

UPPCL comments on draft CERC (Terms & Conditions of Tariff) Regulation, 2014 dt6/12/13.

UPPCL appreciates the Hon'ble CERC for providing the new concept of Income Tax, Truing up of SHR, AEC, Sp. Oil Consumption and generation incentive beyond 85% PLF in the interest of consumer. However certain deficiencies need to be addressed as detailed below : -

1. Determination of tariff by Section 62(5) & 61(d),(g) of electricity Act, 2003 which are mandatory but have not been fully adopted so far.  
It has resulted total profit of Rs.12326.11crore to NTPC during 2011 – 12 out of which Rs.5223crore is unexplained and it is in addition to profit Rs.7102.41crore against 15.5% ROE, incentive & UI Charges.

Quote

*“61(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.*

*61(g) that the tariff progressively, reflects the cost of supply of electricity, and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission.”*

Unquote

2. The hidden /unexplained profit of Rs.5223crore during 2011 – 12 needs to be prevented as it may not be recovered at the cost of distribution companies & consumers. The amount of unexplained profit during the year 2009 – 10 & 2010 – 11 is about Rs1114.52crore & Rs. 2171.02crore as per **Annexure – 1**. It is shocking that every year the hidden profit has been increasing two to three times of the previous year.
3.
  - (a) The pretax ROE may be provided as 15.5%. Income tax may not be made recoverable from beneficiary. It is a direct tax ought to be paid by the person who earns profit as per I. Tax Act.
  - (b) The non-tariff income as defined by Maharashtra Electricity Regulatory Commission includes revenue from sale of scrap, rental income of colony etc. as detailed at **Annexure – 1** may be refunded, each year to beneficiary.
4. Some of the ceiling norms are not appropriate & may be modified for Auxiliary Energy Consumption (AEC) & Interest on Working Capital (IWC).  
AEC of 8.5% needs to be reduced to 7.5% for 200MW because the average of 5 year in many plants is below 7.25% and the electricity consumption of colony & construction power is not included in Auxiliary Energy Consumption.  
The interest on Working Capital should be reduced to stock for 15 days as the most of the plants maintained the fuel for 11 days during last 5 yrs. However the interest may be provided on actual stock basis after truing up to avoid huge gains.

5. Capital Cost based on projected figure should be removed. It should be allowed based on "expenditure incurred" under regulation 3(21) & section 61(d), (g) of the Electricity Act, 2003 after capitalization & put to use like the tariff regulation 2001 & 2004. The Hon'ble Appellate Tribunal for electricity vide judgement dt6.6.07 (Para no 31 & 32) in Appeal no.205/2005 for Tanda TPS additional Capital Expenditure, against CERC Order dt24.10.05 quoted below:-

Quote

*"31. The Appellant submitted that the additional capital expenditure is to be approved based on the balance sheet and the respondent has been allowed expenditure of those items appearing in the balance sheet in the instant case before us, the Petition was decided by the Central Commission when the audited balance sheet was available. Thus, the amount of capitalization as reflected in the books of account of the respondent ought to have been taken into consideration.*

*32. We accept the plea of the Appellant on this court and direct the Central Commission to re- look into the matter and restrict the amount of capitalization to the extent reflected in the balance sheet subject to its prudence check."*

Unquote

The Hon'ble CERC have filed an appeal before Hon'ble Supreme Court that tariff should be provided on capital cost which has actually incurred & based on cash flow under section 61(d) in case of decision of Hon'ble Appellate Tribunal in case of undischarged liability. The Hon'ble CERC ought to follow similar policy and need not allow the tariff on projected expenditure of Capital Cost.(Hon'ble Supreme Court Appeal No. CA 6286 – 99 of 2009 & UPPCL Appeal No. CA 5200 of 2009 in Rihand – 1 Add. Cap. 2004 – 09 )

6. The payment of energy charges or cost of fuel along with FPA (Fuel Price Variation) should be made for quantity actually received & burnt against proof of GCV & quantity actually purchased subject to submission of bill of Coal India Ltd., Indian Oil Corporation or private companies from whom it is purchased.
7. Truing up of interest on working capital and O & M expenses should be also done like SHR,AEC & Secondary Oil Consumption. The gains of cost saving due to normative and actual should be shared in the ratio of 50 : 50 like the previous Regulation, 2009 for secondary oil (in place of 3 : 1 in this draft Regulation, 2014).
- 8( A) The Hon'ble CERC is humbly requested to make regulation u/s 62(5) as promised in Para 3.12 of the Statement of reasons to the 2009 regulation by its order dt3/2/2009 (quoted below). The suggestion of UPPCL by letter no.778/SPATC dt16.10.09 (as per Annexure – 2) may be incorporated.

