

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/RP/2020
in
Petition No. 240/GT/2017
and
Petition No. 241/GT/2017

Coram:

Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member

Date of Order: 22nd February, 2022

In the matter of

Petition for review of Commission's order dated 22.1.2020 in Petition No. 241/GT/2017 and Petition No. 240/GT/2017 for determination of the tariff for Muzaffarpur Thermal Power Station, Stage-I, Unit-2 (110 MW) for the period from COD (15.10.2010) to 31.3.2014 and for Stage-I (220 MW) for the period from 1.4.2014 to 31.3.2019.

And

In the matter of

Kanti Bijli Utpadan Nigam Limited,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi- 110003.

..... Review Petitioner

Vs

1. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road,
Patna- 800 021.

2. North Bihar Power Distribution Company Limited,
Vidyut Bhawan, Bailey Road,
Patna- 800 021.

3. South Bihar Power Distribution Company Limited,
Vidyut Bhawan, Bailey Road,
Patna- 800 021.

....Respondents

Parties Present:

Ms. Poorva Saigal, Advocate, KBUNL
Ms. Tanya Sareen, Advocate, KBUNL
Shri Shashwat Kumar, Advocate, BSPHCL



ORDER

Petition No. 240/GT/2017 and Petition No. 241/GT/2017 had been filed by the Review Petitioner, Kanti Bijli Utpadan Nigam Limited (in short 'KBUNL') for determination of tariff of Muzaffarpur Thermal Power Station, Stage-I, Unit-2 (110 MW) for the period from COD (15.10.2010) to 31.3.2014 and Stage-I (220 MW) (hereinafter referred to as 'the generating station') for the period from 1.4.2014 to 31.3.2019 in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and the Commission by the order dated 22.1.2020 had determined the tariff of the said generating station. Aggrieved by the said order dated 22.1.2020 ('the impugned order'), the Review Petitioner has sought review of the impugned order on the ground that there are errors apparent on the face of the order, raising the following issues:

- (a) *Error in computation of fixed charges for Unit-II for the period from 15.10.2010 to 28.3.2012;*
- (b) *Non-consideration of the capital cost related to Unit-II and the liability discharged while determining the opening capital cost of the MTPS, Stage- I as on 15.11.2014;*
- (c) *Calculation of Depreciation;*
- (d) *Calculation of Interest on Loan;*
- (e) *Computation of annual fixed charges for 2014-15;*
- (f) *Computation of Debt-Equity ratio.*

Hearing dated 25.6.2020

2. The Commission, after hearing the learned counsel for the Review Petitioner on 'admission', through Video Conferencing on 25.6.2020, admitted the Review Petition



vide interim order dated 10.7.2020, on the issues raised in paragraph 1 above and issued notice to the Respondents. The Respondents have filed a joint reply vide affidavit dated 12.10.2020.

Hearing dated 18.6.2021

3. During the hearing of the Review Petition on 18.6.2021 through video conferencing, the learned counsel for the Review Petitioner pointed out certain arithmetical errors which had crept in the impugned order dated 22.1.2020 and submitted that the review petition may be allowed. The learned counsel for the Respondent, BSPHCL submitted that the Respondent has filed appeal against the impugned order dated 22.1.2020 on different grounds. He, however, submitted that the reply filed by the Respondents may be considered while disposing of the Review Petition. The Commission, after hearing the parties, reserved its order in the matter.

4. Based on the submissions of the parties and the documents available on record, we examine each of the issues raised in the Review Petition, in the subsequent paragraphs.

(a) Error in computation of fixed charges for Unit-II for the period from 15.10.2010 to 28.3.2012

Submissions of the Review Petitioner, KBUNL

5. The Review Petitioner has pointed out that in paragraph 59 of the impugned order dated 22.1.2020 the Commission had worked out the total fixed charges as Rs.2411.95 lakh for the period from 15.10.2010 to 31.3.2011 and Rs.6307.10 lakh for the period from 1.4.2011 to 28.3.2012 respectively. It has, however, submitted that there is error as the total summation of the individual components works out to Rs.3103 lakh (for the period from 15.10.2010 to 31.3.2011) and Rs.7799 lakh (for the period from 1.4.2011 to



28.3.2012). Accordingly, the Review Petitioner has submitted that there is error apparent on the face of the record and the impugned order dated 22.1.2020 may be reviewed on this ground.

