

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 537/MP/2020

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of order: 28th February, 2023

In the matter of

Petition for recovery of additional O&M expenses incurred against impact of Pay revision of NHDC employees and employees of Central Industrial Security Force, impact of change in minimum wages, and implementation of Goods & Service Tax, in Omkareshwar Power Station during the period 2014-19.

And

In the matter of:

NHDC Limited,
NHDC Parisar, Shyamla Hills,
Bhopal (M. P.)- 462013.

.....Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur (M.P.) – 482008
2. Narmada Valley Development Department,
GoMP, Mantralaya, Vallabh Bhawan,
Bhopal (M. P.) – 462004

....Respondents

Parties present:

Shri Naresh Kumar Chellani, NHDC
Shri Sushil Kumar Verma, NHDC
Shri Y. Narasimha Rao, NHDC
Shri Ravi Sharma, Advocate, MPPMCL



ORDER

The Petitioner, NHDC Limited has filed this petition seeking the recovery for impact in pay revision of its employees from 1.1.2017 and the employees of Kendriya Vidyalaya & Central Industrial Security Force (CISF) from 1.1.2016 and for impact by, the implementation of revision of minimum wages and Goods & Service Tax (GST), in respect of Indira Sagar Power Station (in short 'the generating station'). Accordingly, the Petitioner has prayed for the following relief(s);

- (a) *Allow the Petitioner under Regulation-54 & 55 of CERC Tariff Regulations 2014 to bill and recover the additional O&M expenses incurred during tariff period 2014-19 amounting to ₹32.14Cr in r/o OSPS as given in petition, from the respondents due to increase in employee cost/ others on account of pay revision of CISF & KV staff and NHPC employees w.e.f. 01.01.2016 and w.e.f. 01.01.2017 respectively, implementation of revision in minimum wages and implementation of GST.*
- (b) *Pass such further order or orders as may be deemed fit and proper in the facts and circumstances of the case.*

Submission of the Petitioner

2. The Petitioner, vide affidavit dated 4.6.2020, has made following submissions:

- (a) The generating station, with an installed capacity of 520 MW (8 x 65 MW) is located in the State of Madhya Pradesh. The entire power (100%) generated by the generating station is supplied to its single beneficiary i.e. the Respondent MPPMCL, at the tariff determined by this Commission.

- (a) As per Regulation 29 of 2014 Tariff Regulations the following O&M expense norms are applicable to the generating station:

(Rs. in lakh)

2014-15	2015-16	2016-17	2017-18	2018-19
4515.31	4815.30	5135.23	5476.42	5840.27

- (b) The normative O&M expenses for the period 2014-19, has been fixed by the Commission, after normalizing and averaging the actual expenses incurred by the hydro generating stations during the period from 2008-09 to 2012-13. As O&M expenses, are on normative basis, there is significant under recovery of expenses in case of the generating station. A comparison of the actual O&M



expenses incurred versus the normative O&M expenses allowed for the period 2014-19 is as under:

(Rs. in lakh)

	Normative O&M expenditure allowed	Actual O&M expenses incurred	Difference
	(a)	(b)	(a-b)
2014-15	4515.31	6216.00	(-)1700.69
2015-16	4815.30	7625.00	(-)2809.70
2016-17	5135.23	7393.00	(-)2257.77
2017-18	5476.42	9470.00	(-)3993.58
2018-19	5840.27	10772.00	(-)4931.73
Total	25782.53	41476.00	(-)15693.15

- (c) The main reason for the substantial gap between the actual O&M expenses and the normative O&M expenses, is due to the implementation of Pay revision for the employees of the Petitioner, including CISF personal deployed in the generating station, change in minimum wages and implementation of Goods & Service Tax (GST).
- (d) The Commission in its Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations, has observed 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 stated that the impact of wage revision, shall only be given after seeing the impact of one full year, and if it is found that the O&M expense norms specified under the said Regulations are inadequate/insufficient to cover all justifiable O&M expenses for a particular year, including employee expenses, then the balance amount may be considered for reimbursement.
- (e) From the above table, it is clear that the actual O&M expenses incurred by the generating station is substantially higher than the normative O&M expenses allowed. It is also evident from Para 33.2 of SOR, that the Commission has not factored the impact of pay revision of employees/others in the normative O&M expenses allowed for the period 2014-19.
- (f) The pay revision of NHDC employees (including CISF staff), wage revision (due to change in minimum wages) and implementation of GST has been implemented by the Petitioner in the following manner:
- (i) The decision of the Government on the recommendations of the 7th Central Pay Commission was notified by the Department of Expenditure, Ministry of



Finance vide Resolution No. 1-2/2016-IC dated 25.7.2016 (The Gazette of India : Extraordinary).

