

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 189/GT/2020

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 10th February 2025

In the matter of

Petition under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Chapter-3, Regulation-9 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for approval of tariff of Barauni Thermal Power Station, Stage-I (220 MW) for the period from 1.4.2019 to 31.3.2024.

AND

IN THE MATTER OF

NTPC Limited,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road, New Delhi-110003

...Petitioner

Vs

1. North Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna-800021
2. South Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna-800021

...Respondents

Parties present:

Shri Nilantika Banerjee, Advocate, NTPC
Shri Prashant Chaturvedi, Advocate, NTPC
Shri Puneeth Ganapathy, Advocate, Bihar Discoms
Ms Jayati Sinha, Advocate, Bihar Discoms



ORDER

This petition has been filed by the Petitioner, NTPC Limited, for approval of tariff of Barauni Thermal Power Station, Stage-I (2 x110 MW) (in short, “the generating station”) for the period from the date of takeover, i.e., 15.12.2018 to 31.3.2019 and the tariff period from 01.04.2019 to 31.03.2024, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations.

Background

2. Barauni Thermal Power Station Stage-I was previously owned by the Bihar State Power Generating Company Limited (“BSPGCL”) and the assets were taken over by the Petitioner with effect from 15.12.2018 and vested in it as per the Bihar Power Generation Undertakings Transfer Scheme, 2018 (“Transfer Scheme”) as notified by the Government of Bihar (“GoB”) on 27.06.2018 and subsequent amendment thereof vide dated 14.12.2018.

3. The generating station originally had 7 units with a total installed capacity of 365 MW (3 x 15 MW + 2 x 50 MW + 2 x 110 MW). However, Units 1 to 5 (3 x 15 MW + 2 x 50 MW) were already decommissioned prior to the transfer of assets to the Petitioner. Thus, the generating station has two units (Units 6 and 7) of 110 MW each, which are presently under shutdown.

4. As per the said Transfer Scheme, the majority of R & M works of the generating station were carried out by BSPGCL through the grant received from the Central/State Governments, and the Petitioner was to take over the generating station on an ‘as-is where-is-basis.’ The unutilised grant was required to be transferred to the Petitioner for completion of the balance R & M works, or alternatively, the payments were required to



be released by BSPGCL. The balance amount available with the Petitioner was to be adjusted against the power purchase dues of the Discoms. Accordingly, the Petitioner was required to revive the two units by selective repair, refurbishment, or R & M, as per the requirement.

5. NTPC entered into an amended and restated Power Purchase Agreement (“PPA”) with Bihar DISCOMS on 07.06.2018, assigning the previous PPA between Bihar DISCOMS and BSPGCL.

6. The Petitioner filed Petition No. 389/GT/2020 for the determination of the tariff of the generating station from the date of the takeover, i.e., 15.12.2018 to 31.3.2019. However, the Commission vide order dated 13.11.2023 in Petition No. 389/GT/2020 observed that Unit-6 and Unit-7 were neither in operation nor were declared under commercial operation during the period from 15.12.2018 to 31.3.2019 and the operational norms based on the performance after R&M, are also not available. Accordingly, the Commission directed as follows:

“16. It is noticed that the Petitioner has filed Petition No. 189/GT/2020 for determination of tariff of this generating station for the period 2019-24 and the Commission has reserved its orders. As the Units of the generating station have been re-commissioned during the period 2019-24 as stated above, the expenditure incurred from 15.12.2018 to 31.3.2019 and the information furnished by the Petitioner in this petition, shall also be considered in terms of clause 5.1.3 of the PPA along with the relevant provisions of the 2019 Tariff Regulations.

