

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.343/MP/2019**

**Coram:**

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

**Date of Order: 28<sup>th</sup> January, 2023**

**In the matter of**

Petition under section 79 of the Electricity Act, 2003 read with Regulations 79, 111 & 114 of the CERC (Conduct of Business) Regulations, 1999 and Regulations 12 and 13 of the CERC (Terms & Conditions of Tariff) Regulations, 2004, Regulation 44 of the CERC (Terms & Conditions of Tariff) Regulations, 2009 and Regulation 54 and Regulation 55 of the CERC (Terms & Conditions of Tariff) Regulations, 2014 for recovery of impact of pay regularization of below board level executives of NHPC Limited, for the period from 1.1.2007 to 31.3.2019

**And**

**In the matter of**

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

**.....Petitioner**

**Vs**

1. Punjab State Power Corporation Limited,  
The Mall, Near Kali Badi Mandir,  
Patiala-147 001, Punjab.

2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6, Panchkula-134109  
Haryana.

3. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14-Ashok Marg,  
Lucknow-226001, Uttar Pradesh

4. Engineering Department,  
1<sup>st</sup> Floor, UT Chandigarh, Sector-9 D,  
Chandigarh-160009.



- 5.BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019
- 6.BSES Yamuna Power Limited,  
Shakti Kiran Building,  
Karkadooma, Delhi-110072.
- 7.Tata Power Delhi Distribution Limited,  
Grid Sub-station Building, Hudson Lines,  
Kingsway Camp, Delhi-110009.
- 8.Uttaranchal Power Corporation Limited,  
Urja Bhawan, Kanwali Road, Dehradun- 248 001  
Uttarakhand)
- 9.Jaipur Vidyut Vitaran Nigam Limited,  
Vidyut Bhawan, Janpath, Jyoti Nagar,  
Jaipur-302005 (Rajasthan)
- 10.Ajmer Vidyut Vitaran Nigam Limited,  
Old Power House, Hatthi Bhatta, Jaipur Road,  
Ajmer - 305 001 (Rajasthan).
- 11.Jodhpur Vidyut Vitaran Nigam Ltd.,  
New Power House, Industrial Area,  
Jodhpur - 342 003(Rajasthan).
- 12.Power Development Department,  
New Secretariat, Jammu (J&K) -180001
13. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Shimla - 171 004 (Himachal Pradesh).
- 14.West Bengal State Electricity Distribution Company Limited,  
Vidyut Bhawan (8<sup>th</sup> Floor), Block-DJ, Sector-II, Salt Lake,  
Kolkata -700091
- 15.Damodar Valley Corporation,  
DVC Towers, VIP Road,  
Kolkata -700054.
- 16.Jharkhand Bijli Vitran Nigam Limited,  
Engineering Building, H.E.C Dhruwa,  
Ranchi, Jharkhand - 834 002.
- 17.North Bihar Power Distribution Company Limited,  
17(a)South Bihar Power Distribution Company Limited,  
Vidyut Bhawan, Bailey Road, Patna - 800001.



18.Department of Power,  
Govt. of Sikkim, Kazi Road,  
Gangtok -737101.

19.GRIDCO Limited,  
4<sup>th</sup> Floor, Janpath, Bhubaneshwar,  
Orissa - 751 022

20.Assam Power Distribution Company Limited  
4th Floor, Bijulee Bhawan, Paltan Bazar,  
Guwahati - 781 001

21.Department of Power,  
Govt. of Arunachal Pradesh, Vidyut Bhawan,  
Itanagar – 79911

22.Power & Electricity Department,  
Govt. of Mizoram, Khatla,  
Aizawl - 796 001

23.Tripura State Electricity Corporation Limited,  
Bidyut Bhawan, Banamalipur,  
Agartala -799 001.

24.Meghalaya Energy Corporation Limited,  
Lum Jingshai, Short Round Road,  
Shillong - 793 001.

25.Department of Power,  
Govt. of Manipur, Keishampat,  
Imphal-795 001.

26.Department of Power,  
Govt. of Nagaland, Kohima -797001,  
Nagaland.

27.Chhattisgarh State Power Distribution Company Limited,  
Vidyut Seva Bhavan, Danganiya  
Raipur – 492013, Chhattisgarh.

**Parties Present:**

Shri Rajiv Shankar Dvivedi, Advocate, NHPC  
Shri Ajay Shrivas, NHPC  
Shri S. K. Meena, NHPC  
Shri Prasant Kumar Das, GRIDCO  
Shri Mahfooz Alam, GRIDCO  
Shri R. B Sharma, Advocate, BRPL  
Ms. Megha Bajpeyi, BRPL



## **ORDER**

The Petitioner, NHPC has filed this petition seeking recovery of impact of pay regularisation of below Board level executives of the Petitioner, for the period from 1.1.2007 to 31.3.2019, in respect of its generating stations. Accordingly, the Petitioner has sought the following relief(s):

*a) Allow the Petitioner to bill and recover the additional expenses amounting to Rs.135.86 cr. as given in para-17 above for the respective tariff periods from the respondents in proportion to their allocated capacity shares in the respective years of tariff periods 2004-09, 2009-14 & 2014-19.*

*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 24.9.2019 has submitted the following:

- (a) The Petitioner being a Central Public Sector Enterprise (CPSE) under the administrative control of Ministry of Power, the salary & wages of its employees are fixed on IDA pay pattern, based on guidelines issued by Department of Public Enterprises (DPE) from time to time. Accordingly, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> pay revisions have been implemented by the Petitioner w.e.f. 1.1.1997, 1.1.2007 and 1.1.2017 respectively, based on the DPE guidelines, and subsequent Presidential directives issued by the administrative Ministry.
- (b) Consequent to the implementation of 1<sup>st</sup> pay revision w.e.f. 1.1.1997, the issue related to disparity / anomaly in the pay scales & rate of increments in comparison to the pay scales implemented by other power sector / oil sector CPSEs of same statute had arisen. In order to remove the anomaly, some of the pay scales & rate of annual increments had been modified by the Petitioner w.e.f. 1.1.1997, with the approval of administrative Ministry i.e., Ministry of Power (MOP, GOI). However, the MOP, GOI while implementing the 2<sup>nd</sup> pay revision w.e.f. 1.1.2007, did not allow the Petitioner, to use the actual pay drawn by the employees, during the period from 1.1.1997 to 31.12.2006 for the pay fixation & fitment benefit w.e.f. 1.1.2007, in the absence of a specific approval of DPE/Govt. for the pay regularization implemented by the Petitioner w.e.f. 1.1.1997. Accordingly, the 2<sup>nd</sup> pay revision was implemented w.e.f. 1.1.2007 on notional basis, by the Petitioner, based on the pay scales as notified by DPE w.e.f. 1.1.1997, and the same was not based on actual pay drawn by the employees during the period 1.1.1997 to 31.12.2006.



- (c) After a long pending persuasion by the Petitioner and the NHPC Officers Association (NOA), at various levels and after intervention of MOP, GOI the Union Cabinet in its meeting held on 16.1.2019, approved the regularization of pay scales implemented by the Petitioner w.e.f. 1.1.1997. After the approval of GOI, and direction received from the administrative Ministry, the Petitioner had re-fixed the pay in respect of below Board level executives w.e.f. 1.1.2007, which was earlier fixed on notional basis. This has resulted in payment of arrears to the employees of the Petitioner during 2018-19, causing increase in man power cost and consequential increase in O & M Expenses.
- (d) The present petition has been submitted by the Petitioner for recovery of above expenses as additional O&M expenses from the beneficiaries as 'man power cost' being the primary component of O&M expenses. As per the Petitioner, the impact of above pay scale regularization has not been part of the O&M norms fixed by the Commission for the different tariff periods.
- (e) The DPE issued OM dated 25.6.1999, whereby guidelines were issued to all the Administrative Ministries/ Departments for revision of pay scales of Board Level & below board level executives and non-unionized supervisors of CPSEs under their control w.e.f. 1.1.1997. The said guidelines issued by DPE were based on Justice Mohan Committee Report, set up for pay revision of executives of CPSEs on IDA pay pattern w.e.f. 1.1.1997. Consequent to DPE guidelines & directives issued by MOP, GOI, the Petitioner, with the approval of its Board of Directors, implemented the pay scales of its executives & supervisors w.e.f. 1.1.1997 (i.e., 1<sup>st</sup> pay revision) vide office Order No. 3/2000 dated 21.1.2000. However, there were anomalies/ disparities in the pay scales including the annual increment adopted & implemented by other CPSEs, under the administrative control of MOP viz. NTPC, PGCIL, PFC etc. NHPC Board in its 264<sup>th</sup> meeting held on 17.2.2006, decided to send a proposal to MOP, GOI for adoption of modified pay scales w.e.f. 1.1.1997, for removal of this anomaly/disparity among the pay scales of power sector utilities. This was done after a conscious decision arrived to bring parity of scales of the employees of Power Sector utilities under the administrative control of Ministry of Power. Accordingly, the Petitioner vide its letter dated 24.2.2006, approached the MOP, GOI for consideration of its proposal for removal of anomalies in the pay scales of below Board Level executives and adoption of modified pay scales w.e.f. 1.1.1997 so as to make it at par with other power sector CPSEs.
- (f) Pursuant to the above proposal of the Petitioner, the administrative ministry i.e. MOP, GOI approved the same vide order dated 4.4.2006 and consequently the Petitioner modified and implemented the pay scales, in line with pay scales of other power sector CPSEs under MOP for below board level executives w.e.f. 1.1.1997 vide Office Order No. 22/2006 dated 9.5.2006. In the modified / revised pay scales, the pay scales of E-3 and E-7 grades of NHPC were reduced to bring parity with the grades prevalent in other power sector CPSEs viz.



NTPC/PGCIL/PFC etc and the rates of annual increment were also changed from the fixed amount to variable amount close to 4% in line with the increments adopted by NTPC/PGCIL/PFC etc. Even though the regularization of pay scales, as mentioned above, was based on approval of MOP GOI, the same was not concurred by the DPE / approved by GOI.

(g) Subsequently, MOP, GOI vide its letter dated 30.4.2009 issued Presidential directive for revision of pay & allowances of NHPC executives w.e.f. 1.1.2007 (i.e., 2<sup>nd</sup> pay revision). In the presidential directive, MOP advised that increment(s) or increase in pay which do not have approval of DPE, such increment and/ or increase in pay will have to be ignored for the purpose of fitment/ pay revision.

