

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 84/MP/2021**

**Coram:**

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

**Date of Order: 18<sup>th</sup> March, 2023**

**In the matter of**

Petition for recovery of additional cost incurred consequent to pay & wage revision of SJVN employees, Central Industrial Security Forces (CISF) personnel, and the impact of Minimum wage revision and implementation of GST in respect of Nathpa Jhakri Hydroelectric Power Station.

**And**

**In the matter of**

SJVN Limited,  
Shakti Sadan, Shanan,  
Shimla-171006 (HP)

**.....Petitioner**

**Vs**

1. Punjab State Power Corporation Limited,  
The Mall, Patiala – 147001
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector 6,  
Panchkula – 134 109
3. Tata Power Delhi Distribution Limited,  
NDPL House, Hudson Lane,  
Kingsway Camp, New Delhi-110019
4. BSES Rajdhani Power Limited,  
2<sup>nd</sup> Floor, B-Bock, BSES Bhawan  
Nehru Place, New Delhi-110019
5. BSES Yumuna Power Limited,  
3<sup>rd</sup> Floor, Shakti Kiran Building  
Karkardooma, Near Court Road  
New Delhi-110092



6. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur – 302 205
7. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur – 342 003
8. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hatthi Bhatta,  
Jaipur Road, Ajmer – 305 001
9. Himachal Pradesh State Electricity Board Limited,  
Vidyut Bhawan, Kumar House  
Shimla-171004 (H.P.)
10. Power Development Department,  
Govt. of J&K, Civil Secretariat Building  
Jammu -180001 (J&K)
11. Engineering Department,  
1<sup>st</sup> Floor, UT Secretariat, Sector 9-D  
Chandigarh – 160009.
12. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg  
Lucknow – 226001 (U.P.)
13. Uttaranchal Power Corporation Limited,  
Urja Bhawan, Kanwali Road  
Dehradun-248001 (U.K.)
14. Government of Himachal Pradesh  
H.P. Secretariat, Shimla-171002 (H.P.)
15. Madhya Pradesh Power Management Company Limited,  
Shakti Bhawan, Rampur,  
Jabalpur- 482008 (M.P.)

.....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 1.1.2017, implementation of 7<sup>th</sup> Pay Commission of Central Industrial Security Force (CISF) Personnel 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, in respect of the Nathpa Jhakri Hydroelectric Power Station (in short 'the generating station'). Accordingly, the Petitioner has prayed for the following relief(s);

(a) *To allow reimbursement of additional O&M expenditure for NJHPS as a result of pay revision (Salaries / wage revisions) on account of 1997 and 2017 Pay scales finalization w.e.f. 1.1.2007 and 1.1.2017 respectively for SJVN/NJHPS employees, implementation of the 7<sup>th</sup> 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 implementation of GST Act w.e.f. 1.7.2017. as detailed below:*

| <b>Sr.No.</b> | <b>Particulars</b>  | <b>Rs. in lakh</b> |
|---------------|---|--------------------|
| 1.            | <i>Impact of revision in salaries &amp; wages paid to employees on account of finalization of 1997 Pay Scales w.e.f. 1.1.2007 during the period 2004-09</i>       | 181.79             |
| 2.            | <i>Impact of revision in salaries &amp; wages paid to employees on account of finalization of 1997 Pay scales w.e.f. 1.1.2007 during the period 2009-14</i>       | 844.97             |
| 3.            | <i>Impact of revision in salaries &amp; wages paid to employees on account of finalization of 1997 Pay scales w.e.f. 1.1.2007 during the period 2014-19</i>       | 1445.42            |
| 4.            | <i>Impact of revision in salaries &amp; wages paid to NJHPS employees on account of finalization of 2017 Pay scales w.e.f. 1.1.2017 during the period 2014-19</i> | 5847.32            |
| 5.            | <i>Impact of revision in salaries &amp; wages paid to CISF employees w.e.f. 1.1.2016 during the period 2014-19</i>  | 712.50             |
| 6.            | <i>Impact of revision in minimum wages paid to HP Ex-Servicemen Corporation staff and Outsourced Manpower w.e.f. 1.4.2017 during the period 2014-19</i>           | 1748.46            |
| 7.            | <i>Additional impact of GST on taxable services due to implementation of GST act w.e.f. 1.7.2017 during the period 2014-19.</i>                                   | 420.73             |
| <b>Total</b>  |   | <b>11201.18</b>    |

(b) *To allow the revision of O&M expenses considering the revised salary of HPSEB Employees on Deputation and DPS School Staff w.e.f. 1.1.2016, as and when finalized in view of submissions, made in this petition.*

