

BEFORE
THE BIHAR ELECTRICITY REGULATORY COMMISSION
VIDYUT BHAWAN - II, PATNA

Review Petition on BERC Tariff Order for
True-Up for FY 2020-21,
Annual Performance Review (APR) for FY 2021-22

And

Business Plan and ARR for the Control Period from FY 2022-23 to FY 2024-25 and
Tariff for FY 2022-23

For

Bihar State Power Transmission Company Limited
(BSPTCL)

Patna



Chief Engineer (STU),
4th Floor, Vidyut Bhawan - I,
Jawaharlal Nehru Marg,
Patna - 800 021

_____ 2022

Patna

Filing No.: _____

Case No.: _____

IN THE MATTER OF

Filing of the Review Petition on BERC Tariff Order in Case No. 20 of 2021 for True-up of FY 2020-21, Annual Performance Review (APR) for FY 2021-22, and Aggregate Revenue Requirement (ARR) for the Control Period from FY 2022-23 to FY 2024-25 and Tariff for FY 2022-23 under Section 94 of The Electricity Act, 2003 and Regulation 31 of the BERC (Conduct of Business) Regulations, 2005

AND

IN THE MATTER OF
THE APPLICANT

Bihar State Power Transmission Company Limited (herein after referred to as 'BSPTCL' or 'Petitioner'), which shall mean for the purpose of this Petition the Licensee, having its registered office at Vidyut Bhawan -I, Jawaharlal Nehru Marg, Patna - 800 021

The Petitioner respectfully submits as under:

Bihar State Power Transmission Company Limited (BSPTCL) is a Company registered under the Companies Act, 1956 in June 2012, to which the State Government through the Department of Energy has vested the transmission undertakings of the erstwhile Bihar State Electricity Board (BSEB) in Bihar, and is a fully owned subsidiary company of Bihar State Power (Holding) Company Limited (BSPHCL).

BSPTCL owns and operates the transmission system above 33 kV, i.e., at 132 kV and 220 kV system, and is presently carrying out the function of intra-State transmission and wheeling of electricity in the State of Bihar.

BSPTCL filed its Tariff Petition for approval of True-up of FY 2020-21, Annual Performance Review (APR) of FY 2021-22 and Annual Revenue Requirement (ARR) for the Control Period from FY 2022-23 to FY 2024-25 and determination of Transmission Tariff for FY 2022-23 on 14 December 2021. The Petition was filed under Section 62 of Electricity Act, 2003 read with Bihar Electricity Regulatory Commission (Multi Year Transmission Tariff and SLDC Charges) Regulations, 2018

and Bihar Electricity Regulatory Commission (Multi Year Transmission Tariff and SLDC Charges) Regulations, 2021.

The Hon'ble Commission (BERC) admitted the Petition as Case No. 20 of 2021 on 4 January 2022, after submission of additional data/information and clarifications by BSPTCL vide Letter No. BERC Tariff Case No-20/2021-1016 dated 28 December 2021 and letter No. BERC Tariff Case No-20/2021-60 dated 18 January 2022.

Public Hearing was conducted on 8 February 2022 through Video Conferencing. The Hon'ble Commission issued the Tariff Order on BSPTCL's Petition on 25 March 2022.

BSPTCL is submitting this Review Petition on the Hon'ble Commission's Order dated 25 March 2022, in accordance with Regulation 31 (Review of decisions, directions, and orders) of the BERC (Conduct of Business) Regulations, 2005, as reproduced below:

"31 Review of the decisions, directions, and orders

(1) The Commission may on its own motion, or on the application of any of the person or parties concerned, within 60 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.

Provided that the Commission may, if it is satisfied, that the petitioner was prevented by sufficient cause from filing the review petition within the said period, allow it to be filed within a further period not exceeding 30 days, subject to such terms and conditions which commission may consider appropriate.

