

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 347/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri P.K. Singh, Member

Date of order: 23rd October, 2021

In the matter of:

Petition under section 94 of the Electricity Act, 2003 read with regulations 79 and 111 of CERC (Conduct of Business) Regulations, 1999 and Regulation 54 & 55 of CERC (Terms & Conditions of Tariff) Regulations, 2014 for recovery of impact of wage revision of employees, Impact of GST, Minimum Wages and Security expenses (CISF) in Tehri HPP (1000MW) during the period from 01.01.2016 to 31.03.2019.

And

In the matter of

THDC India Limited,
(A Joint Venture of Govt. of India & Govt. of U.P.)
Pragatipuram, Bypass Road,
Rishikesh-249 201 (Uttarakhand).

.....Petitioner

Versus

1. Chairman & Managing Director,
Punjab State Power Corporation Limited,
The Mall,
Patiala – 147001 (Punjab).

2. Chairman,
Haryana Power Utilities (DHBVNL & UHBVNL),
Shakti Bhawan, Sector 6,
Panchkula – 134 109 (Haryana).



3. Chairman & Managing Director,
Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14 Ashok Marg,
Lucknow – 226001 (UP).

4. Chief Executive Officer,
BSES Rajdhani Power Limited, BSES Bhawan,
Nehru Place, Behind Nehru Place Bus Terminal,
New Delhi-110019.

5. Chief Executive Officer,
BSES Yamuna Power Limited,
3rd Floor, Shakti Kiran Building,
Karkardooma, Near Court,
New Delhi-110092.

6. Chief Executive Officer,
TATA Power Delhi Distribution Limited,
33KV, Grid Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009

7. Secretary (Engineering),
Engineering Department, Chandigarh Administration,
1st Floor, UT Secretariat, Sector 9-D,
Chandigarh-160009.

8. Managing Director,
Uttarakhand Power Corporation Limited,
UrjaBhawan, Kanwali Road,
Dehradun-248001 (UK).

9. The Chairman,
HPSEB Limited, VidyutBhawan,
Shimla-171004 (HP).

10. The Managing Director,
Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jyotinagar,
Jaipur-302005 (Rajasthan).



11. The Managing Director,
Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hatthi Bhatta, Jaipur road,
Ajmer-305001 (Rajasthan).
 12. The Managing Director,
Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area
Jodhpur-342003 (Rajasthan).
 13. Principal Secretary (Power),
Power Development Department (PDD),
Government of J&K, Civil Secretariat,
Jammu -180001 (J&K).
 14. Chief General Manager (Commercial),
MPPMCL, 3rd Floor, Block No. 11, Shakti Bhawan, Rampur
Jabalpur-482008 (MP).
 15. The Managing Director,
Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005 (Rajasthan).
 16. The Managing Director,
Jammu and Kashmir State Power Trading Company Limited,
PDD Complex, Bemina,
Srinagar – 190010 (Jammu & Kashmir)
-Respondents**

The following were present:

Ms. Anushree Bardhan, Advocate, THDC
Ms. Srishti Khindaria, Advocate, THDC
Shri Ravi Nair, Advocate, THDC
Shri Rajesh Sharma, THDC
Shri Mukesh Kumar Verma, THDC
Shri Ajay Vaish, THDC
Shri Rakesh Singh, THDC
Shri Ravindra Khare, MPPMCL
Shri Vikram Singh, UPPCL
Shri Brijesh Kumar Saxena, UPPCL



Shri R.B.Sharma, Advocate, BRPL
Ms. Megha Bajpeyi, BRPL
Shri Sanjay Jaiswal, RUVNL

ORDER

The Petitioner, THDC India Limited has commissioned the Tehri Hydro Power Project (1000 MW) in Tehri Garhwal in the State of Uttarakhand. The four units of the Tehri Hydro Power Project were put under commercial operation w.e.f. 9.7.2007 (Unit-I), 30.3.2007 (Unit-II), 09.11.2006 (Unit-III) and 22.09.2006 (Unit-IV).

2. The Petitioner had filed tariff Petition No. 178/GT/2015 in respect of Tehri HPP as per provisions of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations') for determination of tariff for the period from 1.4.2014 to 31.3.2019, which has been decided by the Commission vide order dated 29.3.2017. Review Petition No. 20/RP/2017 filed for review of the order dated 29.3.2017 has been decided by the Commission vide order dated 5.12.2017. Vide order dated 29.3.2017 in Petition No. 178/GT/2015 read with order dated 5.12.2017 in Review Petition No. 20/RP/2017, the Commission has allowed the following normative O&M Expenses:



(Rs. in lakh)

Year	2014-15	2015-16	2016-17	2017-18	2018-19
O&M Expenses	21340.78	22757.81	24268.93	25880.39	27598.84