(h) Accordingly, pending approval of Government for regularization of pay scales implemented by the Petitioner w.e.f. 1.1.1997 (implemented vide office order no. 22/2006 dated 9.5.2006), the NHPC Board in its 325<sup>th</sup> meeting held on 28.10.2010 approved the implementation of revised pay scales of below board level executives provisionally w.e.f. 1.1.2007 based on the notional pay fixation in line with pay scales prescribed by DPE w.e.f. 1.1.1997. While doing so, the Petitioner didn't consider the actual pay drawn by the employees in the pay scales w.e.f. 1.1.1997 to 31.12.2006 for pay fixation and fitment benefit & the pay scales w.e.f. 1.1.2007 was fixed on notional basis (since the earlier pay fixation was done without the approval of DPE). The provisional pay scales w.e.f. 1.1.2007 was implemented by the Petitioner vide office order no. 46/2010 dated 2.11.2010. It was also mentioned by the Petitioner in the above office order dated 2.11.2010 that the implementation of pay scales w.e.f. 1.1.2007 was provisional and subject to approval of GOI and once necessary approval is obtained from GOI, in respect of pay scales and rate of increments, the same will be dealt accordingly.

(i) The Union Cabinet in its meeting held on 16.1.2019, chaired by the Prime Minister, had given its approval for regularization of pay scales of below Board level executives of NHPC w.e.f. 1.1.1997 adopted by the Petitioner consequent upon MOP, GOI order dated 4.4.2006. MOP, GOI vide its letter dated 29.1.2019 had conveyed the approval of Government to regularize the adopted pay scales of below board level executives of the Petitioner w.e.f. 1.1.1997. Further, the Petitioner had been directed to implement the decision of the Government.

(j) Since the pay scales of below board level executives were fixed notionally w.e.f. 1.1.1997 and revision was implemented provisionally w.e.f. 1.1.2007, the pay scales of below board level executives were required to be reviewed and re-fixed w.e.f. 1.1.2007, on the basis of actual pay drawn in the pay scales approved by MOP vide its order dated 4.4.2006 and implemented by the Petitioner vide office Order No. 22/2006 dated 9.5.2006. Accordingly, on such regularization of pay scales, the revised pay w.e.f. 1.1.2017 was also re-fixed.



(k) Accordingly, the NHPC Board in its 423<sup>rd</sup> meeting dated 15.3.2019, authorized the CMD, to implement the decision of the Government, as conveyed by MOP, GOI vide its letter dated 29.1.2019. Consequently, the Petitioner vide office order dated 19.3.2019 re-fixed the pay w.e.f. 1.1.2007, in case of the below Board level executives, based on actual pay drawn by the employees in the pay scales w.e.f. 1.1.1997 till 31.12.2006. This has resulted in payment of arrear amount to below Board level executives of the Petitioner w.e.f. 1.1.2007 and also resulted in increased man power cost / O&M expenses during 2018-19.

(l) The total financial implication on account of regularization of pay scales of the Petitioners employees as provided by the Petitioner are tabulated below:

**(Rs in crore)**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Amount</b>
1	Amount allocated to under construction/survey & investigation projects (will be capitalized later on through EDC at the time of COD)	33.96
2	Amount allocated to hydro projects under construction between 1.1.2007 & 31.3.2019 (capitalized through EDC)	57.87
3	Amount allocated to solar & wind projects under construction between 1.1.2007 & 31.3.2019 (capitalized through EDC)	0.69
4	Amount allocated to operating Power Stations during the period 1.1.2007 to 31.3.2019 (including allocation of CO/RO Expenses & excluding impact of PRP)	<b>135.86</b>
5	Amount charged to P&L account (non-allocable)	34.56
	<b>Total</b>	<b>262.94</b>

(m) The expenses shown at serial no. 2 above shall be claimed by the Petitioner as additional capitalization during the year 2018-19 through truing up petitions of respective power stations (i.e., Power Stations which were under construction during the period 1.1.2007 till 31.3.2019). The present petition has been submitted by the Petitioner for reimbursement of expenses shown at serial no. 4 above (para-16) as additional O&M expenses in the following Power Stations for the different tariff periods:

**(Rs in crore)**

<b>Sl. No.</b>	<b>Power Station</b>	<b>Tariff Periods</b>			<b>Total</b>
		<b>2004-09 (1.1.2007 till 31.3.2009)</b>	<b>2009-14</b>	<b>2014-19</b>	
1	Bairasiul	0.71	2.24	2.58	<b>5.53</b>
2	Loktak	0.53	2.96	2.08	<b>5.57</b>
3	Salal	1.18	3.94	4.25	<b>9.37</b>
4	Tanakpur	0.66	2.98	3.73	<b>7.36</b>
5	Chamera-I	1.02	4.74	5.73	<b>11.49</b>
6	Uri-I	0.80	4.30	5.42	<b>10.53</b>
7	Rangit	0.29	1.47	2.11	<b>3.86</b>
8	Chamera-II	0.81	4.40	5.01	<b>10.22</b>
9	Dulhasti	1.29	7.54	8.85	<b>17.68</b>
10	Dhauliganga	0.85	3.38	3.81	<b>8.05</b>





Sl. No.	Power Station	Tariff Periods			Total
		2004-09 (1.1.2007 till 31.3.2009)	2009-14	2014-19	
11	Teesta-V	0.53	3.74	5.68	<b>9.95</b>
12	Sewa-II	0.00	2.42	3.69	<b>6.11</b>
13	TLDP-III	0.00	0.70	3.91	<b>4.61</b>
14	Chamera-III	0.00	1.66	4.96	<b>6.61</b>
15	Chutak	0.00	0.38	2.04	<b>2.42</b>
16	Nimoo Bazgo	0.00	0.21	2.50	<b>2.71</b>
17	Uri-II	0.00	0.35	3.96	<b>4.30</b>
18	Parbati-III	0.00	0.00	5.44	<b>5.44</b>
19	TLDP-IV	0.00	0.00	3.08	<b>3.08</b>
20	Kishanganga	0.00	0.00	0.98	<b>0.98</b>
	<b>Total</b>	<b>8.68</b>	<b>47.39</b>	<b>79.80</b>	<b>135.86</b>

(n) The Petitioner had filed tariff petitions in respect of its power stations for different control periods viz. 2004-09, 2009-14 & 2014-19, based on the Tariff Regulations and the Commission had issued tariff orders from time to time, allowing the amount of annual fixed charges (AFC) to be recovered from beneficiaries. One of the components of AFC is the 'O&M expenses'.

(o) The Petitioner while claiming the impact of pay revision of its employees and KV/CISF Staff deployed at power stations w.e.f. 1.1.2006 (in Petition nos. 5/MP/2012 & batch cases) had indicated that the data of pay / wage revision of employees does not include the Performance Related Payment (PRP), effect of 4% annual rate of increment & liability of employer's contribution towards pension fund, which is under consideration in MOP. Accordingly, it had prayed for approaching the Commission for claiming the impact of such expenditure, as per actual corresponding to the period up to 31.3.2009 when these liabilities are discharged."

(p) In response, the Commission in its order dated 5.12.2012 had clarified that in case the Petitioner approaches with such claims i.e. increment and pension contribution in future, the same will be considered in accordance with law and on its own merit.

(q) The present petition has been filed in terms of the Regulation 12 and Regulation 13 of the 2004 Tariff Regulations, Regulation 44 of the 2009 Tariff Regulations, and Regulation 54 & Regulation 55 of the 2014 Tariff Regulations, and in terms of the liberty granted to the Petitioner vide its order dated 5.12.2012 for reimbursement of additional O&M expenses incurred due to pay regularization of employees w.e.f. 1.1.1997 (impact w.e.f. 1.1.2007).

(r) The arrears have been distributed by the Petitioner on the basis of approval granted by the Union Cabinet for pay regularization and consequent direction of





administrative Ministry i.e., MOP, GOI. Further, the pay regularization was necessitated to achieve parity of pay scales among schedule 'A' CPSEs under the same administrative Ministry. It is pertinent to mention that the impact of subject pay regularization was neither part of the O&M expenses allowed in tariff by the Commission during the periods 2004-09, 2009-14 and 2014-19 nor was it part of the pay revision arrears allowed vide order dated 5.12.2012. The actual O&M expenses incurred by the power stations are far in excess of the normative O&M expenses allowed by the Commission, during the above control periods. Further, the expenditure on 'man power' is an essential component of O&M expenses to be serviced through tariff.

(s) As regards burdening the consumers with past dues, the Commission in its order dated 5.12.2012 had observed that a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the new consumers with the past dues.

(t) In view of the facts and circumstances mentioned above, there is sufficient cause for the Commission to allow the additional O&M expenses on account of pay regularization of employees of the Petitioner during the tariff periods 2004-09, 2009-14 and 2014-19. Accordingly, the Petitioner is praying to allow the reimbursement of above expenses, to be billed and recovered as an additional component, under O&M expenses from the Respondents, in proportion to their allocated capacity share in the respective years, under Regulation 12 and Regulation 13 of the 2004 Tariff Regulations, Regulation 44 of the 2009 Tariff Regulations, and Regulation 54 & Regulation 55 of the 2014 Tariff Regulations relating to the tariff periods 2004-09, 2009-14 and 2014-19 respectively.

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

3. The Respondent UPPCL vide reply affidavit dated 13.11.2019 has mainly submitted the following:

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

(b) The claim of the Petitioner should be viewed in the light of the huge burden on the beneficiaries on account of the increase in annual fixed cost during claimed period. The Petitioner should bear the extra expenses on account of pay regularization out of its profits and it should not be booked to the beneficiaries.

(c) The claim of the Petitioner for power to relax and power to remove difficulties are not applicable in the present case, as no difficulty has arisen to give effect to the Tariff Regulations. As per judgement of Hon'ble Supreme Court in Civil Appeal



No.110/2007 (NTPC Ltd vs UPPCL), the Commission cannot be asked to revisit the tariff for when the period is already over. Further, in the said judgement the Hon'ble Court has also prohibited the recovery of tariff of past consumers from the new consumers;

(d) Since the impact of pay regularization cannot be passed on to the end consumers with retrospective effect, the claim of the Petitioner is not maintainable. In terms of para 5.11(h), paras (3) and (4) of the Tariff Policy, the revenue requirement of the Petitioner should have been established at the beginning of the control period for the convenience of all concerned, including the end consumers, so that uncontrollable costs are recovered speedily, to ensure that future consumers are not burdened with past costs.

