

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.130/GT/2014

- Subject : Petition for approval of tariff of Barh Super thermal Power Station Stage-II (2x660 MW) for the period from anticipated date of commercial operation of 1st Unit (Unit-IV) to 31.3.2019.
- Petitioner : NTPC Ltd
- Respondent : South Bihar Power Distribution Company Limited & ors.
- Date of hearing : **2.6.2020**
- Coram : Shri P.K. Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member
- Parties Present : Shri M.G.Ramachandran, Senior Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri Rohit Chhabra, NTPC
Shri Rajkumar Mehta, Advocate, GRIDCO
Shri Madhusudan Sahoo, GRIDCO
Shri Shashwat Kumar, Advocate, BSPHCL

Record of Proceedings

The matter was heard through video conferencing.

2. At the outset, the learned counsel for the Respondent, GRIDCO submitted that the Appellate Tribunal for Electricity (APTEL) has reserved its judgment in Appeal No. 113/2019 filed by GRIDCO against the Commission's interim order dated 18.3.2019 in Petition No.130/GT/2014. He further stated that since the outcome of the said appeal as regards the adjustment of infirm power (pursuant to the issue of COD of unit having been settled) may have a substantial bearing on the tariff petition, the hearing of this petition may be deferred till the disposal of the said appeal. In response, the learned Senior Counsel for the Petitioner submitted that implications of the judgement of APTEL, if any, can be given effect to, even after the determination of tariff by this Commission.

3. On a specific query by the Commission as to whether APTEL has granted any stay on the Commission's order dated 18.3.2019, the learned counsel for Respondent GRIDCO replied in the negative. Accordingly, the Commission observed that the determination of tariff in this petition would be subject to the final decision of APTEL in the said appeal and requested the parties to make their submissions in the matter.

4. The learned Senior counsel for the Petitioner circulated note of arguments and submitted the following:

(a) The Petitioner had claimed COD of the Unit-IV from 15.11.2014. However, the Commission by order dated 20.9.2017 in Petition No. 130/MP/2015 decided the



COD of the said unit as 8.3.2016. The Commission's order was upheld by APTEL vide its judgment dated 25.1.2019 in Appeal No. 330/2017 and by the Hon'ble Supreme Court vide its judgment dated 5.4.2019 in the Civil Appeal filed by the Petitioner.

(b) The Commission in its order dated 20.9.2017 had observed that the power injected by the Petitioner in respect of the Unit IV before 8.3.2016 shall be treated as infirm power, even though power was scheduled by the beneficiaries. This has been affirmed in Commission's order dated 18.3.2019. The said orders do not provide for the refund of any part of the revenue earned to the Utilities except by way of reduction in the capital cost. Thus, the tariff of the said unit, including the accounting of revenues earned by the Petitioner for the period from 15.11.2014 till 7.3.2016 is to be carried out in terms of the said orders.

(c) The Petitioner has already adjusted the revenue earned during the period from 15.11.2014 to 7.3.2016 over and above fuel expenses and has filed the amended tariff petition accordingly. This adjustment has resulted in the capital cost reduction of Rs 1084 crore.

(d) There is a time over-run of 22 months (from January, 2013 to November, 2014) for Unit-IV and 27 months (from November, 2013 to February, 2016) for Unit-V, due to abnormal heavy rainfall, Non-availability of aggregate and coarse chips, Socio-economic culture and law and order situation in Bihar, Delay in construction of Intake Well at make-up water pump house, etc. The detailed justification for time over-run along with Pert chart has been furnished for consideration of the Commission.

(e) For the period from 15.11.2014 to 8.3.2016, the Petitioner has claimed amounts as there has been consistent generation and supply from Unit-IV (PAF ranging approx 85%) which has substantially benefitted the beneficiaries. The said supply was clearly within the merit order of most of the concerned beneficiaries, particularly for the Bihar Utilities which had taken 88% of the energy made available for the period from 15.11.2014 to 31.3.2015 and 89% of the energy for the period from 1.4.2015 to 31.3.2016. Even GRIDCO had scheduled 27% of the energy during the above said period. Any such purchase from other sources would have involved payment of all tariff elements forming part of the fixed charges.

(f) The Bihar Utilities did not also participate in the proceedings before this Commission resulting in the order dated 20.9.2017 and did not even challenge the declaration of COD by Petitioner on 15.11.2014. Except for the objection raised by GRIDCO, the Bihar Utilities as well as the Eastern Regional Power Committee and Eastern Regional Load Dispatch Centre had not objected to the continuous operation of the generating station and the Plant Availability Factor from November, 2014 to 31.03.2015 was 83% and for the year 2015-16 it was more than 90%.

(g) The Bihar Utilities had availed the services of the generating station under the respective PPAs and cannot claim such service on a 'gratuitous basis'. These Utilities are therefore required to meet the actual cash flow of the Petitioner for undertaking the generation and supply of electricity during the said period in terms of Section 70 of the Contract Act, 1872. Considering the peculiar circumstances of the case, the Commission may direct compensation to be paid



to the Petitioner for actual expenses incurred over and above the fuel cost, in exercise of its 'Power to Relax'.