17. Petition No. 389/GT/2020.is disposed in terms of the above.”

Submissions of the Petitioner

7. The Petitioner, in the instant petition, has mainly submitted the following:



- a) Barauni Thermal Power Station Stage-I (hereinafter called 'BTPS Stage-I'), situated at Barauni in Begusarai District of Bihar, was previously owned by Bihar State Power Generating Company Ltd (BSPGCL). The assets of BTPS Stage-I were transferred w.e.f. on 15.12.2018 and vested in the Petitioner by the Government of Bihar (GoB) in accordance with the "The Bihar Power Generation Undertakings Transfer Scheme, 2018" (hereinafter called 'Transfer Scheme'), vide notification dated 27.6.2018 and subsequent amendment dated 14.12.2018.
- b) The tariff petition of the station Barauni-I for the tariff period 15.12.2018 to 31.3.2019 has been filed in accordance with the 2014 Tariff Regulations, along with this tariff petition, vide affidavit dated 15.1.2020.
- c) The actual closing capital cost as on 31.3.2019, as per the petition filed for the period 15.12.2018 to 31.3.2019, is Rs 32.49 Cr based on the actual expenditure claimed for the period 15.12.2018 to 31.3.2019. The Commission may be pleased to accordingly adopt this capital cost as on 31.3.2019 and determine the tariff in the present petition for the 2019-24 tariff period.
- d) The capital expenditure claimed in the instant petition is based on the opening capital cost as on 1.4.2019, considered as above, and capital expenditures for the 2019-24 tariff period have been projected based on Regulations 25 and 26 of the 2019 Tariff Regulations.
- e) Both units were under shutdown from 15.12.2018 to 22.5.2019. The Petitioner has not been able to get any revenue for the units under shutdown during this period. In view of the above, it is prayed that the Commission may allow Petitioner to bill O&M expenses and interest on the loan for the period of shutdown of R&M of Unit-7 (from 1.4.2019 to 22.5.2019) and Unit-6 (from 1.4.2019 to 15.12.2019) for sustained operation as per proviso to Regulation 42(2) of 2019 Tariff Regulations.
- f) The Petitioner is in the process of installing the Emission Control Systems (ECS) in compliance with the Revised Emission Standards as notified by MOEF vide notification dated 7.12.2015 as amended. The Petitioner has submitted that it would be filing the details in a separate petition in terms of Regulation 29 of the 2019 Tariff Regulations. The tariff of the instant petition would undergo changes consequent to the order of the Commission in the said ECS petition.
- g) A notification dated 25.01.2016 has been issued by the Government of India, Ministry of Environment, Forest & Climate Change (MOEFCC) under the statutory provisions of the Environment (Protection) Act 1986. The said notification of MOEFCC prescribed for the bearing of transportation cost of Fly Ash generated at power stations. In this regard, Petitioner filed a petition, being



no. 172/MP/2016, before the Commission seeking reimbursement of the additional expenditure for Fly Ash Transportation directly from the beneficiaries as the same was in the nature of the statutory expense. The Commission, vide order dated 05.11.2018, disposed of the said petition and directed as follows:

“31. Accordingly, we in exercise of the regulatory power hold that the actual additional expenditure incurred by the Petitioner towards transportation of ash in terms of the MOEFCC Notification is admissible under “Change in Law” as additional O&M expenses. However, the admissibility of the claims is subject to prudence check of the following conditions on case to case basis for each station:

a) Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash.

b) Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors.

c) Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilisation up to 25.1.2016 and from 25.1.2016 to till date, separately.

d) Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification.

32. The Petitioner is granted liberty to approach the Commission at the time of revision of tariff of the generating stations based on true-up exercise for the period 2014-19 in terms of Regulation 8 of the 2014 Tariff Regulations along with all details / information, duly certified by auditor.”

- h) The expenditure towards the ash transportation charges is recurring in nature. The Petitioner would be incurring ash transportation expenditure in some of its stations in the current tariff period. In case the same is permitted to be recovered at the end of the tariff 2019-24 tariff period, there will be additional liability on the beneficiary on account of the interest payment for the period till the time the true-up petitions for the 2019-24 tariff period are decided. To avoid the interest payment liability of the beneficiaries, it is prayed that the Petitioner may be allowed to recover/ pass on the ash transportation charges after adjusting the revenue earned from the sale of ash at the end of each quarter of the financial year subject to true-up at the end of the period.
- i) The Petitioner is filing this tariff petition subject to the outcome of its various appeals/petitions pending before different courts. Besides, the petitions filed by NTPC for the determination of capital base as on 31.3.2014 are also being filed along with this petition. The Petitioner, therefore, reserves its right to amend the tariff petition as per the outcome in such appeals/ petitions, if required.
- j) In the background of the above, the Petitioner has prayed the following:
- i) Approve tariff of Barauni Thermal Power Station Stage-I for the tariff period 01.04.2019 to 31.03.2024.*



