

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 389/GT/2020

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 13th November, 2023

In the matter of:

Petition for approval of tariff of Barauni Thermal Power Station, Stage-I (220 MW) for the period from the date of takeover i.e. 15.12.2018 to 31.3.2019.

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 Venkatesh, Advocate, NTPC
Shri Anant Singh, Advocate, NTPC
Shri Abhishek Nangia, Advocate, NTPC
Ms. Simran Saluja, Advocate, NTPC
Shri A.S. Pandey, NTPC
Shri Shashwat Kumar, Advocate, BSPHCL
Shri Rahul Chouhan, Advocate, BSPHCL

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 till 31.3.2019, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff)



Regulations, 2014 (in short “the 2014 Tariff Regulations”).

2. The Petitioner, in the petition, has submitted the following:

(a) Barauni Thermal Power Station, Stage-I (the generating station), situated in the Begusarai District of State of Bihar, was previously owned by the Bihar State Power Generating Company Limited (BSPGCL). The assets of the generating station were transferred to and vested with the Petitioner NTPC, by the State Government of Bihar (GoB) with effect from 15.12.2018 in accordance with “The Bihar Power Generation Undertakings Transfer Scheme, 2018”, hereinafter called the ‘Transfer Scheme’, vide Notification dated 27.6.2018 and by subsequent amendment dated 14.12.2018.

(b) 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 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. A brief of all the units of the generating station, as on the date of takeover, are as under:

Unit No	Capacity (MW)	Present Installed capacity (MW)	Date of COD	Status of units as on 15.12.2018
1	15	0	26.1.1966	Retired on 16.2.1998
2	15	0	16.1.1963	Retired on 26.11.1985
3	15	0	20.10.1963	Retired on 5.10.1985
4	50	0	9.11.1969	Retired on 12.3.2012
5	50	0	1.12.1971	Retired on 12.3.2012
6	110	110	1.05.1983	Under Shut down (to be recommissioned)
7	110	110	31.03.1985	Under Shut down (to be recommissioned)
Total	365	220		

(c) On 1.11.2017 and 24.11.2017 meetings were held between the Petitioner and BSPGCL on ‘Transfer of Power Generation Assets to NTPC’, wherein the takeover of the generating station was also deliberated. Subsequently, a Memorandum of Understanding (MoU) was entered amongst the Petitioner, the Government of Bihar, the Bihar State Power Holding Company Limited, Bihar State Power Transmission Company Limited, BSPGCL and the Respondents herein, on 15.5.2018 to improve the performance of the generating assets and to reduce the cost of power generation. Thereafter, an amended and restated Power Purchase Agreement (PPA) was signed between the Petitioner and the Respondents herein, on 7.6.2018, for supply of power from Stage-I and Stage-II of the generating station. Subsequently, the Ministry of Power, Government of India, vide its letter dated 21.6.2018 had allocated 100% power from the existing units (Units 6 & 7) of Stage-I and from the upcoming capacity of 500 MW (2 x 250 MW) to the Respondents. Thereafter,



the transfer scheme was notified on 27.6.2018, which was amended on 14.12.2018 and the transfer of assets of the generating station was effected from 15.12.2018.

(d) 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 '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.

(e) BSPGCL and Eastern Coal Fields Limited (ECL) of Coal India Limited (CIL) had executed an agreement on 6.11.2009 (amended on 3.3.2016) for supply of coal to the generating station, and the coal was to be transported through the Indian Railways. Accordingly, this agreement also stood transferred to the Petitioner from the date of transfer i.e. 15.12.2018 in terms of clause VIII of the Transfer Scheme dated 27.6.2018.

