

Oral hearing on Proposed Draft MYT  
Regulations on Terms & Conditions of  
Tariff for the Tariff Period 2019-24

PRESENTATION BY A CONSUMER FROM  
ASSAM

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Presented by H.M.Sharma

On 1<sup>st</sup> February 2019

## Mandate of the EA 2003

- The Electricity Act 2003 under Section 2 (23) which as follows:
- ***“(23) "electricity" means electrical energy-***
- ***(a) generated, transmitted, supplied or traded for any purpose; or***
- ***(b) used for any purpose except the transmission of a message;”***
- The Central Electricity Regulatory Commission must therefore restrict within the Electrical energy as it has no mandate of the law to regulate the coal energy sector as proposed under this draft Regulations. The proposed definitions (45) & (46) in the Regulation 3 and Entire Chapter 9 under the heading of “Computation of Capital cost of integrated Mine and input cost price” cannot be brought in the Electricity Tariff Regulations under this Act. Therefore no comment offered. There will be no legal scrutiny if it is made.

## Definition of Tariff

Definition of Tariff to be incorporated in the Regulation 3. In the Supreme Court Judgement dated **15 March, 2010 in the matters of PTC Vs CERC, CIVIL APPEAL NO. 3902 OF 2006** mentioned “The term "tariff" is not defined in the 2003 Act. The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. If one reads [Section 61](#) with [Section 62](#) of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the Appropriate Commission under [Section 61](#) of the said Act. Under the 2003 Act”. Therefore the Hon’ble Commission is to define Tariff as provided by the Apex Court .

## Retail Tariff in distribution

Except Transmission and Generation of Electricity the Central Commission determines Tariff activities such as Trading and Renewable Energy are expressed in terms of price of commercial unit of electricity expressed in Killowatthour(Kwh). While determination of generic tariff for Renewable energy the Commission determine the cost in terms of Rupees per unit of electricity generated, Also same for the price for trading licensees. However in case of determination of tariff the central Commission determines Tariff as Annual Revenue Requirement. As a ordinary consumer while I am paying cost of electricity as unit price to distribution company where power purchase cost from various unit of transmission and distribution company is a major part in the retail distribution tariff. Here in the draft Regulation it is not found that what may be the affect in the Tariff due proposed new relax norms.

## Principle of making the Tariff Regulations

Main principle of framing of Tariff Regulations is described under section 61 of the EA 2003 (Act) where it is said that the Regulations are to be made safeguarding of consumers' interest and at the same time , recovery of cost of electricity in a reasonable manner. Also the Regulations must includes the factors which would encourage competition, efficiency, economical use of resources, good performance and optimum investment. However it is unfortunate that those principles are not reflected in the draft Regulations. The many of the provisions are contrary to the principles laid down in the Act. Many of the provisions relaxing the norms may increase tariff stiffly against consumer interest which may be amended in the final draft.

## Amendment of various definitions as mentioned in the written submission in the interest of the consumers

3(26)(d), 3(27), 3(41), 3(42), 3 (49), 3(61) are to be amended.

3(45) and 3(46) definitions are to be deleted. This is because the Act has no mandate to make Regulations on coal energy. While framing the final draft Regulations, the principle adopted to frame earlier Regulations must be followed. E.g. In the earlier Regulations on COD two terms were used. One Schedule COD (SCOD) and another Actual COD (ACOD). If the project delays due to time overrun ACOD later than SCOD. In case of ACOD is within the ACOD provisions were made in the Regulations to incentivised the developers. Therefore two distnt terms must be used in the Regulations and to be defined accordingly. Similarly other terms as mentioned above requires amendment.

## Regulation 5. Date of Commercial operation

Before COD the units must undergo trial run and the Regulation must ensure that the unit must be deemed to be declared at 0000 hours preceding trial operation as prescribed CERC MYT Regulations 2014. There are many instances that the generating companies waiting for long time to declare the COD of the unit and capitalized IDC and IEDC inflating capital and other cost and also manipulating the trial run. In case of Bongaigaon TPS, NTPC completed trial run long before it declared COD. Also there are certain instances that the generator manipulated the trial run as in the case referred under the CERC order dated 20.09.2017 in Petition No. 130/MP/2015 along with IA No. 67 of 2017. Therefore no change is required in the CERC MYT Regulations 2014 in this Regulation. The proposed draft regulation is more favourable to generating companies and hence against the consumer interest.

