

**Explanatory Memorandum to
Draft Central Electricity Regulatory Commission (Terms and Conditions
of Tariff) (First Amendment) Regulations, 2015**

The Central Electricity Regulatory Commission (“the Commission”), exercising power under Section 178(2)(s) of the Electricity Act, 2003 (“the Act”) read with Section 61 of the Act, has notified the Central Electricity Regulatory Commission(Terms and Conditions of Tariff) Regulations, 2014 (“the Regulations”) which came into effect from 1.4.2014.

2. Government of India, Ministry of Power has sanctioned the “Scheme for utilization of gas based power generation capacity” vide O.M. No. 4/2/2015-Th. I dated 27th March, 2015. In order to give effect to the scheme, there is a need to make special provision in 2014 Tariff Regulations in respect of gas based generating stations covered under the scheme. Further, it has been noticed that changes in few provisions of the 2014 Regulations are required in order to ensure dispute free implementation of the regulations. Accordingly, the Commission has proposed Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 as per the draft notification.

3. The proposed amendments to the 2014 Tariff Regulations are discussed in brief as under:

3.1 Amendment to Regulation 7 of the Principal Regulations: Proviso (i) to clause (7) of Regulation 7 of the 2014 Tariff Regulations provide for determination of transmission charges for Point of Connection (“PoC”) purposes upto 90% of annual fixed charges. This determination is interim in nature and is subject to adjustment after the transmission charges are determined under Regulation 6 of the 2014 Tariff Regulations. However, there is no provision for adjusting the difference between the tariff determined for PoC purpose and tariff determined under Regulation 6. Similarly, in case of existing projects, the generating company or transmission licensee is required to charge the tariff applicable as on 31.3.2014 till the tariff is determined under Regulation 6. However, there is no provision for adjusting the difference between the tariff charged in terms of proviso (i) to

clause (8) of Regulation 7 and the tariff determined under Regulation 6 of 2014 Tariff Regulations. In order to address the under-recovery or over-recovery on account of difference in tariff as stated above, , the Commission proposes to add new provisos under clauses (7) and 8 of the Regulation 7 of the 2014 Tariff Regulations as under:

New proviso under proviso (i) of clause (7) of Regulation 7

“(ia) The difference between the tariff determined in accordance with proviso (i) above and the tariff determined in accordance with Regulation 6 of these regulations shall be recovered or refunded by the generating company or transmission licensee, as the case may be, with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in six equal monthly installments”.

New proviso under proviso (i) of clause (8) of Regulation 7

“(ia) The difference between the tariff determined in accordance with proviso (i) above and the tariff determined in accordance with Regulation 6 of these regulations shall be recovered or refunded by the generating company or transmission licensee, as the case may be, with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in six equal monthly installments”

3.2 Amendment to Regulation 8 of the Principal Regulations: Clause (6) of Regulation 8 of the 2014 Tariff Regulations provides for annual reconciliation with respect to sharing of gains in regards to the variation in heat rate due to backing down and part loading, frequent start and stop etc. This clause is applicable to all generating stations. It is however, noticed that in case of hydro generating stations, scheduled generation may vary i.e. it may be more or less than saleable design energy depending upon the flow of water. Since the energy charges in case of hydro generating stations are calculated with reference to saleable design energy, the Commission proposes to cap the scheduled generation with reference to saleable design energy. Accordingly, it is proposed to insert the following proviso under clause (6) of Regulation 8 of the 2014 Tariff Regulations:

“Provided that in case of hydro generating station, if the scheduled generation is more than saleable design energy, then the saleable design energy shall be considered in place of schedule generation”

3.3. Amendment to Regulation 9 of the Principal Regulations: Sub-clause (b) of Clause (2) of Regulation 9 of the Principal Regulations provides as under:

“(b) Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;”

As per the above provision, interest during construction and financing charges during construction period form part of the Capital Cost. However, Capital Cost should also include the foreign exchange risk variation (FERV) during construction period. In the tariff regulations for the period 2009-14, it was explicitly mentioned that the foreign exchange risk variation would be allowed as part of capital cost. However, in the 2014 Tariff Regulations, gain or loss on account of FERV are not specified explicitly. Therefore, the Commission proposes to insert a new sub-clause after sub-clause (b) of Clause (2) of Regulation 9 of the Principal Regulations as under:

“(bi) Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period shall form part of the capital cost.”

3.4. Amendment to Regulation 12 of the Principal Regulations: Second proviso to clause (2) of Regulation 12 to the Principal Regulations provides as under:

“Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of

Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:"

Though Regulation 12 provides that the controllable and uncontrollable factors leading to cost escalation impacting the contract price, IDC and IEDC , proviso as quoted above does not mention about IEDC. The Commission has proposed to add the words “and IEDC” after the word “IDC” in above quoted proviso in order to align with the provisions of Regulation 12.

3.5. Addition of Regulation 23A of the Principal Regulations:

Government of India, Ministry of Power has sanctioned the “Scheme for utilization of gas based power generation capacity” vide O.M. No. 4/2/2015-Th. I dated 27th March, 2015. Salient features of the scheme are as under:

(a) Scope: The scheme envisages supply of imported spot RLNG “e-bid RLNG” to the Stranded gas based plants as well as the Plants receiving domestic gas, upto the target PLF selected through a reverse e-bidding process.