Reply of the Respondents

6. The Respondent, BSPHCL has submitted that the total summation of the individual components works out to Rs.3086.56 lakh for the period from 15.10.2010 to 31.3.2011 and Rs.7776.78 lakh for the period from 1.4.2011 to 28.3.2012.

Analysis and Decision

7. We have examined the matter and perused the documents and calculations on record. It is noticed that certain inadvertent arithmetical errors and linkage errors have crept in while calculating the total fixed charges in the table under paragraph 59 of the impugned order dated 22.1.2020. This, according to us, is an error apparent on the face of record and review on this ground is maintainable.

8. Accordingly, review on this ground is allowed and the *pro rata* fixed charges for Unit-II, as worked out in paragraph 59 of the impugned order dated 22.1.2020 in Petition no. 241/GT/2017 stands modified as under:

(Rs. in lakh)

	15.10.2010 to 31.3.2011	1.4.2011 to 28.3.2012
Depreciation	367.12	838.16
Interest on Loan	0.00	712.44
Return on Equity	189.68	539.96
Interest on Working Capital	325.97	731.73
O&M Expenses	1541.55	3511.76
Secondary fuel oil	662.24	1442.73
Total Fixed Charges	3086.55	7776.77

(b) Non-consideration of the capital cost related to Unit-II and the liability discharged determining the opening capital cost of Stage-I as on 15.11.2014

Submissions of the Review Petitioner, KBUNL



9. The capital cost (excluding grant) as determined by the Commission in paragraph 126 of the impugned order dated 22.1.2020 is as under:

		<i>(Rs. in lakh)</i>					
		1.4.2014 to 14.11.2014	15.11.2014 to 31.3.2015	2015-16	2016-17	2017-18	2018-19
1	Opening capital cost	4476.98	7244.71 (1320.36+ 5763.27+ 161.08)	7621.83	8442.72	9119.76	10673.44
2	Admitted additional capital expenditure	1250.59	49.13	751.15	677.04	1553.68	5570.80
3	Discharge of liability	35.70	327.99	69.74	0.00	0.00	0.00
4	Closing capital cost	5763.27	7621.83	8442.72	9119.76	10673.44	16244.24

10. The Review Petitioner has submitted that while calculating the opening capital cost of Stage-I of the generating station, as on 15.11.2014, the Commission had not included: (a) The capital cost of Unit-II of Rs.9489.86 lakh as on 28.3.2012 and; (b) the liability discharge of Rs.261.48 lakh for 2012-13 and 2013-14 corresponding to liability discharges for Unit-II, as admitted by the Commission in paragraph 39 and paragraph 28 & paragraphs 29 of the impugned order dated 22.1.2020 which inter-alia read as under:

“Capital Cost of Unit-2

39. Accordingly, the capital cost for the period from 15.10.2010 to 28.3.2012 (i.e. till R&M of Unit-II) is as below:

		<i>(Rs. in lakh)</i>	
		15.10.2010 to 31.3.2011	1.4.2011 to 28.3.2012
	<i>Opening capital cost</i>	8483.32	9241.26
	<i>Additional capitalization allowed</i>	13.64	40.74
	<i>Discharge of liabilities</i>	744.30	207.86
	<i>Closing Capital Cost</i>	9241.26	9489.86

Un-Discharged Liabilities

“28. The Petitioner has claimed un-discharged liabilities amounting to Rs.1645.65 lakh as on 15.10.2010. The Petitioner was directed vide ROP of the hearing dated 13.3.2019 to furnish the statement of un-discharged liabilities as on COD and the period-wise discharges thereof, duly certified by Auditor, for the periods 2009-14 and 2014-19 respectively. In response, the Petitioner vide affidavit dated 27.4.2019 has furnished the details duly certified by Auditor, as under:



(Rs. in lakh)

Un-discharged liabilities as on 15.10.2010	Discharge of liabilities				Un-discharged liabilities as on 31.3.2014
	2010-11	2011-12	2012-13	2013-14	
1645.65	744.30	207.86	260.55	0.93	432.02