Submissions of the Petitioner

3. The Petitioner in the instant petition has submitted as under:
- a) The expenditure on manpower deployed in the Power Station & Central Industrial Security Force (CISF)) is part of aforesaid O&M Expenses as per definition of O&M Expenses provided in Regulation 3(42) of the 2014 Tariff Regulations.
- b) The normative O&M expenses have been arrived as per Regulation 19(f)(v) of the 2009 Tariff Regulations.
- c) Regulation 29(3)(c) of the 2014 Tariff Regulations provides that *"In case of the hydro generating stations, which have not been in commercial operation for a period of three years as on 1.4.2014, operation and maintenance expenses shall be fixed at 2% of the original project cost (excluding cost of rehabilitation and resettlement works) for the first year of commercial operation. Further, in such case, operation and maintenance expenses in first year of commercial operation shall be escalated @6.04% per annum up to the year 2013-14 and then averaged to arrive at the O&M expenses at 2013-14 price level. It shall be thereafter escalated @6.64% per annum to arrive at operation and maintenance expenses in respective year of the tariff period."*
- d) Pay revision with effect from 1.1.2016 and 1.1.2017 were not taken into account while fixing the norms for the O&M expenses of



Tehri HPP. Had the pay revision or wage revision taken place at the time the norms were decided, the Commission would have taken into account its impact while fixing the norms. In other words, the legitimate expenditures incurred by the Petitioner are not being serviced as the same have not been factored in the norms. Section 61(d) of the Act provides that one of the guiding factors for determination of the terms and conditions of tariff is to safeguard consumer interest while ensuring recovery of the cost of electricity in a reasonable manner. Pay & allowances, security expense, GST etc. are mandatory expenditures and are a necessary inputs to determine cost of electricity. The said expenditure could not be factored at the time of determination of the norms since the pay revision came into force w.e.f. 1.1.2016 in respect of security forces and w.e.f. 1.1.2017 in respect of the employees of the Petitioner, due to change in law i.e. implementation of GST w.e.f. 01.07.2017. If the impact of pay revision or wage revision, security expenses, GST etc. are denied, it would result in under recovery of cost of electricity by the generating company. Therefore, the Commission may exercise its powers to remove the difficulty arising out of non-consideration of the impact of wage revision, Security expenses, GST etc. in the O&M norms for the period 2014-19.

e) This Commission in its order dated 1.12.2016 in Petition no. 318/GT/2014 in the matter of NTPC v. UPPCL has with regard to pay revision held that *"the prayer of the petitioner for enhancement of O&M expenses if any, due to pay revision may be examined by the Commission, on a case to case basis, subject to the implementation of pay revision as per DPE guidelines and the filing of an appropriate application by the petitioner in this regard."*



f) There is significant under-recovery of expenses in case of Tehri HPP on account of wage revision. A comparison of actual vs allowed O&M expenses for the tariff period 2014-19 is tabulated below:

(Rs. in lakh)			
Financial Year	Normative O&M Expenses allowed by the Commission	Actual O&M Expenses	Difference
	(a)	(b)	(a-b)
2014-15	21340.78	28041.10	(-)6700.32
2015-16	22757.81	29285.48	(-)6527.67
2016-17	24268.93	28906.61	(-)4637.68
2017-18	25880.39	32953.85	(-)7073.46
2018-19	27598.84	39514.31	(-)11915.47
Total	121846.75	158701.35	(-)36854.60

g) The effect of implementation of pay revision during tariff period 2014-19 was discussed in para-33.2 of Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations, which reads as under:

"Impact of Wage revision {Draft Regulation 29(4)}"

Commission's Views

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."



h) The pay revision of employees has been implemented by the Petitioner in the following manner:

- i. The decisions of the Central Government on the recommendations of 7th Central pay Commission was notified by the Department of Expenditure, Ministry of Finance vide Resolution No. 1-2/2016-IC dated 25.07.2016. Subsequently, Department of Expenditure, Ministry of Finance vide Office Memorandum No. 1-5/2016-IC dated 29.07.2016 has issued instructions for implementation of pay scales of Central Government Employees which was effective from 01.01.2016. Accordingly, additional cost has been incurred by the Petitioner on account of the pay revision of CISF deployed in the power station.
- ii. Department of Public Enterprises (DPE) vide various Office Memoranda dated 3.8.2017, 4.8.2017 and 7.9.2017 has issued guidelines for revision of pay scales & allowances of Board Level and below Board Level executives and non-unionized supervisors of Central Public Sector Enterprises (CPSEs) w.e.f. 1.1.2017.
- iii. The pay revision proposal of Board Level and below Board Level executives were approved by the Board of Directors of the Petitioner company in its 190th meeting held on 2.1.2018.
- iv. Pay revision proposal of workmen and supervisors were approved by the Board of Directors of the Petitioner company in its 197th meeting held on 27.02.2019.
- v. Memorandum No. W-02/0030/2018-DPE (WC)-GL-XVIII/18 dated: 10.7.2018, Department of Public Enterprises.