Quote

*"3.12 The Commission has considered the provisions of section 62(5) and other relevant provisions of the Act and the submissions of UPPCL and MPPTCL and is of the view that the scope of sub-section (5) of section 62 is limited to specifying the formats for calculating the expected revenue from tariff by the generating company and the transmission licensee. The Commission has*

*decided to specify regulation in this regard. As regards sharing of the gains arising out of improved performance vis -s-vis norms, the Regulation on terms and conditions of tariff issued under section 178(2)(s) of the Act by the Commission already provide for sharing of savings on account of some norms like secondary fuel oil consumption and refinancing of loan, etc.”*

Unquote

The formats of tariff are specified under section 62(2) of Act so the scope of Section 62(5) is not limited on specifying the formats. The scope of section 62(5) is to lay down the “Procedure for calculation of expected revenue from tariff and charges” based on actual cost u/s 61(d) of the ACT, 2003. The tariff determination should not be based on “ceiling norms fixed by CERC”. The procedure has been suggested by UPPCL in subsequent paragraph.

- 8( B) The procedure for calculation of expected revenue may be framed u/s 62(5) based on average of 3 years actual and reasonable cost in a particular head of all the components of fixed/variable charge.
- (i) Ceiling norms may be appropriately fixed by providing appropriate escalation on average of 3 years for each component of tariff.
  - (ii) Truing up may be done in each financial year based on the established principle of Normative or actual lower. In case incurred expenditure is more than average of 3 years then it may be allowed up to ceiling norms.
  - (iii) In case incurred cost is less than average of 3 years then it may be refunded or shared.
  - (iv) The non-incurred expenditure = Ceiling norms – incurred cost may not be given as incentive.
  - (v) The incentive from all the source should not exceed the cap ( to be fixed as % of equity )

Quote

**62(2)** *The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

**62(5)** *The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.”*

Unquote

8(c)(i) Hon'ble CERC has invited comments on Draft (Procedure for calculating the expected revenue from tariff and charges) Regulation, 2009. UPPCL has filed its comments vide letter no. 778/SPATC dt16.10.2009 (as per Annexure – 2). But the proper regulation have not been made for determination of tariff as suggested at para B above (although some information are only being submitted u/s 62(5) by the utilities every year as per CERC (Procedure for calculating the expected revenue from tariff & charges) Regulation, 2010 dt12/4/10. These information may be obtained by a regulation u/s 62(2) of the Act 2003.

8(c)(ii) The ceiling norms are the maximum tariff which is being allowed at present. The maximum tariff can not be reasonable tariff & it is against the mandate u/s Section 61(d) of the Act 2003. In some cases the actual cost of NTPC is

more than such ceiling norm, the CERC has allowed it in 2009 – 14 period without truing up all the components of tariff. This is nothing but Normative or Actual higher. It is inconsistent with section 61(d) of the Act and Govt. of India Notification dt30.3.92 for tariff. The truing up may be done for sharing the gains of efficiency.

The Hon'ble CERC ought to frame appropriate regulation in view of following suggestion as per following para of UPPCL letter no.731/SPATC dt10.10.08.

- Tariff determination by ARR u/s 62(5) as suggested above in place of norm, needs to be implemented. The recovery of Hypothetical cost may be withdrawn (Normative cost which is higher than actual is hypothetical cost. Since it is Non-incurred cost so its recovery with F.P.A and I. Tax is illegal.)
9. The depreciation amount needs to reduce the equity component after repayment of actual debt up to 70%. In case such provision is not made the payment of special allowance @ 7.5Lakh/MW/Year/Unit should not be provided to generator for extending the life of the plant as an option for R & M work. The R & M work ought to be approved with the consent of beneficiaries after cost benefit analysis of the plan.
  10. The luxurious tariff to generator should not be provided by providing profit up to 30% ROE or more at the cost of consumer against the aims & objective of the Electricity Act, 2003. The Hon'ble Commission ought to realize that their arbitrary decisions during 2009 – 14 and past tariff period have provided undue profit in the recovery of income tax & normative cost by fixing arbitrary norms against the tariff policy & section 61(d)(g) of Act, 2003 resulting irreparable loss to the distribution companies & SEBs whose financial loss reached to about Rs.2 Lakh crore and are unable to run their business in commercial manner as mandated u/s 61(b) of the Act, 2003.
  11. All the components of tariff recovery based on norms should be trued up after financial year based on actuals especially interest on working capital which is being allowed irrespective of the actual loan taken. As per statement of reasons issued by CERC, notional interest on loan should not be allowed on loan so similar principle should be adopted for IWC also, without discrimination.
  12. The rate of late payment charge @ 1.50% per month be reduced to @ 1.25% per month and norm for secondary oil consumption for non pit head station 1ml/kWh be reduced to 0.5 ml/kWh as the actual consumption is about 0.2ml/kWh to 0.5ml/kWh for most of the plants except some plants like Farakka, Kahalgaon, Dadri TPS & Badarpur who may be asked to submit the road map to achieve improvement like other plants.

### 13. O & M Expenses

The O & M norms for 2014 – 15 period (Base year) needs to be reduced, due to following reasons by Hon'ble CERC.

- (1) The Rajasthan Electricity Regulatory Commission has specified lower norms in their Regulation for 2014 – 19.