- (ii) Subsequently, the Department of Expenditure, Ministry of Finance vide OM No. 1-5/2016-IC dated 29.7.2016 has issued instructions for implementation of pay scales of Central Government employees, which was effective from 1.1.2016. Accordingly, the additional cost has been incurred by the Petitioner on account of the pay revision of CISF personnel and KV staff deployed in the power station.
- (iii) Department of Public Enterprises (DPE) vide OM No. W-02/0028/2017-DPE(WC)-GL-XIII/17 dated 3.8.2017, O.M No. W-02/0028/2017-DPE (WC)-GL-XIV/17 dated 4.8.2017 and O.M No. W-02/0028/2017-DPE (WC)-GL-XVI/17 dated 7.9.2017, has issued guidelines for revision of pay & allowances of Board level & below Board level executives and Non-unionized supervisors of Central Public Sector Enterprises (CPSEs) w.e.f. 1.1.2017.
- (iv) The pay revision proposal of Board level & Below board level executives was approved by Petitioner's Board of Directors(BOD) in its 111th meeting held on 1.8.2018. Further, the pay revision proposal of Supervisors & Workmen were approved by the Petitioner's Board of Directors in its 115th Board meeting held on 16.5.2019.
- (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. 004/2018 dated 5.9.2018.
- (vi) Similarly, the pay revision proposal approved by BOD in respect of Supervisors & Workmen w.e.f. 1.1.2017, has also been implemented by the Petitioner vide office order no. 06/2019 dated 28.5.2019 and office order no. 07/2019 dated 28.05.2019 respectively.
- (vii) There was cost impact owing to pay regularization on account of fitment of 2nd PRC Salaries to include the reapproved salary increase, granted as per 1st PRC. Petitioner has made payment to its employees, the difference of revised salaries as per 3rd PRC and Pre-revised salaries as per 2nd PRC, as on 1.1.2007.
- (viii) In addition to above, the Petitioner in accordance with Government of India Order No. F1/13(3)2017-LS-II dated 20.4.2017 has implemented the revision in Minimum Wages w.e.f. 1.4.2017.
- (ix) Also, the Petitioner has incurred additional tax on procurement of goods and services as per the provision of previous tax regime vis-à-vis the tax



actually borne by the Petitioner, under the current GST regime w.e.f. 1.7.2017.

- (g) Due to implementation of pay revision of CISF Personnel from 1.1.2016 and Pay revision of Petitioners employees w.e.f 1.1.2017, the Petitioner has incurred additional expenses for payment to its employees and CISF personnel. In addition to this, the Petitioner has also incurred additional expenses on account of increase in ceiling limit of gratuity from Rs 10 lakh to Rs 20 lakh w.e.f. 1.1.2017, as per clause 12.1 of DPE guidelines on 3rd PRC. 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'. The same has been implemented w.e.f. 1.1.2017 as evident from clause 12.2 of office order dated 5.9.2018 and clause 7.2 of Office order dated 28.5.2019.
- (h) In addition to the above, the Petitioner has incurred additional cost on account of payment to employees, the difference of the revised salaries as per 3rd PRC and Pre-revised salaries as per 2nd PRC as on 1.1.2007, payment of compensation to manpower contractors as a result of implementation of revision of the Minimum Wages and impact of implementation of GST w.e.f. 1.7.2017. This has resulted in substantial increase in the O&M expenses in case of the Petitioner's generating stations, w.e.f. 2015-16.
- (i) The year-wise impact of pay revision, revision in minimum wages and implementation of GST is tabulated as under:

	<i>(Rs.in crore)</i>			
	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 including Impact of enhancement of ceiling limit of gratuity as per provisions of 3 rd PRC				
Generating Station		1.06	4.89	5.01
CO allocated to Power Station		0.58	2.49	2.82
Sub Total (A)		1.64	7.38	7.83
Impact of pay revision of CISF / Security Staff w.e.f. 1.1.2016				
Generating Station	0.21	0.87	1.02	1.10
Sub Total (B)	0.21	0.87	1.02	1.10
Impact of Revision in Minimum wages w.e.f. 1.4.2017				
OSPS			3.13	3.13
CO allocated to Power Station			0.18	0.18
Sub Total (C)			3.31	3.31
Impact of implementation of Goods and Services tax (GST) w.e.f. 1.7.2017				