- vi. THDCIL Corporate Personnel Circular No. 01/2018 dated: 28.5.2018, 02/2018 dated: 11.3.2019 and 08/2019 dated: 29.5.2019.
 - vii. THDCIL Corporate Personnel Circular No. 03/2011, 04/2011, 05/2011 and 07/2011 dated: 5.4.2011.
 - viii. Memorandum of Understanding (MoU) between THDCIL management & workmen unions dated: 22.2.2019.
 - ix. Rates of Minimum Wages- Orders of The Deputy Chief Labour Commissioner (Central), Dehradun for variable Dearness allowance.
- i) Due to implementation of pay revision of CISF w.e.f. 1.1.2016 and pay revision of THDCIL employees w.e.f. 1.1.2017, the Petitioner has incurred additional expenses. In addition to this, THDCIL has also incurred additional expenses on account of increase in ceiling of gratuity from Rs. 10 lakh to Rs. 20 lakh w.e.f. 1.1.2017 as per provision 12.1 of DPE Guidelines on 3rd PRC and the impact of enhancement of ceiling of gratuity, minimum wages and implementation of GST are also covered under Regulation 3(9) and Regulation 8(3)(ii) of the 2014 Tariff Regulations under "Change in Law" w.e.f. 29.3.2018. This has resulted in substantial increase in O&M expenses in case of the Petitioner w.e.f. 2016-17.
- j) Year-wise impact on O&M expenses due to implementation of Pay Revision of THDCIL employees, CISF personnel, GST and Minimum Wages is tabulated below:



(Rs. in lakh)

Sl. No.	Description/ Financial Year	2015-16	2016-17	2017-18	2018-19
1	Impact of Pay revision of Executives	0.00	352.00	1469.00	1579.00
2	Impact of Pay revision of Supervisors	0.00	51.00	212.00	228.00
3	Impact of Pay revision of Workmen	0.00	505.00	2111.00	2270.00
4	Impact due to Minimum Wages	0.00	18.90	35.19	8.58
5	Impact of GST	0.00	-	106.84	74.86
6	Security Expenses (CISF)	1527.47	1783.13	2073.46	2340.10
	Total	1527.47	2710.03	6007.49	6500.54

k) The detailed break up of impact of pay revision, security expenses, GST and Minimum Wages duly audited by the statutory auditors has been submitted.

l) Under similar circumstances when the pay revision of CISF and THDCIL employees were implemented w.e.f. 1.1.2006 & 1.1.2007 respectively, the Petitioner had approached the Commission for reimbursement of additional expenses through tariff. The said petition (86/MP/2013) was decided by the Commission vide its order dated 14.2.2014 admitting the claim of the petitioner. The findings of the Commission in the above order equally hold good in the present scenario also.

m) The Commission while notifying the 2019 Tariff Regulations, applicable for the control period 2019-24, has also not factored the impact of wage revision in O&M expenses norms as is evident from paragraph 10.7.4 of SOR to the 2019 Tariff Regulations that provides that *"In case of hydro generating stations, the O&M expenses norms*



are provided for each of the generating stations in absolute terms, i.e. Rs. Lakh for each year. It is not practicable to derive a common impact for the hydro generating stations on account of employee pay revision, escalation in minimum wages and GST. Therefore, the Commission has decided that the impact on O&M Expenses on account of pay revision, escalation in minimum wages & GST shall be considered for each hydro generating station separately at the time of tariff petition for the tariff period 2019-24.” The 2014 Tariff Regulations specifies that the impact of pay revision, minimum wages & GST shall be in accordance with Regulation 35(2)(a). Thus, the intent of regulatory provisions is to allow separate reimbursement of O&M expenses on account of pay revision, security expenses, GST and Minimum Wages in case of hydro generating stations.

n) The Petitioner has filed truing up Petition for tariff of Tehri HPP considering the actual capital expenditure incurred up to COD of the generating station and the actual additional capitalization for the FYs 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 vide Diary No. 628 of 2019 dated 23.10.2019.

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



4. The Petition was heard and admitted on 8.4.2021 and Commission reserved the order in the petition on 29.6.2021.

Replies and Rejoinders

5. Reply to the Petition has been filed by the Respondents, MMPMCL (Respondent No.14), Discoms of Rajasthan (Respondent No.10, Respondent No.11 & Respondent No.12) and UPPCL (Respondent No.3). The Petitioner has filed its rejoinder to replies of the Respondents.

Reply of UP Power Corporation Limited (UPPCL), Respondent No.3

6. The Respondent, UPPCL in its reply dated 13.5.2021 has submitted as under:

a) There was no issue of pay revision (since it is made effect by GOI w.e.f. 1.1.2016 or 1.1.2017) and change in GST rate (w.e.f. 1.7.2017) at the time the 2014 Tariff Regulations were specified.

b) The 2014 Tariff Regulations was effective from 1.4.2014 to 31.3.2019 and stands repealed as on 1.4.2019 after the 2019 Tariff Regulations came into effect. As such, the power conferred on the Commission by Regulations 54 and 55 of the 2014 Tariff Regulations are not available on the date of filing of the Petition (13.3.2020).

c) The Petitioner has already filed a true-Up Petition before the Commission and as such the issue of recovery of expenses raised in this Petition should be considered by the Commission with the true-Up Petition only. Therefore, this Petition which is seeking recovery of



impact of pay or wage revision, GST, minimum wages and security expenses is not maintainable in isolation with the True-up Petition.

d) In case, the true-up Petition has not been disposed of by the Commission, the recovery of the expenses claimed by the Petitioner may be allowed by the Commission to the extent of payments or arrears paid only during control period 2014-19. Any amount or payment attributable to period 1.1.2016 to 31.3.2019 but paid after 1.4.2019 during control period 2019-24 might be rejected.