(e) The Petitioner has failed to register its timely claim in its petitions for respective control period by making budget provision for the likely increase of employees pay and other allowances. The impact of pay regularization for the last tariff block is substantial and if the Petitioner's prayer is allowed at this stage, without considering the difficulties of the Respondent, the same would be contrary to the spirit of section 61(d) of the Act, that preserves consumer's interest and at the same time, recovery of the cost of electricity in a reasonable manner. Therefore, the Petitioner's claim to allow impact of pay regularization of its employees are not maintainable.

#### **Hearing dated 5.3.2021**

4. The Petition was listed for hearing on admission on 5.3.2021 and the Commission, after hearing the learned counsel for the Petitioner, admitted the Petition and ordered notice on the Respondents. The Commission also directed the Petitioner to furnish the following additional information:

- (a) *With regard to claim on account of pay regularization for the 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; and*
- (b) *Clarify whether any provisions were made in the employee cost for the period from 1.1.2007 to 31.3.2019 against this expected pay regularization. If yes, whether it was communicated to the Commission while formulating the norms for the tariff periods 2009-14, 2014-19 and 2019-24.*

5. In response, the Petitioner vide affidavit dated 19.4.2021 has filed the additional information, after serving copy on the Respondents.



## **Reply of the Respondent BRPL**

6. The Respondent BRPL vide its reply affidavit dated 19.7.2022 has mainly submitted the following:

(a) The Petitioner is silent on the question raised as to why the administrative Ministry while implementing the 2<sup>nd</sup> pay revision w.e.f. 1.1.2007 did not allow the Petitioner to use the actual pay drawn by employees during the period 1.1.1997 to 31.12.2006 for the pay fixation and fitment benefits w.e.f. 1.1.2007. The main issue in this petition is whether the Petitioner can at all claim the implementation of the pay allegedly owing to disparity/anomaly in the pay scales & rate of increments from 1.1. 1997. Further, no regulatory provision has been cited under which such a claim can be allowed except, the provisions of 'Power to remove Difficulty' and 'Power to Relax'. The matter is similar to the permissibility of allegedly such a long-drawn claim which came before the Hon'ble Supreme Court in the NTPC appeals. The Hon'ble Supreme Court after examining the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 including the 'revisionary power of the Commission had already set principles in Civil Appeals No. 1110 of 2007 & batch on 3.3.2009.

(b) The Hon'ble Supreme Court held that the claim is permissible only when the tariff is in force, and not afterwards, which means within the same tariff period. This clearly means that the claim of the Petitioner cannot be entertained by the Commission at this late stage. The Petitioner through this petition is attempting implementation of the alleged disparity/anomaly in the pay scales & rate of increments which in turns amounts to revision of tariff and such claims which will be passed on to the beneficiaries. The Petitioner cannot be allowed to place fallacious arguments against the well-established principle laid down by the Hon'ble Supreme Court of India as mentioned above. Accordingly, the alleged claim of the Petitioner is liable to be dismissed as the same is legally impermissible.

(c) The Petitioner has also prayed for invoking the provisions of 'Power to Relax' and 'Power to remove difficulty' clauses during the various tariff periods. The provision related to 'Power to remove difficulty' can be given effect only if it is not inconsistent with the provisions of the Electricity Act, 2003, whereas the 'Power to Relax' provision is the judicial discretion and the same cannot be applied for profit motive. The Hon'ble Supreme Court in Mahadeva Upendra Sinai etc. Vs UOI & ors [1975 AIR 797, 1975 SCR (2) 640] has laid down the scope of the exercise of power to remove difficulty provided in a statute.

(d) As per the above judgment, the power to remove difficulty can be exercised to the extent it is necessary for applying or giving effect to the legislation and in



doing so, the authority exercising the power to remove difficulty may slightly tinker with the legislation to round off angularities, or smoothen joints or remove minor obscurities to make it workable, without doing violence to the basic structure and primary features of the regulations. Further, under the guise of removing difficulties, the scheme and essential provisions of the legislations cannot be changed. Accordingly, the request of the Petitioner seeking relaxation under Regulations 54 & 55 should be limited to parameters laid down by the Hon'ble Supreme Court. In any case, the facts of this case are similar to the facts of the case mentioned above and accordingly the claim of the Petitioner is without any basis.

(e) The Petitioner has claimed the alleged benefit by re-working the pay scales during the tariff period 2004-09 in the O&M expenses prescribed under Regulation 31(xviii) under the 2004 Tariff Regulations, which prescribes for inclusion of manpower under O&M expenses (para-20). However, the O&M expenses under Regulation 38(iv) of the 2004 Tariff Regulations, is norm based. The provisions of the 2004 Tariff Regulations, would show that even in the cases of those generating stations which are in operation for 5 years or more, have been based on the actual O&M expenses for the years 1998-99 to 2002-03. The Petitioner has also admitted that the administrative Ministry while implementing the 2<sup>nd</sup> pay revision w.e.f. 1.1.2007 did not allow the Petitioner to use the actual pay drawn by employees during the period 1.1.1997 to 31.12.2006, for the pay fixation and fitment benefits w.e.f. 1.1.2007. It may, thus, be noted that the actual higher pay received by the employees were factored in the determination of O&M expenses on normative basis. The same principles were adopted to arrive at the O&M expenses for tariff period 2009-14 which was further rationalized considering 50% increase in the employee cost on account of pay revision.

(f) The proviso under Regulation 19(f)(ii) of the 2009 Tariff Regulations, has very clearly incorporated in the norms provided for hydro generating stations. The same principle has been followed for tariff periods 2014-19. Thus, the O&M norms provided in the various tariff periods very clearly take care of the pay revision and based on these norms O&M expenses are being allowed to the generating station and if the employees are not getting their alleged due, then it is a matter between the Petitioner and its employees to settle whatever way they want to settle. Thus, the entire petition of the Petitioner is based on fallacious arguments. No sanctity in the norm-based tariff will be left if these norms are questioned day in and day out.

(g) The Petitioner in para-4 of the petition has also complained regarding the administrative Ministry not allowing the implementation of the pay fixation & fitment benefit w.e.f. 1.1.2007, in the absence of specific approval of DPE/ Govt. of India. While accusing the administrative Ministry, the Petitioner has deliberately concealed the material fact in OM dated 26.11.2008. The OM dated 26.11.2008 of the Department of Public Enterprises (DPE) is very clear which



stipulates that any financial implications on pay and wage revision has to come from the internal resources and no outside support whether in the form of budgetary support or otherwise will be provided.

(h) The contention of the Petitioner relating to the implementation of pay fixation & fitment benefit w.e.f. 1.1.2007, may be viewed in the context of the above OM dated 26.11.2008. The Commission has already allowed the legitimate cost incurred by the Petitioner on account of the revision of pay scales of the Petitioner's employees due to implementation of the 2<sup>nd</sup> pay revision w.e.f. 1.1.2007.

(i) Therefore, the claim of the Petitioner for Rs.135.86 crore has no basis either on legal ground or on the basis of the facts, as mentioned above, and the claim is liable to be rejected by the Commission.

### **Hearing dated 29.7.2022**

7. During the hearing of the Petition on 29.7.2022, the learned counsel for the Petitioner and the learned counsel for the Respondent BRPL made detailed oral submissions in the matter. Also, the Petitioner was permitted to file additional details, after serving copy to the Respondents and the Commission after directing the completion of the submissions/ response by the parties, reserved its order in the petition.

### **Additional Affidavit of the Petitioner**

8. The Petitioner vide additional affidavit dated 10.8.2022, has revised its claim (as per Annexure-I and II) and has submitted the following:

(a) The impact of pay regularisation pertaining to construction period i.e. Rs.57.87 crore was not claimed in the present petition as the same was capitalised in books of account. The capitalised amount was claimed in the tariff petition of respective power station in 2018-19 as additional capitalization.

(b) The Commission has issued tariff order in Petition No 283/GT/2019 on 23.2.2022 in respect of Chutak Power Station. The said power station was under construction till 1.2.2013 and therefore the impact of 4% pay regularization from 1.1.2007 till 1.2.2013 is capitalized in books of accounts and was claimed as additional capitalization. The relevant portion of order dated 23.2.2022 in Petition No.283/ GT/ 2020 is as under:



“40. The Petitioner has claimed actual additional capital expenditure of Rs.206.94 lakh as follows:

Sl. No.	Assets / Works	Amount claimed	Justification	Reason for admissibility / non-admissibility
1.	Capitalisation entry for 4% (Impact of wage revision)	35.44	All the expenses incurred during construction has been allocated to major component of this power station and this Pay Anomaly case since 1997 has been finalised in 2018-19. Expenses on pay anomaly up to COD i.e. 1.2.2013 is being capitalised.	It is noted that the Petitioner has filed Petition No. 343/MP/2019 seeking recovery of impact of pay/ wage revision of its employees for the period from 1.1.2007 to 31.3.2009. In view of this, the additional capital expenditure claimed is <b>not allowed</b> .
2.		78.87		
3.		2.31		
4.		60.23		
5.	Capitalisation entry for 4% (Impact of wage revision)	60.19		

(c)The Commission in its order had disallowed the said claim stating that the Petitioner has filed Petition No. 343/MP/2019 seeking recovery of impact of pay/ wage revision of its employees for the period from 1.1.2007 to 31.3.2019. Therefore, the Petitioner would like to modify its claim in the present petition by including the impact of pay regularization of Chutak Power Station during construction and the impact of pay regularization of all other power stations as well, which were under construction during 1.1.2007 to 31.3.2019. The revised impact during construction stage is at **Annexure-II**

(d) Subsequent to filing of petition, there was some development in the pay regularisation of employees, which resulted in recovery of arrears from employees. The relevant circular / office order in this regard to recovery of arrears paid to employees are attached at **Annexure-III**. Therefore, the claim submitted in the petition needs to be revised. The revised impact for O&M expenses is at **Annexure-I**.

9. Thus, the Petitioner has revised its claim to Rs.129.94 crore, due to recovery of arrears from employees. Further, the Petitioner has indicated an additional claim of Rs.57.87 crore pertaining to pay regularisation in respect of its under-construction projects, which was not indicated in the prayers. However, since the pay regularisation claim in respective generating stations was not allowed by the Commission (as the current petition No.343/MP/2019 was under issuance), the Petitioner has claimed an amount of Rs.35.67 crore, for the respective under-construction generation projects, vide its affidavit dated 10.8.2022.





