

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL No. 59 of 2022

Dated: 31.10.2025

**Present: Hon'ble Mr. Virender Bhat, Judicial Member
 Hon'ble Mr. Ajay Talegaonkar, Technical Member**

IN THE MATTER OF:

Bihar State Power Transmission Company Ltd. (BSPTCL)

4th Floor, Vidyut Bhawan,

Bailey Road, Patna 800021.

Through its authorized signatory Shri Umang Anand
(Resident Engineer)

...Appellant(s)

Versus

1. The Chairman
 Bihar Electricity Regulatory Commission
 Vidyut Bhawan-II, J. L. Nehru Marg,
 Patna- 800 021.
2. The Director (Projects)
 Bihar Grid Company Limited
 2nd Floor, Alankar Palace, Boring Road Crossing
 Patna, Bihar 800 001.
3. The Chairman-cum-Managing Director
 Bihar State Power (Holding) Company Ltd.
 1st Floor, Vidyut Bhawan,
 Bailey Road, Patna - 800021.
4. The Managing Director
 North Bihar Power Distribution Company Ltd.
 Vidyut Bhawan, J.L. Nehru Marg,
 Patna – 800 021.
5. The Managing Director
 South Bihar Power Distribution Company Ltd
 Vidyut Bhawan, J.L. Nehru Marg,
 Patna – 800 021.

....Respondent(s)

Counsel for the Appellant(s) : Mr. Sunil Kumar Jha

Counsel for the Respondent(s) : Mr. Ravi Kishore

JUDGEMENT

PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER

1. The Present Appeal has been filed by M/s. Bihar State Power Transmission Company Limited ("BSPTCL" or "Appellant") challenging the legality, validity and propriety of the Impugned Tariff Order dated 15.02.2019 in Case No. 51 of 2018 and Impugned Order dated 25.07.2019 passed in Review Case No. 12 of 2019 passed by Bihar Electricity Regulatory Commission ("BERC" or "Respondent No. 1").

Description of the Parties

2. The Appellant is a transmission Company constituted under the Bihar State Electricity Reforms Transfer Scheme 2012.

3. The Respondent No. 1 is the statutory Regulatory Commission constituted under Section 82 of the Electricity Act, 2003.

4. The Respondent No. 2, Bihar Grid Company Limited (BGCL) is a joint venture company involved in the development, construction, and operation of transmission infrastructure projects in the State of Bihar.

5. The Respondent No. 3, Bihar State Power (Holding) Company Limited (BSPHCL) is the holding company of the State's power utilities.

6. Respondent Nos. 4 and 5 are North Bihar Power Distribution Company Limited (NBPDC) and South Bihar Power Distribution Company Limited (SBPDCL) engaged in the business of distribution and supply of electricity in Northern and the southern region of Bihar respectively.

Factual Matrix of the Case

7. The present Appeal arises out of the Tariff Order dated 15.02.2019 passed by the Bihar Electricity Regulatory Commission (BERC) in Case No. 51 of 2018 whereby the Commission determined the True-Up for FY 2017-18, Annual Performance Review (APR) for FY 2018-19 and Revised Annual Revenue Requirement (ARR) along with the determination of Transmission Charges for FY 2019-20 through a composite order.

8. The Appellant had initially filed a Petition dated 30.11.2018 in accordance with the provisions of section 61 and 62 of the Electricity Act, 2003 and taking into consideration of the BERC (Terms and Conditions for Determination of Tariff) Regulations, 2007 as amended time to time before the BERC for True-Up of FY 2017-18, APR for FY 2018-19, and Revised ARR for FY 2019-20 which was registered as Case No. 51 of 2018.

9. Subsequently, on 31.12.2018, a Revised Tariff Petition was submitted in Case No. 42 of 2018 and Case No. 51 of 2018 covering the same financial years and control period.