(c) *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, located in the State of Himachal Pradesh, which has been constructed by the Petitioner, is a joint venture between the Government of India and the Government of Himachal Pradesh, and is a run-of-river project with pondage. The capacity of the generating station is 1500 MW comprising of 6 units of 250 MW each. The dates of commercial operation (COD) of the different units of the generating station are as under:

| <b>Units</b> | <b>COD</b> |
|--------------|------------|
| Unit-5       | 6.10.2003  |
| Unit-6       | 2.1.2004   |
| Unit-4       | 30.3.2004  |
| Unit-3       | 31.3.2004  |
| Unit-2       | 6.5.2004   |
| Unit-1       | 18.5.2004  |

### **Submission of the Petitioner**

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

(a) The Petitioner has incurred additional O&M expenses as a result of following:

(A) Pay Revision (Salaries/Wage revision):

- Finalization and implementation of 1997 Pay scales of SJVN/NJHPS employees w.e.f. 1.1.2007 vide SJVN office circular dated 29.3.2019;
- Finalization and implementation of 2017 Pay scales of SJVN/NJHPS 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.

(B) Implementation of Minimum wage revision of outsourced manpower (Contract & HIMPESCO) w.e.f. 1.4.2017 and

(C) Implementation of GST Act w.e.f. 1.7.2017.

(b) The pay/wage revisions of HPSEB employees on deputation, and DPS school staff has not been finalized till date, which was due from 1.1.2016, and therefore, the total financial implication cannot be determined at this stage. The Petitioner craves liberty of the Commission to seek the 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 & DPS school staff.

(c) In terms of Regulation 31(xviii) and Regulation 38(iv) of the 2004 Tariff Regulations and Regulation 19(f) of the 2009 Tariff Regulations, relating to O&M expenses, the Commission had no occasion to consider the impact of increase in the salary/ wages on account of 1997 Pay Scale finalization in respect of the employees of the generating



station, for Rs 181.79 lakh w.e.f. 1.1.2007 to 31.3.2009 and Rs. 844.97 lakh for the period 2009-14, in the allowable O&M expenses. Further, the impact of same was not considered in the O&M expenses of the generating station, while filing the petition for the said control periods by the Petitioner.

(d) The Commission, while framing the 2014 Tariff Regulations, could not factor the impact of the increase in employee cost, in the normative O&M expenses 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/Office Memorandum of the Department of Public Expenditure (DPE) and the 1997 Pay scale finalization are subsequent events, which has led to wage revision, resulting in the increase in O&M expenses of the Petitioner. The recovery of the enhanced O&M expense may be considered and allowed in line with the Tariff principles enshrined under Section 61 (d) of the Electricity Act, 2003.

(e) 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 with effect from 1.1.2007 and the CISF employees of the generating station claimed by the Petitioner, is as under:



| <b>Sl. No.</b> | <b>Particulars</b>   | <b>Amount (Rs. in lakh)</b> |
|----------------|--|-----------------------------|
| 1.             | Impact of revision in salaries & wages paid to employees during the period 2004-09 on account of finalization of 1997 Pay Scales w.e.f. 1.1.2007       | 181.79                      |
| 2.             | Impact of revision in salaries & wages paid to employees during the period 2009-14 on account of finalization of 1997 Pay scales w.e.f. 1.1.2007       | 844.97                      |
| 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       | 1445.42                     |
| 4.             | Impact of revision in salaries & wages paid to NJHPS employees during the period 2014-19 on account of finalization of 2017 Pay scales w.e.f. 1.1.2017 | 5847.32                     |
| 5.             | Impact of revision in salaries & wages paid to CISF employees w.e.f. 1.1.2016 during the period 2014-19  | 712.50                      |
| <b>Total</b>   |  | <b>9032.00</b>              |

(f) 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**

(i) 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.

(ii) 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.

(iii) Significant O&M cost of the Petitioner pertains to Repair & Maintenance services and are directly related to minimum wages to be paid by the Petitioner, in line with the notifications of Chief Labour Commissioner (C). Further, the rates applicable to the Petitioner is largely dependent upon the category wise workers (unskilled, semi-skilled, skilled and highly skilled) engaged for daily activities for generation of electricity and city category wise (Type A, B and C) in which the Petitioner station is geographically situated.



(a) 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 1748.46 lakh (from 1.4.2017), may be allowed under change in law, as additional O&M expenses.

### **Goods & Service Tax**

(a) 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.

(b) 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.

(c) GST Act constitutes change in law, over which the Petitioner has no control. The additional financial burden of Rs 420.73 lakh, due to GST w.e.f. 1.7.2017, may be allowed under change in law, as additional O&M expenses.