Capital cost

(f) The Government of Bihar (GoB) vide Transfer Scheme notified on 27.6.2018 has vested the specified assets of Barauni Stage-I to NTPC Ltd at a transfer value given at Schedule-A Part-II of the said Transfer Scheme. Accordingly, for the purpose of arriving at capital cost of the performing existing units of the generating station in the present petition, the transfer value has been considered as per the terms of PPA and the Transfer Scheme. The details of assets and their respective transfer value transferred to NTPC as per the Transfer Scheme dated 27.6.2018 are as under:

Sl no	Items	Transfer value
A	Fixed Assets	
1	Plant & Machinery including civil structure capitalized on date of takeover.	3249.16
2	Assets to be capitalized after Restoration/Revival /R&M of Units (To be capitalized on unit re-commissioning)	10600.36
	Total Fixed assets	13849.52*
B	Current Assets	1150.48
	Grant Total	15000.00

*An auditor certificate (valuation report relevant pages) regarding the same is attached as Annexure-D. *In addition to 13847.51 Lakh as per valuation report Rs 2.01 Lakh pertains to stores.*

(g) The value of fixed assets taken in the books of account on takeover is considered for deriving opening capital cost for tariff i.e. Rs 3249.16 lakhs. It is



further submitted that assets of Rs 106.00 crore are to be capitalized after restoration of units, therefore these assets and current Assets (Rs. 11.50 crores) have not been considered in opening capital cost for the tariff computation.

(h) Further, as per the provisions of the Transfer Scheme, out of the total land of 911.84 acres of BTPS vested in NTPC, 224.91 acres (including existing ash dyke) of land is transferred to NTPC for the generating station. As per the Transfer Scheme, the specified land is leased by GoB at a lease rent of Rs. 1/- for 33 years. Accordingly, the cost of land of the generating station is excluded from the capital cost for the purpose of tariff computation. Therefore, in line with the PPA dated 7.6.2018 and the Transfer scheme dated 27.06.2018 & 14.12.2018, the opening capital cost considered is Rs. 32.49 crore i.e. cost of Plant & Machinery and Plant Structural & Civil Buildings in the debt equity ratio of 70:30 for the purpose of tariff computation.

(i) The Petitioner, is carrying out various studies, inspection and condition assessment of the units and planning refurbishment/R&M, repair and maintenance of the units accordingly. The estimation of expenditure to be incurred for refurbishment of various units for successful operation may take some time for finalization. The same shall be informed to the Commission subsequently in next tariff period. Accordingly, there is no additional capitalization expenditure incurred by the Petitioner for the period from the date of takeover i.e. 15.12.2018 to 31.3.2019. In view of this, the Petitioner seeks liberty to provide the projected additional capitalization after the finalization of the same.

Return on Equity

(j) The ROE (15.5%) is being grossed up at MAT rate of 21.5488%, which is the Effective Tax Rate applicable for NTPC in 2018-19 for the purpose of computation of ROE.

Depreciation

(k) In terms of Clause 5.1.5 of the PPA, the parties have agreed that the total depreciation of the transfer value is to be recovered during the remaining life of the BTPS Stage-I units. Based on RLA study carried by BSPGL, the remaining life of 5 years has been considered from the date of recommissioning of unit for recovery of total depreciation of the generating station (i.e. 90% of the capital cost). The Petitioner with its best efforts could revive the Unit-7 on 23.5.2019 and Unit-6 has been made available from 16.12.2019 after R&M. As both units were under shutdown during the period 15.12.2018 to 31.3.2019, the availability for the period is 'Nil'. As per clause 5.1.4 of PPA signed with Bihar Discoms, the Target Availability for the first year shall be based on actuals. However, the availability of station was low due to unavoidable reasons which were beyond the control of the Petitioner. The Petitioner could not put any of the units on bar immediately after takeover due to technical and safety aspects.



Norms of operation

(l) Both units of the generating station are very old and have crossed their useful life and are being operated in extended useful life. Before takeover, Unit-7 has only been in service for a brief period 4.11.2016 to 7.5.2017 and was operated at load of about 70 MW due to poor condenser vacuum problem by BSPGCL. The actual operating performance of the generating station in 2016-17 as per records is as under:

Month	PLF%	Gross Generation (MU)	HR (Kcal/Kwhr)	specific oil (ml/Kwhr)	Maximum Power (MW)
Nov-16 (04.11.2016 onwards)	21.80	17.26	4768	30.3	106
Dec-16	40.52	33.16	4516	24	102.88
Jan-17	55.71	45.60	4195	8.9	90.33
Feb-17	20.93	15.47	4068	4.33	77.81
Mar-17	24.35	19.93	4564	16.03	110
Cumm. Value	33.64		4392	16	97