(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations

(3) The application shall be accompanied by such fee, if any, as may be laid down by the Commission"

BSPTCL requests the Hon'ble Commission to admit the Review Petition since:

- a) No appeal has been preferred so far;
- b) The Petitioner has identified certain error/s apparent on the face of the record;
- c) The Petitioner has also identified certain parameters, which the Hon'ble Commission is requested to kindly review based on the submission of BSPTCL.

The specific grounds on which the review is being sought have been identified against each aspect of the Order on which review is being sought, in subsequent paragraphs.

Table of Contents

| | |
|---|-----------|
| <i>1 Employee Expenses</i> | <u>5</u> |
| <i>2 Disallowed Other Finance Charges for FY 2020-21</i> | <u>9</u> |
| <i>3 Funding of Capitalization for IRF scheme</i> | <u>11</u> |
| <i>4 Capitalization Disallowed for FY 2020-21</i> | <u>14</u> |
| <i>5 Sharing of Gains/ (Losses) for O&M Expenses for FY 2020-21</i> | <u>21</u> |
| <i>6 Capitalisation Disallowed for FY 2021-22</i> | <u>25</u> |
| <i>7 O&M Expenses Norms for FY 2022-23 to FY 2024-25</i> | <u>26</u> |
| <i>8 Financial Claim of BSPTCL in Review Petition</i> | <u>37</u> |
| <i>9 PRAYER</i> | <u>39</u> |



1 Employee Expenses

BSPTCL in the Petition, had claimed Normative Employee Expenses as per the methodology adopted by the Hon'ble Commission in its previous Orders. The Normative Employee Expenses claimed by BSPTCL in True up of FY 2020-21, APR of FY 2021-22 and ARR for the Control Period from FY 2022-23 to FY 2024-25 are as shown in the Table below:

Table 1: Employee expenses claimed by BSTCL in the Petition (Rs. Crore)

| Particulars | FY 2020-21 | FY 2021-22 | FY 2022-23 | FY 2023-24 | FY 2024-25 |
|-----------------------------|------------|------------|------------|------------|------------|
| Normative Employee Expenses | 181.01 | 200.07 | 226.23 | 252.64 | 285.06 |

Further, BSPTCL through its additional submission dated 3 February 2022 had requested the Hon'ble Commission to allow actual uncontrollable Terminal Benefits of Rs. 40.79 Crore in addition to the normative Employee Expenses, for FY 2020-21 and onwards, in accordance with the applicable provisions of BERC MYT Regulations, 2018 and BERC MYT Regulations, 2021. BSPTCL had also highlighted this issue during the Public Hearing held by the Hon'ble Commission on BSPTCL's Petition.

The additional submission of BSPTCL to allow Terminal Benefits is reproduced as below:

"EMPLOYEE EXPENSES

In the Tariff Petition, BSPTCL has claimed normative employee expenses for FY 2020-21 considering the norms of the Hon'ble Commission. Regulation 21.1 of MYT Regulations, 2018 allow terminal benefits over and above normative employee expenses. The relevant extract of the Regulations is as under:

"21.1 Employee Cost

Employee cost shall be computed as per the approved norm escalated by consumer price index (CPI), adjusted by provisions for expenses beyond the control of the Transmission Licensee and one time expected expenses, such as recovery/adjustment of terminal benefits, implications of pay commission, arrears and Interim Relief, governed by the following formula:

....."

Further, Regulation 21.1 of MYT Regulations, 2021 also allow terminal benefits over and above normative employee expenses. The relevant extract of the Regulations is as under:

"21.1 Employee Cost

Employee cost shall be computed as per the approved norm escalated by consumer price index (CPI), adjusted by provisions for expenses beyond the control of the Transmission Licensee and one time expected expenses, such as recovery/adjustment of terminal benefits, implications of pay commission, arrears and Interim Relief, governed by the following formula:

....." (Emphasis added)

In FY 2020-21, BSPTCL has incurred Rs. 40.79 Crore towards terminal benefits, which has been booked in Annual Accounts. BSPTCL requests the Hon'ble Commission to allow terminal benefits for FY 2020-21 and onwards.