### **Interest on Working Capital**

4. The Petitioner vide affidavit dated 22.4.2021 has also prayed to allow the impact of interest on working capital amounting to Rs 618.79 lakh for the period 2014-19 consequent to the additional O&M expenses claimed as above. Accordingly, the year-wise details of impact on the interest on working capital, as claimed, is as under:

| Sl. no       | Year    | Interest on working capital on account of additional O&M expenses ( <i>Rs in lakh</i> ) |
|--------------|---------|---|
| 1            | 2014-15 | 136.57  |
| 2            | 2015-16 | 2.19  |
| 3            | 2016-17 | 45.13   |
| 4            | 2017-18 | 213.57  |
| 5            | 2018-19 | 221.33  |
| <b>Total</b> |         | <b>618.79</b>   |



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

### **Replies of the Respondents.**

#### ***Reply of Respondent Rajasthan Discoms***

5. The Respondent, Rajasthan Discoms vide reply affidavit dated 20.4.2021 has mainly submitted as under:

(i) An impact of Rs. 181.79 lakhs for revision of salaries/wages paid to employees on account of finalization of 1997 Pay scales with effect from 1.1.2007, is during the period 2004-09. The Commission may direct the Petitioner to submit the reasons for such huge delay in claiming the wages/salaries. Further, if any negligence or inefficiency on the part of officials and employees of the generating station is found, then the additional burden of O&M expenses should not be passed on to the consumers.

(ii) The units of the generating station were synchronized one by one and declared fully commercially operative on 18.5.2004. In terms of Regulation 38 (iv) (c) of the 2004 Tariff Regulations, an annual escalation of 4% per annum has already been allowed, as per norms, in previous years for O&M expenses. Therefore, the Commission may disallow any further claims, if the escalation in O&M expenses had already been covered for the rise in wages and pay.

(iii) It is pertinent to note that Regulation 19 (f) (i) and Regulation 19 (f) (ii) of the 2009 Tariff Regulations, has given due consideration to wage revision. Hence, the Commission may disallow any further claims, as the escalation in O&M expenses and rationalization of O&M expenses considering increase in employee cost on account of pay revision of the employees has been already considered by the Hon'ble Commission.

(iv) The Respondent seeks more clarification regarding the claims made towards wage revision by the Petitioner and request the Commission to direct the Petitioner to provide the necessary details of employees along with the break-up of their salary structure, indicating the increase in each component. This is essential in order to ascertain, if the revision in salary, pertains to basic salary or bonus. The increase in bonus/ special 1-time payments, should be carried out from the ROE of the Petitioner and should not be passed on to the beneficiaries, by adding it to O&M expenses.

(v) Further the Man: MW ratio of the generating stations has been high. In this regard, the Commission has already referred this issue in Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations, [para 30.21] in respect of the generating station, as under:



*“The Commission has reviewed the same and observed that Man:MW ratio for most of the stations is very high. The Commission has reviewed the O&M expenses of these stations and has further carried out normalization in employee expenses wherever there was an abrupt increase in these expenses”*

(vi) The Commission may direct the Petitioner to provide a benchmark of the Man:MW ratio of industry, distributing the employee cost from top management, to lower cadre, with its individual stations, to support its claim. Further, the Commission may also direct the Petitioner to bring out a restructuring plan for its workforce and plan in advance, for any imminent wage revisions.

(vii) The security expenses, as claimed by the Petitioner, have witnessed an increase of 53% from 2015-16 to 2018-19. The Commission may direct the Petitioner to provide detailed justification for such a high increase along with necessary documents. The Petitioner has also not provided any details regarding reimbursement of wage revision, which can result in financial impact due to employees providing contractual services /consultancy services. Therefore, the Commission may direct the Petitioner to submit a detailed breakup of the wages of persons engaged in contractual/consultancy services.

(viii) The Respondent emphasizes on the fact that the overall burden submitted by the Petitioner due to increase in O&M expenses, would have to be borne by the Respondents in the share of contracted capacity and will eventually be passed on to the consumers, thereby further burdening the end consumers. Hence, considering the consumer’s interests, the respondent(s) request the Hon’ble Commission to take a prudent view, based on the submitted points, before deciding on the additional O& M cost for the Petitioner.

Accordingly, the Respondents have submitted that the prayer of the Petitioner, is without any merit, and the same may be disallowed.

### ***Reply of the Respondent, MPPMCL***

6. The Respondent MPPMCL vide reply affidavit dated 23.6.2021 has mainly submitted the following:

(a) It is evident from memorandum dated 3.8.2017 of the Ministry of Heavy Industries & Public Enterprise, GOI 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.

a) 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.

(b) 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 in 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.

(c) 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.

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

(e) 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.

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

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

#### **Allowable O&M expenses for Rs 181.79 lakh on account of the '1997 Pay scale' attributable to the period 2004-09**

(a) The project was commissioned on 18.5.2004, during the period when the 2004 Tariff Regulations were in force. The '1997 Pay scale revision' was made effective by MOP, GOI with effect from 1.1.1997, vide MOP, GOI letter dated 29.1.2019. Therefore, the actual expenditure of Rs. 181.79 lakh on account of revision during period of construction and the period 2004-09, has actually been incurred by the Petitioner, only after 29.1.2019, during the currency of the 2019 Tariff Regulations. This amount cannot be allowed to the Petitioner, in addition to the O&M expenses already determined for the period 2004-09, since no truing-up for the period 2004-09 period can be maintained under the provisions of the 2004 Tariff Regulations, after 31.3.2009, due to its repeal.