(m) The average PLF and Heat rate achieved during this period was 33.64 % and 4392 Kcal/Kwhr respectively in 2016-17. Accordingly, in terms of clause 5.1.4 of the PPA, the norms for Station Heat Rate, Auxiliary Power Consumption and Specific Oil Consumption, Target Availability for recovery of full annual fixed charges and O&M Expenses during the first year shall be based on the actuals. As both the units were under shutdown at the time of takeover and have to revived after refurbishment/R&M, the initial performance is not as desired. It is therefore submitted that based on above the actual operating parameters of Station Heat rate, APC, Specific Oil, Availability and O&M expenses may be considered for tariff during first year of operation.

(n) As both units were under shutdown from 15.12.2018 to 22.5.2019. The Petitioner has not been able to get any revenue during this period. In view of above, it is prayed that the Commission may allow the Petitioner to bill O&M expenses and interest on loan for the period of shutdown for R&M of Unit-6 and Unit-7 i.e. from 15.12.2018 to 31.03.2019 as per proviso to Regulation 30(2) of the 2014 Tariff Regulations.

(o) *The present petition is being filed seeking approval of tariff of the generating station from the date of takeover of the project i.e. 15.12.2018 to 31.3.2019 based on actuals. Further, it is submitted that one unit-7 of the generating station has started generation and is supplying power to Bihar Discoms from 23.5.2019 and the other Unit No.6, has been revived w.e.f. 16.12.2019. The Commission may issue interim order to facilitate an interim arrangement for billing of energy supplied to Bihar Discoms from the date of takeover of the generating station based on the capital cost/annual fixed charges claimed in the petition for the period till final tariff under the 2014 Tariff Regulations, is determined by the Commission, under section 94 (2) of the Electricity Act' 2003.*



3. In the above background, the Petitioner, in the Petition, has prayed for the following:

(i) Approve tariff of Barauni Stage I Thermal Power Station (2x110 MW) from the date of takeover i.e. 15.12.2018 to 31.03.2019.

(ii) Allow recovery of O&M expenses and interest on loan for shutdown period for revival and restoration of Unit-6&7 as per proviso to Regulation 30(2) of CERC Tariff Regulations, 2014.

(iii) Grant interim tariff order to facilitate billing.

(iv) Allow the recovery of filing fees as and publication expenses incurred by the petitioner.

(v) Allow billing and recovery of levies, taxes, duties, SLDC/ RLDC charges, service tax etc. levied by the various authorities on Petitioner in accordance with law additionally from the beneficiaries.

(vi) Pass any other order as it may deem fit in the circumstances mentioned above.

4. The capital cost claimed by the Petitioner from the date of taken over (15.12.2018) of the generating station is as under:

Capital Cost claimed

	<i>(Rs. in lakh)</i>
	2018-19
Opening capital cost	3249.16
Additional Capital Expenditure	0.00
Decapitalization during the year	0.00
Reversal during the year	0.00
Discharges during the year	0.00
Closing capital cost	3249.16
Average capital cost	3249.16

5. The annual fixed charges, to the extent of Interest on loan (IOL) and O&M expenses claimed by the Petitioner, in terms of Regulation 30(2) of the 2014 Tariff Regulations, are as under.

Annual fixed charges

	<i>(Rs.in lakh)</i>
	2018-19
Return on Equity	192.59
Interest on Loan	189.68
Depreciation	0.00
Interest on Working Capital	0.00
O & M Expenses	2056.81
Total (annualised)	2439.08

6. The Petition was heard on 27.7.2020 and the Commission, after hearing the parties, had sought certain additional information from the Petitioner. The Respondents have filed their combined reply on 27.8.2020. Thereafter, the Petitioner



vide affidavit dated 11.1.2021 has furnished the additional information, sought vide ROP of the hearing dated 27.7.2020, after serving copies on the Respondents. In response to this, the Respondents vide affidavit dated 30.6.2021 has filed their combined reply. Thereafter, the Petitioner vide affidavit dated 18.8.2021 has furnished certain additional information and also its rejoinder (to the reply dated 30.6.2021) vide affidavit dated 26.11.2021. The Petition, along with Petition No.189/GT/2020 (tariff of generating station for 2019-24) was heard on 25.2.2022 and the Commission after seeking certain additional information from the Petitioner, reserved its order in the petition. The Petitioner has filed its note of submissions of the hearing dated 25.2.2022 and has later filed its additional information vide affidavit dated 2.5.2022, after serving copy on the Respondents. The Respondents vide affidavit dated 24.5.2022 has filed its reply to the same.