29. Accordingly, the un-discharged liabilities and the discharge of liabilities claimed by the Petitioner are allowed.”

11. The Review Petitioner has submitted that non-inclusion of the capital cost of Unit-II of Rs.9489.86 lakh and the liability discharge of Rs.261.48 lakh for 2012-13 and 2013-14 is an error apparent on the face of record and constitutes sufficient ground to review the impugned order dated 22.1.2020. Accordingly, the Review Petitioner has submitted that the revised capital cost (excluding grant) for the 2014-19 tariff period shall be as follow:

(Rs. in lakh)

	1.4.2014 to 14.11.2014	15.11.2014 to 31.3.2015	2015-16	2016-17	2017-18	2018-19
Opening Capital Cost	4476.98	16996.05	17373.17	18194.06	18871.1	20424.78
Admitted Additional Capital Expenditure	1250.59	49.13	751.15	677.04	1553.68	5570.80
Discharge of liability	35.70	327.99	69.74	0.00	0.00	0.00

Reply of the Respondents

12. The Respondents have submitted that the rest of the contentions raised by the Review Petitioner in the Review Petition may be considered after being subjected to prudence check by the Commission.

Analysis and Decision

13. We have examined the matter and perused the documents on record. The generating station was established by the Respondent, BSPHCL during 1985-86 and has been transferred and vested to the Review Petitioner with effect from 8.9.2006, in terms of Bihar State Electricity Reforms (Transfer of Muzaffarpur Thermal Power Station) Scheme, 2006. The project was in depleted condition at the time of transfer and the generating station was in a position to generate power only at 10% to 15% of its



capacity. As there was acute shortage of power being faced by the Respondents, only selective refurbishment works for restoration of generation from Unit-II of the generating station was taken up and the commercial operation of Unit-II was declared on 15.10.2010, without doing any major Renovation & Modernization (R&M) work. Unit-I of the generating station was taken under R&M during 2010 that was completed on 1.11.2013. Accordingly, the Commission vide its order dated 9.2.2016 in Petition No. 260/GT/2014 had determined the tariff for Unit-I of the generating station for the period from 1.11.2013 to 31.3.2014. Subsequently, Unit-II was once again taken under major R&M from 29.3.2012 to 14.11.2014.

14. It is evident that, after takeover of the generating station by the Review Petitioner from 8.9.2006, the capital cost had been determined on the following occasions:

(i) After partial refurbishment of Unit-II, along with the cost incurred for takeover of the said unit, the capital cost was allowed vide impugned order dated 22.1.2020 in Petition No.241/GT/2017 as under:

	<i>(Rs. in lakh)</i>	
	15.10.2010 to 31.3.2011	1.4.2011 to 28.3.2012
Opening capital cost	8483.32	9241.26
Additional capitalization allowed	13.64	40.74
Discharge of liabilities	744.30	207.86
Closing Capital Cost	9241.26	9489.86

(ii) The capital cost of Unit-I, after R&M, was allowed as Rs.4476.98 lakh as on 1.4.2014 by impugned order dated 22.1.2020 in Petition No. 240/GT/2017.

(iii) The Commission in the impugned order dated 22.1.2020 had allowed capital cost of Rs.7244.71 lakh for Unit-II after completion of R&M of both the Units, as on 15.11.2014, as under:

	<i>(Rs. in lakh)</i>					
	1.4.2014 to 14.11.2014 (Unit-I only)	15.11.2014 to 31.3.2015	2015-16	2016-17	2017-18	2018-19
Opening Capital Cost	4476.98	7244.71 (1320.36 + 5763.27 + 161.08)	7621.83	8442.72	9119.76	10673.44
Admitted Additional Capital Expenditure	1250.59	49.13	751.15	677.04	1 553.68	5570.80



Discharge of Liability	35.70	327.99	69.74	0.00	0.00	0.00
Closing Capital Cost	5763.27	7621.83	8442.72	9119.76	10673.44	16244.24

15. It is observed that the capital cost of Rs.7244.71 lakh (as in paragraph 14(iii) above) comprises of Rs.1320.36 lakh (second R&M cost of Unit-II), Rs.5763.27 lakh for Unit-I and Rs.161.08 as additional capitalization for Unit-II. However, the capital cost of Rs.9489.86 lakh of Unit-II (pertaining to partial refurbishment including take over cost for the period from 1.4.2011 to 28.3.2012) [as shown in the table under paragraph 14(i) above] was inadvertently not included in the capital cost of generating station, as on 15.11.2014 on completion of R&M of both the Units. Also, the discharge of liabilities amounting to Rs.260.55 lakh for 2012-13 and Rs.0.93 lakh for 2013-14, was inadvertently not considered in the opening capital cost as on 15.11.2014. This, according to us, is an error apparent on the face of the order and review on this ground is maintainable.