**Allowable O&M expenses for Rs 844.97 lakh on account of the '1997 pay scale' attributable to the period 2009-14**

(b) An amount Rs. 844.97 lakh attributable to the period 2009-14 could be considered for revision in O&M expenses in the truing-up of tariff Petition. The truing-up Petition for the period 2009-14 was maintainable under the provisions of the 2009 Tariff Regulations, had it been filed during the period 2014-19. Since the period 2014-19 has expired, the amount for Rs. 844.97 lakh claimed cannot be allowed to the Petitioner, by way of revision in tariff of the period 2009-14 and the claim may be rejected.

**Allowable O&M expenses for Rs 1445.42 lakh on account of the '1997 pay scale' attributable to the period 2014-19**

(c) The Commission has observed in SOR to the 2014 Tariff Regulations that it is not specifying the norms for the generating station, in the said Regulations, and the same shall be considered after detailed scrutiny on being approached by the generating station, by a separate petition. In the light of the said decision, the expenditure incurred on account of revision can be considered in accordance with the provisions of the 2014 Tariff Regulations read with the decision taken in Paras 29.2, 30.18 and 30.20 of SOR to the 2014 Tariff Regulations.

**Allowable impact of Rs 8729.01 lakh towards the '2017 Pay revision' of Petitioner's employees, CISF Personnel pay revision and Minimum Wage revision of outsourced employees and implementation of GST**

(d) The Petitioner has claimed total actual amount of Rs. 8729.01 lakh as additional O&M expenses during the period 2014-19, in addition to the O&M expenses allowed at the time of determination of tariff for the period 2014-19, as per Regulations.

(e) The Central Government had approved pay revision of Board and below Board level executives with effect from 1.1.2017, pursuant to the recommendations of the anomalies committee on 10.7.2018. However, the Petitioner has not shown the impact of this revision clearly and separately for the periods 2004-09, 2009-14 and 2014-19. The Petitioner may be directed to submit the impact of this revision for periods 2004-09, 2009-14 and 2014-19 included in the impact.

(f) However, the impact of the revision during the period 2014-19 can be considered while fixing/determining norms for O&M expenses in accordance with the provisions of the 2014 Tariff Regulations, read with Paras 29.2, 30.18 and 30.20 of the SOR to the said regulations.

**Implementation of CISF Personnel wage revision, Minimum wage revision and GST**

(g) As regards the claim due to revision of pay of CSIF Personnel with effect from 1.1.2016, the revision of Minimum wage from 1.4.2017 and implementation of GST



from 1.7.2017, the impact of these revisions during the period 2014-19 can be considered while fixing/determining norms for O&M expenses in accordance with the provision of the 2014 Tariff Regulations read with Paras 29.2, 30.18 and 30.20 of the SOR to the said regulations.

***Allowable revised salary of HPSEB employees on deputation***

(h) The Petitioner has not been able to compute the impact of revision of salary of HPSEB employees effective from 1.1.2016. The claims of the Petitioner may be considered together at one point of time with other claims.

***Allowable change in Interest on Working Capital due to revision of O&M expenses.***

(i) The Petitioner is seeking additional amount of Rs. 618.79 lakh on account of change in interest on working capital (IWC), due to revision of O&M expenses in 2014-19 on account of pay scale/wage revision and GST. IWC is incidental to revision in O&M expenses, as such the revision in IWC may be considered based on norm for O&M expenses, in terms of the 2014 Tariff Regulations read with Para-29.2, 30.18 and 30.20 of the SOR to the said regulations.

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

8. The Petitioner vide affidavits dated 26.5.2021, 12.7.2021 and 9.3.2022 has filed its rejoinders to the replies of the Respondents Rajasthan Discoms, Respondent MPPMCL and Respondent UPPCL respectively and has clarified, as under:

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

(i) The 1997 Pay scales (w.e.f. 1.1.2007) were finalized by the Petitioner on 29.3.2019, pursuant to the MOP, GOI letter dated 29.1.2019 and the Corporate HR Circular dated 29.3.2019. The O&M expenses claimed and allowed by the Commission for the period 2004-09 had not covered this impact of 1997 Pay scales as the same has been finalized in 2018-19. Further, in the O&M expense norms finalized for the period 2004-09, no provision was kept for increase in salary and wage revision. It is reiterated that there is no negligence or inefficiency on the part of the Petitioner.

(ii) Further, no provision was kept for increase in salary/wage revision while allowing 50% increase in the employee cost in 2009-10 for the period 2009-14, since the arrears claimed now, were not the part of then employee cost. Similarly, the impact of salary/wage revision was not part of the O&M expense norm for the period 2014-19. Therefore, this impact has been considered separately.