#### **Norms for Coal based Thermal Power Station**

Period	CERC Norm		Rs. in Lakh/MW/Year Rajasthan Elect. Reg. Commission	
	200MW	500MW	Up to 250MW	500MW
2014 – 15	24.07	20.19	16.30	14.69
2015- 16 onwards	By escalation of 6.35% per year			
2014 – 15	Tanda TPS Rs.36.08Lakh/MW needs to be reduced to Rs.29.12Lakh/MW specified by CERC for 125MW set.			

- (2) The truing up needs to be done each year by getting the actual O & M expenses u/s 61(d) of Act 2003.
- (3) The norms of Tanda TPS Rs.36.68Lakh/MW (in 2014 – 15 base year) is very high & not justified in view of the huge expenditure on R & M and additional capitalization done in previous years, after take over from UPSEB. It should be reduced at least Rs.29.12Lakh/MW in 2014 – 15 of Lignite fired generating station of 125 MW.
- Truing up needs to be done each year.

### 14. Interest on Working Capital

The Working Capital should consist only following, in view of very higher amount considered in the proposed regulation. The earlier regulation 2009 have provided unnecessary profit of about Rs.500crore per year from IWC at the cost on consumer.

- (1) Storage of fuel 15 days or storage capacity which is higher.
- (2) Receivable for 2 months already includes ROE, Depreciation, O & M, IWC, Interest on loan, Fuel Cost for two months.
- (3) Maintenance Spares @ 20% of O & M expenses specified at Regulation 29.

(The cost of Coal, Oil & Fuel for 30 days should not be provided which is covered in the receivable for 2 months)

- Truing up needs to be done every year to avoid unnecessary load on consumer.

**15. Normative Annual Plant Availability Factor(NAPAF)**

Hon'ble Commission may prescribe the NAPAF for coal based power station as 90% which has been achieved by most of the power station after due additional capitalization. Those stations which have not been able to achieve it, they may be asked to submit the specific reason or difficulty and may be exempted up to NAPAF of 85% for recovery of AFC on reasonable grounds only.

**16. Target PLF for Incentive**

Incentive ought to be allowed based on Target PLF of 85% @ 50 Paisa/kWh of ROE per unit instead.

There are various station whose rate of fixed charge is below 50 Paisa/kWh so they should not be allowed higher incentive 50 Paisa/kWh.

In view of aforesaid it is humbly requested that the Hon'ble Commission provide appropriate regulation for determination of tariff u/s 61 & 62 of the Electricity Act, 2003 specially Section 61(b),(d),(g) and 62(5) of Act 2003.

**Annexure – 1**  
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Reconciliation of Regulatory Profits and Book Profits

		2009 – 10	2010 – 11	2011 – 12
<b>Book Profit</b>				
<b>Profit Before Tax</b>	Rs Crores	10885.46	12049.60	12326.16
<b>Regulatory Profits</b>				
<b>Return on Equity</b>	Rs Crores	4977.84	5550.41	6037.15
<b>UI Income</b>	Rs Crores	834.15	858.87	554.00
<b>Incentive</b>	Rs Crores	1102.76	1124.65	511.26
		<b>6914.75</b>	<b>7533.93</b>	<b>7102.41</b>
<b>Variance</b>		3970.71	4515.67	5223.75
<b>Interest /Dividend and other non – operative income</b>		2856.19	2344.65	2778.42
<b>Unexplained Variance</b>		1114.52	2171.02	2445.33
<b>Over Recovery Coal Stock – IWC</b>		500	520	560
		614.52	1651.02	1885.33

The Non - tariff Income of generator includes

1. Income from rent of land or building.
2. Income from sale of scrap.
3. Income from statutory investment.
4. Income from sale of Ash/rejected coal.
5. Interest on delayed /deferred payment on bills.
6. Interest on advances to suppliers/ contractors
7. Rental from staff quarters.
8. Rental from Contractors.
9. Income from hire charges from contractors & others.
10. Income from advertisements etc.
11. Any other non tariff income.

**Selected Financial Information (NTPC)**  
**(NTPC website NTPC.co.in)**

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Million Rs.

Year	Gen. Revenue (M. Rs.)	Gross Gen. (at Terminal)(MU)	Profit (M. Rs.)	Tariff Rs./kWh	Profit Rs./kWh	Tax (M. Rs.)	Tax (Rs./kWh)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
2012 – 13	6,41,895.7	232000	165786.3	2.76	0.71 (25.5% of Tariff)	39592.4	0.170
2011 – 12	6,10,022.0	222070	123261.6 (60930.4) ROE	2.74	0.55 (20% of Tariff)	31024.3	0.139
2010 – 11	5,47,045.5	220540	120496.0	2.48	0.54 (21.7% of Tariff )	29470.1	0.133
2009 – 10	4,61,686.7	218840	108854.6 32320 (ROE)	2.10	0.49 (23.3% of Tariff )	21572.6	0.098
2008 – 09	4,17,911.8	206940	93594.7	2.01	0.45 (22.3% of Tariff)	11581.7	0.055

The Actual Profit of NTPC is about Rs.6000crore more than ROE of 35 power station as per information u/s 62(5) of Act 2003 on CERC website (during 2011 – 12).