## **Reply of the Respondent GRIDCO**

10. The Respondent GRIDCO vide reply affidavit dated 29.8.2022, has mainly submitted the following:

(a) Revision of the earlier tariff orders by allowing the additional O&M expenses shall be considered as review of the earlier orders of the Commission. Further, the Petitioner has not prayed for review of orders under Section 94 of the Electricity Act, 2003 and therefore the Petition is not maintainable.

(b) The Petitioner has claimed additional O&M towards employee cost by re-working the pay scales during the tariff period 2004-09 under Regulation 38(iv) of the 2004 Tariff Regulations, which prescribes for inclusion of manpower under O&M expenses.

(c) It is evident from the above Regulation, that in cases of generating stations which are in operation for 5 years or more, the actual O&M expenses incurred based on the audited accounts for the years 1998-99 to 2002-03 has been considered. The administrative Ministry while implementing the 2<sup>nd</sup> Pay revision w.e.f. 1.1.2007, did not allow the Petitioner to use the actual pay drawn by employees during the period 1.1.1997 to 31.12.2006, for the pay fixation and fitment benefits w.e.f. 1.1.2007. This means that the actual higher pay received by the employees were factored in the determination of O&M expenses on normative basis. Therefore, there is no scope for revisiting the O&M expense of past period.

(d) Similar principles were adopted by the Commission to arrive at the O&M expenses for period 2009-14 as per Regulation 19(f) of the 2009 Tariff Regulations, which was further rationalized considering 50% increase in the employee cost on account of pay revision. The 2014 Tariff Regulations, also provides for calculation of O&M expenses on normative basis. Thus, O&M norms provided in the various tariff periods clearly take care of the pay revision and based on these norms, the O&M expenses are being allowed to the generating stations.

(e) The provision related to 'Power to remove difficulty' can be given effect only if it is not consistent with the provisions of the Electricity Act, 2003 whereas the 'Power to Relax' provision is the judicial discretion and the same cannot be applied for profit motive. Further, under the guise of removing difficulties, the scheme and essential provisions of the legislations cannot be changed.

(f) The matter is similar to such a long-drawn claim which came before the Hon'ble Supreme Court in the NTPC appeals. The Hon'ble Supreme Court after examining the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 including the 'revisionary power of the Commission had already set principles in Civil Appeals No. 1110 of 2007 & batch on 3.3.2009. The Hon'ble Supreme Court has opined that the claim is permissible only when the tariff is in force i.e. within the same





tariff period. This clearly means that the claim of the Petitioner may not be reviewed at this late stage as contained in the Petition. The Petitioner cannot be allowed to place misleading arguments against the well-established principle laid down by the Hon'ble Supreme Court of India as mentioned above. Therefore, the claim of the Petitioner is liable to be rejected as the same is legally not permissible.

(g) In case the employees are not getting their alleged due, then the Petitioner may be directed to meet the requirement from the Return on Equity (ROE). The Petitioner has made a considerable amount of profit in the past years apart from ROE, which may also be used for settlement of current claims. The sanctity in the norm-based tariff will be lost if these norms are questioned repeatedly and allowed by the Hon'ble Commission.

(h) The Petitioner has never requested for adjustment of excess normative O&M expenses over and above the actual O&M expenses incurred and has been availing such benefit as per the applicable Regulations. Then, in case of expense more than the normative value, the Petitioner may not be allowed to pass on the shortfall to the end consumers following a selective approach.

(i) Section 61 of the Electricity Act, 2003 provides that the Commission specify the terms and conditions for the determination of tariff, in such a way that consumer's interest is protected and recovery of the cost of electricity is recovered in a reasonable manner. Seeking relaxation on any account whatsoever amounts to disturbing this delicate balance, which the Commission had tried to maintain through the 2014 Tariff Regulations. Thus, the relaxation in the regulation would only result in unreasonable benefit to the Petitioner which may not be allowed.

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

11. In response to the above replies, the Petitioner has filed its rejoinders vide affidavits dated 26.7.2022 (UPPCL and BRPL) and 7.10.2022 (GRIDCO) as under:

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

(a) By implementing 1st pay revision, the issue related to disparity / anomaly in the pay scales & rate of increments in comparison to the pay scales implemented by other power sector / oil sector CPSEs of same statute had arisen. In order to remove the anomaly, some of the pay scales & rate of annual increments had been modified by the Petitioner w.e.f. 1.1.1997 with the approval of administrative Ministry i.e., Ministry of Power. However, the same administrative Ministry while implementing the 2nd pay revision w.e.f. 1.1.2007 did not allow the Petitioner to use the actual pay drawn by the employees during the period 1.1.1997 to 31.12.2006 for the pay fixation & fitment benefit w.e.f. 1.1.2007, in the absence of specific approval of DPE / Govt, for the pay regularization implemented by the Petitioner w.e.f. 1.1.1997. Accordingly, the 2<sup>nd</sup> pay revision was implemented w.e.f. 1.1.2007 on notional basis by the Petitioner, based on the pay scales notified by DPE w.e.f.



1.1.1997, and the same was not based on actual pay drawn by the employees.

(b) Thereafter, the Union Cabinet in its meeting held on 16.1.2019 approved the regularization of pay scales implemented by the Petitioner w.e.f. 1.1.1997. Subsequent to the approval of the Central Government and direction received from administrative Ministry, the Petitioner has re-fixed the pay in respect of below Board level executives w.e.f 1.1.2007, which was earlier fixed on notional basis. This has resulted in payment of arrears to the employees of the Petitioner during 2018-19 causing increase in manpower cost and consequential increase in O & M expenses which is higher than the O&M expenses allowed.

(c) Further, the Commission while finalizing the tariff norms for the periods 2009-14, 2014-19 and 2019-24 had not factored in the impact of pay regularization of below board level executives of NHPC for the period 1.1.2007 to 31.3.2019. Accordingly, the argument of the Respondent that tariff is a package and cannot be reopened in isolation does not hold good in the present case, as the impact of 4% pay regularization was never "factored in" in the Tariff Regulations for the periods 2009-14, 2014-19 and 2019-24 by the Commission.

(d) The actual O&M expenses incurred by the respective power station(s) were largely on the higher side compared to normative O&M expenses allowed by the Commission during the previous tariff periods. Accordingly, the claim of the Petitioner is genuine and legitimate and cannot be negated on the ground that it will result in huge burden on the beneficiaries. The Commission in its wage revision order dated 5.12.2012 (in Petition Nos. 5/MP/2012 & batch cases) had already observed that a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the end consumers.

(e) The expenses incurred by the Petitioner on account of pay regularisation are part of the 'O&M expenses', which is direct input to determine the cost of electricity. O&M expenses as defined under Regulation 3(28) and Regulation 3(42) of the 2009 Tariff Regulations and the 2014 Tariff Regulations, mean the expenditure incurred for operation and maintenance of the project, or part thereof, and include the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads. Pay and allowances are part of the 'O&M expenses', which is an essential input for determination of cost of electricity. Accordingly, if impact of pay regularization is denied and the same is met out from the profit of the Petitioner, it will result in under recovery of cost of electricity, which is against the intent of Section 61(d) of Electricity Act, 2003.

(f) The Commission has not factored the impact of pay regularization (on above wage revision) while framing the tariff regulations for the periods 2009-14 and 2014-19. Further, the actual O&M expenses incurred by the Petitioner were on the higher side than the normative O&M expenses allowed by the Commission. Accordingly, the Petitioner has invoked the provision of Regulations 54 and 55 of the 2014 Tariff Regulations, 2014 in the absence of specific provision for recovery of additional



burden on account of pay regularization. Accordingly, the contention of the respondent that no difficulty has arisen to invoke the said provisions is not tenable.

(g) As regards the judgment of the Hon'ble Supreme Court in Civil Appeal No.1110 of 2007, the same has already been deliberated in detail by the Commission in its wage revision order dated 5.12.2012 (in Petition Nos. 5/MP/2012 & batch cases), and had concluded that a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the new consumers with the past dues. Accordingly, the contention of the respondent is not tenable.

(h) The 2nd pay revision was implemented w.e.f 1.7.2007, on notional basis, based on the pay scales notified by DPE. However, the same was not based on actual pay drawn by the employees. Thereafter, the Petitioner and NHPC Officers Association (NOA) had made continuous efforts at various levels and after intervention of MOP GOI, the Union Cabinet, in its meeting held on 16.1.2019 approved the regularization of pay scales implemented by the Petitioner w.e.f. 1.1.1997. Subsequent to the approval and direction from the administrative Ministry, the Petitioner had re-fixed the pay in respect of below Board level executives w.e.f. 1.1.2007, which was earlier fixed on notional basis. The payments were made in 2018-19 and thereafter, the Petition was filed for recovery of impact of 4% pay regularization. Thus, there has been no delay on account of the Petitioner and hence, the contention of the Respondent is wrong and illogical.

#### ***Rejoinder to the reply of BRPL***

(i) As regards the reference made to the judgment of the Hon'ble Supreme Court in Civil Appeal No.1110 of 2007, the same has been deliberated in detail by the Commission in its wage revision order dated 5.12.2012 (in Petition No. 5/MP/2012 & batch cases) and concluded that a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the new consumers with the past dues.

(j) The present petition is for claiming impact of wage revision only & not for opening up / truing up / reworking / review of tariff for the periods 2004-09, 2009-14 and 2014-19. Further, the reference judgment, which the respondent has quoted, is not applicable on the factual inputs of a particular case / petition and the facts of the judgment are not related to the instant petition. Accordingly, the contention of the respondent is not tenable.

(k) As stated, the Commission had not factored the impact of pay regularization (on wage revision) while framing the tariff regulations for the periods 2009-14 and 2014-19. Further, the actual O&M expenses incurred by the Petitioner are higher than the normative O&M expenses allowed by the Commission. Accordingly, the Petitioner has invoked the provision of regulations 54 and 55 i.e. 'power to remove difficulty' and 'power to relax' in the absence of specific provision for recovery of additional burden on account of pay regularization in the 2014 Tariff Regulations. The claim of the Petitioner under similar circumstances has already been upheld by the



Commission in its wage revision order dated 5.12.2012 (in Petition No 5/MP/2012& batch cases).

