

Explanatory Memorandum to Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2011

Regulation 5(3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 provided for determination of provisional tariff in case of the generating station or transmission system declared under commercial operation on or after 1.4.2004 as under:

“(3) In case of a generating station or the transmission system declared under commercial operation on or after 1.4.2004, an application for fixation of tariff shall be made in two stages, namely:

(i) A generating company or a transmission licensee may make an application as per Appendix I to these regulations, for determination of provisional tariff in advance of the anticipated date of completion of the project based on the capital expenditure actually incurred up to the date of making of the application or a date prior to making of the application, duly audited and certified by the statutory auditors, and the provisional tariff shall be charged from the date of commercial operation of the respective unit of the generating station or the line or sub-station of the transmission system:

[[Provided that while making the application for determination of provisional tariff, it shall not be necessary to file the details as specified under Forms 5B, 5C and 5D of the tariff filing forms, as applicable.]]”

2. The Commission decided to do away with the provisional tariff during the tariff period 2004-09 as the generating companies and transmission licensees are permitted to file the tariff petitions six months before their date of commercial operation. The following reasons were advanced in the explanatory memorandum to draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009:

“5.9 In case of a new generating station or transmission system, the generating company or the transmission licensee as the case may be shall have the option to approach the Commission for determination of tariff six months before the COD and the Commission shall determine tariff based on the capital cost actually incurred, projected capital expenditure to be incurred till the COD and the projected additional capital expenditure for each year of the tariff period.

5.10 With the provision for truing up and adjustment of excess recovery or shortfall as a result of such truing up at the rate of SBI PLR as on the 1st April of the respective financial year, the concern of inflated projection of capital expenditure or additional capital expenditure is also taken care of. This would also obviate the need for provisional tariff. The proposed tariff regulation therefore does away with the provision for provisional tariff.”

3. Accordingly, the following provisions were made in the draft regulations for the tariff period 2009-14:

‘Provided that in case of an existing project, the application shall be based on admitted capital cost including any additional capitalization already admitted up to 31.3.2008 and estimated additional capital expenditure for the year 2008-09 and for the respective years of the tariff period 2009-14’

4. However, while finalizing the 2009 regulations, the above provisions were dropped for the reasons given in para 6.2 and 6.3 of the Statement of Reasons which are extracted as under:

6.2 The Commission has reconsidered this provision. As per Regulation 18(4) of the CERC (Terms and Conditions of Tariff) Regulations, 2004, the utilities are permitted to approach the Commission for tariff revision on account of additional capital expenditure twice during 2004-09. As the capital cost as on 31.03.2009 shall form the basis for determination of tariff for the control period 2009-14 as per the 2009 tariff regulations, it is imperative that all applications for revision of tariff on account of additional capital expenditure incurred upto 31.3.2009 are considered and decided as per the 2004 tariff regulations before taking up the tariff determination for the next tariff period starting 1.4.2009 . Most of the utilities are in the process of filing their applications for revision of tariff for the period 2004-09 on account of additional capital expenditure. The Commission feels that once these applications are disposed of, the applications for determination of tariff for the next tariff period starting from 1st April, 2009 should be taken up based on the firmed up capital cost as on 1.4.2009.

6.3 Accordingly, the Commission decided that the first proviso to clause (2) of Regulation 5 should be modified as under:

“Provided that in case of an existing project, the application shall be based on admitted capital cost including any additional capitalization already admitted up to 31.3.2009 and estimated additional capital expenditure for the respective years of the tariff period 2009-14.”

5. In order to take care of the eventuality of marginal delays in issuing the tariff orders in respect of the existing projects, Regulation 5(3) of the 2009 regulations provides as under:

“(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the 2 transmission customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance these regulations.”

6. However, in case of new projects, there is no provision for provisional tariff as the generating companies or the transmission licensee are required to make applications for determination of tariff in respect of the units of generating station or the transmission lines or substation of the transmission system completed or projected to be completed within six months from the date of application.

6. Two years of the tariff period 2009-14 are almost over. Till date orders in all the petitions for additional capital expenditure have not been issued. The generating companies and transmission licensees are raising the bills on the basis of the tariff as on 31.3.2009

without accounting for the impact of additional capital expenditure. Moreover, there is increase in tariff during 2009-14 on account of increase in ROE and O & M expenses on account of pay revision of employees of public sector undertakings. In other words, there is a gap between the tariff being provisionally billed by the generating companies and transmission licensees and the tariff to be determined under 2009 regulations. This results in cash flow problem for the generating companies and transmission licensees and extra liabilities on the beneficiaries in the form of interest. In case of new projects, the delay in determination of tariff has occurred due to delay in finalization of capital cost on completion of the projects and submission of the Auditor's certificate. This has resulted in cash flow problem apart from creating extra liability on the beneficiaries.

7. Central Electricity Regulatory Commission (Sharing of Transmission charges and losses) regulations, 2010 provides that overall charges to be shared among the nodes shall be computed based on the yearly transmission charge apportioned to the each of the line of ISTS licensees. A number of petitions for determination of transmission charges filed by the CTU are under process leading to delay in computation of the yearly transmission charges.

8. In view of the above, there is a need to introduce appropriate provision for provisional tariff in the 2009 regulations so that billing and payments are not hampered on account of delay in issue of the tariff orders by the Commission. It has been proposed in the draft amendment regulations to add a new clause under Regulation 5 of 2009 regulations as under:

“(4) Where determination of tariff in case of an existing or a new project is delayed for any reason whatsoever for which applications have been filed in the Commission, the Commission may consider in its discretion to grant provisional tariff upto 95% of the annual fixed cost of the project claimed in the petition subject to adjustment after the final tariff order has been issued”