Rejoinder of the Petitioner to the Reply of UPPCL

7. The Petitioner in its rejoinder dated 4.6.2021 to reply of UPPCL has submitted as under:

a) The pay revision which came into effect from 1.1.2016 for the security personnel and 1.1.2017 for THDCIL employees were not taken into account while fixing the norms for the hydro generating stations by this Commission. In view of the above, this Commission in Petition no. 318/GT/2014 in the matter of NTPC v. UPPCL has held vide its order dated 1.12.2016 as well as in the Statement of Objects and Reasons for the 2014 Tariff Regulations that it will consider the claim of the O&M Expenses on a case to case basis.

b) O&M expenses claimed on account of impact of pay revision, wage revision, CISF expenses and GST etc. are for the period from 1.1.2016 to 31.3.2019. Therefore, the provisions of the 2014 Tariff Regulations shall be applicable.



c) The truing up Petition no. 98/GT/2020 has not been decided by the Commission so far.

Reply of MPPMCL, Respondent No.14

8. The Respondent, MPPMCL in its reply dated 2.2.2021 has submitted as under:

a) From reading Office Memorandum dated 3.8.2017 of the Ministry of Heavy Industries & Public Enterprise, the Petitioner has to bear the financial implications by its own and respondents are not liable to bear the burden under this count.

b) Proviso to Regulation 29(3)(b)(ii) of the 2014 Tariff regulations allows escalation @6.64% per annum in O&M expenses during tariff period 2014-19, which is sufficient to cover increase in O&M expenses.

c) The Commission has made a provision in the 2014 Tariff Regulations related to 'deviation from norms' which allows deviation from norms if actual parameters are better than the norms. The principle that 'the tariff is a composite package and any element cannot be seen as isolation' is well established. Tariff determined on normative basis needs to be compared with expenditure actually incurred and individual elements cannot be seen in isolation. In view of above, if employee expenses have to be allowed over and above normative O&M expenses, then all other normative parameters will also be required to be examined to excess the overall loss/ gain to the Petitioner for arriving at reasonable and justifiable proposition, which is not tenable.



d) The Petitioner has also claimed impact of GST in year 2017-18 and 2018-19 without providing proper documents/ supporting statements. On perusal of profit & loss statement it may also be seen that during whole tariff period, taxes paid by THDC were nil. Moreover, the Petitioner has already earned pre-tax RoE despite Nil taxes liability.

Rejoinder of the Petitioner to the reply of MPPMCL

9. The Petitioner in its rejoinder dated 9.3.2021 to the reply of MPPMCL has submitted as under:

a) The pay revision which came into effect from 1.1.2016 for the security personnel and 1.1.2017 for THDCIL employees were not taken into account while fixing the norms for the hydro generating stations by this Commission.

b) Legitimate expenditures incurred by the Petitioner on account of wage revision of employees, impact of GST, Minimum Wages and Security expenses (CISF) have to be serviced as the same have not been factored in the norms. Pay and allowances, Security expenses, GST etc. are mandatory expenditures and are a necessary input to determine cost of electricity.

c) The Petitioner has incurred expenditure of Rs. 36854.60 lakh over and above the normative O&M expenses provided for in Regulation 29(3)(c) of the 2014 Tariff Regulations for the period 2014-19.



d) The arguments of MPPMCL regarding the profits of THDCIL and the notification of Ministry of Heavy Industries & Public Enterprise dated 3.8.2017 are irrelevant as THDCIL has not taken any budgetary support from Government for implementation of pay revision of employees.

e) It cannot be the case of MPPMCL that irrespective of the additional costs which THDCIL has to incur on account of the above reasons, they will continue to supply the power to the beneficiaries at the same cost. This would be contrary to Section 61(d) of the Electricity Act, 2003. MPPMCL has not pointed out any mistake in the data furnished by THDCIL as regards claim for the additional O&M Expenses. Escalation @6.64% per annum in the O&M expenses provided for in the 2014 Tariff Regulations is not sufficient to cover the expenses incurred for claims raised in this petition.

f) The impact of GST on the O&M expenses in FY 2017-18 and FY 2018-19 is Rs. Rs. 106.84 lakh and Rs 74.86 lakh respectively.

g) THDCIL pays Income Tax on the total income earned from all the projects and the statement of income tax paid is shown in the Balance Sheet of the Company that is available in public domain (thdc.co.in). The Return on Equity has been computed by grossing up the base rate with the Actual rate of MAT/ Effective tax rate applicable for the period 2014-15 to 2018-19, which the company has actually paid. The Petitioner maintains books project/ unit wise and consolidates the accounts for company as a whole.

h) The Government of Uttarakhand issued Notification No. 32/XXXVI(3)/2013/67(1)/2012 dated: 28.01.2012 for Uttarakhand



water tax on electricity generation Act on non-consumptive use of water for electricity generation. THDCIL had challenged the notification vide writ Petition no. WPMS No. 187 of 2016 before the Hon'ble High Court of Uttarakhand at Nainital. The Hon'ble High Court of Uttarakhand on 12.2.2021 rejected the claim of THDCIL. The financial implication towards the water tax as on 31.12.2020 billed amount to Rs. 332.50 crore. The Petitioner is in the process of challenging the order before the appropriate forum and claim for such tax shall be subject to the outcome of Hon'ble Court order.