(l) The actual expenses on account of pay regularisation have been incurred by the Petitioner in 2018-19 and hence these expenditures have not been accounted for in the normative O&M expenses of the relevant tariff periods. Hence, the present petition was filed by the Petitioner.

(m) The contention of the respondent that 'relaxation in the regulation would only result in unreasonable benefit to the Petitioner' is superfluous and denied. The Petitioner is having huge under recovery of O&M expenses due to pay revision. As such, there is no case for unreasonable benefits. The expenses incurred by the Petitioner due to regularisation of pay scales, is a legitimate expense, and need to be allowed under Section 61(d) of the Electricity Act, 2003 in a reasonable manner. The issue of pay regularisation is pending and it will have impact on the Respondents and was raised by the Petitioner from time to time in various submissions made before the Commission and is known to the Respondents (refer para 21 & 22 of the petition).

#### ***Rejoinder to the reply of GRIDCO***

(n) The Petition has been filed to recover the additional O&M expenses incurred by the Petitioner consequent on the approval of regularization of pay scales and directions received from administrative Ministry, in respect of below Board Level Executives w.e.f. 1.1.2017 and does not intend to modify the already determined tariff by Commission for the various power stations.

(o) The present petition is not for review of tariff orders passed by the Commission for the respective power stations for the relevant tariff period. The fact that pay scales were regularized during the year 2018-19 and details of same are given in para-4 to 17 of the petitions. Since the amount of pay regularization was not finalized till 2018-19, the same could not be claimed in the tariff petitions for the period 2004-09, 2009-14 and 2014-19. However, the fact that the issue of pay regularization is pending and the liability on this count may arise in future years, had been brought to the notice of Commission and the Respondent beneficiaries, which is evident from order dated 5.12.2012 (reference to paras 21 & 22 of the petition). Therefore, the contention of the Respondent is not tenable.

(p) The normative O&M expenses of operating power stations, which are in operation for 5 years or more, were allowed based on the actual (after normalization) O&M expenses of 1998-99 to 2002-03. The pay revision of Petitioner's employees was implemented from 1.1.2007, which was further regularized in 2018-19. Therefore, the actual O&M expenses of 1998-99 to 2002-03, do not include the revised pay scales of Petitioner's employees. Further, the Commission had allowed the impact of wage revision of vide order dated 5.12.2012.



Thus, the present petition has been filed for claiming further regularization of pay scales, as approved by MOP.

(q) The normative O&M expenses are finalised based on the actual O&M expenses of previous years. Thus, the base of normative O&M expenses is the actual expenditure during the previous years. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> pay revision has been implemented w.e.f. 1.7.1997, 1.7.2007 and 1.7.2017 respectively. By implementing 1<sup>st</sup> pay revision, the issue related to disparity / anomaly in the pay scales & rate of increments in comparison to the pay scales implemented by other power sector / oil sector CPSEs of same statute had arisen. In order to remove the anomaly, some of the pay scales & rate of annual increments was modified by the Petitioner w.e.f. 1.1.1997 with the approval of administrative Ministry i.e. Ministry of Power. However, the same administrative Ministry while implementing the 2<sup>nd</sup> pay revision w.e.f. 1.1.2007 did not allow the Petitioner to use the actual pay drawn by the employees during the period 1.1.1997 to 31.12.2006 for the pay fixation & fitment benefit w.e.f. 1.1.2007 in the absence of specific approval of DPE / Govt. for the pay regularization implemented by the Petitioner w.e.f. 1.1.1997.

(r) Accordingly, the 2<sup>nd</sup> pay revision was implemented w.e.f. 1.1.2007 on notional basis, by the Petitioner, based on the pay scales notified by DPE w.e.f. 1.1.1997 and the same was not based on the actual pay drawn by the employees. Thereafter, the Union Cabinet in its meeting held on 16.1.2019 approved the regularization of pay scales implemented by the Petitioner w.e.f. 1.1.1997. Subsequent to the approval of Govt. and direction received from administrative Ministry, the Petitioner has re-fixed the pay in respect of below Board level executives w.e.f. 1.1.2007, which was earlier fixed on notional basis. This has resulted in payment of arrears to the employees of the Petitioner during 2018-19, causing increase in the manpower cost and consequential increase in the O&M expenses, which is higher than the O&M expenses allowed.

(s) It is clear that the Commission while finalizing the tariff norms for the period 2009-14, 2014-19 and 2019-24 had not factored 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 argument of the Respondent that O&M expenses cannot be considered in terms of actuals, does not hold good as the impact of 4% pay regularization was never "factored in" in the Tariff Regulations for the periods 2009-14, 2014-19 and 2019-24 by the Commission.

(t) The Petitioner has invoked the provision of Regulations 54 and 55 i.e. 'power to remove difficulty' and 'power to relax' in the absence of specific provision for recovery of additional burden on account of pay regularization in the tariff regulations, 2014. The claim of the Petitioner under similar circumstances has already been upheld by the Commission in its previous wage revision order dated 5.12.2012 in Petition No 5/MP/2012 & batch.





(u) As regards the judgment of the Hon'ble Supreme Court in Civil Appeal No.1110 of 2007, the same has already been deliberated in detail by the Commission in its wage revision order dated 5.12.2012 (in Petition Nos. 5/MP/2012 & batch cases), and had concluded that a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the new consumers with the past dues. Accordingly, the submission of the respondent is not correct and is liable to be rejected.

(v) The expenses incurred by the Petitioner on account of pay regularization are part of the 'O&M expenses', which is direct input to determine the cost of electricity. O&M Expenses as defined under Regulation 3(28) of the 2009 Tariff Regulations and Regulation 3(42) of the 2014 Tariff Regulations, means the expenditure incurred for operation and maintenance of the project, or part thereof, and include the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads; Further, the Commission in its order dated 5.12.2012 in Petition No 5/MP/2012 & batch had already observed that pay and allowances are part of 'O&M Expenses', which is an essential input for determination of cost of electricity. Accordingly, if impact of pay regularization is denied and the same is met out from the profit of the Petitioner, it will result in under recovery of cost of electricity, which is against the intent of Section 61(d) of Electricity Act, 2003.

(w) The normative O&M expenses are determined based on actual O&M expenses of previous years and if the actual O&M expenses for a particular period is less as compared to actual, the same gets adjusted in the next tariff period during determination of actual O&M expenses. However, the present case is different as the impact of pay regularization was never taken into consideration by the Commission while determining the normative O&M expenses for the periods 2009-14, 2014-19 and 2019-24.

(x) If the impact of pay regularization is denied, it will result in under recovery of cost of electricity by the Petitioner as already explained above. Accordingly, the contention of the respondent is not acceptable.

### **Analysis and Decision**

12. The submissions of the parties have been considered. The chronology of events, based on which the Petitioner has sought the recovery of impact of wage revision, during the periods from 2004-09 till 2014-19, is tabulated below:

Sl.No	Date	Events	Remarks/Impact
1	25.6.1999	Department of Public Enterprise i.e., DPE, Gol issued office Memorandum dated	Pay Revision guidelines w.e.f.1.1.1997 (1 <sup>st</sup> pay revision in this petition) were issued to all the administrative Ministries and



Sl.No	Date	Events	Remarks/Impact
		25.6.1999 for pay revision of CPSE employees	PSUs.
2	21.1.2000	Consequent to the DPE guidelines & directives issued by MOP, GOI, the Petitioner's BOD implemented the pay scales w.e.f. 1.1.1997 vide office Order No. 3/2000 dated 21.1.2000	The Petitioner, with the approval of its Board of Directors had implemented the pay scales of its executives & supervisors w.e.f. 1.1.1997 (i.e., 1 <sup>st</sup> pay revision).
3	17.2.2006	NHPC Board in its 264 <sup>th</sup> meeting held on 17.2.2006 decided to send a proposal to MOP, GOI for adoption of modified pay scales w.e.f. 1.1.1997	The petitioner approached the MOP, GOI vide letter dated 24.2.2006 for removal of pay anomaly / disparity among the pay scales of different power sector CPSEs.
4	4.4.2006	MoP vide its letter observed as under: - "2. The proposal of NHPC for revision of pay scales of Executives below Board level has been considered in this Ministry. With a view to remove the anomalies in the pay scales of Executives below Board level of NHPC, the undersigned is directed to say that this Ministry do not have any objection to the removal of anomalies in the pay scales and adoption of the revised pay scales, as indicated in the Annexure, being considered by the Board of NHPC in so far as the range of the pay scales are in line with the scales prescribed by Department of Public Enterprises (DPE), on the basis of recommendations of the Justice S. Mohan Committee, vide Office Memorandum No. 2(49)/98-DPE(WC) dated 25 <sup>th</sup> June 1999.	MOP, GOI allowed the petitioner to remove the pay anomalies in the pay scales and adoption of the revised pay scales as proposed in the petitioners Board approval dt.17.2.2006. This was implemented by the petitioner vide office order No. 22/2006 dated 9.5.2006. In addition, the rates of annual increment were also changed from the fixed amount to variable amount close to 4% in line with the increments adopted by NTPC/ PGCIL/PFC etc.
5	30.4.2009	MOP, GOI vide its letter	Pay Revision guidelines





Sl.No	Date	Events	Remarks/Impact
		issued Presidential directives for revision of pay & allowances of NHPC executives w.e.f. 1.1.2007 (i.e.2 <sup>nd</sup> Pay revision).	w.e.f.1.1.2007 were issued to all the CPSEs. Here the petitioner was directed that for the purpose of fitment benefit, if any extra ordinary increment or increase in the pay of employees which have been granted with retrospective effect and which affects the revision of pay as on 1.1.2007 and which do not have the approval of DPE, such increment and increase in pay will be ignored for the purpose of fitment/ pay revision.
6	28.10.2010	NHPC Board in its 325th meeting approved the implementation of the revised pay scales provisionally w.e.f 1.1.2007 (i.e.2 <sup>nd</sup> Pay revision).	The Petitioner vide Office Order No. 46/2010 dated 2.11.2010 approved the implementation of revised pay scales of below board level executives provisionally w.e.f. 1.1.2007 based on the notional pay fixation in line with pay scales prescribed by DPE w.e.f 1.1.1997 and as directed by MOP GOI vide their order dated 30.4.2009. <b><i>The pay revision impact claimed in this petition is due to the difference between what was implemented by the Petitioner on 2.11.2010 in line with MOP directives and the pay fixation which was finally approved by the Union cabinet on 16.1.2019.</i></b>
7	16.1.2019	The Union Cabinet in its meeting gave its approval for regularization of pay scales of below Board level executives of NHPC Limited w.e.f. 1.1.1997 adopted by the Petitioner consequent upon MOP, GOI order dated 4.4.2006.	The Union cabinet approval was conveyed by MOP, GOI vide its letter dated 29.1.2019 directing the petitioner to regularize the adopted pay scales of below board level executives of the Petitioner w.e.f. 1.1.1997. The NHPC Board in its 423rd meeting dated 15.3.2019 implemented the pay fixation anomalies, as conveyed by MOP, GOI vide letter dated 29.1.2019.