- ii) Allow norms of operation based on actual performance achieved by station.
- iii) Allow billing of O&M expenses and interest of loan component of AFC for Unit-7 from 01.04.2019 to 22.05.2019 and for Unit-6 from 01.04.2019 onwards till 15.12.2019 (From 16.12.2019 unit made available for generation).
- iv) Allow the recovery of filing fees as & when paid to the Commission and publication expenses from the beneficiaries.
- v) Allow reimbursement of Ash Transportation Charges directly from the beneficiaries quarterly on net basis.
- vi) Pass any other order as it may deem fit in the circumstances mentioned above.

k) The Capital Cost claimed by the Petitioner is as follows:

Particulars	2019-20 (1.4.2019 to 22.5.2019)	2019-20 (23.5.2019 to 15.12.2019)	2019-20 (16.12.2019 to 31.3.2020)	2020-21	2021-22	2022- 23	2023-24
Opening Capital Cost	3249.16	8104.12	11750.93	11750.93	16196.82	6796.82	16796.82
Add: Addition during the year / period	0.00	0.00	0.00	4445.89	600.00	0.00	0.00
Less: Decapitalisation during the year /period	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Less: Reversal during the year/period	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Add: Discharges during the year /period	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Closing Capital Cost	3249.16	8104.12	11750.93	16196.82	16796.82	6796.82	16796.82

l) The annual fixed charges, to the extent of Interest on loan (IOL) and O&M expenses claimed by the Petitioner, are as under:

S. No.		2019-20 (1.4.2019 to 22.5.2019)	2019-20 (23.5.2019 to 15.12.2019)	2019-20 (16.12.2019 to 31.3.2020)	2020-21	2021-22	2022-23	2023-24
1.1	Depreciation	0.00	1458.74	2,067.07	2519.21	3182.20	3293.55	3293.55
1.2	Interest on Loan	189.00	426.79	557.23	556.78	471.64	233.95	52.34
1.3	Return on Equity	183.08	456.63	662.12	785.29	925.36	942.26	942.26
1.4	Interest on Working Capital	0.00	1257.15	1,578.00	1897.59	1908.41	1,906.76	1,903.45
1.5	O and M Expenses	6921.67	6921.67	6921.67	10438.20	10438.20	10438.20	10438.20
	Total Annual fixed Charges	7293.75	10520.98	11786.09	16197.06	16925.81	16814.72	16629.79

Replies and Rejoinders

8. Replies to the Petition have been filed by the Respondents, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited (Bihar Discoms), and the Petitioner has filed its rejoinders to the said replies.

9. The Respondents/Bihar DISCOMs vide affidavit dated 30.6.2021 mostly denied the claims of the Petitioner and submitted as follows:

a) According to the indicative benefits on account of reduced tariff post takeover of BTPS by NTPC, it was envisaged that there would be an annual savings of Rs. 29 Crores in BTPS Stage – I and Rs. 655.07 Crores in BTPS Stage – II. Subsequently, the Memorandum of Understanding (“**MoU**”) dated 15.05.2018 was entered into between the Government of Bihar, Bihar State Power Holding Company Ltd., Bihar State Power Generation Company Ltd., Bihar State Power Transmission Company Ltd., Respondents, and NTPC. As per the MoU, it was the understanding between the parties - including the Respondents and NTPC, that the power generation cost would be reduced for the consumers of Bihar, and the power projects would achieve enhanced operational performance.

b) NTPC may be directed to submit on an affidavit as to how the power generated from the BTPS Stage –I would be efficient and cost-effective, as compared to the power generation results prior to the takeover of the plant by NTPC.

c) The NTPC has submitted that Unit 7 was revived for generation from 23.05.2019. After restoration/refurbishment/R&M, the said restoration/refurbishment/R&M was carried out by BSPGCL prior to the transfer of BTPS to NTPC. Further, it was also submitted by NTPC that Unit 6 was under shutdown for R&M and started generation only on 16.12.2019. However, in view of the provisions of CEA Guidelines (Guidelines for Renovation and Modernisation / Life Extension Works of Coal/Lignite based Thermal Power Stations, October 2009), NTPC has not submitted any certificate/consent from concerned SLDC/beneficiaries on successful completion of R&M of Unit 6. The Respondents challenged the veracity of the successful completion of the R&M of Unit 6 conducted by NTPC.