## 8(2). Tariff determination

The two tariff part for the generating station which is to be supplied to the long term beneficiary is to be determined in proportionate to capital cost of the entire project and not the tariff determined on the basis of entire capital cost and then apportioned which is not proper and also not based on commercial principle. Therefore to protect the interest of the consumer the Regulation is to be modified. E.g. the tariff of ONGC Tripura Power Corporation Ltd. the tariff for entire project was determined considering entire capital cost of the project and then apportioned. 90 MW of Power is kept for merchant power which the developer is selling at higher rate as agreed by the two companies. Thus recovery of capital cost to consumers has been much higher than the capacity charges as determined by the Central Commission. In the written submission submitted there is a typographical mistake in the column of Regulation which may be read as 8(2) instead of 6(2). Mistake is regretted.



**8(5) &(6). Tariff determination and 9(1) 2<sup>nd</sup> proviso  
Application for determination of tariff**

In the written submission it was mentioned as 6(5) & (6) due to typographical mistake which may be read as 8(5)&(6). Both provisions require deletion as Act does not permit.

Auditor certificate can not be substituted by any other certificate of any other officer of the utility. Hence accepting the certificate to be submitted by officer of the entity shall be illegal. The 2<sup>nd</sup> proviso to be deleted.

## 11(1)(b) Truing up due to force majeure conditions and change of law

Since the tariff determination is on projection tariff as per provisions 62 (5) of the Act. Hence cost due to change of law and the force majeure conditions during Multy Year Tariff( MYT) Period should be taken up during truing up for that period under the provisions 62(6). For force majeure condition occurred, the generating company or the licensee must intimate the beneficiary/beneficiaries immediately after its occurrence and must be mutually agreed for such force majeure condition. The cost due to force majeure conditions must be shared equally i.e. 50%:50% between the Generating companies or licensees and the beneficiaries as per APTEL judgement dated 27.04.2011 in the Appeal No. 72 of 2010. The Regulation may be amended accordingly

### 13(3) Truing up during MYT period

The proposed Regulations must be deleted and the existing Regulation is sufficient. The Regulations are made on Multi Year Tariff principle, therefore this would affect the principle of MYT. Tariff Policy mandates MYT principle because of the fact that there should not be uncertainty in retail tariff to the end consumers. Under MYT Principle tariff has been revised every year and the Act does not permit change of projected tariff more than once in a financial Year except fuel sur-charges under section 62 (4) of the Act. Therefore this proposed Regulation is contrary to law, therefore to be deleted. Any change in tariff during multy year period is not desired as dis may modify tariff more than once.

### 13(4) Truing up and recovery of excess or shortfall of Tariff

- Truing up is to be carried out at the end of MYT period and the excess or shortfall may be adjusted in the next MYT period tariff determination as per law. Realizing in 6 equal instalment is to be deleted. This is because the tariff determined under Section 62(5) is expected tariff for the future period. Any short fall or the excess may be adjusted in the next tariff period.

## 18.Capital Cost

During prudence check the Power Purchase Agreement (PPA) between the Generating Company or Licensee and beneficiary is to be considered. Benchmarking of Capital cost is essential. Further the Central Commission must by way of regulation shall make it mandatory that initially the generating company or the licensee would first utilize the equity capital and subsequently on complete utilization of the equity the loan capital be drawn for utilization . There must be Regulation may be framed under this proposed draft Regulation. Considerable amount of IDC can be shaved which may reduce the Tariff. This is in the interest of the consumers as per Act.

18(4)(b) Electrification of unelectrified village under RGGVY or DDUGVY of the villages in the affected area

All the villages i.e. 100% villages of India were already electrified under RGGVY and DDUGVY. Hence this provision needs to be deleted. If any village is to be electrified due to Replacement and Rehabilitation (R&R), that is to be done in R&R expenditure which is already exist in the Regulation. RGGVY or DDUGVY is the same and the flagship programme of the central government and under the programme all the villages of India have already been electrified and no village left and the programme is in the verge of closure. Therefore under ththis programme no cost is to be allocated in the capital project. To be amended accordingly.