13. Before we proceed to examine the prayer of the Petitioner on merits, it is considered appropriate to deal with some of the objections of the Respondents, namely, that (a) tariff is a package and norms should not be reopened, (b) the present consumers should not to be burdened with past dues, and (c) financial difficulties of the Respondents and their inability to pay should be considered.

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

14. The Respondent UPPCL has submitted 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 submitted that if the Commission is inclined to review the tariff in isolation, then other parameters of tariff should also be reviewed on the basis of actuals. The Petitioner has, however, submitted that the Commission while finalizing the tariff norms for the periods 2009-14, 2014-19 and 2019-24 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, it has been submitted by the Petitioner that the Respondent's submission that tariff is a package and cannot be reopened in isolation does not hold good in the present case, as the impact of 4% pay regularization was never "factored in" in the Tariff Regulations for the periods 2009-14, 2014-19 and 2019-24 by the Commission.

15. The matter has been examined. It is noticed that similar objections were raised by some of the Respondents in Petition No.35/MP/2011 and batch petitions filed by NTPC for recovery of additional cost incurred consequent to pay revision of employees and CISF and KV staff for Farakka STPS and other generating stations, for the period from 1.1.2006 to 31.3.2009 and the Commission by its order dated 12.10.2012 had decided the issue as under:



*“11. ....In our view, norms of tariff have been specified in the terms and conditions of tariff after extensive stakeholder’s consultation and keeping in view the provisions of the Act, National Electricity Policy and Tariff Policy and its sanctity should be maintained. Normally a party should not be allowed any charge in deviation of the norms. However, when a particular expenditure has not been factored while deciding the norms, in that case the claim for such 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”*

16. Further, the same objections (tariff as a package) raised by some of the Respondent Discoms in Petition No.5/MP/2012 & batch petitions, filed by the Petitioner herein, for recovery of additional cost incurred consequent to pay revision of employees for its generating stations, Indian Reserve Battalion (IRBn) and KV staff during 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."*

17. It is pertinent to mention that the Respondent, UPPCL had raised similar objections in Petition No. 221/MP/2019, Petition No. 235/MP/2019 and Petition No. 229/MP/2019 & batch cases, filed by the Petitioner, 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 terms of the aforesaid decisions, rejected the contention of the Respondent vide orders dated 13.11.2021, 22.11.2021 and 31.12.2022 respectively and granted relief to the Petitioner. Accordingly, the objection of the Respondent UPPCL on the ground of tariff being a package and norms should not be reopened is disposed of in the light of the aforesaid decisions.

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

18. The Respondent BRPL and the Respondent GRIDCO have relied on the judgement of the Hon'ble Supreme Court dated 3.3.2009 in Civil Appeal No.1110 of 2007, and submitted that the Commission cannot be asked to revisit the tariff, when the tariff period



is already over. They have also submitted that the Hon'ble Court in the said judgment has prohibited the recovery of tariff of past consumers from the new consumers. Per contra, the Petitioner has submitted that the issue has already been deliberated in detail by the Commission in its order dated 5.12.2012 in Petition No. 5/MP/2012 & batch petitions and, therefore, the contentions of the Respondents are not tenable.

19. The matter has been considered. It is noticed that in Petition No.5/MP/2012 & batch cases filed by the Petitioner, the Respondent BRPL had contended that in view of the judgement of the Supreme Court dated 3.3.2009 in Civil Appeal No.1110 of 2007 and other related appeals, the claim is permissible only when the tariff is in force and not afterwards and accordingly, the claim of the Petitioner (NHPC) could be considered by the Commission, if the same was brought during the period 2004-09. Rejecting the aforesaid objections, the Commission in its order dated 5.12.2012 held as under:

*"17. We have considered the objections of the respondents. Though the petitioner has not approached the Commission during 2004-09 period for its claim due to the impact of pay and wage revision, in our view the petitioner's claim in the present petitions cannot be negated on that ground. The Commission has taken cognisance of the problem in its orders passed in the petitions filed by NTPC. The Commission in its order dated 5.2.2009 in Petition Nos.162/2008, 164/2008 and 165/2008 filed by NLC has made the following observation:*

*"9. ...However, the question raised in these petitions is in regard to revision of O&M expense for the period prior to 1.4.2009, primarily on account of revision of salaries and wages w.e.f. 1.1.2007. This is an issue which universally affects other central power sector utilities as well. Therefore, a holistic view needs to be taken in the matter in accordance with law and by involving all the stakeholders....."*

*It is apparent from the above that the Commission considered it appropriate to attend to the claims of all central power sector utilities at the appropriate time which also includes the petitioner. In the RoP for the hearing dated 13.10.2011 in Petition No. 35/MP/2011 and other related petitions, the Commission while admitting the petitions of NTPC had also directed other generating companies and inter-State transmission licensees whose tariff is being determined by the Commission under Section 62 of the Electricity Act, 2003 to file their submissions. Therefore, all the parties including respondents are aware that the Commission is seized with the issue and appropriate order will follow in due course of time. In our view, a legitimate expenditure cannot be denied to the petitioner on the ground that it will burden the new consumers with the past due."*

20. Also, the Petitioner, in Petition No. 5/MP/2012 & batch cases, while seeking the reimbursement of the impact of pay revision with effect from 1.1.2006 upto 31.3.2009 had



sought liberty to approach the Commission for claiming the impact of PRP, effect of 4% annual rate of increment & liability of employer's contribution towards pension fund, which was under consideration. The Commission vide its order dated 5.12.2012 observed as under:

*"23. The petitioner has prayed to be allowed to approach the Commission for claiming the impact of Performance Related Payment (PRP), effect of 4% annual rate of increment and liability of employer's contribution towards pension fund, as per actual corresponding to the period up to 31.03.2009 when these liabilities are discharged. In this regard, it is clarified that PRP is not pass through to the beneficiaries as it has to be borne by the generating company out of the incentive earned by it for performing above the norms. As regards the increment and pension contribution, no direction can be issued in this regard at this stage. If the petitioner approaches with such claims in future, the same will be considered in accordance with law and on its own merit"*

21. It is observed that similar objections raised by some of the Respondent Discoms in Appeal No. 55/2013 and batch appeals, filed by them, were rejected by APTEL, observing that the facts in the said case (Civil Appeal No.1110 of 2007) were distinguishable and not applicable to the facts in the batch appeals filed by the Discoms.

The relevant portion of the judgment dated 24.3.2015 is extracted below:

*"18.11. So far as the proposition of law as laid down by the Hon'ble Supreme Court of India in Uttar Pradesh Power Corporation Ltd. Vs NTPC Ltd. & Ors. (2009) 6 SCC 235 relied upon by the appellants is concerned, the Hon'ble Supreme Court did not grant the relief to NTPC as the NTPC did not claim amount in the first instance though NTPC was entitled to claim. The facts of the reported case are quite distinguishable and are not applicable to the instant matters because in the present matters, the power generators NTPC etc. had made the claim in the first available instance and at that time the Central Commission vide its order dated 09.05.2006 deferred the consideration of the same to a later stage. The appellants did not challenge the said deferment granted in its order dated 09.05.2006 in Petition No. 160 of 2004 of the Central Commission at that relevant time and now the appellants cannot raise this issue of deferment at this stage."*

22. In the present case, the Petitioner has claimed the impact of wage revision/ pay revision, with effect from 1.1.1997 (impact with effect from 1.1.2007) consequent upon the regularisation of pay scales, subsequent to the approval of the Government, the DPE guidelines and the directions received from the Administrative Ministry, resulting in payment of arrears to the employees of the Petitioner during 2018-19, and in terms of the liberty granted vide order dated 5.12.2012 as above. This is not the case in Civil Appeal





No.1110 of 2007, wherein, NTPC had not claimed the amount at the first instance, though it was entitled to. Thus, the facts in the said civil appeal are distinguishable from the facts in the present case of the Petitioner and, hence, not applicable. Therefore, the findings of APTEL in the aforesaid judgment dated 24.3.2015, is squarely applicable to the present case. It is pertinent to mention that the Commission, while determining the tariff of some of the generating stations of NTPC and NEEPCO for the 2014-19 tariff period had, in its orders, granted liberty to file appropriate application for recovery of impact of salary/ wage revision, subject to the implementation of pay revision as per DPE guidelines. Thus, all parties including the Respondents herein were aware that appropriate orders with regard to the impact of pay revision/ wage revision of central power sector utilities, would follow in due course of time. In our view, a legitimate expenditure cannot be denied to the Petitioner on the ground that it will burden the new consumers with past dues. Similar contentions of the Respondents were rejected by the Commission in its orders dated 13.11.2021, 22.11.2021 and 30.12.2022 in Petition No. 212/MP/2019, Petition No.235/MP/2019 and Petition No. 229/MP/2019 & batch filed by the Petitioner.

23. In view of the above discussions, the objections raised by the Respondents on the ground that present consumers cannot be burdened with past dues stand rejected.

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

24. The Respondent UPPCL has submitted that the prayer of the Petitioner, if allowed at this stage, without considering the difficulties of the Respondent, would be contrary to the spirit of Section 61(d) of the Act. The Respondent GRIDCO has pointed out that Section 61 of the Electricity Act, 2003 provides that the Commission specify the terms and conditions for the determination of tariff in such a way that consumer's interest is protected and recovery of the cost of electricity is recovered in a reasonable manner. It has stated that seeking relaxation on any account whatsoever, amounts to disturbing this





delicate balance, which the Commission had tried to maintain through the 2014 Tariff Regulations and therefore, the relaxation in the regulation would only result in unreasonable benefit to the Petitioner which may not be allowed. Per contra, the Petitioner has submitted that the actual O&M expenses incurred by the generating station are largely on a higher side as compared to the normative O&M expenses allowed during the 2004-09, 2009-14 & 2014-19 tariff period. The Petitioner has also submitted that the claim is genuine and cannot be negated on the ground that it will result in huge burden on the beneficiaries. The Petitioner has added that the claim for recovery of wage revision impact is consistent with Section 61(d) of the Act, as the same is only to ensure the reasonable recovery of the cost of electricity.