Submission of the Respondents

7. The Respondents, in their combined replies, have made the following submissions:

- a) In terms of Regulation 10(4) of the 2014 Tariff Regulations, a comparative chart analysing the component wise difference between the estimated fixed charges and the fixed charges claimed is necessary to ascertain the cost of the project ci-a-vis the estimated cost for the purpose of determining each component of annual fixed charges in terms of Regulation 21 of the 2014 Tariff Regulations.
- b) The operating performance provided in the Petition, as per records corresponds to Unit-7 of the generating station, which has been relied upon by the Petitioner for determining the norms of the operation. It is also not clear as to what assumption or records have been considered as base for determining the fixed cost, when Unit-6 is considered as well for the purpose of determining the fixed cost of the generating station.
- c) The Petitioner has not provided the component wise details of the actual O&M expenses for the period 15.12.2018 to 31.3.2019, amounting to Rs. 617.88 lakh. As per Regulation 15 of the 2014 Tariff Regulations, the proposal for R&M is required to be submitted along with DPR, for approval of the



Commission.

- d) In compliance to the MOEF notification dated 7.12.2015, the Petitioner is required to install various Emission control systems and the Respondents are unaware of the actions taken by the Petitioner to comply with such norms.
- e) Admittedly both units of the generating station are very old and have crossed their useful life and are being operated in extended useful life. It is a fact that the operating parameters of the station are very poor as compared to newer plants with modern technology.
- f) The present Petition has failed to demonstrate that the power generation cost would be reduced for the consumers of Bihar and that the power project would achieve enhanced operational performance, in terms of the MOU. Since the Petitioner has submitted that the remaining useful life is considered to be only 5 years after re-commissioning of the units for recovery of total depreciation, as per RLA study, the Petitioner may be directed to provide the power generation analysis along with the details of the steps taken in furtherance of the objective of MOU.
- g) In the actual O&M expenses claimed (for Rs. 602.93 lakhs), the total expenditure claimed towards salaries & wages is Rs. 460.20 lakhs. However, in the break-up details of O&M expenses, the expenditure incurred towards salaries & wages is in excess of Rs. 313.29 lakhs (as against Rs. 146.91 lakhs-Net of IDC) as per audited accounts filed. Similarly, the actual amount transferred to IEDC is Rs. 1677.58 lakhs whereas the same is Rs. 1635.50 lakhs only.
- h) The Petitioner has submitted that the retained amount of Rs. 20 crore is being utilized for making both the units operational and for paying the liability of BSPGCL, prior to takeover. It has also submitted that the total estimated cost for revival of Stage-I is Rs. 3196.78 lakhs and the liability of BSPGCL, prior to takeover is Rs. 486.18 lakhs. However, the Petitioner has not provided the details of grant received to its takeover.
- i) Though the Petitioner has shared the copy of the RLA study report carried out by BSPGCL, wherein the remaining useful life of Stage-I is to be considered as 5 years only, after re-commissioning of the units, it has not provided any justification as to how the said useful life has been assessed based on the said report.
- j) CEA vide annexure 5.5 A to the National Electricity Plan dated January 2018 has recommended a list of projects which are to be considered for retirement as per the new Environmental norms and the said list includes Units 6 & 7 of Stage-I. Since the Petitioner has not planned to install any FGD system it may be directed to submit its plans for retirement of these units.