d) The Petitioner claimed that Unit 6 of the BTPS began generating power on December 16, 2019, and included this in their tariff petition, along with O&M expenses and interest on loans. However, the respondents, as sole beneficiaries, argued that Unit 6 had not started generation and remained under shutdown. NTPC may be directed to provide documentary evidence to establish that the generation from Unit 6 has, in fact, commenced from 16.12.2019 and has been continuously supplying power from the said Unit till date. The respondents requested the commission to disallow the Petitioner's claims for Unit 6, pending a prudency check.

e) The Petitioner has not provided any details qua the water consumption by BTPS Stage – I and has simply replied on a letter issued by Water Resources Department, Govt. of Bihar, to seek in-principle relief. Bihar DISCOMs submitted that such relief, which is contrary to the extant regulations issued by the Commission, ought not be allowed.

f) The Petitioner has made several errors in seeking approval of the operating norms. The Respondents requested this Commission to direct NTPC to provide the actual operating norms for Units 6 & 7 and, accordingly, rework and resubmit the operating norms for prudency check and approval before this Commission.

g) NTPC should provide component-wise actual expenditure details under the head O&M Expenses for the period 01.04.2019 to 31.03.2020.

h) NTPC has not submitted the details of expenditure made from the unutilized grant received from BSPGCL/Niti Aayog and details of expenditure made from the additional amount retained from BSPGCL. The Petitioner may be directed to provide these details for prudency check by this Commission.

i) The useful life of BTPS Stage – I can be determined either through RLA studies or on mutually agreed terms. Since there exists no mutual agreement between the Respondents and NTPC qua the determination on the useful life of Stage – I, RLA studies would have to be referred to determine the same. Although NTPC has referred to some RLA studies conducted by BSPGCL to submit that the useful life of Stage – I is 5 years from the date of re-commissioning of units; however, no such study has been put on record by NTPC for consideration and prudency check of this Hon'ble Commission.



j) In terms of Regulation 29 (1), NTPC is obligated to share the proposal for implementing the ECS with the beneficiaries. As already submitted by NTPC in the petition that NTPC is in the process of installing ECS, NTPC may be directed to share the proposal for the same, along with details of Investment Approval and Cost-benefit analysis.

k) A comparative chart analyzing the component-wise difference between the estimated fixed charges and the claimed fixed charges is necessary to ascertain the difference between the cost of the project vis-à-vis the estimated cost for the purposes of determining each component of annual fixed cost in terms of Chapter 8 of the 2019 Tariff Regulations. Hence, NTPC may be directed to furnish such details.

10. The Petitioner, vide additional affidavit dated 26.11.2021, filed a rejoinder in response to the joint reply by the Respondents dated 30.6.2021 and submitted that it is not prudent on the part of the Respondents to attempt to stall the present proceedings after having agreed (in PPA dated 7.6.2018) for tariff as determined by the Commission and hence the reliance placed upon the MoU by the Respondents is wholly misplaced and liable to be rejected. In the context of the contentions raised by the Respondents, the Petitioner has submitted that neither the 2019 Tariff Regulations nor the Central Electricity Authority Guidelines, 2009 ("CEA Guidelines") mandates the Petitioner to submit any certificate/consent from concerned SLDC/beneficiaries on successful completion of R&M of the instant Station.

11. The Petitioner further submitted that the claim for Water Charges is based on the estimated expenses for the 2019-24 tariff period. The same shall be subject to retrospective adjustment based on actuals at the time of truing up. In so far as Unit-6 is concerned the same was under shutdown on the date of takeover and only started generation from 16.12.2019, i.e., even after a period of 1 year from the date of transfer. Hence, no actual operation figures were available for the period stipulated in Article 5.1.4



of the PPA. Further, upon operationalization and stabilisation of Unit 6 the operational figures have been considered by the Petitioner. The Petitioner has claimed the actuals for the period from 23.5.2019 to 15.12.2019 as per the Norms of Operation envisaged under Clause 5.1.4 of the reinstated and amended PPA dated 7.6.2018 and from 16.12.2019 to 31.3.2020 average of actual of Unit-7 performance from 23.5.2019 to 30.10.2019 and BERC approved norms for FY 2018-19 has been considered.

12. Further, the Petitioner, vide various additional affidavits dated 18.8.2021, 2.5.2022, and 28.5.2024, has refuted the claims made by the Respondents. Also, the Respondents, vide various additional affidavits dated 26.8.2021, 24.5.2022, and 17.6.2024, submitted counter-arguments.