(iii) The Petitioner has claimed the impact of salary/wage revision for the employees of the generating station, CISF Personnel, HP Ex-servicemen corporation manpower/ Outsourced manpower and impact of GST as per provisions of the 2014 Tariff



Regulations, along with necessary documents and details attached with the forms submitted in this petition, duly audited by Statutory Auditors. Further, the Performance Related Pay (PRP) has not been claimed, which is also apparent from the forms submitted, and the revision in salary pertains to the basic salary of the employees only.

(iv) The Petitioner has deployed optimum number of employees, which are necessary for efficient & successful operation of the Project. Further, the norms for Manpower as per National Electricity Plan (NEP) published by the CEA, in January 2018, is enclosed wherein, it is clear that the manpower ratio of the generating station, is well within the norms specified by CEA.

(v) The Security expenses in 2015-16 includes the impact of salary revision for only three months i.e., from 1.1.2016 to 31.3.2016, while during the period from 2016-17 to 2018-19, the impact of the salary revision, besides the impact of revision in DA & increments, is for the entire year. Further, the impact of salary revision of CISF Personnel, has been claimed on the basis of information's/data provided by CISF.

(vi) The Petitioner has claimed the impact of wages/minimum wages revision as per the revision of minimum wages, by the Central Government, through the Ministry of Labour and Employment, GOI in respect of various categories of workers/manpower engaged for carrying out generation activity and Directorate General of Resettlement Ministry of Defence Govt, of India in respect of the manpower of HP Ex-Servicemen Corporation (HIMPESCO) engaged for carrying out security/safety/generation activity.

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

(vii) The tariff of the generating station is determined by this Commission as per the relevant provisions of the 2014 Tariff Regulations. The Petitioner has claimed O&M expenses in line with Regulation 29 (3) (d) of the 2014 Tariff Regulations. However, the salary/wage revisions were notified subsequent to the 2014 Tariff Regulations and therefore the Petition for the same has been filed separately.

(viii) Further, as per Commission's order dated 19.7.2019 in Petition No.314/GT/2018 in respect of tariff of the generating station for the period 2014-19, the Petitioner was allowed to file application for claiming the pay/salary revision which is to be examined by the Commission on case to case basis, subject to the implementation of pay revision.

(ix) The Petitioner has claimed additional impact of GST on taxable services, due to implementation of GST act w.e.f. 1.7.2017 as per the provisions of the 2014 Tariff Regulations, along with necessary documents and details attached with the forms, duly audited by Statutory Auditors.

(x) The Petitioner has been paying income tax as per provisions of Income Tax Act which may be evidenced from the Statements of Profit & Loss of the Company and not the statements of Profit & Loss of the generating station.



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

(xi) The 2004 Tariff Regulations and the 2009 Tariff Regulations, had not been repealed and the Commission, in the past has, in terms of provisions of power to relax had allowed the impact of pay & wage revision.

(xi) The pay/wage revision of HPSEB employees on deputation and DPS school staff has not been finalized till date, which was due from 1.1.2016. Therefore, the total financial implication of salary/ wage revision of employees cannot be determined at this stage. The Petitioner has craved 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 and DPS School staff.

(xii) The Security expenses in 2015-16 includes impact of salary revision for only three months i.e., from 1.1.2016 to 31.3.2016, while in 2018-19, the impact of salary revision besides DA and increments includes the impact for the entire financial year. Further, the impact of salary revision of CISF Personnel has been claimed on the basis of information/data provided by CISF (Central Armed Police Force under Ministry of Home Affairs, Govt. of India).

### **Hearing dated 15.2.2022**

9. This Petition was heard along with Petition No.123/MP/2021 (*Petition for recovery of the impact of salary/wage revision in respect of Rampur 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. 1.1.2007 to 31.3.2019. 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, after serving copies on the Respondents.

### **Hearing dated 18.10.2022**

10. During the hearing of this petition, on 18.10.2022, the learned Senior counsel for the Petitioner made detail 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**

11. 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***

12. 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.

13. 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.”*

14. 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.”*

15. 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***

16. 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 “Power to remove difficulties” and “Power to Relax” under the 2004 and 2009 Tariff Regulations, cannot be invoked, as the said Regulations stand repealed for the amount claimed in the present petition. Therefore, it has submitted that the provisions of the 2014 Tariff Regulations, will only apply. The Respondent Rajasthan Discoms have submitted that if any negligence or inefficiency on the part of officials and employees of the generating station as regards delay in claiming the salary/wages, is found, then the additional burden of O&M expenses should not be passed on to the consumers. *Per contra*, the Petitioner has stated that the prayer of the Petitioner for enhancement of O&M expenses, in Petition No. 314/GT/2018, and Petition No.31/GT/2020, were disposed of by this Commission, vide its orders dated 19.7.2019 and 6.9.2021 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. The Petitioner has also clarified that the O&M expenses claimed and allowed by the Commission for the period 2004-09 had not covered the impact of the 1997 Pay scales as the same was finalized in 2018-19. Accordingly, the Petitioner has stated that there is no negligence or inefficiency on the part of the Petitioner in claiming the recovery of the impact of revision in salary/wages of its employees and CISF Personnel.



