

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 130/GT/2014**

**Coram:**

**Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I.S.Jha, Member**

**Date of Order: 18.3.2019**

**In the matter of**

Determination of tariff of Barh Super Thermal Power Station, Stage-II (2 x 660 MW) from the anticipated COD of first unit [Unit-IV] (30.6.2014) till 31.3.2019

**AND**

**In the matter of**

NTPC Limited  
NTPC Bhawan  
Core-7, Scope Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi - 110 003

**...Petitioner**

**Vs**

1. (a) South Bihar Power Distribution Company Limited  
(b) North Bihar Power Distribution Company Limited  
1st Floor, Vidyut Bhawan  
Bailey Road Patna-800 001

2. Jharkhand Urja Vikas Nigam Limited  
Engineering Bhawan, Heavy Engineering Corporation,  
Dhurwa, Ranchi-834004

3. GRIDCO Limited  
Janpath, Bhubaneswar-751007

4. West Bengal State Electricity Distribution Company Limited,  
Vidyut Bhawan,  
Block DJ, Sector-II, Salt Lake City  
Kolkata-700091

5. Power Department,  
Govt. of Sikkim, Kazi Road, Gangtok, Sikkim

**...Respondents**



**Parties present:**

Ms. Poorva Saigal, Advocate, NTPC  
Ms. Tanya Sareen, Advocate, NTPC  
Shri R.B.Sharma, Advocate, GRIDCO & BSPHCL  
Shri Rohit Chhabra, NTPC  
Shri Shailendra Singh, NTPC  
Shri A. Basu Roy, NTPC  
Shri Ajay Mehta, NTPC  
Shri R.K.Singh, NTPC  
Shri Vinod T. Thofa, NTPC  
Shri Nishant Gupta, NTPC  
Shri A.S.Pandey, NTPC

**INTERIM ORDER**

This petition has been filed by the petitioner, NTPC for determination of tariff of Barh Super Thermal Power Station, Stage-II (2 x 660 MW) ('the generating station') from the anticipated COD of first unit [Unit-IV] (30.6.2014) till 31.3.2019 in terms of the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 ('the 2014 Tariff Regulations')

2. During the pendency of this petition, the Respondent, GRIDCO filed Petition No. 130/MP/2015 seeking the declaration of the commercial operation of Unit-IV of the generating station by the Petitioner as null and void. The Commission vide order dated 20.9.2017 disposed of the said Petition as under:

*"26. .... However, the unit demonstrated successful trial run at MCR during the period from 4.3.2016 to 7.3.2016. Though it is a fact that various beneficiaries have scheduled and availed the power generated by the unit, the Unit had not demonstrated its capacity to run at required capacity as required under provisions of the 2014 Tariff Regulations. It is possible that the unit was capable of delivering rated capacity since it was able to achieve normative availability of 83% in the financial year 2014-15 and more than 90% in 2015-16 (till February, 2016). Since, trial run did not achieve required capacity, we are not inclined to accept COD of 15.11.2014 as claimed by the Respondent No. 1. We are also not inclined to exercise our powers to relax the provisions under Regulation 54 of the 2014 Tariff Regulations as there is no case made out for the same. Accordingly, COD of 15.11.2014 as declared by Respondent No. 1 is set aside."*



3. Against the said order dated 20.9.2017, the Petitioner had filed Appeal No. 330 of 2017 before the Appellate Tribunal for Electricity (the Tribunal) and the Tribunal vide its judgment dated 25.1.2019 has affirmed the Commission's order dated 20.9.2017. The relevant portion of the order is extracted hereunder:

*“9.14 Accordingly, the Central Commission after careful evaluation of all the material placed before it found that there does not appear sufficient ground which necessitates the exercise of its power under Section 54 of the Tariff Regulation, 2014 to relax the prerequisite conditions of Trial Run before declaration of COD. Having regard to submissions and pleadings of both the parties and taking note of the findings of the Central Commission, we are of the considered opinion that the instant case of the Appellant does not qualify for exercising the regulatory powers of the Commission to relax the conditions which are required to be fulfilled before decelerating COD of a generating unit. Hence, we do not consider necessary to interfere in the decision of the Central Commission in this regard.”*