10. Pursuant thereto, on 15.02.2019, BERC issued the Tariff Order in Case No. 42 of 2018 and 51 of 2018.

11. Aggrieved by the said Tariff Order, the Appellant filed a Review Petition being Case No. 09 of 2019 on 18.04.2019 before BERC, seeking review of the Order dated 15.02.2019.

12. On 10.05.2019, BERC directed the Appellant to file a fresh Review Petition against the Tariff Order dated 15.02.2019, positively by 28.05.2019. In compliance with the said direction, the Appellant filed fresh Review Petition No. 12 of 2019 on 24.05.2019 against the same Tariff Order.

13. Upon consideration, BERC vide its Impugned Order dated 25.07.2019 partially allowed the Review Petition by amending Clause 7.15 of the Tariff Order but rejected the Appellant's claim for additional incentive amounting to ₹6.02 Crores. The Respondent Commission examined Appellant's plea for review and modification of paragraph 4.11 of the Tariff Order dated 15.02.2019, which pertained to incentives for achieving a higher Transmission Availability Factor (TAF) for FY 2017–18.

14. It was reiterated by the Respondent Commission that the issue had already been deliberated in earlier orders dated 07.03.2018 and 20.11.2018. Referring to the BERC (Terms and Conditions for Determination of Tariff) Regulations, 2007, the Respondent Commission acknowledged that the Regulation 68 specifies 98% target availability for recovery of full transmission charges and Regulation 76 allows incentives linked to equity for each percentage point of availability achieved above the target. However, the Respondent Commission relied on Regulation 4 of the aforesaid Regulations which inter-alia mandates that in determining the tariffs, the Commission shall be guided by principles and guidelines issued by the Central Electricity Regulatory Commission (CERC). In line with CERC norms (Regulation

38 of the CERC Tariff Regulations, 2014–19), the normative availability threshold for incentive computation is 98.50%.

15. The Respondent Commission held that contention of BSPTCL was solely based on the Regulation 68, ignoring the guidance of Regulation 4, which modifies the interpretation of availability targets in conjunction with CERC norms. Consequently, the Respondent Commission concluded that there was no basis for deviation from the methodology adopted in the original order and rejected Appellant's request for an additional incentive of ₹6.02 crore for FY 2017–18.

16. Thus, being aggrieved by the partial rejection of its claim, the Appellant has preferred the present Appeal. The Appellant has prayed for the following relief before us:

“(a) allow the present appeal of the appellant and modify the impugned order dated 15.02.2019 passed by BERC in Case No. 51 of 2018 to the extent as stated in the grounds;

(b) Set aside the impugned order dated 25.07.2019 passed in the Review Petition No. 12 of 2019.

(c) pass such order or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

Written Submissions of the Appellant

17. The Appellant has submitted that the Commission has erred in calculating the incentive by adopting the Target Availability Factor (TAF) of 98.5% instead of 98%, contrary to the provisions of the Bihar Electricity Regulatory Commission

(Terms and Conditions for Determination of Tariff) Regulations, 2007 (“BERC Tariff Regulations, 2007”).

18. The Appellant achieved a TAF of 99.134% for FY 2017–18 as against the prescribed target of 98% for the AC Transmission System. In accordance with Regulation 76 of the BERC Tariff Regulations, 2007, the Transmission Licensee is entitled to an incentive @ 1% of equity for each percentage point increase in annual availability beyond the target level. Accordingly, the Appellant claimed an incentive of ₹11.55 Crores.

19. The Appellant has submitted that despite express and unambiguous provision in its own Regulations, the Commission, erroneously and arbitrarily applied provision of CERC Regulations and fixed the target at 98.5%, thereby approving only ₹5.53 crores and disallowing the balance ₹6.02 crores. The Appellant has further contended that the TAF set in the BERC Tariff Regulations, 2007 are binding, and not that is given in the guidelines of CERC. The Respondent Commission, having itself accepted the Appellant’s computation showing TAF of 99.134%, ought to have applied the 98% target specified under Regulation 68.