17. We notice from records that the Petitioner, in Petition No. 314/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 19.7.2019, disposed of the same as under:

*“57 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.*

18. Thereafter, in Petition No.31/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 6.9.2021 as under:

*“72. 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.”*

19. 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 under para 14 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.”*

20. 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.

21. The claim of the Petitioner for recovery of the impact of revision of pay scales (1997 Pay scales) w.e.f. 1.1.2007, relating to the periods 2007-09, 2009-14 and 2014-19, including the Pay scale revision of CISF Personnel (from 1.1.2016) and 2017 Pay scale revision of the Petitioner’s employees (from 1.1.2017) for the period 2014-19, are discussed in the subsequent paragraphs:

### **Tariff Period 2004-09**

22. The Petitioner has claimed total impact of Rs 181.79 lakh towards the impact of salary/wage revision of its employees during the period 2004-09, on account of the finalization of 1997 Pay scales w.e.f. 1.1.2007. In this regard, Regulation 38(iv) of the 2004 Tariff Regulations, pertaining to O&M expenses, applicable for the period 2004-09, is extracted below:



*“38(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”*

23. In response to the directions vide ROP dated 15.2.2022, the Petitioner, has admitted to the fact that it had, in line with the DPE guidelines dated 25.6.1999, revised the pay scales of its employees, since 1.1.1997 (the due date of pay revision), 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. This pay revision was not approved by the administrative Ministry of the Petitioner i.e. MOP, GOI and only after several directions from MOP, GOI and consequent compliances by the Petitioner, the pay scales were finally revised w.e.f.1.1.1997 and the same was approved in the 168<sup>th</sup> BOD meeting and thereafter, implemented by Petitioner vide its circular dated 23.5.2008.



24. MOP, GOI vide its letter dated 27.12.2013 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.

25. 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. Hence, the claim of Rs.181.79 lakh has 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 revision which was implemented by the Petitioner vide order dated 29.3.2019, after approval of the same by the Union Cabinet and MOP, GOI. In the present case, the COD of the generating station is 18.5.2004, and therefore, the normative O&M expenses, as per Regulation 38(iv)(c) of the 2004 Tariff regulations at 1.5% of the actual capital cost, as admitted by the Commission (in the year 2004-05), with an annual escalation of 4% per annum from the subsequent years was allowed during the period 2004-09. It is clear from the above discussions that the O&M expenses allowed for the 2004-09 tariff period does not include the impact of the revision of salary/pay scales of the Petitioners employees w.e.f. 1.1.2007. We, therefore, find merit in the claim of the Petitioner for recovery of impact of Rs.181.79 lakh towards revision of pay scales of the Petitioners employees, on



account of finalization of 1997 Pay scales w.e.f. 1.1.2007, as additional O&M expenses for the period 2004-09.

26. The Appellate Tribunal for Electricity ('APTEL') in the case of NTPC V MPSEB (2007 ELR APTEL 7) has held as under:

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

27. Accordingly, we, in exercise of the power under Regulation 13 of the 2004 Tariff Regulations hereby, relax Regulation 38(iv) of the 2004 Tariff Regulations, in respect of O&M expenses for the generating station of the Petitioner, and allow the impact of pay regularization, amounting to Rs.181.79 lakh as additional O&M expenses, claimed by the Petitioner for the period from 1.1.2007 till 31.3.2009.

#### **Tariff Period 2009-14**

28. The Petitioner has claimed recovery of the impact of Rs.844.97 lakh as additional O&M expenses, towards revision in salaries/wages paid to its employees, for the period 2009-14, on account of finalization of the 1997 Pay scales (w.e.f.1.1.2007). 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) Hydro generating station*

*(i) Operation and maintenance expenses, for the existing generating stations which have been in operation for 5 years or more in the base year of 2007-08, shall be derived on the basis of actual operation and maintenance expenses for the years 2003-04 to 2007-08, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission.*



(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.*

(iii) *The operation and maintenance expenses for the year 2009-10 shall be escalated further at the rate of 5.72% per annum to arrive at permissible operation and maintenance expenses for the subsequent years of the tariff period.*

(iv) *In case of the hydro generating stations, which have not been in commercial operation for a period of five years as on 1.4.2009, operation and maintenance expenses shall be fixed at 2% of the original project cost (excluding cost of rehabilitation & resettlement works). Further, in such case, operation and maintenance expenses in first year of commercial operation shall be escalated @5.17% per annum up to the year 2007-08 and then averaged to arrive at the O&M expenses at 2007-08 price level. It shall be thereafter escalated @ 5.72% per annum to arrive at operation and maintenance expenses in respective year of the tariff period. [The impact of pay revision on employee cost for arriving at the operation and maintenance expenses for the year 2009-10 shall be considered in accordance with the procedure given in proviso to sub-clause (ii) of clause (f) of this regulation.]*

