.2016 as and when finalized, in view of submissions made in this petition. It has submitted pay/wage revision of HPSEB employees, on deputation, which was due from 1.1.2016, has not been finalized till date, and therefore the total financial implication on this count, could not be determined at this stage. Accordingly, the Petitioner has sought liberty to approach the Commission, to seek the enhancement in O&M expenses w.e.f. 1.1.2016 towards impact of revision of salary/wages of the HPSEB employees on deputation, based on actual payments, made to these employees. In view of the submissions and since wage /salary revision are yet to be finalized and payments to be made, we grant liberty to the Petitioner to claim the said amounts, after finalization and actual payments being made, by way of a separate application. Needless to say, the claims of the



Petitioner, under this head, will be considered based on the details furnished and in terms of the methodology adopted in this order. Prayer (c) is disposed of accordingly.

### **Impact due of implementation of GST**

37. The Petitioner has claimed total additional O&M expenses of Rs.134.10 lakh, during the period 2017-19, on account of implementation of GST and payments thereof. The Respondent, MPPMCL has submitted that the Petitioner has claimed the impact of GST without providing proper documents/ supporting statements.

38. The matter has been considered. It is observed that the Commission while specifying the O&M expense norms for the period 2014-19 had considered taxes to form part of the O&M expense calculations and accordingly, had factored the same in the said norms. This is evident from paragraph 49.6 of SOR (Statement of Objects and Reasons) issued with the 2014 Tariff Regulations, which is extracted hereunder:

*“49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in...”*

39. Further, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations is only after accounting for the variations during the past five years of the period 2014-19, which in our view, takes care of any variation in taxes also. It is pertinent to mention that in case of reduction of taxes or duties; no reimbursement is ordered. In this background, we find no reason to grant additional O&M expenses claimed by the Petitioner towards payment of GST.

### **Impact due to revision of Minimum Wages**

40. The Petitioner has also claimed additional O&M expenses for Rs 807.59 lakh due to impact of revision of the minimum wages paid to HP ex-servicemen, Corporation



staff, and outsourced manpower w.e.f. 1.4.2017 (i.e during the period 2014-19). The Commission vide ROP of the hearing dated 15.2.2022, directed the Petitioner to submit the 'basis and rationale' for the said claim and in response, the Petitioner has submitted as under:

*“As per the order dated 20.4.2017, 3.4.2018 and 28.9.2018 of the Chief Labour Commissioner (C) subsequent to Gazette Notification 188 (E) dated 19.1.2017, there was substantial upward revision of minimum wages to be paid to the workers effective from 1.4.2017.”*

41. The Commission vide its order dated 4.6.2021 in Petition No. 29/GT/2020 had allowed the normative O&M expenses for the generating station for the period 2014-19, based on the actual O&M expenses incurred for the period 2008-09 to 2012-13. While considering the actual O&M expenses for the period 2008-13, the Commission had only excluded the expenditure under the heads such as, productivity linked incentive and performance related pay, donations, filing fees, Corporate Social Responsibility (CSR) etc. As such, the actual expenditure of minimum wages for the period 2008-2013, has been considered, while calculating the allowable O&M expenses for the period 2014-19. Further, the escalation rates considered in the O&M expense norms, under the 2014 Tariff Regulations, is only after accounting for the variations during the period 2008-2013, which in our view, takes care of any variation due to revision in minimum wages also. In this background, we find no reason to grant the additional O & M expenses incurred towards revision of the minimum wages.

42. Petition No. 123/MP/2021 is disposed of in terms of above.

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

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

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