Reply of Discoms of Rajasthan, Respondent No.10, 11 and 12

10. The Respondents, Discoms of Rajasthan in their reply dated 20.4.2021 have submitted as under:

a) The petitioner has not provided the details of number of employees, designation and pay-scale of each employee along with the percentage breakup of the increase in each component of salary. This is essential in order to ascertain if the revision in salary pertains to basic salary or bonuses or incentives.

b) The Commission may consider any one-time bonus or incentives to be carried out from Return on Equity (RoE) and the Petitioner should not be allowed to pass such cost on to the consumers by adding it to O&M expenses.

c) The security expenses, as claimed by the petitioner, have witnessed an increase of 53% from FY 2015-16 to FY 2018-19.

d) The Petitioner has not provided any details regarding reimbursement of wage revision which can result in financial impact



due to employees providing contractual services/ consultancy services.

e) The man/MW ratio in generating stations has been high. The Petitioner may be directed to provide a benchmark of man/MW ratio of industry distributing the employee cost from top management to lower cadre with its individual stations to support its claim.

Rejoinder of the Petitioner to the reply of Discoms of Rajasthan

11. The Petitioner in its rejoinder dated 4.6.2021 to reply of the Discoms of Rajasthan has submitted as under:

a) No PRP/ incentive/ ex-gratia/ bonus has been included in the wage revision impact claimed for executives/ supervisors/ workmen.

b) Expenses for CISF salary from FY 2015-16 to FY 2018-19 is provided in actual along with arrear payment. Pay Commission of CISF was implemented from January 2016 and the same was regularized by CISF in the month of August 2016.

c) The basis and rationale for arriving at amount of impact due to minimum wages is in line with the notification issued by the Deputy Labour Commissioner (Central), Ministry of Labour & Employment, Government of India for revised Minimum rates of wages payable to the employees employed in the "Construction or maintenance of roads, runways or in building operation including laying down underground electric, wireless, radio, television, telephone, telegraph & overseas communication cables and similar underground cable works, electric lines, water supply lines & sewerage pipe lines".



d) The man/MW ratio for Tehri HPP is in line with the benchmark provided by CEA for National electricity plan 2018.

Analysis and Decision

12. Before considering the prayers of the Petitioner, we consider it appropriate to deal with contention of respondents as regards maintainability of the Petition.

13. UPPCL has contended that the Petitioner is not entitled to any relief on basis of provisions of the 2014 Tariff Regulations claiming that the 2014 Tariff Regulations has been repealed. In Multi-Year Tariff Regulations, the Tariff Regulations subsist, do not get repealed and become applicable for the relevant Tariff period. Hence, the 2014 Tariff Regulations still subsist and are not repealed. Therefore, the contention of UPPCL is devoid of merit and, hence, rejected.

14. Another contention of UPPCL is that the Petitioner has filed true-up petition bearing Petition No. 98/GT/2020 and that the Petitioner cannot claim wage/ pay revision in this Petition. We note that Petition No. 98/GT/2020 is still to be decided. Also, there is no provision in the 2014 Tariff Regulations requiring that wage revision has to be considered only in the true-up petition. However, it shall be ensured that there is no duplicity in the claims of the Petitioner in this petition and in Petition No. 98/GT/2020.



15. MPPMCL has contended that Office Memorandum dated 3.8.2017 of the Ministry of Heavy Industries & Public Enterprise, based on which pay revision of employees of the Petitioner has been claimed, provides that the Petitioner has to bear the financial implications by its own. MPPMCL has contended that the Respondents should not be required to pay any such expense. The Petitioner has submitted that as provided in the aforesaid OM of the Ministry of Heavy Industries & Public Enterprise, no budgetary support has been sought by the Petitioner.

16. Since salary to the employees of the Petitioner is paid through O&M expenses provided in the 2014 Tariff Regulations, any revision in salary/ pay also needs to be considered in light of provisions of the 2014 Tariff Regulations only. In our view, balancing the interest of the Petitioner and the respondents would serve the requirements of Section 61 of the Electricity Act, 2003.