25. The matter has been considered. Admittedly, the 2014 Tariff Regulations notified by the Commission for the 2014-19 tariff period, had not factored in the impact of revision in salary and wages of employees of the Petitioner, with effect from 1.1.2017 and pay revision of CISF and KV/DAV employees, posted at the generating station of the Petitioner, with effect from 1.1.2016. In our view, the additional expenditure incurred on salary and wages of the generating company form part of the cost of electricity and needs to be serviced. The financial difficulties of the Respondents cannot be a ground for not paying for the cost of power which has been supplied to the Respondent beneficiaries. By parity of reasoning, we are of the considered view that the Petitioner should be suitably compensated for the wage revision/ pay revision from 1.1.2016/1.1.2017 till 31.3.2019. The Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission v CESC Limited (2002) 8 SCC 715, has observed that employees' cost prudently incurred, needs to be reimbursed to the utility. Similar contention of the Respondents was rejected by the Commission in its orders dated 13.11.2021, 22.11.2021 and 30.12.2022 in Petition No. 12/MP/2019, Petition No.235/MP/2019 and Petition No. 229/MP/2019 & batch filed by the



Petitioner. In view of the above discussion, the objections of the Respondents on the ground of financial difficulties and their inability to pay cannot be sustained.

***Other issues***

26. The Respondent GRIDCO has submitted that allowing the additional O&M expenses shall be considered as review of the earlier orders of the Commission. It has also submitted that the Petitioner has also not prayed for review of orders under Section 94 of the Electricity Act, 2003 and therefore the present Petition is not maintainable. In response, the Petitioner has submitted that the present petition is not for review of the tariff orders passed by the Commission for the respective power stations of the Petitioner for the relevant tariff period. It has clarified that since the amount of pay regularization was not finalized till 2018-19, the same could not be claimed in the tariff petitions for the tariff periods 2004-09, 2009-14 and 2014-19. The Respondent, BRPL has submitted as per the DPE Office Memorandum dated 26.11.2008, the CPSE concerned has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided. It has also stated that the contention of the Petitioner relating to the implementation of pay fixation & fitment benefit w.e.f. 1.1.2007, may be viewed in the context of the above OM dated 26.11.2008. In response, the Petitioner has clarified that the expenses incurred by the Petitioner due to regularisation of pay scales, is a legitimate expense, and need to be allowed in terms of Section 61(d) of the Electricity Act, 2003, in a reasonable manner.

27. We have examined the submissions of the parties. As stated, the Petitioner has claimed the impact of wage revision/pay revision, with effect from 1.1.1997 (impact with effect from 1.1.2007) consequent upon the regularisation of pay scales, subsequent to the approval of the Government, the DPE guidelines and the directions received from the Administrative Ministry, resulting in payment of arrears to the employees of the Petitioner



during 2018-19, and in terms of the liberty granted vide order dated 5.12.2012. Since the issue of enhanced employee cost has not been finally decided, the plea of the Respondent GRIDCO cannot be sustained. Also, the submissions of the Respondent BRPL to consider the claim of the Petitioner in the context of the OM dated 26.11.2008 is also 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.

28. In view of the above discussion, the objections of the Respondents on allowing the impact of pay and wage revision to be passed on through tariff, cannot be sustained. It needs to be pointed out that the Commission has the mandate to balance the interest of the consumers and ensure recovery of the cost of electricity in a reasonable manner. Therefore, the Commission is required to find out an equitable solution so that the generating company is not deprived of its legitimate dues, while ensuring that the tariff burden on the beneficiaries and consumers are minimised.

#### **Additional O&M expenses on account of impact of Pay regularisation of employees**

29. The Petitioner has submitted that consequent to the DPE guidelines and directives issued by administrative Ministry i.e. MOP, GOI, the Petitioner, with the approval of its Board of Directors, had implemented the pay scales of its Executives & Supervisors, with effect from 1.1.1997 (1<sup>st</sup> pay revision) vide office order dated 21.1.2000. However, due to anomaly/disparity in the said pay scales, including annual increment adopted, the Petitioner approached the MOP, GOI vide letter dated 24.2.2006, for removal of anomalies and in order to make it on par with other power sector CPSEs. Pursuant to the approval of MOP, GOI on 4.4.2006, the Petitioner had modified and implemented the pay scales in respect of below Board level executives with effect from 1.1.1997, vide order



dated 9.5.2006 (*albeit* without the concurrence of DPE/GOI). In addition, the rates of annual increments were also changed from the fixed amount to variable amount close to 4% in line with the increments adopted by NTPC/PGCIL/PFC etc.,

30. Subsequently, on 30.4.2009, MOP, GOI issued Presidential directive for revision of pay & allowances of the Petitioners executive, with effect from 1.1.2007 (2nd pay revision). The Board of the Petitioner Company in its 325<sup>th</sup> meeting held on 28.10.2010 approved the implementation of the revised pay scales of below Board level executives provisionally, subject to approval of Government, with effect from 1.1.2007, based on the notional pay fixation in line with the scales prescribed by DPE w.e.f 1.1.1997. The provisional pay scales w.e.f 1.1.2007, was implemented by the Petitioner on 2.11.2010. Pursuant to the approval of the Union Cabinet , the MOP, GOI on 29.1.2019, conveyed the approval of the Govt to regularise the adopted pay scales of below board level executives of the Petitioner with effect from 1.1.1997 and directed its implementation. Consequently, the Petitioner vide order dated 19.3.2019 has re-fixed the pay with effect from 1.1.2007, in case of below Board level executives, based on the actual pay drawn by the employees in the pay scales w.e.f 1.1.1997 till 31.12.2006, which resulted in the payment of arrear amount to below Board level executives of the Petitioner w.e.f 1.1.2007, thereby resulting in increased manpower cost/O&M expenses during 2018-19. In this background, the Petitioner has sought the recovery of the additional O&M expenses on account of pay regularization of its employees, in respect of its various generating stations, to be billed and recovered from the Respondents, in proportion to their allocated capacity share in the respective years, under Regulation 12 and Regulation 13 of the 2004 Tariff Regulations, Regulation 44 of the 2009 Tariff Regulations, and Regulation 54 and Regulation 55 of the 2014 Tariff Regulations, relating to the tariff periods 2004-09, 2009-14 and 2014-19 respectively. In other words, the



present petition relates to the recovery of additional expenses incurred due to revision / regularization of the pay scales of Petitioner's employees, with effect from 1.1.1997 (impact with effect from 1.1.2007) and payment of the arrears during 2018-19, after approval of the same by the Central Government and does not consider the impact of wage/pay revision implemented by the Petitioner for its employees etc., w.e.f 1.1.2017.

31. The Petitioner, in the main petition, had claimed total amount of Rs.13586 lakh as impact on account of pay revision/regularisation for the periods from 2004-09 till 2014-19. Subsequently, vide affidavit dated 10.8.2022, the total amount claimed for the period from 2004-09 till 2014-19, was revised by the Petitioner as under:

Claim of Petitioner in respect of its generating stations	(Rs in lakh)			Total amount claimed
	Tariff Periods			
	2004-09 (1.1.2007 to 31.3.2009)	2009-14	2014-19	
Pay Regularisation (for Commissioned Projects)	646.35	4234.97	8112.55	<b>12993.87</b>
Pay Regularisation (for Under-construction Projects)	837.63	2530.71	198.54	<b>3566.88</b>

32. The aforesaid claims of the Petitioner are examined on merits, as stated in the subsequent paragraphs:

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

33. The Petitioner has claimed amount of Rs.646.35 lakh for projects which had been commissioned and Rs.837.63 lakh, in respect of under-construction projects of the Petitioner, on account of the retrospective pay scale revision/regularisation, duly certified by Auditor, for the tariff period 2004-09. Regulation 38(iv) of the 2004 Tariff Regulations, which provide for O&M expense norms 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.*

*(b) 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.*

*(c) 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.*

*(d) 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”*

*For the generating stations commissioned during the tariff period (2004-05 to 2008-09), the base operation and maintenance expenses shall be fixed at 1.5 percent 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 percent per annum for the subsequent years.*

34. It is observed that the Petitioner has admitted to the fact that since 1.1.1997 (the due date of Pay revision), the Petitioner after obtaining the approval of DPE, was paying annual increment as per the DPE guidelines issued vide order dated 25.6.1999. Subsequently, after obtaining the approval of MOP vide dated 4.4.2006, Petitioner started paying annual increment in parity with other Power sector CPSEs, however the specific approval of DPE was not obtained. MOP, GOI had allowed the Petitioner to remove the pay anomalies in the pay scales and adoption of the revised pay scales, as proposed in the Petitioner’s Board approval dated 17.2.2006. This was implemented by the Petitioner vide office order No. 22/2006 dated 9.5.2006. In addition, the rates of annual increment were also changed from the fixed amount to variable amount close to 4% in line with the increments adopted by NTPC/ PGCIL/PFC etc.