- k) Petitioner has also not submitted any certificates/consent from the concerned SLDC/beneficiaries on successful completion of R&M of Unit-6, which commenced its generation from 16.12.2019. In case, Unit-6 is under shutdown, the Petitioner may not claim any tariff for the same.
- l) The COD of Unit 7, after its R&M, was achieved by BSPGCL on 4.11.2016, therefore, at the time of takeover of generating station, Unit 7 was already commissioned. Unit 7 was not in operation due to some other technical reasons. Hence, no tariff may be allowed as per Regulation 30 (2) of the 2014 Tariff Regulations.
- m) As per Clause 1 (a) of the transfer scheme, any expense incurred ought to be incurred for R&M of the generating station should be met from the fund received as grant from central/state government. Also, unutilized funds available with the Petitioner have to be utilized for making any payments, required for completion of balance R&M works. Further, the Petitioner has retained certain amount of the grant, the same has to be utilized in adjusting any contingency payment for the purpose of completion of the activities of the generating station.
- n) Entry No. D in Part-II of Schedule A of the transfer scheme, the contingency amount retained by the Petitioner for the completion of Stage-I activities is Rs. 20 crores. However, as per R&M fund utilization submitted by the Petitioner to BSPGCL, an amount of Rs. 82.27 crores (which is the Government grant received by BSPGCL for R&M of the generating station) was transferred to the Petitioner by BSPGCL for completion of the balance R&M works. The Petitioner has not provided any details of expenditure of the retention amounts or the grant amount as received from BSPGCL and incurred for the generating station.

Submissions of the Petitioner

8. The Petitioner vide its rejoinder affidavits have mainly submitted the following:
- a) The actual O&M expenses for the period 15.12.2018 to 31.3.2019 are Rs 609.93 lakh which was inadvertently mentioned as Rs 617.88 lakh (in foot note of Form 3A of the petition). Details of the component-wise actual O&M expenses are enclosed at Annexure-I. Details of loan disbursed to the Petitioner is attached as Annexure-II.
- b) The proposed expenditure to comply with MOEF&CC Notification dated 7.12.2015 is not subject matter of the present proceedings, which is confined to true up of the period 2014-19.
- c) Both the Units went under shutdown for carrying out R&M activities by



BSPGCL at the time of takeover. The efficiency of the units and other details before the takeover is available with the BSPGCL/Discoms. Further, it is submitted that the Bihar Discoms have agreed in the MoU/ PPA that the tariff would be computed based on the actual parameters for the first year after date of Asset transfer date and thereafter based on normative values as determined by the Commission and applicable provisions of the extant tariff regulations.

- d) The generating station comprised of 7 Units out of which 3 Units of 15 MW each and 2 Units of 50 MW each, the said stations were decommissioned and the existing Units 6 & 7, were under shutdown during the course of takeover by the Petitioner and were supposed to be re-commissioned as per Transfer Scheme to revive the existing plants. The Petitioner after restoration has been able to revive generation from Unit-7 w.e.f. 23.5.2019. It is pertinent to note that Unit –6 is under shut down since August 2006 and are under advanced stages of R&M. Without prejudice to above, the Petitioner has utilised contingent payments for making Unit 6 & 7 operational which are part of the generating station.
- e) The Petitioner has provided the actual R&M cost in Annexure -I appended with the Additional Submissions dated 11.1.2021. R&M expenses provided in Annexure -I indicates an expense of Rs. 912.41 Lakh. Further, the total Govt. grant transferred to the Petitioner by BSPGCL: Rs.49.04 crore Payment released to BHEL against verified BSPGCL Invoices: Rs 18.12 crore. Amount required for PG Test of Unit 6 & 7: Rs 22.75 crore, Remaining Rs.8.17 crore shall be used for completion of balance R&M work. Payment released to BHEL against verified BSPGCL Invoices of Rs 18.12 Crore.
- f) The Petitioner has considered the remaining useful life of the generating station as per the terms of Clause 5.1.5 of the reinstated and amended PPA dated 7.6.2018 and based upon remaining life assessment prepared by BSPGCL which is enclosed as Annexure-I.
- g) It is pertinent to mention that both the Units of generating station were under shutdown from 15.12.2018 to 22.5.2019. Thus, the Petitioner was not able to generate any revenue for the said period. Accordingly, in view of the same the Petitioner has claimed O&M expenses and interest on loan for the period of shutdown for R&M of Units 6 & 7 i.e., 15.12.2018 to 31.3.2019 as per proviso Regulation 30 (2) of 2014Tariff Regulations.
- h) The generating station is envisaged to be retired as per the recommendation of 'National Electricity Plan' by CEA under the sub-head "*Thermal Station Units without space for FGD installation and shall attain age of more than 25 years*". Therefore, the Petitioner is not planning to install the FGD in the station, as units have a higher heat rate and are proposed to be decommissioned after 5 years from recommissioning of the Units. Furthermore, the installation of FGD



will only increase the burden of additional cost on the beneficiaries/end consumers.