Hearing dated 25.2.2022

13. The Petition, along with Petition No.389/GT/2020 (tariff of generating station from date of takeover to 31.3.2019), was heard on 25.2.2022, and the Commission, after seeking certain additional information from the Petitioner, reserved its order in the petition.

14. The Petitioner has filed its note of submissions of the vide dated 25.2.2022 and has later filed its additional information vide affidavit dated 2.5.2022 after serving a copy on the Respondents. The Respondent Nos. 1 and 2 vide affidavit dated 24.5.2022 has filed its reply to the same.

Hearing dated 6.2.2024

15. The matter was re-listed for hearing due to a change in Coram. During the hearing of the petition on 6.2.2024, additional information was sought from the



Petitioner. The Respondents were also permitted to file their replies. Subject to the above, an order in the matter was reserved.

Submission of the Petitioner vide affidavit dated 28.5.2024

16. With reference to the RoP of hearing dated 6.2.2024, the Petitioner vide affidavit dated 28.5.2024, inter alia, submitted as follows:

- a) The Petition has been filed on 20.1.2020 for Barauni Stage-I on an anticipated basis for 2019-24, and the actual date of re-commissioning of Unit-6 is 1.6.2022.
- b) The units were decommissioned on 31.3.2024, and a station- level committee has been formed thereafter to ascertain the details of utilisation of R&M funds available as on 31.12.2021.
- c) No infirm power was generated by Unit-7 till 22.5.2019, and the unit was under shutdown at the time of takeover and was revived on 23.5.2019; hence infirm power is not applicable for Unit-7

Hearing dated 13.8.2024

17. The Petition was re-listed for hearing due to a change in Coram, and the order was reserved in the matter.

Submission of the Petitioner and Respondents in compliance with RoP dated 13.8.2024

18. In response to the RoP of hearing dated 13.8.2024 and continuation thereof, the Petitioner has filed additional submissions vide affidavit dated 27.9.2024 and mainly submitted as follows:

- a) The work of the 'firefighting system' as claimed in 189/GT/2020, was on a projection basis and it has not been executed in the 2019-24 tariff period.

b) UDIN was not generated by the auditor while signing in Stage I BSPL; however, the auditor has digitally signed all the documents. The Petitioner also submitted that compliance related to UDIN will be ensured for all future purposes.

c) In regard to '*Reason for not conducting third party sampling from July 2019 to September 2019 along with the reason for not claiming credit/debit note from the coal company for the high loss in GCV and the details of remedial action taken by the Petitioner to resolve the same*', the Petitioner submitted that at the time of the takeover, the assets were transferred on where is as-is basis. The petitioner, after contract resource mobilization entered into an agreement with CIMFR on 22.07.2019, and the work for third-party sampling & analysis was awarded to CIMFR on 16.11.2019.

d) Regarding the difference between 'GCV as billed' and 'GCV as received,' the Petitioner submitted that 'GCV as billed, is done at the loading end on an Equilibrated (EQ) basis, whereas 'GCV as received' is at unloading end and on Total Moisture (TM) basis. One of the reasons for the gap is the presence of surface moisture in the coal, as received, leading to a difference in GCV with respect to the GCV measured at EQ basis at the loading end. The Petitioner also submitted that as coal is heterogeneous in nature, the loading end and unloading end may differ in characteristics, leading to differences in GCV. Further, the indicated GCV loss comparison is given on the basis of as billed (EQ) and as received (TM).

e) Presently, the supply and transportation of coal is through entities which are essentially monopolistic. However, the petitioner has made all possible efforts to reduce the grade slippage, such as carrying out third-party sampling as per GOI guidelines. However, the grade slippage during transit, if any, is beyond the reasonable control of the Petitioner, and the commercial settlement for procurement of coal is based on the declared Grade of mines (i.e., GCV of declared grade.

f) In regard to '*The revised tariff forms as per the actual date of recommissioning for Unit-6 and Unit-7*', the Petitioner submitted that since the tariff period 2019-24 is over, the petitioner is required to file the revised tariff forms as on actual date of recommissioning for Unit-7 (23.05.2019) and Unit-6 (01.06.2022) and up to 31.03.2024. Further, the Station has been



decommissioned w.e.f. 31.03.2024, the Petitioner has prayed to file a consolidated petition for tariff period 2019-24 as per Tariff Regulations 2019 to save the precious time of this Commission.