(b) Funding: The outlay for the support from PSDF has been fixed at Rs. 3500 Cr. and 4000 Cr. for FY 2015-16 and FY 2016-17 respectively. Further, PSDF support has been apportioned between the two groups i.e. stranded plants and plants receiving domestic gas.

(c) Eligible Utilities: The eligible Gas based power plants under this scheme shall be the Stranded gas based plants and those Plants receiving domestic gas whose actual average PLF achieved during April-January 2014-15 was below the target PLF. The list of the eligible gas based plants which can participate in the bidding shall be declared prior to bidding based on the target PLF as decided by Empowered Pool Management Committee (EPMC).

(d) Contribution by Different Stakeholder: The scheme requires following intervention/sacrifices by different stakeholders related with tariff of the generating company:

- (i) Capping of fixed cost to be recovered by the stranded developers: For the stranded gas based plants, the developers shall completely forego the return on their equity as detailed in Para 10 of the office memorandum dated 27th March, 2015. Accordingly, the fixed cost recovery shall be limited to meet only the obligation towards debt servicing and Operation & Maintenance (O&M) cost;
- (ii) In case of the stranded gas based plants, the lead banker will ensure that all receipts of money would be utilized only for payments towards the variable cost of generation plus O&M expenses as per the CERC/concerned regulator guidelines in force and debt servicing after capping the fixed cost and ensure that no payments are made towards any return on equity to the sponsors of the project;

In respect of the generating stations regulated by the Commission which are covered under the scheme, the tariff shall have to be determined in deviation of some of the provisions of the 2014 Tariff Regulations. The Commission has proposed to provide for an enabling provision for tariff determination of these plants by inserting a new regulation as under:

“23A Tariff Determination of Gas based generating stations: The Tariff of gas based generating stations covered under the “Scheme for Utilization of Gas based power generation capacity” issued by the Government of India, Ministry of Power vide Office Memorandum No. 4/2/2015-Th.1 dated 27.3.2015 shall be determined in due consideration of the provisions of that scheme in deviation of the relevant regulations”

3.6. Amendment to Regulation 25 of the Principal Regulations: Regulation 25 provides for calculation of effective tax rate for the purpose of grossing up of ROE. The last sentence of clause (1) of Regulation 25 provided as under:

“.....The actual tax income on other income stream (i.e., income of non generation or non transmission business, as the case may be) shall not be considered for the calculation of “effective tax rate”.

Since ‘actual tax income’ is a typological error, it has been proposed to read these words as “actual income tax”. Further, deferred tax liability is not admissible in tariff under 2014 Tariff Regulations. Therefore, the said element should not be considered while calculating the effective tax rate. Accordingly, it has been proposed to add deferred tax under the exclusion for calculation of effective tax rate. The Commission has proposed to modify last sentence of clause(1) as under:

“(1)The actual income tax on other income stream including deferred tax (i.e., income of non generation or non transmission business, as the case may be) shall not be considered for the calculation of “effective tax rate”.

3.7. Amendment to Regulation 27 of the Principal Regulations: The Commission has included the provisions for tariff determination of the communication system which form part of the transmission system. The infrastructure of the Communication system includes the IT equipment and software. However, the salvage value for IT equipment and software has not been specified in the depreciation clause. However, the salvage value of IT equipment and software has been considered as Nil in the CERC(Fees and Charges of Regional Load Dispatch Centre and other related matters) Regulations, 2015. In line with the said regulations, the Commission proposes to add the following proviso under the clause (3) of Regulation 27 of the Principal Regulations:

“Provided that the salvage value for IT equipment and softwares shall be considered as NIL and 100% value of the assets shall be considered depreciable”

3.8. Amendment to Regulation 29 of the Principal Regulations:

The Commission proposes to replace “Durgapur TPS (Unit-1)” by the word “Durgapur TPS(Unit-3)” as a textual correction.

3.9. Amendment to Regulation 49 of the Principal Regulations:

In order to provide clarity with regard to the deferred tax liability of the generating companies and transmission licensees during the period 2014-19, the Commission proposes to substitute the Regulation 49 of the Principal Regulation by following:

“49. Deferred tax liabilities for the period upto 31st March, 2009 whenever they materialize shall be recoverable directly by the generating companies or transmission licensees from the beneficiaries or long term customers/DICs, as the case may be. Deferred tax liabilities for the periods from 1.4.2009 to 31.3.2014 and from 1.4.2014 to 31.3.2019 shall not be recoverable from the beneficiaries of the long term customers/DICs as the case may be”

3.10. Amendment to Appendix II (Depreciation Table) of the Principal Regulations:

Since the Commission has introduced the tariff of the Communication system forming a part of transmission system, it is proposed to include the depreciation rate of following communication assets in Appendix II (Depreciation Table) to the Principal Regulation under serial no. (o):

(iii)	Fibre Optic	6.33%
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