20. It has been submitted that the finding and the Impugned Tariff Order, as well as the order passed in the review petition, are inconsistent with the BERC Tariff Regulations, 2007 and the material on record. Based on the above, the Appellant has concluded that the rejection of its claim of ₹6.02 crores is, therefore, erroneous and not in consonance with the BERC Tariff Regulation, 2007.

Written Submissions of the Respondents

21. Written Submissions have been filed only by the Respondent No 1. No other Respondent has made any submission.

22. The Respondent Commission (Respondent No. 1) has submitted that its Regulations namely the BERC (Terms and Conditions for Determination of Tariff) Regulations, 2007, particularly Regulations 4, 68, and 76, and the CERC Tariff Regulations 2014–19, are relevant to the present case.

23. Respondent Commission has admitted that under Regulation 68 of the BERC Tariff Regulations, 2007, the TAF for recovery of full transmission charges for AC systems is 98%, while Regulation 76 provides for incentive calculation at 1% of equity for each percentage point increase in availability beyond the TAF.

24. The Respondent Commission has, however, placed reliance on Regulation 4 of the BERC Tariff Regulations, 2007, which inter alia stipulates that the Commission shall be guided by the principles and guidelines specified by the CERC for determination of tariff applicable to an integrated utility or generating company or transmission licensees from time to time. The Respondent Commission has contended that this is a specific provision, whereas Regulations 68 and 76 are general in nature. Accordingly, it has been contended that the specific provision prevails.

25. In accordance with Regulation 38 of the CERC Tariff Regulations, 2014–19, the TAF for full recovery is 98% whereas incentive is payable if TAF exceeds 98.5% in AC systems. Placing reliance on Regulation 4 of BERC Tariff Regulations, 2007 the Respondent Commission adopted the CERC benchmark and determined the Normative Annual Transmission System Availability Factor (NATAF) at 98.50% for incentive eligibility.

26. Accordingly, the Commission granted incentive to the Appellant during the truing up for FY 2016–17, FY 2017–18, and FY 2018–19. The Respondent Commission has submitted that the Impugned Order was thus passed in conformity with the CERC Regulations, as required by the specific mandate under Regulation 4 of the BERC Tariff Regulations, 2007.

27. Citing the legal and regulatory position, the Respondent Commission has submitted that the appeal is devoid of merit and is liable to be dismissed.

Our Observations and Analysis

28. Before we proceed to analyse the rival contentions, it is worthwhile to look at the relevant provisions of the BERC and CERC Regulations:

Relevant extracts of BERC (Terms and Conditions for Determination of Tariff) Regulations, 2007:

“4. Guidelines for determination of tariffs:

The Commission shall be guided in determination of tariff by the following:

(1) The principles and guidelines specified by the Central Electricity Regulatory Commission for determination of tariff applicable to an integrated utility or generating company or transmission licensee from time to time.

(2) National Electricity Policy and Tariff Policy as laid down by the Government of India.

***(3) Guidelines laid down in Section 61 of the Electricity Act, 2003.”
(Emphasis added)***

68. Target availability for recovery of full transmission charges

(i) AC System 98%

(ii) HVDC System 95%

Note: Recovery of fixed charges below the level of target availability shall be on pro rata basis. At zero availability, no transmission charges shall be payable. (Emphasis added)

76. Incentive

(1) *The Transmission Licensee shall be entitled to incentive @1% of the equity for each percentage point of increase in annual availability beyond the target availability prescribed under Regulation 68 in accordance with the following formula:*

$$\text{Incentive} = \text{Equity} \times (\text{Annual availability achieved} - \text{target availability})/100$$

(2) *Incentive shall be shared by long term customers in the ratio of their average allotted transmission capacity for the year.”*

Relevant extracts of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014:

“38. Normative Annual Transmission System Availability Factor (NATAF): shall be as under:

(a) For recovery of Annual Transmission Charges:

(i) AC System: 98%

(ii) HVDC bi-pole links: 95%

(iii) HVDC back-to-back stations: 98%

(b) For incentive consideration:

(i) AC System: 98.5%

(ii) HVDC bi-pole links: 96%

(iii) HVDC back-to-back stations: 98.5%.” (Emphasis added)

29. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondent Commission at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the only issue before us is whether BERC was justified in adopting TAF of 98.5% against the claim of 98% by the Appellant.