17. Having dealt with preliminary issues, we proceed to deal with claims of the Petitioner. The Petitioner in instant petition has claimed the following year-wise impact in O&M expenses due to implementation of pay revision of THDCIL employees, CISF personnel, implementation of GST and increase in Minimum Wages:



(Rs. in lakh)

Sl. No.	Description/ Financial Year	2015-16	2016-17	2017-18	2018-19	Total
1	Impact of Pay revision of Executives	0.00	352.00	1469.00	1579.00	3400.00
2	Impact of Pay revision of Supervisors	0.00	51.00	212.00	228.00	491.00
3	Impact of Pay revision of Workmen	0.00	505.00	2111.00	2270.00	4886.00
4	Impact due to Minimum Wages	0.00	18.90	35.19	8.58	62.67
5	Impact of GST	0.00	0.00	106.84	74.86	181.70
6	Security Expenses (CISF)	1527.47	1783.13	2073.46	2340.10	7724.16
	Total	1527.47	2710.03	6007.49	6500.54	16745.53

18. In this regard, the Commission vide ROP of the hearing dated 8.4.2021 had directed the Petitioner to furnish the following information:

(a) *Break-up of actual O&M expenditure for the tariff period 2014-19 under various sub-heads (as per Annexure-I enclosed) after including the pay revision impact (employees, CISF and KV), wage revision impact (minimum wages);*

(b) *Similar break-up of actual O&M expenses including pay revision impact for Corporate Centre/other offices & breakup of claimed wage revision impact on employee cost, expenses on corporate centre and on salaries of CISF & KV employee of the generating station (as per enclosed Annexure- II and Annexure- III, respectively) for the period 2014-19 along with allocation of the total O&M expenditure to various generating stations under construction, operational stations and any other offices along with basis of allocating such expenditure;*

(c) *Basis and rationale for claim on account of impact due to revision of minimum wages;*

(d) *Basis and rationale for claim on account of security expenses for CISF separately for 2014-19 tariff period, in place of impact of wage revision in respect of the CISF employees; and*

(e) *Any other information deemed necessary by the Petitioner in justification of the claimed wage revision impact.*



19. The Petitioner has submitted the details vide affidavit dated 24.5.2021 in compliance to ROP.

20. We have considered the submissions of the Petitioner. The Commission, while specifying the 2014 Tariff Regulations, had taken note in the SOR that any increase in the employee expenses, on account of pay revision shall be considered appropriately, on case to case basis, balancing the interest of generating stations and consumers. The same is reproduced below:

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

*33.2 The draft Regulations provided for a normative percentage of employee cost to total O&M expenses for generating stations and transmission system with an intention to provide a ceiling limit so that the same should not lead to any exorbitant increase in the O&M expenses resulting in spike in tariff. The Commission shall examine the increase in employee expenses on case to case basis and shall consider the same if found appropriate, to ensure that overall impact at the macro level is sustainable and thoroughly justified. Accordingly, clause 29(4) proposed in the draft Regulations has been deleted. **The impact of wage revision shall only be given after seeing impact of one full year and if it is found that O&M norms provided under Regulations are inadequate/insufficient to cover all justifiable O&M expenses for the***



particular year including employee expenses, then balance amount may be considered for reimbursement.”

21. The Petitioner has claimed additional O&M expenses of Rs.1527.47 lakh in 2015-16, Rs.2691.13 lakh in 2016-17, Rs.5865.46 lakh in 2017-18 and Rs.6417.10 lakh in 2018-19 towards impact of wage revision of employees of CISF personnel with effect from 1.1.2016 and for the employees of the Petitioner posted at the generating station, with effect from 1.1.2017. The Petitioner has also clarified that its claim does not include the impact on account of the payment of additional PRP/ex-gratia to its employees, consequent upon wage revision.

22. The methodology indicated in the SOR suggests a comparison of the normative O&M expenses with the actual O&M expenses, on a year to year basis. In this respect, the following facts need consideration:

- a) The norms are framed based on the averaging of the actual O&M expenses of past five years to capture the year on year variations in sub-heads of O&M;
- b) Certain cyclic expenditure may occur with a gap of one year or two years and as such adopting a longer duration i.e. five years for framing of norms also captures such expenditure which is not incurred on year to year basis;
- c) Generators when find that their actual expenditure has gone beyond the Normative O&M in a particular year put departmental restrictions and try to bring the expenditure for the next year below the norms.



23. As such, in consideration of above facts, we find it appropriate to compare the normative O&M expenses with the actual O&M expenses for a longer duration so as to capture the variation in the sub-heads due to above-mentioned facts. Accordingly, it is decided that for ascertaining that the O&M expense norms provided under the 2014 Tariff Regulations are inadequate/insufficient to cover all justifiable O&M expenses, including employee expenses, a comparison of the normative O&M expenses allowed by the Commission and the actual O&M expenses incurred by the Petitioner shall be made for four years i.e. 2015-19 period on a combined basis, which is commensurate with the wage revision claim being spread over these four years.

24. We have discussed the claims of the Petitioner under each head (impact due to GST implementation; impact due to Minimum Wages; impact due to pay revision of CISF personnel; and impact due to wage revision of employees of the Petitioner) in subsequent paragraphs.