(h) The de-allocation of capacity by the Central Government in February, 2019 was at the instance of the Respondent GRIDCO. Hence, the Respondent cannot now claim that the de-allocation of capacity should be considered for the purpose of interpretation of Regulation 18 of the 2014 Tariff Regulations or for modification of the Commission's Order dated 20.9.2017.

(i) The Petitioner may be permitted to file detailed written submissions in the matter.

5. In response, the learned counsel for the Respondent GRIDCO referred to the reply and submitted the following:

(a) The Petitioner may be directed to explain the reason for approval of RCE by a Sub-committee of the Board of Directors instead of the Board of Directors itself. There is a huge difference between the original project cost as approved by the Board of Directors and the RCE approved by the Sub-committee of the Board of Directors, which implies a huge cost over-run;

(b) In view of the Commission's order and the judgments of the APTEL and Hon'ble Supreme Court settling the COD of Unit IV as 8.3.2016, the IDC, IEDC and other financial implications if any, for the period from 15.11.2014 to 7.3.2016 cannot be allowed to the Petitioner;

(c) In terms of the Commission's order dated 20.9.2017, ERPC has to bill the infirm power to the beneficiaries in terms of Regulations 18 of 2014 Tariff Regulations and Regulation 9 of CERC (Deviation Settlement Mechanism & Related Matters) Regulations, 2014. The payment in respect of infirm power would be received by the Petitioner from the Regional Deviation Settlement Fund Account as per the aforesaid regulations.

(d) As per the 2014 Tariff Regulations, no amount is to be adjusted in the capital cost on account of revenue earned over and above fuel cost from sale of infirm Power from 15.11.2014 to 7.3.2016 for Unit-IV;

(e) The reasons furnished by the Petitioner in support of delay in the execution of the project cannot be accepted, as the same were within the control of the petitioner. The delay due to abnormal heavy rainfall as submitted by the Petitioner can be accepted as a 'Force Majeure condition' subject to the condition that such rainfall was in excess of the statistical measures for the last hundred years. The rainfall due to normal monsoon must have been taken into account, while setting the timeline for completion of the project;

(f) The Petitioner may be directed to furnish the information as sought vide Commission's order dated 18.3.2019, namely the (i) Detailed Project Report (DPR) (ii) Comparison of actual cost as on COD vis-a-vis the awarded cost (iii) Cost of initial spares as a percentage of the Plant & Machinery cost to be capitalized upto cut-off date (iv) List of the balance scope of work as on COD, consisting of relevant details like cost, quantity etc. pertaining to each item of work etc.

(g) The Auxiliary Energy Consumption of 5.75% claimed by the Petitioner may not be allowed as the Petitioner has not furnished any details relating to the



super critical technology and its impact on auxiliary consumption. It has also not furnished the details on energy consumption for supply of power to housing colony and other facilities at the generating station in terms of Regulation 3(3) of the 2014 Tariff Regulations.

(h) As regards capitalization of other Coal linkages to this generating station, the Commission's order dated 15.2.2016 in Petition No. 59/MP/2015, wherein, the prayer of the Petitioner to retain the rebate in freight charges in consideration of the investment made by the Petitioner was disallowed, may be followed;

(i) The prayer of the Petitioner for higher GSHR under Regulations 54 and 55 of the 2014 Tariff Regulations is not sustainable and the Commission may not allow inefficiency in the generation of electricity to be passed on to the consumers;

(j) The Petitioner has neither submitted any documents regarding the shortage of coal at this generating station nor has claimed any reduction of NAPAF on account of coal shortage or uncertainty of assured coal supply on sustained basis. Hence, the Petitioner's request for reduction of NAPAF from 85% to 83% may be rejected;

(k) The prayer of the Petitioner for escalation of 6.35% in O&M expenses on account of enhanced employee cost w.e.f. 1.1.2017 may not be allowed as the terms and conditions of tariff for the period of 2014-19 had been specified by the Commission. The employee cost on account of pay revision may be met from the improved efficiency and productivity levels by the Petitioner and the consumers may not be unnecessarily burdened with increased cost;

(l) The Petitioner may not be permitted to compute ECR on the basis of GCV of coal 'as received' at the generating station as the difference in GCV from 'Mines' end to the 'Generating station' end is unreasonable and cannot be passed on to the beneficiaries.

(m) The stone picking charges should not be allowed in tariff since there is provision in the Fuel Supply agreement to compensate the generator on account of stones;

(n) The Respondent may be permitted to file detailed written submissions in the matter.

6. The learned counsel for the Respondent, BSPHCL, sought time to file its reply in the matter on the ground that they have been recently engaged by the Respondent. He also prayed that the petition may be listed again for the Respondent to make submissions. The Commission accepted the request and granted time to the Respondent to file its reply in the matter.