- i) Both the Units of the generating station have crossed their useful life and Units 6&7 are being operated in their extended life after R&M. Both the Units 6&7 were under shutdown at the time of takeover by the Petitioner and were to be revived by doing selective repair, refurbishment/ R&M as per the requirement to make the Units operational.
- j) R&M work was awarded to BHEL. However, prior to the take-over of the instant station, 94.5 % R&M fund which is equivalent to Rs 550 crore was already utilized. Furthermore, post takeover of the station by the Petitioner, balance funds' Performance Guarantee test liability was Rs 22.75 crore and funds available for completion of the balance of R&M work was Rs.8 crores approx. It is submitted that at present no work is being undertaken for Unit 6 by BHEL.

Analysis

9. Taking into consideration the submissions of the parties and the documents on record, we proceed to examine the prayers of the Petitioner as stated in the subsequent paragraphs.

10. The provisions of Regulation 7 of the 2014 Tariff Regulations provides for the procedure for making an application for determination of tariff for new projects and existing projects or units thereof in accordance with the CERC Conduct of Business Regulations, 1999 as amended from time to time. Regulation 9 (1) of the 2014 Tariff Regulations provides that the capital cost as determined by the Commission, after prudence check, in accordance with the Regulations shall form the basis of determination of tariff for existing and new projects.

11. Further, Regulation 15 of the 2014 Tariff Regulations pertaining to R&M provides as under:

15. Renovation and Modernisation:

(1) The generating company or the transmission licensee, as the case may be, for meeting the expenditure on renovation and modernisation (R&M) for the purpose of extension of life beyond the originally recognised useful life for the purpose of tariff of the generating station or a unit thereof or the transmission system or an element



thereof, shall make an application before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, and any other information considered to be relevant by the generating company or the transmission licensee.

(2) Where the generating company or the transmission licensee, as the case may be, makes an application for approval of its proposal for renovation and modernisation, the approval shall be granted after due consideration of reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors as may be considered relevant by the Commission.

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(4) Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on the estimates of renovation and modernisation expenditure and life extension, and after deducting the accumulated depreciation already recovered from the original project cost, shall form the basis for determination of tariff.”

12. The Government of Bihar (GoB) vide Transfer Scheme Notification dated 27.6.2018 (amendment dated 14.12.2018) specified for the assets to be taken over by the Petitioner and effected the date for transfer of the assets as 15.12.2018. Schedule A of this notification has vested specified assets of Stages I and II of the generating station to the Petitioner for a total consideration of Rs.3441.60 crore, which includes Rs.150.00 crore for Stage I and Rs.3291.60 crore for Stage II. The relevant provisions of the said notification is as under:

“I. NTPC would take over the assets of Barauni Thermal Power Station (BTPS), as mentioned below:

- a. Stage - I: NTPC shall takeover Stage-I (Unit# 6 and 7 – 2 X 110 MW) of BTPS on as-is where-is basis. Further, as the R&M of Stage-I is being carried out through grant from Central/State Government, the unutilized grant (by Niti Aayog and other sources, if any) will be transferred to NTPC to complete the balance R&M works; alternatively the payment will be released by BSPGCL. NTPC may further retain an additional amount for adjusting any contingency payment for utilizing towards completion of activities for Stage-I (details given in Point D, Part-II Schedule A);
- b. Stage - II: NTPC shall takeover Stage-II (Unit# 8 and 9 – 2 X 250 MW) of BTPS. Balance Works shall be completed by NTPC, within 18 months on a best efforts basis. The cost to complete and Interest During Construction, precommissioning, overheads, financing charges etc. for Stage-II of BTPS and other liabilities shall be adjusted against total the transfer consideration of BTPS Assets;
- c. Any balance amount available with NTPC, as per the actual expenditure incurred, from the consideration amount retained with NTPC, post completion of activities and settlement of vendor payments, would be adjusted against the power purchase dues of the Bihar Discoms;



- d. Any additional expenditure required for completion of facility or compliance to environmental norms/ regulatory/ statutory order, subject to the approval of CERC, shall form part of capital cost for determination of Tariff as per Article IX b.