30. It is a well-established legal maxim that where a statute contains both a general provision and a specific provision covering the same subject, the specific provision prevails over the general (*lex specialis derogat legi generali; generalia specialibus non derogant*). The Respondent Commission has justified its stand on this legal maxim. The Respondent Commission has contended that the BERC Regulation are general in nature whereas a specific Regulation has mandated that BERC shall be guided by the Regulations of CERC.

31. In our view, any clause which is narrowly tailored and subject-specific must be treated as specific provision and must prevail over any broadly worded, residuary or default clause. When we apply this test, clearly Regulation 68 has specific stipulation about target availability for transmission system and Regulation 76 has specific provision about payment of incentive if actual availability exceeds the target availability specified in Regulation 68. On the other hand, Regulation 4 is broadly worded; it mentions the guiding factors for the Commission encompassing all aspects of power sector and not just transmission. Also, there is no specific mention of target availability or incentive in Regulation 4.

32. We have observed that the sub-Regulation (1) of the Regulation 4 of the BERC Tariff Regulations, 2007 appears to be based on Section 61 of the Electricity Act, 2003. The relevant part of the said section of the Electricity Act, 2003 is reproduced below:

“Section 61. (Tariff regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) -----

(c) -----

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33. It is clear that intent of the Section 61 of the Electricity Act, 2003 is that while specifying the terms and conditions of the tariff i.e. during the process of preparing the tariff regulations, the Appropriate Commission must take into account the relevant provisions of CERC Regulations on generation and transmission tariff. By no stretch of imagination, the provisions of CERC Regulations can be applied by the Appropriate Commission on specific issues after having specified its own tariff Regulations. In fact, the State Commissions should be alive to the prevailing Tariff Regulations of the Central Commission and initiate process of amendment to their Regulations, unless there is specific reason for not adopting one or more of the provisions of CERC Tariff Regulations.

34. In our view, the Regulation 4, in the overall context of the BERC Tariff Regulations, 2007 could find its application only in cases where a gap or void is noticed, which gets covered by relevant provision in CERC Tariff Regulations. This, in our view, is not the case in the present matter.

35. In view of the forging analysis, we conclude that the Regulation 4 of BERC Tariff Regulation, 2007 is general provision whereas the Regulations 68 and 76 are specific provisions relating to payment of incentive to transmission licensee. Therefore, BERC ought to have used TAF of 98% in accordance with Regulation 68 read with Regulation 76 of its own Tariff Regulation for calculating incentive amount receivable by the Appellant.

36. We notice that in the original petition filed before the BERC, the Appellant had claimed that its actual availability during 2017-18 was 99.134% and the amount of equity claimed was ₹ 872.27 Crs. These are the only parameters other than TAF that are used in calculation of incentive amount. Since no contention has been raised on the remaining two parameters, other than TAF, it can be concluded that there can be no doubt on the amount claimed by the Appellant in its petitions against which Impugned orders were issued by the Respondent Commission.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 59 of 2022 has merit and is allowed.

The Impugned Tariff Order dated 15.02.2019 in Case No. 51 of 2018 and Impugned Order dated 25.07.2019 passed in Review Case No. 12 of 2019 are

set aside to the extent they pertain to claim of incentive by the Appellant for the year 2017-18.

Accordingly, the Appellant's claim for additional incentive amount of ₹ 6.02 Crores is allowed.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 31st DAY OF OCTOBER, 2025.

(Ajay Talegaonkar)
Technical Member

(Virender Bhat)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~

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