## 19(1) Prudence Check of Capital Expenditure

Prudence check does not mean comparison of cost of similar project. The proposed amendment is not acceptable. This shall provide opportunity for acceptance of irregular cost overrun of the project, therefore existing provisions of MYT Regulations 2014 is sufficient. It was experienced that without carryout prudence check in the manner prescribed in the existing Regulations, huge amount of unjust capital expenditure was approved by the Central Commission in the Bongaigaon Thermal Power Station (BgTPS) of NTPC on the excuse of only by comparing the capital cost of certain high cost power stations including those own by private operators which is not permissible as per law. The capital expenditure which is actually not permissible as per law would be regularized by this proposed Regulation against the commercial principle and against the interest of consumers. It is pertinent to mention that this draft Regulations that many provisions are proposed for unjust enrichment to the central and private utilities whose tariff would be determined by the Central Commission. The Central Commission should have been specified the bench mark norms for the capital expenditure which is yet to specify. Therefore propose draft Regulation is not acceptable which is indeed inferior to the earlier existing regulations.

## 20(1) Interest During Construction (IDC) and Incidental Expenditure during Construction (IEDC)

The propose Regulation shall have stipulation for generating company or the licensee for incurring initial expenditure from their equity capital fund. On complete utilization of Equity capital, loan capital shall be drawn from the financial institution. This would not only ensure flowing of equity fund but also reduce IDC component considerably. It is established fact that in the starting period not much fund is required for awarding the packages and payment of mobilising advance maximum of 10% of contract value is sufficient. Subsequently till supply of the materials/equipment no money is paid in case of domestic supplier or contractors. For other activities such as civil packages etc. fund required is for payment of running bills for the completed works. Equity capital is adequate to meet up these expenditure. In the later part of the completion of the project more amount is needed and the loan capital may be drawn gradually from the financial institution which would reduce the IDC. This also restricts the generating company or licensee to against mis-utilization of project loan capital in the working capital of the existing running project. This would be conducive to the commercial principle and on the interest of the consumer. Therefore this modification may be incorporated in the draft Regulations.



### 30. Return on Equity:

Reference of the discussion paper on draft CERC MYT Regulation 2004 took place on 10,11 and 12 Nov. 2003 and the CERC order dated 06.01.2014 wherein it was deliberated that bank interest that since the bank interest were falling and contemporary Bank interest was in the range of 10% to 11%, therefore return on equity was made at 14% on Equity capital in MYT Regulations 2004. However the Central Commission subsequently arbitrarily increased to 15.5% and 16.5% for Thermal and hydro power project respectively in the subsequent MYT Regulations. Now prevailing Bank interest rates are in the range of 6% to 8%. Therefore considering the principle laid down by CERC in the order dated 06.01.2004; Return on equity capital is to be fixed at 10%. It is pertinent to note mention that risk capital in investment is really negligible in view of the fact that generation and Transmission utilities have captive consumers. Considering the present market and economic conditions RoE at 10% shall be fully justified.

## 33(3) Depreciation and 34 IWC

- Salvage value of asset can not be less than 10%. Proposed salvage value of 5% is against the interest of consumers. Therefore to be retained as per earlier Regulation.
- Since one months' O&M expenses is a part of 45 days receivables , inclusion of one month's O&M expenses additionally will be an extra burden on the consumers. Also the norms for capital cost include reasonable amount of capitalised initial spares, cost of spares should not be included in the working capital. Cost of 20% spare is very very higher side. Depreciation and the Return on Equity capital does not require any working capital. Therefore both the RoE and the Depreciation components are to be removed from the receivables. The time of 45 days should be reduced to maximum days of 15 day. This is because in the present circumstances the cycle from meter reading is not more than 10 Ten) days due to innervation of Information Technology IT) in every step till payment of bills. Moreover the bill payment through LC payment. Therefore 20 days time is more than sufficient for providing IWC. However this interest on WC is absolutely unnecessary as the companies have certain level of cash flow to finance a part of its working capital requirement without need to take recourse to borrow from the market and also the Tariff determined is projected Tariff and subject to trued up with actual expenditure and any deficit if any in any how supposed to be paid with carrying cost

## Cost plus Tariff

The proposed draft Regulations are for cost plus Tariff. However in cost plus Tariff, Tariff in the later years decreases. The Central Commission determines the generic Tariff for other generating stations in the same principle where tariff reduces in the later years and the consumers are getting the benefit of levelized tariff. However in case of tariff determines for generating companies and licensees under same principles under these Regulations increases very stiffly. An Annexure is Enclosed separately where it is found that the fixed cost increases stiffly over the years. From the table it is clear that due to relaxing norms and not providing efficient benchmark norms tariff rising stiffly whereas under cost plus tariff it was to be reduced. Therefore there should not relaxation in the operating norms and 2% efficiency gain on Year of Year basis is must to bring efficiency into the system.

Thank You