Generating Station			0.45	0.62
CO allocated to Power Station			0.01	0.01
Sub Total (D)			0.46	0.64
Total 1 (A+B+C+D)	0.21	2.51	12.17	12.89

- (j) In addition to above, the Petitioner has made payment to employees on account of the difference of the revised salaries as per 3rd PRC and Pre-revised salaries as per 2nd PRC as on 1.1.2007, upto 31.12.2016, as detailed below:

(Rs.in crore)

Additional Cost due to Fitment of 2 nd PRC Salaries (period 1.1.2007 to 31.12.2016)	
Generating Station	2.44
CO allocated to Power Station	1.93
Total 2	4.37
Total 1 + 2 (From 1.1.2007 to 31.3.2019)	Rs.32,14,56,131/-

- (k) Further, the Commission while notifying the 2019 Tariff Regulations, applicable for the period 2019-24, 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 and GST shall be considered for each hydro generating station, separately, at the time of filing tariff petition, for the period 2019-24. Accordingly, the Commission has allowed the impact of pay revision, minimum wages & GST in the Regulation 35(2)(a) of the 2019 Tariff Regulations. The intent of regulatory provisions is to allow separate reimbursement of O&M expenses on account of pay revision/ other justifiable expenses, in case of hydro generating stations.
- (l) The 2014 Tariff Regulations do not specifically provide for reimbursement of expenses on account of pay revision/ others. However, the Commission under Regulation 55 of the 2014 Tariff Regulations, is vested with the powers to remove difficulty (if any) in implementing the provisions of said regulations and also the power to relax under Regulation 54.
- (m) Accordingly, the Commission may kindly allow reimbursement of above expenses to be billed and recovered as additional component under O&M expenses from the Respondent, MPPMCL under Regulation 54 & 55 of CERC 2014 Tariff Regulations.

Reply of the Respondent, MPPMCL

3. The Respondent, MPPMCL vide reply affidavit dated 16.1.2021, has submitted the following:



- (a) Paragraphs 30.9, 3.10, 30.25 and 30.26 of the SOR to the 2014 Tariff Regulations provides that in case of O&M expenses, all factors including wages, pay revision, water charges have been taken into consideration while fixing the norms for the period 2014-19. Further, the O&M expenses allowed under the 2014 Tariff Regulations are a complete package and pay revision & wage revision are just one element of the package and under recovery of one element may off-set over-recovery of another element. Hence, one element cannot be considered in isolation, as the Petitioner cannot choose, if one element of O&M expenses is increased or decreased, it is entitled to claim the same;
- (b) In terms of the Tariff policy, the O&M expenses are a controllable factor and hence, the Petitioner has to take suitable measures to control the O&M expenditures and the Electricity Act, 2003 (in short 'the Act') provides reward for efficiency in performance. Further, as per the 2014 Tariff Regulations, the O&M expenses is norm based and not at actuals and therefore, additional expenses in one component, cannot be allowed and the whole spectrum of cost should be looked into while considering the comparison of actual cost and the recovery based on norms. Moreover, the Commission has considered an escalation factor of 6.64% as per WPI & CPI index published by Government of India;
- (c) The Board of Directors of the Petitioner by resolution dated 1.1.2018, had observed that the pay-revision of employees, shall be done from the profit of the company, which indicates that the Petitioner can afford to pay to its employees from their profit and no financial hardship would be caused. Further, the Ministry of Heavy Industries & Public Enterprises, GOI vide its OM dated 3rd August, 2017 has issued instructions regarding the implementation of wage revision as under:
- "3. Affordability:- The revised pay scales would be implemented subject to the condition that the additional financial impact in the year of implementing the revised pay package for Board Level Executives, below Board Level Executives and Non-Unionized Supervisor should not be more than 20% of the average Profit Before Tax (PBT) of the last three financial year preceding the year of implementing above memorandum also correlate the utmost benefits with average PBT of last 3 years, and accordingly allowed the fitment mentioned below benefits Full (15%), 10%, 5% respectively Memorandum also states that:-*
- 'No fitment or any other benefit of pay revision will be implemented in the CPSEs where the additional financial impact of revised pay package is more than 40% of the average PBT of last 3 financial years.'*
- 17. Financial Implications: Expenditure on account of pay revision is to be entirely borne by the CPSE out of their earnings and no budgetary support will be provided by Government."*
- (d) In terms of the 2014 Tariff Regulations, the O&M cost from part of the annual fixed charges is linked to 'availability'. Regulation 29(3)(b)(ii) of the said regulation, cover