7. The Commission after hearing the parties directed the Petitioner to submit the following additional information, with advance copy to the Respondents, on or before **30.6.2020**:



- (i) Reconciliation statement showing the movement of IDC, FERV and Short-Term FERV between 15.11.2014 to 8.3.2016 and its treatment for the purpose of tariff;
- (ii) A statement showing the net loan status as on 15.11.2014 and 8.3.2016 along with its movement within these two dates;
- (iii) Statement showing FERV & IDC calculations clearly indicating the details of exchange rates considered on respective dates;
- (iv) Detailed calculation/workings in respect of additional infirm power adjusted in the capital cost claimed due to shifting of COD from 15.11.2014 to 8.3.2016;
- (v) CWIP pertaining to common facilities as on respective COD's booked with Barh Stage-I;
- (vi) Status of commercial operation of Barh Stage-I;
- (vii) IDC and FERV details corresponding to common facilities;
- (viii) A certificate in respect of inter-unit transfer of assets stating that these assets have not been claimed as additional capital expenditure at the transferee station. Further, the Petitioner shall also specify the duration by which these assets are expected to be received back at this station;
- (ix) Break-up of Corporate Center cost allocated to this station;
- (x) Auditor certificate stating that the relevant accounting standards provide for capitalization of IDC, FERV and IEDC for the extended period due to shifting of COD date of Unit-IV;
- (xi) List of balance scope of work within original scope of work as on COD, consisting of relevant details like cost, quantity etc., pertaining to each item of work;
- (xii) The total un-discharged liabilities, as on COD of Unit-IV as stated at Form-5B is Rs.57645.64 lakh. However, the pending liabilities as stated in Annexure-K furnished vide affidavit dated 26.8.2019 is Rs.54318.11 lakh. This variation shall be reconciled/clarified;
- (xiii) Details in respect of the Diesel Locomotive transferred to Talcher-II and received back at Barh to be submitted as per format below:

Particulars	Financial Year	Value at which capitalized to Gross Block	Corresponding Net Block
When originally procured at Barh-II			
When transferred to Talcher-II			
When received back at Barh-II			

- (xiv) It has been submitted that since Barh Stage-I was not ready and Barh Stage-II has been commissioned ahead of Stage-I, various common systems/facilities which have been put to use with Stage-II has been capitalized and the balance would be capitalized with Stage-I as and



when Stage-I is commissioned. In this regard, details shall be submitted as per format below:

Name of common asset / facilities	Year of capitalization	Capitalized value (Rs. in lakh)						Source of funding (whether pertaining to Stage-I or Stage-II)
		Total	Corresponding IDC	Allocated to Stage-II	Corresponding IDC	Allocated to Stage-I	Corresponding IDC	

- (xv) The Petitioner shall also certify that there is no capitalization of IDC, on aforesaid common systems/facilities, to Stage-I beyond the aforesaid period of capitalization;
- (xvi) The CPM chart shall be furnished as per format provided specified in ROP dated 25.7.2019. Also, the scheduled & actual start and finish dates along with the scheduled & actual duration of each milestone activities/works to be furnished;
- (xvii) The time over-run has been attributed to the non-availability of aggregates, Law & Order situation in Bihar, Abnormal heavy rain fall at Barh site during 2011 monsoon period and the delay in construction of Intake well at makeup water pump house. The Petitioner shall clearly specify the date-wise impact of delay on each milestone activities, separately. Any other information as considered relevant, may also be furnished;
- (xviii) The following discrepancies have been noticed in Form 15 (Coal) and 15A (Oil) furnished in the Petition;
- The opening stock of coal/oil, coal/oil received during the month and closing stock of coal/oil for computation of GCV & Cost of Fuel has been included. However, the 2014 Tariff Regulations provides for working out the GCV and price of the coal/oil for the purpose of energy charges and working capital based on the GCV and landed price of the coal/oil procured during the preceding three months only. Accordingly, the forms indicating the price and GCV of coal procured during preceding three months shall be re-submitted;
 - The cost of diesel for MGR system has been indicated in Form-15. It shall be clarified as to how MGR is in place being a non-pithead station;
 - 'As received' GCV of coal has been furnished for the period from November, 2015 to February, 2016. The point of sampling of coal i.e whether from 'wagon top' or from any other point, shall be clarified;
 - From the detailed break-up of expenditure claimed under 'Other Charges' furnished in Annexure-E (in compliance with ROP), certain charges are still found to appear under the head 'Others'. These charges shall be clarified.



(e) The loco driver's salary has been indicated as Rs.18.45 lakh, Rs. 3.24 lakh and Rs.5.38 lakh for December, 2015, January, 2016 and February, 2016, respectively. Whereas, the coal supply during the period was 372689 MT during December, 2015, 495688 MT during January, 2016 and 663045 MT during February, 2016. The Petitioner shall clarify the variation as there appears to be no co-relation between the coal received and the driver's salary.

8. The Respondents are directed to file their reply/written submissions, on or before 13.7.2020, with copy to the Petitioner who shall file its rejoinder/written submissions by 20.7.2020.

9. The Commission directed that the due date of filing of reply, rejoinder and information sought should be strictly complied with.

10. Matter part-heard. Petition shall be listed during the last week of July, 2020 for submissions of the Respondent BSPHCL.

By order of the Commission

Sd/-
(B.Sreekumar)
Dy. Chief (Law)