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IV. Consideration to be paid by NTPC to BSPGCL for transfer of assets and equity buy-out would be as follows:

a. The Consideration of the BTPS Assets shall be as agreed between the Parties, subject to acceptance by CERC and will form the basis for determination of fixed charge of the tariff payable by the Bihar Discoms. NTPC, subject to adjustments if any, shall pay this value to BSPGCL as Transfer Consideration of BTPS Assets.

i. The consideration towards BTPS Assets, as agreed, shall also include the estimated cost to be incurred by NTPC towards completion of the Stage-II units to render them capable for sustained Commercial Operation which will include direct capital expenditure, Interest During Construction, pre-commissioning, overheads, financing charges etc.

ii. Parties agree that the decommissioned units of BTPS Stage-I (Unit # 1-5) along with associated scrap / inventory shall not form part of the consideration. These units shall be dismantled and disposed off (along with associated scrap/ inventory in store) by NTPC at risk and cost of BSPGCL. NTPC is to ensure that these units are disposed off in the most efficient and effective manner with due care to realise their revenue potential appropriately. Proceeds realised from such disposal less administrative and incidental expenses towards this sale shall be to the account of GoB/ BSPGCL, which upon realisation can be adjusted against the receivables of NTPC from NBPDC and SBPDCL.

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c. The net consideration for BTPS assets and equity buyout of KBUNL and NPGCL, shall be worked out after first adjusting the outstanding debt liabilities and dues of Bihar Discoms towards sale of Power by KBUNL to Bihar Discoms in the transfer consideration.

d. The total consideration for BTPS (including the cost to completion) would be considered for adjustment in the books of accounts of BSPGCL.

V. Utilisation of funds: The consideration received for BTPS and equity shares in KBUNL and NPGCL, would be utilised by BSPGCL for settling its outstanding debt including pre-payment charges, towards FIs/ Banks first. Any balance consideration post settlement of debt obligations, would be utilised for adjustment of outstanding power purchase dues of the Bihar Discoms. The same has been detailed in Schedule A (Part-V).

VI. Treatment of Power Purchase Agreements (PPAs):

- a. The existing power purchase arrangements would continue to be in force;
- b. The PPA signed by BSPGCL with the Bihar Discoms for the BTPS shall be assigned to NTPC along with transfer of BTPS Assets through an Amended and Restated/ Supplementary Power Purchase Agreement incorporating any other changes as required which shall include payment security mechanism provided by the Bihar Discoms to NTPC as per other PPAs of NTPC with Bihar Discoms.

VII. Water for BTPS: GoB and BSPGCL shall ensure that the ongoing contingency scheme shall be suitably augmented to meet the requirement of BTPS Assets.

VIII. Coal for BTPS: BSPGCL shall apply to Ministry of Power, GoI (MOP) / Ministry of Coal, GoI (MOC) to facilitate transfer of following Coal linkages allocated to BTPS:

- a. Existing Fuel Supply Agreement (FSA) with ECL for providing Annual Contracted Quantity of 1.1 MTPA coal for BTPS Stage- I including necessary permissions from the Standing Linkage Committee (Long Term), MoP/MoC on takeover of BTPS Stage-



I by NTPC.

b. Assignment of existing Bridge Linkage of 1.07 MTPA for BTPS Stage- II from CCL mines.

c. Apply to MoP/MoC for allocation of coal for BTPS Stage-II under the SHAKTI scheme, 2017 of Gol.

d. Whereas the Ministry of Coal, Govt. of India vide its letter no. 23014/4/2018-CLD dt. 5th Sept. 2018, has decided to transfer the bridge linkage of BTPS Stage-II (2x250 MW) to NTPC in the event of NTPC taking over the Badam Coal Block. Therefore, it has been agreed between NTPC and BSPGCL that the Badam Coal Block, allocated to BTPS Stage-II, shall be assigned to NTPC in terms of the allotment agreement dated 30.03.2015 between BSPGCL and Ministry of Coal, Gol for the Badam Coal Block. All liabilities except assets related liabilities pertaining to Badam Coal Block accruing for the period prior to the Date of Transfer of Coal Block to NTPC shall be to the account of BSPGCL.