16. Accordingly, review on this ground is allowed and the capital cost (excluding grant) as determined by the Commission in paragraph 126 of the impugned order dated 22.1.2020 stands revised as under:

		<i>(Rs. in lakh)</i>					
		1.4.2014 to 14.11.2014	15.11.2014 to 31.3.2015	2015-16	2016-17	2017-18	2018-19
1	Opening Capital Cost	4476.98	16996.05 (1320.36 + 5763.27 + 161.08 + 9489.86 + 261.48)	17373.168	18194.06	18871.098	20424.78
2	Admitted Additional Capital Expenditure	1250.59	49.13	751.15	677.04	1 553.68	5570.80
3	Discharge of Liability	35.70	327.99	69.74	0.00	0.00	0.00
4	Closing Capital Cost	5763.27	17373.17	18194.06	18871.10	20424.78	25995.58



(c) & (d) Calculation of Depreciation and Interest on Loan

Submissions of Review Petitioner, KBUNL

17. The Review Petitioner has submitted that the while computing depreciation and Interest on loan for the period from 1.4.2014 to 31.3.2019, following errors have crept in in the impugned order dated 22.1.2020:

(a) Depreciation of Rs.1205.28 lakh recovered up to 31.3.2014 for Unit-II (as in paragraph 54 of the impugned order dated 22.1.2020) has not been considered in the opening cumulative depreciation as on 15.11.2014.

(b) Repayment of loan of Rs.1205.28 lakh for Unit-II, as on 31.3.2014 has not been considered while computing interest on loan for the period from 15.11.2014 to 31.3.2015.

(c) 2014-15 has been considered as a leap year with 366 days instead of 365 days.

Analysis and Decision

18. We have examined the matter and perused the documents on record. Since the capital cost pertaining to partial refurbishment of Unit-II and taken-over cost has been allowed as on 15.11.2014, the corresponding depreciation recovered up to 31.3.2014 for Unit-II, amounting to Rs.1205.28 lakh is required to be considered in the opening cumulative depreciation as on 15.11.2014. Also, the corresponding repayment of loan up to 31.3.2014 for Unit-II amounting to Rs.1205.28 lakh is required to be considered while computing interest on loan for the period from 15.11.2014 to 31.3.2015. Non-consideration of these amounts, is in our view, an error apparent on the face of the impugned order dated 22.1.2020 and review on this ground is maintainable.

(e) Computation of annual fixed charges for 2014-15

Submissions of the Review Petitioner, KBUNL



19. The Review Petitioner has submitted that the Commission, in paragraph 171 of the impugned order dated 22.1.2020, while computing the annual fixed charges for 2014-15, has inadvertently used the *pro rata* figures for all components of tariff (barring O&M expenses) instead of annualized figures. Accordingly, the Review Petitioner has submitted that the review may be allowed on this ground and the calculation error may be rectified.

Analysis and Decision

20. We have examined the matter. The Commission in paragraph 171 of the impugned order dated 22.1.2020 (for Unit-I and Unit-II) had allowed the fixed charges for 2014-15 as under:

	<i>(Rs. In lakh)</i>	
	1.4.2014 to 14.11.2014	15.11.2014 to 31.3.2015
Depreciation	300.27	245.97
Interest on Loan	341.64	258.57
Return on Equity	57.01	101.19
Interest on Working Capital	895.05	1084.45
O&M Expenses	3946.80	7893.60
	5540.76	9583.79

21. It is noticed that except for O&M expenses, all the other components of the fixed charges for the year 2014-15 have been allowed on *pro rata* basis. Hence, there is no error apparent on the face of the impugned order on this count.