O&M escalation @6.64% per annum for the period 2014-19, and such escalation is sufficient to cope up with the increase in O&M expenses. Further, the higher O&M rates will ultimately over burden the end consumers, which is not consistent with the Act. The power to remove difficulties and power to relax is conferred upon the Commission to remove trivial difficulties and does not include the power to amend the Regulations.

- (e) Therefore, 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 excess the overall loss/gain to the Petitioner for arriving at reasonable and justifiable proposition. Hence, the claim of the Petitioner may be disallowed as the same is not maintainable.

Rejoinder of the Petitioner

4. In response, the Petitioner vide its rejoinder affidavit dated 23.3.2021, has submitted the following:

- (a) As regards the contention of the Respondent, that the normative O&M expenses cannot be re-opened for under recovery and that they are controllable factors, the Commission's observation in Paragraph 33.2 of the SOR to the 2014 Tariff Regulations are as under:

"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."

- (b) The Petition has been filed for reimbursement of O&M expenses including Employee expenses for the particular year owing to inadequate O&M expense norms provided under the 2014 Tariff Regulations and therefore, the contention of the Respondent that the Petition is an attempt to get un-just enrichment is not sustainable.



Hearing dated 5.3.2021

5. The matter was heard on 'admission' through virtual hearing on 5.3.2021, and the Commission, after hearing the parties, 'admitted' the petition and directed to issue notice to the Respondents. The Commission also directed the Petitioner to furnish the following additional information:

- (a) *Breakup of actual O&M expenditure for the tariff period 2014-19 under various sub-heads (as per Annexure-I enclosed) after including the pay revision impact (employees and CISF), 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) *Similar break-up of actual O&M expenses including pay revision impact for Corporate Centre/other offices (as per Annexure-II enclosed) for the period 2014-19 along with allocation of the total O&M expenditure to various stations under construction, operational stations and any other offices along with basis of allocating such expenditure. (To be provided in both MS Excel and PDF format).*
- (c) *A certificate to be provided to the effect that the employee and any other cost booked to IEDC has not been indicated as a part of actual O&M expenditure.*
- (d) *Basis and rationale for claim on account of impact due to revision of minimum wages.*
- (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) *The due date of filing of reply, rejoinder and information should be strictly complied with.*

6. In response, the Petitioner vide affidavit dated 8.5.2021, has filed the additional information, after serving copy on the Respondents.

Hearing dated 22.9.2022

7. During the hearing of the Petition on 22.9.2022, the representative of the Petitioner and the learned counsel for the Respondent, MPPMCL made detailed oral submissions in the matter. The Commission after hearing the parties, reserved its order in the petition.



Based on the submissions off the parties and the documents on record, we examine the prayers of the Petitioner, as stated in the subsequent paragraphs.

8. Before we proceed to examine the prayer of the Petitioner on merits, it is considered appropriate to deal mainly with the objection of the Respondent namely, that (a) tariff is a package and norms should not be reopened.

Tariff is a package and norms should not be reopened

9. As stated above, the Petitioner, in the present petition, has sought the recovery of additional O&M expenses incurred on account of the (i) impact of pay revision of the Petitioner's employees (w.e.f. 1.1.2017) and employees of Central Industrial Security Force and Kendriya Vidyalaya (w.e.f. 1.1.2016) (ii) impact of change in minimum wages (w.e.f. 1.4.2017), and (iii) implementation of GST (w.e.f. 1.7.2017) in respect of its generating station, for the period 2014-19.