19. The Respondents/Bihar DISCOMs, in response to the Additional Submissions filed by the Petitioner dated 27.9.2024, filed an affidavit dated 18.10.2024 and mainly submitted as follows:

a) The credentials of the auditor, as well as details such as the UDIN for the audited accounts for FY 2023-24, have not been provided in the audited accounts. Pursuant to Notification No.1-CA(7)/192/2019 dated 2.8.2019 issued by the Institute of Chartered Accountants of India, the generation of UDIN was made mandatory for all kinds of certification, GST, and Tax Audit Reports and other Audit, Assurance, and Attestation functions undertaken/signed by a chartered accountant w.e.f. 2019. In view of the same, the accounts furnished by the Petitioner cannot be treated as duly audited and, therefore, cannot be conclusively relied on in the absence of appropriate UDIN. Accordingly, the Petitioner may be directed to furnish proper audited accounts in accordance with the directions of this Commission vide its letter dated 30.8.2024.

b) Also, the accounts furnished by the Petitioner do not contain the auditor's report. Accordingly, the Petitioner may be directed to submit the auditor's report issued along with the accounts.

c) The Respondent argued against the scope of work furnished by the Petitioner against the 'R&M Utilisation fund' and 'firefighting system,' and the same ought to be disallowed by the Commission.

d) The Commission had specifically directed the Petitioner to provide the bifurcation of apportionment of water charges and security expenses: (a) between Barauni Stage I & II and (b) between Unit-6 and Unit-7. However, no such bifurcation has been provided by the Petitioner. In this regard, the contention of the Petitioner that apportionment has been done 'as per MW ratio' is evasive and misleading.

e) Units 6 and 7 of BTPS-I were barely functional as evidenced by the fact that they remained shut down for a majority of the period in the tariff 2019-24 tariff period. Accordingly, since the constituent units of BTPS-I were admittedly



not in operation for significant periods in 2019-2024, uniform apportionment of security expenses and water charges cannot be allowed.

f) The Petitioner has admittedly carried out GCV analysis for the period July-September 2019 through its internal laboratories. This is in clear contravention of the mandatory provisions of the 2019 Tariff Regulations. Accordingly, GCV analysis carried out by the Petitioner ought to be disregarded in its entirety and any claim by the Petitioner towards costs of conducting such analysis should also be disallowed. Further, the Petitioner has failed to justify the large loss of GCV in comparison to the 'as billed' and 'as received' quantities or remedial actions taken by it.

g) The Respondent reiterated that Units 6 and 7 of BTPS-I have barely functioned/been available for evacuation of power on account of large-scale shutdowns and periodic outages between 2019-24 up until their decommissioning w.e.f. 31.03.2024.

h) Further, in the event the Petitioner is directed to file a consolidated petition for tariff 2019-24 tariff period, the same cannot be used as an opportunity to develop or better the case of the Petitioner in the instant petition.

Analysis and Decision

20. The Commission, without going into the merit of the case in the instant petition, noted the submissions of the Petitioner and also the rival submissions of the Respondents/Bihar DISCOMs on various issues, such as the veracity of successful completion of R&M of Unit 6 of BTPS conducted by the Petitioner, O&M norms, RLA studies, R&M utilization, firefighting system, the difference in GCV as billed vis-a-vis GCV as received, third party sampling, obligations under MoU, a requirement under CEA guidelines, water charges, UDIN for the audited accounts, etc.

21. The Commission notes the Petitioner's submission vide affidavit dated 27.9.2024 regarding the requirement to file revised tariff forms based on the actual re-commissioning dates for Unit-7 (23.05.2019) and Unit-6 (01.06.2022) and up to



31.03.2024. Further, as per the submission of the Petitioner vide affidavit dated 27.9.2024, it is noticed that the Station was decommissioned w.e.f. 31.03.2024, and the Petitioner seeks to file a consolidated petition for the tariff period 2019-24 in accordance with the 2019 Tariff Regulations.