Further, BSPTCL has projected the terminal benefits from FY 2021-22 and onwards at the same level as actual terminal benefits of FY 2020-21. However, BSPTCL shall claim actual amount of terminal benefits based on actuarial valuation at time of truing up for respective years.

| Particulars | FY 2020-21 | FY 2021-22 | FY 2022-23 | FY 2023-24 | FY 2024-25 |
|-------------------------------|------------|------------|------------|------------|------------|
| Terminal Benefits (Rs. Crore) | 40.79 | 40.79 | 40.79 | 40.79 | 40.79 |

Accordingly, revised Employee Expenses of BSPTCL are as under:

| Particulars | FY 2020-21 | FY 2021-22 | FY 2022-23 | FY 2023-24 | FY 2024-25 |
|--------------------------------|--------------|---------------|---------------|---------------|---------------|
| Normative Employee Expenses | 181.01 | 200.07 | 226.23 | 252.64 | 285.06 |
| Terminal Benefits (Rs. Crore) | 40.79 | 40.79 | 40.79 | 40.79 | 40.79 |
| Total Employee Expenses | 221.8 | 240.86 | 267.02 | 293.43 | 325.85 |

BSPTCL humbly requests the Hon'ble Commission to kindly allow actual uncontrollable Terminal Benefits in addition to the normative Employee Expenses, for FY 2020-21 and onwards, in accordance with the applicable provisions of BERC MYT Regulations, 2018 and BERC MYT Regulations, 2021."

However, the Hon'ble Commission has not considered the additional submission of BSPTCL on Terminal Benefits as no such submission has been detailed as part of the Order. The Hon'ble Commission has allowed Normative Employee Expense for FY 2020-21 as claimed in the original Petition, without any reference to BSPTCL's additional submission or any rationale for not considering the request made by BSPTCL in its additional submission. The Normative Employee Expense approved by the Hon'ble Commission for FY 2020-21 are reproduced as below:

"...

The Commission considering the approved norm has computed the employee expenses with inflationary indexation of 5.35% for FY 2020-21 as detailed in the table below:

Table 4.27: Employee expenses approved for FY 2020-21 in true up

(Rs. Crore)

| <i>Sl. No.</i> | <i>Particulars</i> | <i>Base Norm</i> | <i>Approved in TO dated 20.03.2020</i> | <i>Claimed in Truing Up for FY 2020-21</i> | <i>Now approved for FY 2020-21 in truing up</i> |
|----------------|---|------------------|--|--|---|
| 1 | <i>Average annual CPI index</i> | | 4.22% | 5.35% | 5.35% |
| 2 | <i>Norms-Number of personnel per Ckt/km</i> | 0.0822 | 0.0822 | 0.0822 | 0.0822 |
| 3 | <i>Norms-Number of personnel per substation</i> | 6.6427 | 6.6427 | 6.6427 | 6.6427 |
| 4 | <i>Transmission line in Ckt km</i> | | 16696 | 15,084 | 15,084 |
| 5 | <i>No. of substations</i> | | 152 | 146 | 146 |
| 6 | <i>Norms-Annual expenses per personnel (Rs. lakh)</i> | 7.7756 | 8.1040 | 8.1916* | 8.1916 |
| 7 | <i>Employee cost (Number of personnel per Ckt/km basis) (2*4*6)/100 (Rs. Crore)</i> | | 111.22 | 101.57 | 101.57 |
| 8 | <i>Employee cost (Number of personnel per substation basis) (3*5*6)/100 (Rs. Crore)</i> | | 81.83 | 79.45 | 79.45 |
| 9 | <i>Total Employee cost for the year (7+8) (Rs. Crore)</i> | | 193.05 | 181.01 | 181.01 |

- *Value wrongly considered as 8.1919 by the petitioner now correctly depicted.*

The Commission approves employee cost at Rs.181.01 crore for FY 2020-21 in true up as detailed in the table above."