10. The Respondent MPPMCL has submitted that the O&M expenses allowed under the 2014 Tariff Regulations, are a complete package and pay revision and wage revision are just one element of the package, and any under recovery of one element, may offset over-recovery of another element. It has accordingly submitted that one element cannot be considered in isolation, as the Petitioner cannot choose, if one element of O&M expenses is increased or decreased, and that it is entitled to claim the same. The Respondent has further submitted that in terms of the Tariff Policy, the O&M expenses, are controllable factor and hence, the Petitioner has to take suitable measures to control the O&M expenses. Accordingly, the Petitioner has reiterated that tariff is a complete package governed by various factors and cannot be reviewed in isolation, as prayed for by the Petitioner. It has also stated 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, clarified that the Commission while finalizing the O&M expense norms for the tariff periods 2004-09, 2009-14 and 2014-19 had not factored in the impact of pay regularization of below Board Level Executives of the Petitioner for the period from 1.1.2007 to 31.3.2019. Accordingly, the Petitioner has submitted that the Respondent's submission that tariff is a package and cannot be reopened in isolation, does not hold good in the present case, since it is clear from Para 33.2 of Statement of Reasons(SOR) to the 2014 Tariff Regulations, that the impact of pay revision was never 'factored in' while framing the Tariff Regulation for the period 2014-19. Similarly, the cost impact owing to pay regularization on account of fitment of 2nd PRC salaries to include the re-approved salary increase granted as per the 1st PRC was never factored while framing the tariff regulations for the periods 2004-09 and 2009-14.

11. The submissions have been considered. It has been placed before us that in Petition No. 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, similar objections were raised by some of the Respondent discoms therein, and the Commission by its order dated 12.10.2012 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 an 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, the objections (tariff as a package) raised by some of the Respondent discoms in Petition No.5/MP/2012 & batch petitions, filed by NHPC (Petitioner therein), for recovery of additional cost incurred consequent to pay revision of employees for its generating stations, Indian Reserve Battalion (IRBn) and KV staff during the period from 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 below;

“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. It is also pointed out that the Respondent therein (UPPCL) had raised similar objections in Petition No. 221/MP/2019, Petition No. 235/MP/2019 and Petition No. 229/MP2019 & batch cases, filed by NHPC, for recovery of impact of wage revision of its employees and deputed employees of Kendriya Vidyalaya (KV) & Central Industrial Security Force (CISF) in respect of some of its hydro power stations, for the period from 1.1.2016 to 31.3.2019. The Commission, after examining the same in line with the aforesaid decisions, had rejected the contentions of the Respondent therein, vide its orders dated 13.11.2021, 22.11.2021 and 31.12.2022 respectively and granted relief to the Petitioner. Similar contentions raised by some of the Respondents therein, in Petition No.343/MP/2019 filed by the NHPC for recovery of impact of pay regularization of below board level executives of NHPC, for the period from 1.1.2007 to 31.3.2019 was also rejected by the Commission vide its order dated 28.1.2023, in line with the earlier decisions as stated above. Further, the submission of the Respondent MPPMCL, to consider the claim of the Petitioner in the context of the Board Resolution and MHI&PE, GOI OM dated 1.1.2017 is not acceptable considering the fact that in a cost-plus regime, all legitimate costs of the generating companies are to be borne by the beneficiaries. Since the impact of pay and wage revision of its employees as per the DPE directives is a legitimate cost incurred by the Petitioner, the expenditure on this account must be borne by the beneficiaries. Accordingly, the objection of the Respondent on the ground of tariff



being a package and norms should not be reopened is disposed of in the light of the aforesaid decisions.

A. Additional cost due to fitment of 2nd PRC salaries (from 1.1.2007 to 31.12.2016)

14. The Petitioner has claimed the total additional expenses due to fitment of 2nd PRC salaries (1.1.2007 to 31.12.2016) for Rs.436.79 lakh, for different periods, as under:

Tariff Period	Amount (Rs. in lakh)
2004-09	66.79
2009-14	230.19
2014-19	139.81
Total	436.79

15. The claim of the Petitioner for reimbursement of the impact of retrospective pay scale regularisation w.e.f. 1.1.2007, for the periods from 2007-09, 2009-14 and 2014-19 Tariff Regulations are discussed in the subsequent paragraphs:

Tariff Period 2004-09

16. Regulation 38(iv) of the 2009 Tariff Regulations, pertaining to O&M expenses, applicable for the period 2004-09, is extracted below:

“(iv) Operation and Maintenance expenses

(a) The operation and maintenance expenses including insurance, for the existing generating stations which have been in operation for 5 years or more in the base year of 2003-04, shall be derived on the basis of actual operation and maintenance expenses for the years 1998-99 to 2002-03, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission.