(v) *In case of the hydro generating stations declared under commercial operation on or after 1.4.2009, operation and maintenance expenses shall be fixed at 2% of the original project cost (excluding cost of rehabilitation & resettlement works) and shall be subject to annual escalation of 5.72% per annum for the subsequent years.”*

29. It is evident from the methodology in clause (iv) above, that in case of hydro generating stations which are not in commercial operation, for a period of five years, as on 1.4.2009, the O&M expenses are to be fixed at 2% of the original project cost and the same was subject to annual escalation to arrive at the 2009-10 price level. 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. In the present case, the COD of the generating station is 18.5.2004 and hence, the period of 5 years had not been completed by the generating station, as on 1.4.2009. Therefore, regulation 19(f)(iv) of the 2009 Tariff Regulations, was applied for fixation of the normative O&M expenses of the generating station. As stated above, the pay revision w.e.f. 1.1.1997 was



implemented by the Petitioner vide circular dated 23.5.2008 and therefore, the impact of salary/wage revision, could not be factored in, while framing the O&M expense norms under the 2009-14 Tariff Regulations, applicable for the period from 1.4.2009 to 31.3.2014. Further the claim of Rs.844.97 lakhs has 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 revision which was implemented by the Petitioner vide order dated 29.3.2019, after approval of the same by the Union Cabinet and MOP, GOI. Accordingly, there is merit in the claim of the Petitioner for recovery of impact of revision of pay scales of the Petitioner's employees, on account of finalization of 1997 Pay scales w.e.f. 1.1.2007, amounting to Rs.844.97 lakh for the period 2009-14.

30. Accordingly, we, in exercise of the power under Regulation 44 of the 2009 Tariff Regulations hereby, relax Regulation 19 (f)(iv) of the 2009 Tariff Regulations, in respect of O&M expenses for the generating station of the Petitioner, and allow the impact of pay regularization, amounting to Rs.844.79 lakh as additional O&M expenses, claimed by the Petitioner for the period 2009-14.

### **Tariff Period 2014-19**

31. The Petitioner has claimed total amount of Rs 8005.24 lakh, for the period 2014-19, towards recovery of impact of salary/pay revision of its employees, (on account of finalization of 1997 Pay scales and 2017 Pay scales) and also the impact of revision of salary/wages of CISF personnel from 1.1.2016, as detailed below:

| <i>(Rs. in lakh)</i> |   |         |
|----------------------|---|---------|
| SI. No.              | Particulars   | Amount  |
| 1.                   | 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 | 1445.42 |



|              |   |                |
|--------------|---|----------------|
| 2.           | of revision in salaries & wages paid to NJHPS employees during the period 2014-19 on account of finalization of 2017 Pay scales w.e.f. 1.1.2017 | 5847.32        |
| 3.           | of revision in salaries & wages paid to CISF employees w.e.f. 1.1.2016 during the period 2014-19  | 712.50         |
| <b>Total</b> |   | <b>8005.24</b> |

32. 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."*

33. 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.

34. 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.

35. 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.*



36. 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, has 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 some hydroelectric power generating companies viz. NHPC, THDC and NHDC in the separate petitions filed for their respective 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.

37. For comparison, the components of O&M expenses like Productivity linked incentive, Performance Related Payment (PRP), CSR Expenses, FERV and Filing Fees (separately recoverable) etc. 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 centre. 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.

38. The comparison of the actual O&M expenses incurred and the salary/wage revision impact for all the generating station of the Petitioner are as under:

**(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  | 7370.30        | 6969.13        | 6983.00        | 8002.08        | 11663.08       | 40987.57     |
| B. General & Administration Expenses | 10517.56       | 12131.73       | 12400.55       | 13256.60       | 13868.90       | 62175.34     |
| C. Other Expenses                    | 2215.88        | 902.70         | 1202.25        | 473.90         | 503.23         | 5297.96      |
| D. Apportioned CO/RO Expenses        | 11423.79       | 12665.32       | 15789.06       | 17374.04       | 22041.07       | 79293.28     |
| E. Total O&M Expenses (E=A+B+C+D)    | 31527.53       | 32668.88       | 36374.86       | 39106.62       | 48076.28       | 187754.17    |
| G. Exclusions                        | 6957.73        | 4689.91        | 6049.26        | 6263.93        | 11378.69       | 35339.52     |
| H Normalised O&M Expenses(E-G)       | 24569.81       | 27978.96       | 30325.59       | 32842.69       | 36697.59       | 152414.64    |