IX. Tariff determination:

a. Upon the transfer and vesting of BTPS Assets in NTPC on the Asset Transfer Date, BTPS will be under the regulatory jurisdiction of the Central Electricity Regulatory Commission (CERC) for determination of tariff as per Section 79(1)(a) of the Electricity Act, 2003.

Xxx

Schedule A

Part II : Transfer Consideration for NTPS undertakings

Assets (both movable and immovable) of BTPS stage I and Stage II alongwith associated land, infrastructure, approval, concessions and consents (hereafter both Stage I and Stage II of BTPS referred to "BTPS Assets"), free from all encumbrances and charges.

(Rs.in crore)

A.	Total consideration for BTPS Stage I & II as mutually agreed	Rs.3441.6
B.	Balance cost to completion to be incurred by NTPC for Stage II	Rs.1023.00
C.	Additional expenditure on account of IDC for 13 months (upto June, 19)	Rs.185.00
D.	Contingency amount to be retained by NTPC for completion of Stage I (any balance remaining with NTPC post completion would be adjusted with outstanding Bihar DISCOM dues)	Rs.20.0
E.	Net consideration to be paid by NTPC for BTPS stage I & II	Rs.2213.60
I	Apportionment of consideration for BTPS Stage I (2 x 110 MW)	Rs.150
II	Apportionment of consideration for BTPS Stage II (2 x 250 MW)	Rs.3291.6
III	Total consideration for BTPS	Rs.3441.6

Xxxxx

Part V : Net Consideration from NTPC to BSPGCL / Government of Bihar

For the avoidance of doubt, the net consideration from NTPC for BTPS, and towards the equity buy-out of BSPGCL shares in KBUNL and NPGCL, would be calculated as the following.

A.	Net consideration for BTPS	Rs.2213.60 crore
B.	



13. The Petitioner, in this Petition, has prayed for approval of tariff of the generating station from the date of takeover (15.12.2018 till 31.3.2019) and allow the recovery of the O&M expenses and interest on loan for shutdown period for revival and restoration of Units 6 & 7. The Petitioner has stated that both the Units were under shutdown during the course of takeover by the Petitioner from BSPGCL and were supposed to be recommissioned as per the transfer scheme, to revive the existing plants, by doing selective repair, refurbishment/ R&M as per the requirement to make the Units operational. The Petitioner has stated that it was not able to generate any revenue for the said period and hence it has claimed O&M expenses and IOL for the period 15.12.2018 to 31.3.2019, for Units 6 & 7, as per proviso to Regulation 30 (2) of the 2014 Tariff Regulations, which provides as under:

“Provided that in case of generating station or unit thereof or transmission system or an element thereof, as the case may be, under shutdown due to Renovation and Modernisation, the generating company or the transmission licensee shall be allowed to recover part of AFC which shall include O&M expenses and interest on loan only.”

14. The Statement of Object and Reasons (SOR) to the above Regulations states as under:

“34.7 As regards payment of capacity charges during renovation & modernisation period, beneficiaries have suggested to limit the capacity charges to Interest on Loan and part of O&M expenses, while some of the stakeholders have suggested to include the depreciation as part of capacity charges during renovation & modernisation period, to facilitate the repayment. In this regard, it may be noted that renovation & modernisation will be generally carried out at the fag end of the useful life or after completion of useful life and hence, the generating company or transmission licensee would have recovered substantial part of depreciation on original fixed cost and at that stage, there is unlikely to be any repayment obligation remaining corresponding to the loan for original project cost. Therefore, the Commission is of the view that the provision in draft Regulations in this regard is appropriate and does not warrant any change...”

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.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