Impact due of GST implementation:

25. The Petitioner has claimed additional O&M expenses of Rs.106.84 lakh in 2017-18 and Rs.74.86 lakh in 2018-19 on account of payment of GST. The Respondent, MPPMCL has submitted that the Petitioner has claimed impact of GST in year 2017-18 and 2018-19 without providing



proper documents/ supporting statements. It has also submitted that during the whole tariff period, taxes paid by THDC were nil and the Petitioner has already earned pre-tax RoE despite Nil taxes liability.

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

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

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



Impact due to revision of Minimum Wages:

28. With regard to additional O&M expense claimed by the Petitioner due to impact of minimum wages, the Commission vide ROP of the hearing dated 8.4.2021 directed the Petitioner to submit the 'basis and rationale for claim on account of impact due to revision of minimum wages'. The Petitioner in its reply has submitted as under:

"THDCIL states that the Basis and rationale for arriving at amount of impact due to minimum wages is in line with the Notification issued by the Dy. Labour Commissioner (Central), Ministry of Labour & Employment, Government of India- for revised Minimum rates of wages payable to the employees employed in the "Construction or maintenance of Roads, Runways or in Building Operation including laying down underground electric, wireless, Radio, Television, Telephone, Telegraph & Overseas communication cables and similar underground cable works, electric lines, water supply lines & sewerage pipe lines".

29. The Commission vide order dated 29.3.2017 in Petition No. 178/GT/2015 has allowed normative O&M expense for the instant generating station for the period 2014-19 based on the actual O&M expense for the period 2008-09 to 2012-13. While considering the actual expenses for the period 2008-09 to 2012-13, the Commission had only excluded the expenditure under the heads such as, productivity linked incentive and performance related pay, losses written off & loss on sale/ discarding of asset, Corporate Social Responsibility (CSR) and expenditure on gifts, survey and investigation expenditure and deferred revenue expenditure written off.



30. As such, the actual expenditure of minimum wages for the period 2008-2013 has been considered while calculating the allowable O&M expense for the period 2014-19. Further, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations is only after accounting for the variations during the period 2008-2013, which in our view, takes care of any variation due to revision in minimum wages also. In this background, we find no reason to grant additional O&M expenses towards minimum wages.

Impact due to implementation of Pay Revision of CISF Personnel (Security Expenses):

31. The Petitioner in the main petition had claimed the following impact in O&M expenses due to implementation of Pay Revision of CISF personnel:

(Rs. in lakh)					
Description/ Financial Year	2015-16	2016-17	2017-18	2018-19	Total
Security Expenses (CISF)	1527.47	1783.13	2073.46	2340.10	7724.16

32. Subsequently, the Petitioner vide affidavit dated 24.5.2021 has submitted as under:

‘Expenses for CISF salary from FY 2015-16 to FY 2018-19 is provided in actual along with arrear payment. Pay Commission of CISF was implemented from Jan-2016 and the same was regularized by CISF in the month of Aug 2016. Arrear for the period from Jan 2016 to July 2016 is enclosed herewith month wise and the impact of the same has been taken in F.Y. 2015-16 & 2016-17.’



33. The Petitioner vide affidavit dated 24.5.2021 has submitted the following claim due to Pay Revision of CISF personnel:

(Rs. in lakh)

Year	2018-19			2017-18		
	Pre-Revised	Post-Revised	Wage revision Impact	Pre-Revised	Post-Revised	Wage revision Impact
CISF	2340.10	2340.10	0.00	2073.46	2073.46	0.00
TOTAL	2340.10	2340.10	0.00	2073.46	2073.46	0.00

(Rs. in lakh)

Year	2016-17			2015-16		
	Pre-Revised	Post-Revised	Wage revision Impact	Pre-Revised	Post-Revised	Wage revision Impact
CISF	1718.52	1783.13	64.61	1479.01	1527.47	48.46
TOTAL	1718.52	1783.13	64.61	1479.01	1527.47	48.46

34. It is evident from above that the Petitioner has claimed impact of wage revision of CISF employees for 2015-16 and 2016-17. However, for the period 2017-18 and 2018-19, it is noted that pre-revised and post-revised pay is same and, therefore, there is apparently no impact of wage revision for these financial years. We also notice from the Petitioner's submission, vide affidavit dated 24.5.2021, that CISF headquarter has not given the impact of pay revision for the years 2017-18 and 2018-19. However, they have claimed the revised salary from the Petitioner.



35. It is pertinent to mention that while working out the O&M expenses for 2014-19 period, pay revision of CISF personnel (security expenses) was not considered by the Commission. Therefore, the same needs to be allowed. Also, as CISF headquarter has not given actual pay revision impact for 2017-18 and 2018-19 in respect of CISF personnel deployed at instant generating station, we are not able to work out the impact of pay revision in O&M expenses for 2017-19 period. Accordingly, we have considered the wage revision impact of CISF personnel for the year 2017-18 and 2018-19 limited to wage revision impact allowed in 2016-17 i.e. Rs.64.61 lakh.