The average of such normalised operation and maintenance expenses after prudence check, for the years 1998-99 to 2002-03 considered as operation and maintenance expenses for the year 2000-01 shall be escalated at the rate of 4% per annum to arrive at operation and maintenance expenses for the base year 2003-04.

The base operation and maintenance expenses for the year 2003- 04 shall be escalated further at the rate of 4% per annum to arrive at permissible operation and maintenance expenses for the relevant year of tariff period.

(b) In case of the hydroelectric generating stations, which have not been in existence for a period of five years, the operation and maintenance expenses shall be fixed at 1.5% of the capital cost as admitted by the Commission and shall be escalated at the



rate of 4% per annum from the subsequent year to arrive at operation and maintenance expenses for the base year 2003-04. The base operation and maintenance expenses shall be further escalated at the rate of 4% per annum to arrive at permissible operation and maintenance expenses for the relevant year.

(c) In case of the hydroelectric generating stations declared under commercial operation on or after 1.4.2004, the base operation and maintenance expenses shall be fixed at 1.5% of the actual capital cost as admitted by the Commission, in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years”

17. The Petitioner has claimed impact of Rs 66.79 lakh as additional cost impact incurred due to fitment of 2nd PRC salaries, for the period 2004-09. The project was commissioned on 15.11.2007, so as on the date of COD, normative O&M as per 38(iv)(c) of the 2004-09 tariff regulations was allowed, which was 1.5% of the capital cost as admitted by the Commission (in the year of 2007-08), with an annual escalation of 4% per annum from the subsequent years. We notice that the Petitioner, after obtaining the approval of DPE, was paying annual increments as per DPE guidelines issued vide order dated 25.6.1999. Subsequently, after obtaining the approval of their administrative Ministry, i.e MOP, GOI vide order dated 4.4.2006, the same was implemented by the Petitioner, on 9.5.2006. The Petitioner started paying annual increments at par with other power sector CPSEs, despite absence of any specific approval of the DPE. It is therefore concluded that the impact of enhanced pay revision had already been factored in the capital cost of the project, based on which the normative O&M expenses was specified under the 2004 Tariff Regulations, in the case of the generating station of the Petitioner. In this background, the Petitioner's claim of Rs.66.79 lakh, on account of fitment of 2nd PRC salaries, for the period 2004-09 has not been allowed.



Tariff Period 2009-14

18. The Petitioner has claimed impact of Rs.230.19 lakh towards additional cost incurred due to fitment of 2nd PRC salaries of the Petitioner's employees, for the period 2009-14. It is pertinent to mention that the Commission, while framing the O&M expense norms, for the period 2009-14, had taken into consideration the actual O&M expenses incurred by the generating station, for the period from 2003-04 to 2007-08. The relevant portion of the 2009 Tariff Regulations, is extracted below:

“19 (f) (ii) The normalised operation and maintenance expenses after prudence check, for the years 2003-04 to 2007-08, shall be escalated at the rate of 5.17% to arrive at the normalized operation and maintenance expenses at the 2007-08 price level respectively and then averaged to arrive at normalized average operation and maintenance expenses for the 2003-04 to 2007-08 at 2007-08 price level. The average normalized operation and maintenance expenses at 2007-08 price level shall be escalated at the rate of 5.72% to arrive at the operation and maintenance expenses for year 2009-10:

Provided that operation and maintenance expenses for the year 2009-10 shall be further rationalized considering 50% increase in employee cost on account of pay revision of the employees of the Public Sector Undertakings to arrive at the permissible operation and maintenance expenses for the year 2009-10.”

19. It is evident from the methodology above, that 'the average normalized operation and maintenance expenses' at 2007-08 price level was escalated at the rate of 5.72% to arrive at the O&M expenses for year 2009-10. This was further rationalized by considering 50% increase in employee cost on account of the pay revision of the employees of the PSUs, which was due from 1.1.2007. Thus, the entire impact of revised pay scales (after removal of anomalies), as stated earlier, had already been 'factored in by the Commission, while framing the O&M expense norms under the 2009 Tariff Regulations, applicable for the period from 2009-14.