Further, the Hon'ble Commission has allowed Normative Employee Expense of Rs. 200.06 Crore for FY 2021-22 as claimed by BSPTCL in the original Petition. The Hon'ble Commission has approved Normative Employee Expense of Rs. 194.59 Crore, Rs. 217.25 Crore and Rs. 245.10 Crore for FY 2022-23, FY 2023-24 and FY 2024-25, respectively, based on the employee norms determined by the Hon'ble Commission for the Control Period.

BSPTCL submits that it is evident from the above that the Hon'ble Commission has allowed Normative Employee Expense based on the BSPTCL's submission in the original Petition. However, the Hon'ble Commission seems to have inadvertently not considered BSPTCL's additional submission on Terminal Benefits in the Order. BSPTCL submits that the non-consideration of BSPTCL's Additional Submission and non-consideration of Terminal Benefits as a pass-through expense in accordance with the applicable BERC MYT Regulations is an apparent error on the face of the record.

BSPTCL further submits that the Hon'ble APTEL in the Judgment dated 14 September 2006 in Appeal No. 189 of 2005 in the matter of Uttaranchal Jal Vidyut Nigam Ltd. Vs. Uttaranchal Electricity Regulatory Commission, has set aside the disallowance of Terminal Benefits claimed by the appellant and directed the Hon'ble Commission to allow the claim made by the appellant in respect of Terminal Benefits. The relevant paras of the Judgment are reproduced as under:

"27. Next we shall take up point D, where we have to examine the disallowance of employee related costs claimed for payment of Provident Fund (PF) and related terminal benefits of the employees to retire. The commission has chosen to negative the said claim on the reasoning that U.P. government has taken the responsibilities. The commission, in effect requires the appellant has been allowed to raise loan and service on actuals in this behalf, that apart the appellant has been directed to take up the matter with State Authority with expedition.

....

29. In respect of the claim of terminal benefits in identical circumstances on 12.9.2006 in appeal No. 24 of 2006 HVPN Vs. HERC, in respect of identical issue/occasion to consider in detail this aspect and held thus:

"....



19. *Concedingly both appellant and respondent realize that a corpus is required to be created to pay terminal benefits payable on a future date. While we appreciate the concern of the Commission regarding interest payment, we are convinced that once the Accounting Standards-15 are mandatory in nature and accounts are required to be kept on accrual basis, there is no way in which the appellant can deviate from this basic accounting principle. In view of this position we answer this point in favour of the appellant and set aside the directions issued by the Commission in this regard."*

30. *The above statement of law squarely applies to the case on hand and following the same, while reversing the direction of the commission, we direct that all terminal benefits including PF shall be approved on accrual basis. We answer this point in favour of appellant."* (Emphasis added)

The Hon'ble Commission has thus erred in not allowing the Terminal Benefits as a part of the Employee expenses for FY 2020-21 to FY 2024-25 by. **This is clearly an error apparent on the face of record and hence, BSPTCL request the Hon'ble Commission to review the Tariff Order on this issue, and allow the consequential impact to BSPTCL.**

BSPTCL has worked out the impact of considering the Terminal Benefits for FY 2020-21 to FY 2024-25 as shown in the following Table:

Table 2: Total Impact of Terminal Benefits (Rs. Crore)

| Sl. | Particulars | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|-----|-------------------|----------|----------|----------|----------|----------|
| 1 | Terminal Benefits | 40.79 | 40.79 | 40.79 | 40.79 | 40.79 |

In view of the above, BSPTCL respectfully requests the Hon'ble Commission to review the Employee expenses of FY 2020-21 to FY 2024-25 as approved in Tariff Order dated 25 March 2022, under the head, *"error apparent on the face of the record"* and approve the Employee Expenses after considering the Terminal Benefits as per Regulation 21.1 of BERC MYT Regulations, 2018 and BERC MYT Regulations, 2021.