35. For fixing the O&M norms for the tariff period 2004-09, the past data of actual O&M expenses for the period 1998-1999 to 2002-03 was considered which did not include the enhanced pay fixation which was implemented by the petitioner on 4.4.2006 after approval from MOP, GOI. Therefore, Commission is of the view that due to late issuance of necessary orders from MOP, GOI, the differential amount of Rs.646.35 lakh was not considered while framing the normative O&M norms. However, subsequently the Petitioner in Petition No. 5/MP/2012 & batch cases, had prayed for liberty to approach the Commission for claiming the impact of enhanced increment and enhanced employer liability towards pension funds. The Commission vide order dated 5.12.12 has already granted relief to the petitioner to recover the actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 from the beneficiaries on account of wage revision limited to 50% of the salary and wages (Basic + DA) of the employees as on 31.12.2006. Further the petitioner was allowed to recover the actual increase in the salary of the security personnel posted at NHPC stations and the employees of Kendriya Vidyalaya attached to the generating stations for the period from 1.1.2006 to 31.3.2009. The relevant portion of the order is extracted below:

*“22. .... Accordingly, we direct that the petitioner shall be entitled to recovery of the following from the beneficiaries:*

- a) Actual increase in employee cost for the period from 1.1.2007 to 31.3.2009 on account of wage revision which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006;*
- b) Actual increase in the salary of the security personnel posted at NHPC stations and the employees of Kendriya Vidyalaya attached to the generating stations for the period from 1.1.2006 to 31.3.2009 provided that the liability to pay their salary rests with the petitioner;*
- c) The arrears shall be recovered from the beneficiaries in twelve equal monthly instalments during the year 2013-14 in addition to the O&M charges as per the 2009 Tariff Regulations.”*

*23. The petitioner has prayed to be allowed to approach the Commission for claiming the impact of Performance Related Payment (PRP), effect of 4% annual rate of increment and liability of employer's contribution towards pension fund, as per actual corresponding to the period up to 31.03.2009 when these liabilities are discharged. In this regard, it is clarified that PRP is not pass through to the beneficiaries as it has to be borne by the generating company out of the incentive earned by it for performing above the norms. As regards the increment and pension contribution, no direction can be issued in this regard*





*at this stage. If the petitioner approaches with such claims in future, the same will be considered in accordance with law and on its own merit”*

36. From the above order dated 5.12.2012, it is apparent that the salary and wages (Basic+DA) based on which the Commission allowed the Petitioner to recover the actual increase in employee cost as on 31.12.2006, included the enhanced pay fixation after removal of the pay anomalies, which was implemented by the Petitioner on 4.4.2006 after approval by the MOP, GOI. Since, the Petitioner was already allowed to directly recover the impact of pay revision for the period from 1.1.2007 to 31.3.2009, the Petitioner's claim for the period 2004-09 of Rs.646.35 lakh for already commissioned projects is not allowed.

37. In respect of the claim of the Petitioner for Rs.837.63 lakh for recovery of impact of revised pay revision, for ten under-construction projects including two projects Dulhasti, which was commissioned during 2007-08 and Teesta V project of the Petitioner, which was commissioned in 2008-09, we notice that the impact of enhanced pay revision has already been factored in since the Petitioner had already started paying the revised pay scales (after removal of anomaly) after they got the approval of their administrative ministry (,MOP, GOI) vide order dated 4.4.2006 ,and implemented by the Petitioner vide office order no. 22/2006 dated 9.5.2006. In view of the above, we find no merit in the claim of the Petitioner for recovery of impact of pay revision in respect of its under-construction projects, for the tariff period 2004-09.

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

38. The Petitioner has claimed amount of Rs.4234.97 lakh in respect of projects which had been commissioned and Rs.2530.71 lakh in respect of its under-construction projects on account of retrospective revision of pay scales, duly certified by Auditor for the tariff



period 2009-14. Regulation 19(f) of the 2009 Tariff Regulations provide for the following O&M expense norms for hydro generating stations for the period 2009-14.

*(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.*

*(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.*

39. It is evident from the above methodology 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 operation and maintenance 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.

40. Further, in respect of under construction projects, wherein, the scheduled zero date was during the tariff period 2004-09, but the actual commissioning of the project was achieved during the tariff period 2009-14, the impact of revised pay scales along with the 50% increase in employee cost had already been factored in the normative O&M expense norms notified by the Commission. In view of this, we are not inclined to allow the Petitioner's claim for the tariff period 2009-14.

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

41. Admittedly, the 2014 Tariff Regulations notified by the Commission for the 2014-19 tariff period, had not factored in the impact of revision in salary and wages of employees of the Petitioner, with effect from 1.1.2017 and pay revision of CISF and KV/DAV employees, posted at the generating station of the Petitioner, with effect from 1.1.2016 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. Accordingly, the Petitioner has claimed an amount of Rs.8112.55 lakh for projects which have already been commissioned and Rs.198.54 lakh, in respect of under construction projects, on account of retrospective revision of pay scales, duly certified by the Auditor for the tariff period 2014-19.



42. The Petitioner has furnished the detailed break-up of the actual O&M expenses incurred in respect of all its generating stations, during the 2014-19 tariff period. From the table above, it is observed that the total 'actual (normalized) O&M expenses' incurred is more than the 'normative O&M expenses' recovered by the Petitioner, during each year of the 2014-19 tariff period. As stated earlier, the impact of pay revision could not be factored in by the Commission, while framing the O&M expense norms under the 2014-19 Tariff Regulations, as the pay revision came into effect only from 1.1.2016 (CISF & KV employees) and from 1.1.2017 (employees of the Petitioner) respectively. However, considering the submissions of the stakeholders, the Commission, in the Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations, had observed that the increase in employees cost due to impact of pay revision, will be examined on case to case basis, balancing the interest of generating stations and the consumers. The relevant extract of the SOR is extracted 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.*

*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."*



43. The methodology indicated in 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 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.

44. As such, in terms of the SOR to the 2014-19 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.*

45. It is pertinent to mention that the Commission, in its tariff orders for various generating stations (both hydro and thermal) for the 2014-19 tariff period, had adopted the above methodology for allowing the recovery of additional O&M expenses due to impact of pay revision, by comparing normative O&M expenses allowed to a generating station with the actual normalised O&M expenses. Accordingly, 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.



46. For comparison, the components of O&M expenses like Productivity Linked Incentive, Performance Related Pay, CSR expenses, Donations, Non-cash expenses like Provisions, Foreign Exchange Rate Variations (separately recoverable), Filing fees (separately recoverable) have been excluded from the yearly actual O&M expenses. Having done so, if the normative O&M expenses for the period 2014-19 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, are 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 impact of wage revision for the period 2014-19. The comparison of the actual O&M expenses incurred by the Petitioner with the wage revision impact for all the generating stations of the Petitioner are tabulated below:

<i>(Rs in lakh)</i>						
<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	79092.20	80046.62	102600.85	99683.46	102756.87	464180.00
B. Generation expenses	3039.97	3797.47	2527.33	2459.30	2154.54	13978.61
C. Other Expenses	64540.30	75483.00	85324.41	76025.13	96965.81	398338.66
D. Apportioned CO/RO Expenses	18698.20	17702.49	37486.06	38004.13	46256.60	158147.47
E. Total O&M Expenses (A+B+C+D)	165370.67	177029.58	227938.65	216172.01	248133.82	1034644.74
G. Exclusions	16025.65	16636.55	23625.98	17015.53	20628.50	94497.14
H Normalised O&M Expenses (E-G)	<b>149345.02</b>	<b>160393.03</b>	<b>204312.67</b>	<b>199156.48</b>	<b>227505.32</b>	<b>940147.59</b>

<i>(Rs in lakh)</i>						
<b>Normative O&amp;M expenses allowed for 2014-19:</b>	<b>Financial Year</b>					<b>Total</b>
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	
True-up of the tariff orders issued for 2014-19	54746.33	58064.59	61799.06	66395.41	70869.84	311875.23
True-up tariff petitions submitted, but pending for issuance of orders - Final tariff order issued for 2014-19	55238.48	58908.52	62822.41	66996.33	71447.58	315413.32





Petitions for truing-up submitted, but pending for issuance of orders-COD after 1.4.2012	19694.19	21488.89	28363.23	31555.51	42137.67	143239.49
<b>Grand Total</b>	<b>129679.00</b>	<b>138462.00</b>	<b>152984.70</b>	<b>164947.25</b>	<b>184455.09</b>	<b>770528.04</b>
Pay Revision & Gratuity Impact allowed in other Miscellaneous Petitions						58198.98
<b>Total O&amp;M expenses allowed:</b>						<b>828727.02</b>

47. The comparison of the actual O&M expenses incurred with the wage revision impact (excluding PRP) for the Petitioner is as under:

<i>(Rs in lakh)</i>						
<b>Summary</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>TOTAL</b>
Normalized actual O&M expenses including impact of Pay revision and Gratuity	149345.02	160393.03	204312.67	199156.48	227505.32	940147.59
Normative O&M expenses allowed by the Commission	129679.00	138462.00	152984.70	164947.25	184455.09	770528.04
Pay Revision & Gratuity impact allowed in Miscellaneous Petitions	-	-	-	-	-	58198.98
Excess of actual O&M expenses over Normative O&M allowed	<b>19666.02</b>	<b>21931.03</b>	<b>51327.97</b>	<b>34209.23</b>	<b>43050.23</b>	<b>111420.57</b>

48. The APTEL in the case of NTPC V MPSEB (2007 ELR APTEL 7) has held as under:

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

49. 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 all the generating stations of the Petitioner, and allow the impact of pay revision/regularisation, as additional O&M expenses, amounting to Rs.8112.55 lakh, for the projects which have already been commissioned and Rs. 198.54 lakh, in respect of the under-construction projects of the Petitioner, wherein COD was achieved during the 2014-19 tariff period.



50. 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 **February, 2023**. However, keeping in view the passage of time and in consumers' interest, we, as an exceptional case, 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 2014-19 tariff period.

### **Summary of Decisions**

51. The status of the retrospective pay scale revision/ regularisation claimed by the Petitioner vis-a-vis the impact of wage revision allowed for all the generating stations of the Petitioner, in respect of the tariff periods 2004-09, 2009-14 and 2014-19 are summarised below:

	Tariff Period			Total
	2004-09 (1.1.2007 to 31.3.2009)	2009-14	2014-19	
Pay Regularisation (for Commissioned Projects) <b>Claimed</b>	646.35	4234.97	8112.55	<b>12993.87</b>
Pay Regularisation (for Commissioned Projects) <b>Allowed</b>	0.00	0.00	8112.55	<b>8112.55</b>
Pay Regularisation (for Under construction Projects) <b>Claimed</b>	837.63	2530.71	198.54	<b>3566.88</b>
Pay Regularisation (for under construction Projects) <b>Allowed</b>	0.00	0.00	198.54	<b>198.54</b>
Total Pay Regularisation Impact <b>Claimed</b>	<b>1483.98</b>	<b>6765.68</b>	<b>8311.09</b>	<b>16560.75</b>

(Rs in lakh)



Total Pay Regularisation Impact <b>Allowed</b>	<b>0.00</b>	<b>0.00</b>	<b>8311.09</b>	<b>8311.09</b>
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52. 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 February, 2023. Further, no interest shall be charged by the Petitioner on these arrear payments on account of the pay revision impact,

53. Petition No. 343/MP/2019 is disposed of in terms of the above

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

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

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