36. Therefore, wage revision impact of CISF personnel for 2015-16 to 2018-19 is considered as follows:

	(Rs. in lakh)				
	2015-16	2016-17	2017-18	2018-19	Total
Claimed by the Petitioner (post revision pay)	1527.47	1783.13	2073.46	2340.10	7724.16
Impact due to wage revision of CISF personnel allowed	48.46	64.61	64.61	64.61	242.29

37. The Petitioner may pursue with CISF headquarter to get the details of the actual pay revision impact. While claiming the impact of O&M expenses from beneficiaries if actual impact of pay revision towards CISF personnel is available that shall be claimed from beneficiaries subject to



upper limit of Rs 242.29 lakh as allowed by the Commission in paragraph 36 above.

38. In view of the above, the Petitioner's claim {refer paragraph 3(j)} due to pay revision of THDCIL employees, CISF personnel, implementation of GST and increase in Minimum Wages is revised as follows:

(Rs. in lakh)						
Sl. No.	Description/ Financial Year	2015-16	2016-17	2017-18	2018-19	Total
1	Impact of Pay revision of Executives	0.00	352.00	1469.00	1579.00	3400.00
2	Impact of Pay revision of Supervisors	0.00	51.00	212.00	228.00	491.00
3	Impact of Pay revision of Workmen	0.00	505.00	2111.00	2270.00	4886.00
4	Impact due to Minimum Wages	0.00	0.00	0.00	0.00	0.00
5	Impact of GST	0.00	0.00	0.00	0.00	0.00
6	Security Expenses (CISF)	48.46	64.61	64.61	64.61	242.29
	Total	48.46	972.61	3856.61	4141.61	9019.29

39. Details of actual O&M expenses claimed by the Petitioner, normalized O&M expenses after excluding expenses as discussed at paragraph 22, normative O&M expenses allowed in Petition No 178/GT/2015 and under-recovery is as follows:



(Rs. in lakh)

Sl. No		2015-16	2016-17	2017-18	2018-19	Total
1	Actual O&M expenditure for generating station (a)	29285.48	28906.61	32953.85	39514.31	130660.26
2	Actual O&M expenses (normalized) (b)	26361.13	25874.53	29922.45	33461.99	115620.10
3	Normative O&M allowed in 178/GT/2015 (c)	22757.81	24268.93	25880.39	27598.84	100505.97
4	Under-recovery (d) = (b)-(c)	3603.32	1605.60	4042.06	5863.15	15114.13
5	Revised wage revision impact as per table under paragraph 38	48.46	972.61	3856.61	4141.61	9019.29

40. It is observed that during the period 2015-16 to 2018-19, the normative O&M expenses is less than the actual O&M expenses (normalized) and the under-recovery is to the tune of Rs.15114.13 lakh. As such, in terms of methodology described at paragraph 22, the wage revision impact (excluding PRP/incentive) is of Rs. 9019.29 lakh (as calculated in table above) is allowable. Accordingly, we, in exercise of Power to relax under Regulation 54 of the 2014 Tariff Regulations hereby relax Regulation 29(1) of the 2014 Tariff Regulations and allow the reimbursement of Rs. 9019.29 lakh to the Petitioner, as additional O&M charges for the period 2015-16 to 2018-19.

41. The arrears payments on account of the above allowed wage revision impact is payable by the beneficiaries in twelve equal monthly installments. Also, keeping in view the consumer interest, we, as a special



case, direct that no interest shall be charged by the Petitioner on the arrear payments on account of the pay/ wage revision impact allowed in this order. This arrangement, in our view, will balance the interest of both, the Petitioner and the Respondents. Further, considering the fact that wage revision impact is being allowed under power to relax, these expenses shall not be made a part of the O&M expenses for Annual Fixed Charges (AFC) being determined under the 2014 Tariff Regulations. The same shall be considered in Petition No. 98/GT/2020.

42. The Petitioner vide affidavit dated 10.3.2021 in its rejoinder to the reply of Respondent No. 14 (MPPMCL) has submitted that the Government of Uttarakhand issued Notification No. 32/XXXVI(3)/2013/67(1)/2012 dated 28.01.2012 for Uttarakhand water tax on electricity generation on non-consumptive use of water for electricity generation. THDCIL had challenged the notification vide writ Petition no. WPMS No. 187 of 2016 before the Hon'ble High Court of Uttarakhand at Nainital. The Hon'ble High Court of Uttarakhand on 12.2.2021 rejected the claim of THDCIL. The financial implication towards the water tax as on 31.12.2020 billed amount to Rs. 332.50 crore. It is submitted by THDCIL that it is in the process of challenging the order before the appropriate forum and claim for such tax shall be subject to the outcome of Hon'ble Court order.



43. The matter is sub-judice as mentioned by the Petitioner and the same is not part of the prayer of the instant Petition. Therefore, the issue raised by the Petitioner is not covered under the scope of this Petition.

44. Petition No. 347/MP/2020 is disposed of in terms of above.

Sd/-
(P.K. Singh)
Member

Sd/-
(I.S.Jha)
Member

Sd/-
(P.K.Pujari)
Chairperson