2 Disallowed Other Finance Charges for FY 2020-21

BSPTCL had claimed Interest and Finance Charges of Rs. 328.73 Crore for FY 2020-21, which included the Other Finance Charges of Rs. 1.23 Crore. BSPTCL had claimed Other Finance Charges in line with the amounts reflecting in annual accounts of FY 2020-21. Further, BSPTCL had considered the Other Finance Charges of Rs. 1.23

Crore for FY 2021-22 and for Control Period from FY 2022-23 to FY 2024-25, same at actuals for FY 2020-21.

However, the Hon'ble Commission has approved Rs.0.04 Crore towards Other Finance Charges based on the audited accounts for FY 2020-21 and disallowed upfront fee of Rs.1.19 Crore. The relevant paras of the Order are reproduced as below:

"The Commission, accordingly has computed interest on loan in the truing up for FY 2020-21 as detailed in the Table below:

**Table 4.22: Interest on loans approved in truing up for FY 2020-21
(Rs. Crore)**

| Sl. No. | Particulars | Approved in TO dated 20.03.2020 | Claimed in Truing-up of FY 2020-21 | Now approved for FY 2020-21 in true up |
|---------|------------------------------------|---------------------------------|------------------------------------|--|
| 1 | Opening Loan | 3,263.81 | 3,524.26 | 3524.26 |
| 2 | Addition during the year | 1,235.13 | 503.86 | 477.12 |
| 3 | Normative Repayment | 330.48 | 354.27 | 344.49 |
| 4 | Closing Loan (1+2-3) | 4,168.45 | 3,673.85 | 3656.89 |
| 5 | Average Loan (1+4)/2 | 3,716.13 | 3,599.06 | 3590.57 |
| 6 | Interest Rate (%) | 10.50% | 9.10% | 8.95% |
| 7 | Interest on Loan (5*6) | 390.19 | 327.50 | 321.36 |
| 8 | Other Finance Charges | 0.01 | 1.23 | 0.04 |
| 9 | Interest and Finance Charges (7+8) | 390.20 | 328.73 | 321.40 |

The Commission, accordingly, approves the interest on loans of Rs.321.36 crore for FY 2020-21 in truing up.

The Commission also approves Rs.0.04 crore towards other finance charges based on the audited accounts for FY 2020-21, except upfront fee of Rs.1.19 crore related to capital loans treated as capital expenditure.

Thus, the Commission approves the Interest & Finance Charges of Rs.321.40 crore (321.36+0.04) for FY 2020-21 in truing up."

It is also observed that the Hon'ble Commission has also considered the Other Finance Charges of Rs. 0.04 Crore for FY 2021-22 and for FY 2022-23 to FY 2024-25, same as approved for FY 2020-21.

BSPTCL submits that it has claimed Upfront Fees of Rs. 1.19 Crore based on the audited annual accounts for FY 2020-21 and the breakup of the same is provided as below:

Table 3: Break up of Upfront Fee of Rs. 1.19 Crore claimed by BSPTCL for FY 2020-21 (Rs. Crore)

| Sl. No. | Particulars | Date | Amount |
|---------|---|------------|-------------|
| 1 | Processing fee & GST thereon of loan from Canara Bank | 12.11.2020 | 1.18 |
| 2 | Processing fees charged by Canara Bank on loan for state plan | 18.12.2020 | 0.01 |
| 3 | Total Disallowance | | 1.19 |

From the above, it is to be noted that BSPTCL has actually paid the processing fees for loan from Canara Bank during FY 2020-21. The supporting document in this regard is submitted as **Annexure- I** of this submission.