39. Accordingly, the following table portrays the comparison of normative O&M expenses versus the actual O&M expenses (normalized) along with wage revision impact (excl PRP) 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>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 order dated 6.9.2021 in Petition No. 31/GT/2020 (A) | 23842.88         | 25426.04           | 27114.33           | 28914.72           | 30834.66          | 136132.63          |
| Actual O&M expenses (normalized) (B)  | 24569.81         | 27978.96           | 30325.59           | 32842.69           | 36697.59          | 152414.64          |
| <b>Difference (A-B)</b>   | <b>(-)726.93</b> | <b>(-) 2552.92</b> | <b>(-) 3211.26</b> | <b>(-) 3927.97</b> | <b>(-)5862.93</b> | <b>(-)16282.01</b> |



40. 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 period 2014-19, by Rs.16282.01 lakh. However, the Petitioner, in this petition, has claimed total impact of Rs 8005.24 lakh, towards revision of salary/wages of its employees (2007 and 2017), and CISF Personnel (1.1.2016). Accordingly, we in exercise of the power under Regulation 54 of the 2014 Tariff Regulations, relax Regulation 29(3)(c) of the 2014 Tariff Regulations, in respect of O&M expenses, for the generating station, and allow the recovery of Rs.8005.24 lakh (as claimed in the table under paragraph 31 above) as additional O&M expenses, for the period 2014-19.

41. The arrear payments on account of the impact of the salary/pay revision, as above, is payable by the beneficiaries in twelve equal monthly instalments starting from April, 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/regularization 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.

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

42. The Petitioner has also prayed to allow the impact of working capital for Rs 618.79 lakh for the period 2014-19 lakh, consequent upon the additional O&M expenses



considered due to impact of salary/wage revision of its employees and CISF Personnel as above. It is pertinent to mention that the additional O&M expenses allowed as above, is in exercise of the power to relax and is payable by the beneficiaries in 12 equated monthly installments. For this reason, the additional O&M expenses have not been made part of the O&M expenses and the annual fixed charges of the generating station. In view of this, we find no reason to allow the claim of the Petitioner for revision of interest on working capital of the generating station. Accordingly, the prayer of the Petitioner for revision of the Interest on Working Capital is not allowed.

**Revision of O&M expenses considering the salary revision of HPSEB employees on Deputation and DPS School staff**

43. The Petitioner has also submitted that the pay/wage revision of HPSEB employees on deputation and DPS school staff, which was due from 1.1.2016, has not been finalized till date and therefore, the total financial implication on this count, cannot 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 HPSEB employees on deputation and DPS School staff, 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.



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

44. The Petitioner has claimed total additional O&M expenses of Rs.420.73 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.

45. 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...”*

46. 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**

47. The Petitioner has also claimed additional O&M expenses for Rs 1748.46 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 (E) 188 dated 19.1.2017, there was substantial upward revision of minimum wages to be paid to the workers effective from 1.4.2017."*

48. The Commission vide order dated 6.9.2021 in Petition No. 31/GT/2020 has allowed normative O&M expense for the instant generating station for the period 2014-19 based on the actual O&M expense for the period 2008-09 to 2012-13. While considering the actual expenses for the period 2008-09 to 2012-13, the Commission had only excluded the expenditure under the heads such as, productivity linked incentive and performance related pay, losses written off & loss on sale/ discarding of asset, Corporate Social Responsibility (CSR) and expenditure on gifts, survey and investigation expenditure and deferred revenue expenditure written off. 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 2008-13, 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 minimum wages.

### **Summary**

49. The comparison of the retrospective pay scale revision/regularization claimed by the Petitioner with those allowed for the generating station for the periods 2004-09, 2009-14 and 2014-19 are summarized below:



(Rs in lakh)

|  | Tariff Period                         |             |             | Total       |
|--|---------------------------------------|-------------|-------------|-------------|
|  | 2004-09<br>(1.1.2007 to<br>31.3.2009) | 2009-14     | 2014-19     |             |
| Pay Regularisation (for NJHPS employees) claimed   | 181.79                                | 844.97      | 8005.24     | 9032.00     |
| Pay Regularisation (for NJHPS employees) <b>allowed</b>  | 181.79                                | 844.97      | 8005.24     | 9032.00     |
| Impact due to revision of Minimum Wages (for Ex-Servicemen Corporation staff and Outsourced manpower) claimed        | 0.00                                  | 0.00        | 1748.46     | 1748.46     |
| Impact due to revision of Minimum Wages (for Ex-Servicemen Corporation staff and Outsourced manpower) <b>allowed</b> | 0.00-                                 | 0.00        | 0.00-       | 0.00        |
| Additional impact of GST claimed   | 0.00                                  | 0.00        | 420.73      | 420.73      |
| <b>Additional impact of GST allowed</b>  | <b>0.00</b>                           | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |
| Impact of IWC claimed  | 0.00                                  | 0.00        | 618.79      | 618.79      |
| <b>Impact of IWC allowed</b>   | <b>0.00</b>                           | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |

50. Petition No. 84/MP/2021 is disposed of in terms of above.

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

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

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