4. During the hearing of this petition on 12.3.2019, the representative of the Petitioner submitted that the tariff petition is required to be amended taking into account the COD approved by the Commission. He accordingly prayed for grant of time. The representative however pointed out that the Respondent GRIDCO, in its letter dated 11.2.2019 has stated that since the power injected by Barh-II Unit-IV prior to 8.3.2016 (from 15.11.2014 to 7.3.2016) shall be treated as infirm power as per the order of the Commission as upheld by the Tribunal, the amount billed by NTPC for Rs 359.69 crore, as paid by GRIDCO for the said period is required to be refunded to GRIDCO. Accordingly, the Respondent, GRIDCO has adjusted the said amount against the bills for the month of December, 2018 and January, 2019. He submitted that since the revenue earned from supply of infirm power is to be adjusted in the capital cost in terms of the Commission's order dated 20.9.2017, the Commission may direct the said Respondent to forthwith refund the amount adjusted as above.



5. The learned counsel for the Respondent GRIDCO submitted that the refund of the adjustment of amount made by GRIDCO may be subject to determination of tariff of the generating station for the period from COD till 31.3.2019.

### **Analysis & decision**

6. The matter has been examined. Regulation 18 of the 2014 Tariff Regulations, provides a under:

*“Supply of infirm power shall be accounted as deviation and shall be paid for from the regional deviation settlement fund accounts in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014 as amended from time to time or any subsequent re-enactment thereof.*

*Provided that any revenue earned by the generating company from supply of infirm power after accounting for the fuel expenses shall be applied in adjusting the capital cost accordingly.*

7. It is noticed that the Commission in its order dated 20.9.2017 while declining to accept the COD of 15.11.2014 declared by the Petitioner, had observed that the revenue earned from sale of infirm power shall be adjusted in the capital cost. The relevant portion of the order is extracted hereunder:

*“28. Power injected by Respondent No. 1 in respect of the Unit before 8.3.2016 shall be treated as infirm power even though power was scheduled by the beneficiaries during the period. The revenue earned over and above fuel cost from sale of infirm power from 15.11.2014 to 7.3.2016 shall be adjusted in the capital cost.*

8. The order of the Commission has been affirmed by the Tribunal in its judgment dated 25.1.2019. Since the power was scheduled to the beneficiaries during the relevant period which has now been deemed to be infirm power, there is a requirement for adjustment of the rates of infirm power against the rates of scheduled power. Further, the amount adjusted towards infirm power shall be applied towards the reduction of capital cost which will have impact in determination of tariff after the COD. Taking all these factors in view, the amount payable/



receivable during the relevant period is to be adjusted. The Commission will undertake the exercise at the time of determination of tariff of the generating station. In our view, unilateral action on the part of the Respondent, GRIDCO to recover the payments made for scheduled power prior to 8.3.2016 cannot be accepted. Accordingly, we direct the Respondent, GRIDCO to refund the adjusted amount to NTPC within 7 days from the date of this order. Needless to say, any delay in refund of the amount shall attract the provisions of late payment surcharge as per the Tariff Regulations.

9. The petitioner is granted liberty to amend the Petition along with tariff filing forms by **29.4.2019**, with copy to the respondents, who shall file their replies on or before **13.5.2019**. Rejoinder, if any, by **22.5.2019**.

10. Matter shall be listed for hearing in due course for which separate notices shall be issued to parties. Pleadings shall be completed by the parties prior to the date of hearing.

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

*Sd/-*  
(Dr. M.K.Iyer)  
Member

*Sd/-*  
(P. K. Pujari)  
Chairperson