The Hon'ble Commission has thus, erred in considering the Other Finance Charges of Rs. 0.04 Crore for FY 2020-21 to FY 2024-25 instead of Rs. 1.23 Crore claimed by BSPTCL. BSPTCL has worked out the impact of the erroneous Other Finance Charges of for FY 2020-21 to FY 2024-25 in the subsequent section of this Review Petition.

In view of the above, BSPTCL respectfully requests the Hon'ble Commission to review the Other Finance Charges for FY 2020-21 to FY 2024-25 as approved in Tariff Order dated 25 March 2022, under the head, "*error apparent on the face of the record*" and approve disallowed amount of Rs. 1.19 Crore for FY 2020-21 and allow Other Finance Charges of Rs. 1.23 Crore for FY 2020-21 to FY 2024-25 as claimed in the Petition.

3 Funding of Capitalization for IRF scheme

BSPTCL had claimed Debt:Equity ratio in line with the approach of the Hon'ble Commission in Previous Orders as 70:30 for 12th Plan projects and 80:20 for 13th Plan projects as well as 100% Debt for ADB funded projects. The Hon'ble Commission, in Table 4.7 of the Order has approved scheme-wise funding of capitalisation for FY 2020-21 as shown below:

"

Table 4.7: Scheme-wise funding of capitalisation approved for FY 2020-21 in truing up

(Rs. Crore)

| Sl. No. | Name of the scheme | Capitalisation | IDC | Total capitalisation | Equity | Loan | Grant |
|---------|--------------------------------------|----------------|-------------|----------------------|---------------|---------------|--------------|
| | 12th Plan (ongoing projects) | | | | | | |
| 1 | BRGF Schemes | 19.75 | | 19.75 | 5.93 | 13.83 | |
| 2 | State Plan | 221.41 | | 221.41 | 66.42 | 154.99 | |
| 3 | ADB Schemes | 5.66 | | 5.66 | | 5.66 | |
| | sub-total - A | 246.82 | 0.00 | 246.82 | 72.35 | 174.47 | 0.00 |
| | 12th Plan (old projects) | | | | | | |
| 4 | BRGF Schemes | 66.16 | | 66.16 | 19.85 | 46.31 | |
| 5 | State Plan | 164.65 | | 164.65 | 49.40 | 115.26 | |
| 6 | ADB Schemes | | | 0.00 | | 0.00 | |
| 7 | IRF schemes | 35.70 | | 35.70 | | 35.70 | |
| 8 | Deposit schemes | 25.29 | | 25.29 | | | 25.29 |
| | sub-total - B | 291.80 | 0.00 | 291.80 | 69.24 | 197.27 | 25.29 |
| | 13th Plan (upcoming projects) | | | | | | |
| 9 | State Plan | 41.23 | 2.87 | 44.10 | 8.82 | 35.28 | |
| | sub-total - C | 41.23 | 2.87 | 44.10 | 8.82 | 35.28 | 0.00 |
| | 13th Plan (other projects) | | | | | | |
| 10 | State Plan | 89.96 | 0.87 | 90.83 | 18.17 | 72.66 | |
| | sub-total - D | 89.96 | 0.87 | 90.83 | 18.17 | 72.66 | 0.00 |
| | Total (A+B+C+D) | 669.81 | 3.74 | 673.55 | 168.58 | 479.68 | 25.29 |

..."

From the above, it is observed that the Hon'ble Commission has considered IRF Projects to be funded by 100% Debt for FY 2020-21. For FY 2021-22 and FY 2022-23 also, the Hon'ble Commission has considered IRF Projects to be funded by 100% Debt. For FY 2023-24 and FY 2024-25, there are no IRF Projects.

Regulation 24(b) of the BERC MYT Regulations, 2018 specifies that:

"24. Interest and finance charges on loan capital

....

(b) If the equity actually deployed is more than 30 % of the capital cost, equity in excess of 30 % shall be treated as normative loan:

Provided that where equity actually deployed is less than 30% of the capital cost, the actual loan shall be considered for determination of interest on loan:" (Emphasis added)