22. The Commission observes that the Respondents, vide affidavit dated 18.10.2024, have also submitted that the Petitioner may be directed to submit tariff forms based on the actual date of commissioning of Unit-6 and Unit-7 of the Barauni Stage-I. Further, in the event the Petitioner is directed to file a consolidated petition, the same cannot be used as an opportunity to develop or better the case of the Petitioner in the instant petition. The Respondents also submitted that the period for which the plant was under shutdown should be taken into consideration for the determination of the PAFM and, consequently, the capacity charges and tariff for the 2019-24 tariff period. It was pointed out that Unit-6 and Unit-7 of BTPS-I were under shutdown and not operational for a vast majority of the time in the 2019-24 tariff period.

23. It is also pertinent to mention that the Commission vide order dated 13.11.2023 in Petition No. 389/GT/2020 observed that the expenditure incurred from 15.12.2018 (from the date of takeover) to 31.3.2019 and the information furnished by the Petitioner in Petition No. 389/GT/2020 shall be considered in terms of clause 5.1.3 of the PPA along with the relevant provisions of the 2019 Tariff Regulations. The relevant extracts of the aforesaid Order are reproduced below:

“15. It is evident from the above that the recovery of Interest on loan and O&M expenses are permissible towards R&M that are generally carried out at the fag end of useful life or after the completion of useful life. This is not so in the present case, wherein, both the Units of the generating station were not operational and were under shutdown at the time of takeover by the Petitioner from BSPGCL and the Petitioner was required to revive and re-commission these plants. It is also noticed from the submissions of BSPGCL that the COD of Unit-7 after R&M was



achieved on 4.11.2016 (prior to the takeover), but was not in operation due to some other technical reasons. Moreover, the operational norms relied upon by the Petitioner, corresponds to Unit-7 which admittedly has a higher heat rate. Also, in terms of the transfer scheme, R&M of Stage-I is to be carried out by the Petitioner through grant from Central or State Government and the un-utilized grant will be transferred to the Petitioner to complete the balance R&M works or alternatively the payment will be released by BSPGCL. It also provides for the Petitioner to retain an additional amount for adjusting any contingency payment for utilising towards completion of activities for Stage-I. Further, Clause 5.1.3 of the PPA provides that any capital expenditure incurred by the Petitioner on a restoration, refurbishment, efficient operation of the generating station associated studies and such other works shall form part of the capital cost for the purpose of tariff. It is noticed that the Petitioner has utilized the contingent payments for making these Units operational and accordingly Unit-6 and 7 were re-commissioned on 16.12.2019 and 23.5.2019, respectively. Admittedly, these Units were neither in operation nor were declared under commercial operation, during the period from 15.12.2018 to 31.3.2019 and the operational norms, based on the performance after R&M, is also not available. In consideration of the above factors, we find no reason to grant the reliefs as prayed for by the Petitioner, in para 3 above.

16. It is noticed that the Petitioner has filed Petition No. 189/GT/2020 for determination of tariff of this generating station for the period 2019-24 and the Commission has reserved its orders. As the Units of the generating station have been re-commissioned during the period 2019-24 as stated above, the expenditure incurred from 15.12.2018 to 31.3.2019 and the information furnished by the Petitioner in this petition, shall also be considered in terms of clause 5.1.3 of the PPA along with the relevant provisions of the 2019 Tariff Regulations.

17. Petition No. 389/GT/2020 is disposed in terms of the above.”

24. Keeping in view the submissions of the Petitioner to file a consolidated petition based on the actual date of re-commissioning for Unit-7 (23.05.2019) and Unit-6 (01.06.2022) and up to 31.03.2024 and decommissioning of the Station w.e.f. 31.3.2024, the Commission permits the Petitioner to withdraw the present petition, with liberty to the Petitioner to approach the Commission with a consolidated tariff petition for determination of tariff of Unit-6 & Unit-7 of BTPS Stage-I, in terms of clause 5.1.3 of the PPA along with the relevant provisions of the 2019 Tariff Regulations. Further, the information furnished by the Petitioner in this petition, as well as in Petition No. 389/GT/2020, including the details sought in RoP in entirety, shall also be considered

by this Commission while tariff determination in the consolidated petition to be filed by the Petitioner in future.

25. Petition No. 189/GT/2020 is disposed of in terms of the above.

**Sd/
(Harish Dudani)
Member**

**Sd/
(Ramesh Babu V.)
Member**

**Sd/
(Jishnu Barua)
Chairperson**