20. The first pay revision for the Petitioner employees was implemented w.e.f. 19.1.2000, to give effect to the pay revision due from 1.1.1997. Subsequently, the



Petitioner had taken up with the MOP, GOI to remove the pay anomalies, which was approved by MOP, GOI on 4.4.2006, and implemented by the Petitioner w.e.f. 9.5.2006. In effect, it transpires that while framing the 2009-14 Tariff Regulations, the entire impact of the enhanced wages, after removal of pay anomalies along with 50% increase in employee cost was already factored in by the Commission, while framing the normative O&M expenses for the generating station of the Petitioner, for the tariff period 2009-14. In this background, we find no merit in considering the Petitioner's claim for Rs 364.04 lakh for the period 2009-14 on account of retrospective pay regularization. Accordingly, the claim of the Petitioner for the period 2009-14 is not allowed.

Tariff Period 2014-19

21. The Petitioner has claimed total amount of Rs 2004.97 lakh (Rs. 1685.37 + 319.60 lakh) towards impact of pay revision of its employees, CISF personnel/ security staff for the period 2016-19, in addition to the impact of Rs.139.81 lakh, towards additional cost due to fitment of 2nd PRC salaries to the Petitioners employees. As regards the recovery of impact of 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 macroeconomics involved as these norms are also applicable for private generating stations. In order to ensure that such increase in employee expenses on account of pay revision in case of central generating stations and private generating stations are considered appropriately, the Commission is of the view that it shall be examined on case to case basis, balancing the interest of generating stations and consumers.

xxxxx



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.”

22. Admittedly, the 2014 Tariff Regulations, notified by the Commission, for the period 2014-19, had ‘not factored in’ the impact of revision in salary and wages of employees of the Petitioner, with effect from 1.1.2017 and the pay revision of CISF and KV/DAV employees, 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 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 towards the impact due to retrospective revision/regularization of pay scales.

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

However, in this respect the following facts needs consideration:

(a) The norms are framed based on the averaging of the actual O&M expenses of the 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 expenses in a particular year put departmental restrictions and try to bring the expenditure for the next year below the norms.

24. 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 2015-19”

25. It is pertinent to mention that the Commission in its tariff orders for 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.



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

27. 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)

Actual O&M expenses	2014-15	2015-16	2016-17	2017-18	2018-19	TOTAL
A. Consumption of stores & Spares	67.35	39.66	34.42	19.77	94.60	255.80
B. Repair & Maintenance	876.31	808.58	876.26	1227.11	1517.41	5305.69
C. General & Administrative Expenses	1306.20	1471.42	1523.11	1593.63	1655.50	7549.86
D. Employee cost	2074.22	2259.93	2676.83	3304.49	3911.07	14226.54
E. Others	1779.22	2982.16	2012.23	3255.59	3535.79	13564.99
F. Total O&M expenses (A+B+C+D+E)	6103.30	7561.75	7122.85	9400.59	10714.38	40902.87
G. Exclusions	771.34	1906.36	985.44	1853.61	2229.96	7746.71
H Normalised actual O&M expenses(F-G)	5331.96	5655.39	6137.41	7546.98	8484.41	33156.16

(Rs. in lakh)

Normative O&M expenses allowed for 2014-19	Financial Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
Tariff orders issued for 2014-19	4515.31	4815.30	5135.23	5476.42	5840.27	25782.53

(Rs. in lakh)

SUMMARY	2014-15	2015-16	2016-17	2017-18	2018-19	TOTAL
Normalized actual O&M expenses including impact of Pay revision and Gratuity	5331.96	5655.39	6137.41	7546.98	8484.41	33156.16
Normative O&M expenses allowed	4515.31	4815.30	5135.23	5476.42	5840.27	25782.53
Excess of actual O&M expenses over Normative O&M expenses allowed	816.65	840.09	1002.18	2070.56	2644.14	7373.63

28. From the above discussions, it is clear that total normalized actual O&M expenses incurred by the Petitioner are more than the normative O&M expenses allowed by the Commission during the 2014-19 period by Rs.7373.63 lakh. Further Rs.139.81 lakh claimed as additional cost due to the fitment of 2nd PRC salaries of the Petitioners are also part of the normalized actual O&M expenses, during the period 2014-19. As the normative O&M expenses for the period 2014-19, are lesser than the normalized actual O&M expenses including the 2nd PRC fitment impact, the additional O&M expenses as claimed by the Petitioner on account of Impact of pay revision of executives, workmen and supervisor of generating station w.e.f. 1.1.2017 including the impact of enhancement of ceiling limit of gratuity as per provisions of 3rd PRC, the Impact of pay revision of CISF personnel/Security staff w.e.f. 1.1.2016 and additional cost due to fitment of 2nd PRC



salaries to the Petitioners employees, is allowed for the period 2014-19 as tabulated below:

<i>(Rs. in lakh)</i>	
Impact of pay revision of Executives, Workmen & Supervisor w.e.f. 1.1.2017 including impact of enhancement of ceiling limit of gratuity as per provisions of 3 rd PRC	1685.37
Impact of pay revision of Petitioners CISF personnel/Security staff w.e.f. 1.1.2016	319.60
Total Pay regularisation claimed for the tariff period 2014-19	2004.97
Additional cost due to fitment of 2 nd PRC salaries for the 2014-19 tariff period	139.81
Total Pay Regularisation impact claimed	2144.78
Total impact of Pay revision/regularisation to the extent of shortfall during the period 2014-19	2144.78

29. Accordingly, we in exercise of the power under Regulation 54 of the 2014 Tariff Regulations hereby relax Regulation 29(3)(c) of the 2014 Tariff Regulations in respect of O&M expenses, for the petitioner generating station, and allow the recovery of Rs.2144.48 lakh on account of the impact of pay revision/ regularisation, as additional O&M expenses, for the period 2014-19.

30. The arrears payments on account of the impact of the pay revision/regularisation, as above, is payable by the beneficiaries in twelve equal monthly instalments starting from March, 2023. However, keeping in view the passage of time and in consumers' interest, we, as an exceptional case, and in exercise of our regulatory powers, hereby direct that no interest shall be charged by the Petitioner, on such arrear payments, on account of the 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 the pay revision/regularisation impact has been allowed in exercise of the power to relax, these additional expenses shall not be



made part of the O&M expenses and the consequent annual fixed charges for this generating station, for the period 2014-19.

B. Impact due to implementation of GST

31. The Petitioner has claimed additional O&M expenses for Rs.46.50 lakh in 2017-18 and Rs.63.89 lakh in 2018-19, on account of implementation of GST from 1.7.2017. It is observed that the Commission while specifying the O&M expense norms of the generating stations (including the norms for new generating stations) for the period 2014-19, had considered taxes and wages, to form part of the O&M expense calculations and accordingly, had factored in the same in the said norms. This is evident from paragraph 49.6 of the SOR to 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...”

32. 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 towards payment of GST. Therefore, the additional O&M expenses claimed by the Petitioner on account of impact of GST is not allowed.

C. Impact due to revision of Minimum Wages

33. The Petitioner has also claimed total additional O&M expenses due to impact of revision of Minimum wages for Rs.662.40 lakh (i.e Rs 331.20 lakh each during the period 2017-19). As stated above, the Commission while specifying the O&M expense norms of the generating stations (including the norms for new generating stations) for the period 2014-19, had considered wages to form part of the O&M expense calculations and had accordingly, factored the same in the said norms. In view of this, the additional O&M



expenses claimed by the Petitioner due to impact of revision of Minimum wages, is not allowed.

Summary

34. The comparison of the amount claimed by the Petitioner and those allowed by the Commission during the periods 2004-09, 2009-14 and 2014-19 are summarized below :

(Rs. in lakh)

		2015-16	2016-17	2017-18	2018-19	Total
Impact of Pay revision and Gratuity w.e.f. 1.1.2017 due to 3 rd PRC	Claimed		164.26	737.85	783.26	1685.37
	Allowed		164.26	737.85	783.26	1685.37
Impact of pay revision of CISF / Security Staff w.e.f. 1.1.2016	Claimed	20.85	87.02	101.52	110.20	319.60
	Allowed	20.85	87.02	101.52	110.20	319.60
Impact of revision in Minimum wages w.e.f. 1.4.2017	Claimed			331.20	331.20	662.40
	Allowed			0.00	0.00	0.00
Impact of implementation of GST w.e.f. 1.7.2017	Claimed			46.50	63.89	110.39
	Allowed			0.00	0.00	0.00
Sub Total	Claimed	20.85	251.28	1217.07	1288.56	2777.77
	Allowed	20.85	251.28	839.37	893.46	2004.97

(Rs. in lakh)

		2004-09	2009-14	2014-19	TOTAL
Additional Cost due to Fitment of 2 nd PRC Salaries (period 1.1.2007 to 31.12.2016)	Claimed	66.79	230.19	139.81	436.79
	Allowed	0.00	0.00	139.81	139.81

35. Petition No.537/MP/2020 is disposed of in terms of above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