22. However, in respect of O&M expenses, it is noticed that the amount of Rs.3946.80 lakh for the period from 1.4.2014 to 14.11.2014 and Rs.9583.79 lakh for the period from 15.11.2014 to 31.3.2015 which were calculated on annualized basis, have been inadvertently considered in the fixed charges allowed in the impugned order dated 22.1.2020. This according to us is an error apparent on the face of the impugned order. Accordingly, review on this ground is allowed and the O&M expenses for 2014-15 in



paragraph 171 of the impugned order dated 22.1.2020 has been worked out and allowed on *pro rata* basis, as under:

2014-15	
1.4.2014 to 14.11.2014 (Unit-I)	15.11.2014 to 31.3.2015 (Unit-I & Unit-II)
2465.40	2962.80

(f) Computation of Debt-Equity Ratio

Submissions of the Review Petitioner, KBUNL

23. The Review Petitioner has submitted that there are certain errors in the computation of debt-equity ratio as under:

(a) The debt-equity ratio has been recomputed as at 1.11.2013 based on a methodology provided in PPA. Even considering the methodology adopted, the debt-equity ratio, as recomputed should be 90.21:9.79 instead of 91.09:8.91.

(b) The debt-equity ratio has been recomputed as at 15.11.2014 based on a methodology provided in PPA. Even considering the methodology adopted, the debt-equity ratio, as recomputed should be 82.32:17.68 instead of 81.83:18.17.

(c) The additional capital expenditure with effect from 15.11.2014 to 31.3.2019 has been considered at debt-equity ratio of 81.83:18.17 instead of 70:30 and additional capitalization for 1.11.2014 to 15.11.2014 has been considered at the debt-equity ratio of 91.09:8.91. PPA as well as the applicable provisions of Tariff Regulations provide for funding of additional capitalization in ratio of 70:30 (normative debt-equity ratio), which has not been considered while determining the tariff.

24. Accordingly, the Review Petitioner has submitted that in terms of Clause 7.1.1(ii) of the PPA read with Regulation 19 of the 2014 Tariff Regulations, the errors in calculation need to be rectified in the impugned order dated 22.1.2020.



Analysis and Decision

25. The matter has been examined. Clause 7.1.1(ii) of the PPA dated 22.8.2006 provides as under:

“For the purpose of tariff, the entire transfer price shall be considered as equity. Entire expenditure through grant shall be treated as debt and further expenditure thereafter shall be split in 70:30 Debt Equity ratio.”

26. The debt-equity ratio was computed in terms of Clause 7.1.1(ii) of the PPA dated 22.8.2006, by treating the take-over price as equity, the amount of grant received as loan and further expenditure in the debt-equity ratio of 70:30. Based on this, the debt-equity ratio of 91.09: 8.91 as on 1.11.2013 and 81.83: 18.17 as on 15.11.2014 was computed in the impugned order dated 22.1.2020. It is observed that the Review Petitioner has not furnished any details/ calculations for the debt-equity ratio claimed in the Review Petition as against the debt-equity ratio allowed vide the impugned order dated 22.1.2020. We, therefore, find no error apparent on the face of the impugned order dated 22.1.2020 and review on this ground is not maintainable.

27. However, as regards the debt-equity ratio in respect of the additional capitalization, the same is required to be considered in the ratio of 70:30, in line with the aforesaid provision of the PPA. The non-consideration of the normative ratio of 70: 30 in respect of additional capitalization, is in our view, an error apparent on the face of the impugned order and review on this count is maintainable.

28. Accordingly, the annual fixed charges approved for Unit-I and Unit-II of the generating station for the 2014-19 tariff period, in paragraph 171 of the impugned order dated 22.1.2020 in Petition No.240/GT/2017, stand modified as under:



(Rs. in lakh)

	1.4.2014 to 14.11.2014	15.11.2014 to 31.3.2015	2015-16	2016-17	2017-18	2018-19
Depreciation	300.27	546.38	1626.46	1716.57	1871.46	2456.41
Interest on Loan	236.43	570.50	1186.89	1020.48	896.78	928.66
Return on Equity	73.97	236.26	515.30	699.37	765.30	975.89
Interest on Working Capital	927.60	1129.00	3035.96	3067.75	3104.85	3160.94
O&M Expenses	2465.40	2962.80	8390.80	8918.80	9479.80	10076.00
Annual Fixed charges	4003.67	5444.94	14755.40	15422.97	16118.19	17597.90

29. Review Petition No.10/RP/2020 in Petition No.240/GT/2017 and Petition No.241/GT/2017 is disposed of in terms of the above.

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson

