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Ref. No. HOD(PMG)/BRPL/2020-21/523

Dated: 15.05.2020

To,
The Secretary
Central Electricity Regulatory Commission
3rd & 4th Floor Chanderlok Building,
36 Janpath,
New Delhi 110 001
Tele No. 23353503, Fax No. 23753923

Sub: Comments on draft Central Electricity Regulatory Commission (Terms and Conditions of tariff) (First Amendment) Regulations, 2020.

Dear Sir,

With Reference to your letter no. L-1/236/2018/CERC dated 1st April 2020 & L-1/236/2018/CERC dated 30th April 2020(re-notified for extension of last date of submission of comments) we would like to submit BRPL comments on the Draft Central Electricity Regulatory Commission (Terms and Conditions of tariff) (First Amendment) Regulations, 2020.

Please find enclosed our Comments on the same enclosed as **Annexure-1(Page no. 2-12)**.

Thanking You,

Yours faithfully
For BSES Rajdhani Power Limited



Sanjay Srivastav
Vice President (PMG)

Enclosed: Annexure-1(Page no. 2 -12)

BRPL's Comments on Draft of First Amendment of CERC's Tariff Regulation for FY 2019-24:

I. Huge tariff impact on consumers:

As per Sec-61 of Electricity Act, 2003 the Hon'ble Commission must safeguard the interest of consumers.

"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:-

.....

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

The Hon'ble Commission proposed to recover emission control system cost That has been incurred till the useful of these plants. There are thermal generating stations having remaining useful life less than 2 years. The disadvantages inter alia are :-

- Loss of competitiveness to renewables;
- Out-dated technologies and second rate equipment purchases;
- An inability to cost-effectively supply power at a commercially viable or previously agreed rate as per the power purchase agreement (PPA);
- Construction cost and timeline overruns;

Hence, end-of-life capacity retirements, and capacity that should be retired due to age plus space constraints should be identified preventing the implementation of emission control systems on plant facilities.

These thermal plants with emission control is to protect the environment. Ultimately, the cost per MW is very high, resulting in a high levelized tariff. The Delhi discoms are reeling under huge financial losses with a Regulatory Asstes of Rs. 8911 Cr. (Up to FY 2017-18).

The average power purchase cost for discoms in Delhi (including PGCIL and POSOCO charges) is Rs. 5.99/kWh for FY2019-20.

The Burden of Thermal power project is high relative to alternative renewable energy sources, and this will add to the poor financial health of the state.

The recovery provision leads to the following:

1. **PPA extension of in-efficient thermal plants:** There are several power plants where the operational inefficiency are to the disadvantage of the distribution licensees and ultimately its consumers. However if the inefficient power plant installs Emission control system by incurring a huge cost possibly the life of such plants may get

extended. Hence an otherwise inefficient power plant would be continued to run much to the detriment of the consumers by incurring an enormous expense towards installation of emission control system. Such a provision will not be in consonance with the tariff principle that generation and distribution ought to be conducted on commercial principles and ultimately the interest of the consumer should be protected. From this point of view, expenses incurred on a Emission Control system should not be a pass through. Hence, a choice should be given to the distribution to either continue with the procurement from such a power plant who has installed in emission control system or have a clear entitlement and right to exit from such a power purchase agreement with the approval of the Commission.

It would create a tariff shock for Discoms /existing beneficiaries & their end consumers.

Therefore there should be a Cap on the recovery of Emission control system to 5% of Total (Fixed + Energy) yearly recovery.

II. Clarification : Supplementary Capacity and Supplementary Energy Charges are integral part of Capacity and Energy Charges

As per O.P. 1 of 2011, State Commission has implemented the mechanism for recovery of additional Fuel/Power Purchase Adjustment charges from the consumers.

Hence, in order to avoid any confusion, the Hon'ble Commission to include Supplementary Capacity charge as a subset to Capacity charges and Supplementary Energy Charges as subset of Energy Charges.

Hence, we request the Hon'ble Commission to clarify/consider Supplementary capacity and Energy charges as an integral part of Capacity and Energy Charges and advice State Commission to consider it in Fuel/Power Purchase Adjustment charges.

III. Benefits of ECS must also pass through to Discoms

In order to comply with the Ministry of Environment, Forest and Climate Change (MOEF) notification emission standards, the generating company has to incur additional cost and recurring additional expenses. Such cost is merely a pass through to the Discoms and ultimately to end consumers. On contrary, if there are any benefits which generating companies will get if they install such equipment must also be pass through to Discoms as well. Hence, clear cut provision required to be made in terms of which the efficiencies brought about by the emission control systems that are installed in the power plant must be quantified so that there is a proper sharing of the benefits and incentives With the distribution license an inturn with the consumers.

IV. BRPL has certain comments relating to Hydro Power Generation and other related issues which are as follows:

1. Amendment of ECR of Hydro Power Generation:- It is submitted that the Tariff Regulations, 2019 as well as the Tariff Regulations, 2014 provided for variable charge in the form of **Energy Charge Rate** whereas there is no cost involved in the generation of hydro energy as the Petitioner does not incur any expenditure for the water that is the only input necessary for hydro generation. Accordingly, the hydro generation cannot be put at par with coal/lignite/gas based thermal generation. The hydro generation is at par with the transmission licensee who is also not provided any variable charge. Providing the Energy Charge Rate by some proportion to the 'Annual Fixed Charge' when no expenses are incurred for water as the main and only source is against the Regulation 61(d) of the Electricity Act, 2003 which clearly provided for safeguarding of consumer's interest and at the same time, recovery of the cost of electricity in a reasonable manner. The provision related to providing the variable charge is neither in the interest of beneficiaries and through beneficiaries ultimately to consumer's interest who are required to pay extra charge almost Rs. one per unit for the supply from the hydro power generation, nor this provision is facilitating recovery of reasonable cost to the hydro generators as they are not incurring any cost on inputs. In fact, the provision related to the variable charge contained in tariff regulations is wholly unreasonable and it is our submission that the Commission may consider amendment to the Tariff Regulations, 2019. The grant of such a huge benefits also creates imbalances in a regulatory regime creating lot of problems besides coming in the way of optimal utilization of hydro energy during monsoon which is narrated as under;

- a. The amendment in the variable charge for hydro generation would allow the optimum utilization of the National Hydro Power resources as the spillage during the monsoon season can be reduced to bare minimum if not eliminated completely;
- b. The amendment in the variable charge would also help in achieving the maximum economy and efficiency in the integrated operation of power systems which tend to disturb the least cost option in scheduling the power;
- c. The amendment in the variable charge will render valuable support in promoting competition in the sector provided in the preamble of the Electricity Act, 2003;
- d. The grant of undue benefits in the form of variable charge also creates inefficiency in the operation as people tend to seek outrageous demands and undue benefits;
- e. Creates imbalance in the tariff structure by incorporating provisions like 44(7), 44(8) and 44(9) in the Tariff Regulations, 2019 for recovery of ECR especially when no cost is incurred what recovery is required to be made?
- f. Avoid bleeding of the Respondent-Discoms from such regulatory policies and through the Respondent-Discoms the ultimate electricity consumers whose interests are required to be safeguarded and this statutory duty is vested in the Ld. Commission.

It is for the above reasons that the Ld. Commission may re-visit the above regulation related to Energy Charge Rate does not give sense of justice and contrary to the principles enunciated in Section 61 of the Electricity Act, 2003. It is our submission that the Commission may also amend the provision related to ECR and all other incidental clauses which may be necessary. It is accordingly requested the Commission may also prepare the draft amendment on this issue and circulate the same for early amendment and till such time the tariff determination of the hydro petitions may be kept in waiting.

2. Double incentive for Hydro generation beyond Design Energy.

- Hydro Stations are given incentive for generating energy beyond design energy in both in Fixed Charges and Variable Charges
- Through capacity charge : By charging capacity charges based on PAFM which is beyond NAPA There is no capping of Fixed cost based on normative availability.
- Through ECR : in case plant generate more than Design Energy then the power is charges @1.20Paisa/Unit.
- We proposed that Genco should not be incentivised for hydro generation beyond design energy.

3. The definition of DCi:- for Hydro power stations should be modified to “Declared capacity (in ex-bus MW) for the day of the month which the station can deliver for at least minimum of three (3) hours, as certified by the nodal load dispatch centre after the day is over.

Right now NRLDC is taking average of peak hours (3 hours). It is requested not to consider any notional number by computing the average DC for peak hours for computing the DC for the full day instead we request you to consider the minimum DC value in peak hours which actually the plant has demonstrated for these 3 peak hours/ average DC of operational hours allowed by NRLDC may be considered.

The same has also been communicated and deliberated at RPC forum and it was decided that with new tariff period it will be clarified and implemented.

4. Grossing of Deferred Tax liabilities with respect to previous tariff period:

In the prevailing scenario, Genco's are providing CA certificate which are brief in nature. However, despite our repeated requests the detailed breakup of the basis computation of deferred tax liability amount with respect to previous tariff period has not been provided. We would request Hon'ble Commission to insert a clause for a provision which mandates generator to provide the following information with respect to deferred tax :

- Block wise and Plant wise deferred tax liabilities accumulated as on 31.3.2009 along with asset wise backup details.
- Year on year Block wise and Plant wise depreciation as per companies Act and Income Tax act in respect of assets existing as on 31.03.2009 and deferred tax liability materialized since 31.03.2009 along with backup details.

- Comparison of computed depreciation as per companies Act and IT act from the COD of the plant to 31.03.2018.

The existing regulation provides for recovery of deferred tax liability with respect to previous tariff period, whereas Gencos are grossing up the deferred tax liability amount with tax rates.

Hence, it is requested that this Hon'ble Commission may kindly insert suitable clause to which requires the generator to mandatorily provide the aforesaid information for deferred Tax liability and prohibits Genco for grossing up the deferred tax liability with tax rate .

V. The clause-wise comments are as follows:

S No	Clause	BRPL Comments
1	<p>9.2. A new clause, namely, Clause (6) shall be added after Clause (5) of Regulation 21 of the Principal Regulations as under: “(6) For the purpose of Clauses (4) and (5) of this Regulation, IDC on actual loan and normative loan infused shall be considered.”</p>	<p>Keeping the cost plus nature in mind, we would urge CERC to allow IDC on either actual loans or normative loan whichever is lower</p>
2	<p>12.2. A new clause, namely, Clause (3) shall be added after Clause (2) of Regulation 30 of the Principal Regulations, as under: “(3) The return on equity in respect of additional capitalization due to emission control system shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or in the absence of actual loan portfolio of the generating station, the weighted average rate of interest of the generating company as a whole shall be considered;”</p>	<p>We appreciate CERC initiative of equating the ROE with weighted average rate of interest on additional capex, as this would help in rationalizing the increase in tariff on account of installation of emission control systems.</p> <p>The need for installation of ECS has arisen out of change in law issued by MNRE on 7.12.2015 with regard to revision of emission norms of plants, which made it obligatory for generators to install emission control system by 7.12.2017. However the deadline was subsequently revised to Dec’2022.</p> <p>Considering the fact that during investment conceptualization stage of plants this investment wasn’t foreseen hence we are convinced by the commission’s view as stated in the explanatory memorandum that it’s reasonable to compensate the generating company for infusion of equity at the rate of borrowing from financial institutions. The relevant abstract has been reproduced below.</p> <p><i>“Regulation 30: Return on Equity 3.15 Servicing of additional capital expenditure is to compensate the generating station for the additional cost incurred to comply</i></p>

		<p><i>with revised emission standards. The Commission is of the view that it would be reasonable to allow equity infused by the generating company for installing emission control system at the cost of borrowing from financial institution. Explanatory Memorandum to Draft Regulations Page 8 The same principle is also applicable for additional capital expenditure required due to other Change in Law events. Accordingly, it is proposed to amend existing clause (2) and to add new clause (3) to Regulation 30"</i></p>
3	<p>13. Amendment of Regulation 32 of the Principal Regulations</p> <p>13.1. A new clause, namely, Clause (5a) shall be inserted after Clause (5) of Regulation 32 of the Principal Regulations as under:</p> <p>“(5a) The rate of interest on loan for emission control system shall be the weighted average rate of interest of actual loan portfolio of the emission control system or in the absence of actual loan portfolio, the weighted average rate of interest of the generating company as a whole shall be considered.”</p>	<p>A sizable fund has been acquired on account of the Green Energy Cess which is levied on the purchase of coal, we would urge CERC to request the Union Government of India to utilize this fund by providing loans to generating companies from this fund at a low interest rate for installation of ECS.</p> <p>This would help drastically rationalize the potential tariff shock which is anticipated in the foreseeable future.</p>
4	<p>14. Amendment of Regulation 33 of the Principal Regulations</p> <p>14.1. A new clause, namely, Clause (9) shall be added after Clause (8) of Regulation 33 of the Principal Regulations as under:</p> <p>“(9) The depreciation of the emission control system shall be computed from its date of operation for the balance useful life or extended life of the generating station, as the case may be.”</p>	<p>Coal fired plants totalling to about 26 GW of installed capacity had been identified for closure between 2022-27 by CEA in its national electricity plan issued in Jan’18 on account of completion of useful life, however they are still going ahead with installation of emission control systems (ECS) as their useful life is marginally over shooting the 2022 deadline for installation of ECS.</p>

		<p>In view of this we are concerned that if entire cost of ECS installation is recovered within the useful of these plants, it would create a tariff shock for Discoms/existing beneficiaries& their end consumers.</p> <p>Hence we propose that salvage value of fixed cost of assets considered for supplementary AFC be kept at 50%, as these plants may still choose to operate with another set of beneficiaries in line with provision of CERC tariff regulation 2019 so that rest can be recovered from them. The relevant clause has been reproduced below.</p> <p><i>“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation:</i></p> <p><i>(1) In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.</i></p> <p><i>(2) The beneficiary shall have the first right of refusal and upon its refusal to enter into an arrangement as above, the generating</i></p>
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		<p><i>company shall be free to sell the electricity generated from such station in a manner as it deems fit.”</i></p> <p>OR</p> <p>An alternate approach can be that depreciation may be spread over a 12 year period or balance useful life of the plant whichever is higher as plants are mostly likely to operate beyond their useful life either with their existing beneficiaries or new beneficiaries after completing 25 years of operation as per clause 17 of CERC’s tariff regulation 2019 which has been reproduced above.</p> <p>This would help proportionally distribute the burden of this additional capital investment amongst the existing & new beneficiaries of a plant.</p> <p>OR</p> <p>Cap on the recovery of Emission control system to 5% of Total (Fixed + Energy) yearly recovery.</p>
5	<p>15. Amendment of Regulation 34 of the Principal Regulations</p> <p>15.1. A new clause, namely, Clause (aa) shall be inserted after Clause (a) of Regulation 34 of the Principal Regulations as under: “(aa) For emission control system of coal or lignite based thermal generating stations:</p> <p>(i) Cost of limestone or reagent towards stock for 20 days corresponding to the normative annual plant availability factor;</p>	<p>Considering the fact that national average PLF of thermal plants is about 60%, we would urge CERC that while computing the cost of limestone component of IWC PLF of 60% should be considered instead of 85%.</p>
6	<p>16. Amendment of Regulation 35 of the Principal Regulations</p> <p>16.1. At the end of the first sentence of first proviso under sub-Clause (6) of Clause</p>	<p>We urge CERC to provide a normative quantum of gypsum generation and its normative price of sale. CERC may consider these normative values while</p>

	<p>(1) of Regulation 35 of the Principal Regulations, the words “and considering the norms of specific water consumption notified by the Ministry of Environment, Forest and Climate Change” shall be added.</p> <p>16.2. Sub-Clause(7) of Clause (1) of Regulation 35 of the Principal Regulations along with its proviso shall be substituted as under: “(7) The operation and maintenance expenses on account of emission control system in coal or lignite based thermal generating station shall be 2% of the admitted capital expenditure (excluding IDC & IEDC) as on the date of its operation, which shall be escalated annually at the rate of 3.5% during the tariff period ending on 31st March 2024:</p> <p>Provided that income generated from sale of gypsum or other by-products shall be reduced from the operation & maintenance expenses.”</p>	<p>calculating the O&M cost while issuing the tariff order. This normative cost of gypsum sale may be subjected to true-up.</p>												
7	<p>25. Amendments of Regulation 49 of the Principal Regulations</p> <p>25.1. A new sub-clause, namely, sub-clause (bb) shall be inserted after sub-clause (b) of Clause (E) of Regulation 49 of the Principal Regulations as under:</p> <p>“(bb) Auxiliary Energy Consumption (AUXe) on account of emission control system of thermal generating stations:</p> <p>Name of Technology AUXen (as % of gross generation)</p> <p>(1) For reduction of emission of sulphur dioxide:</p> <table border="0"> <tr> <td>a) Wet Limestone based FGD system (without Gas to Gas heater)</td> <td>1%</td> </tr> <tr> <td>b) Lime Spray Dryer or Semi dry FGD System</td> <td>1%</td> </tr> <tr> <td>c) Dry Sorbent Injection System (using Sodium bicarbonate)</td> <td>Nil</td> </tr> <tr> <td>d) For CFBC Power plant (furnace injection)</td> <td>Nil</td> </tr> <tr> <td>e) Sea Water based FGD system (without Gas to Gas heater)</td> <td>0.70%</td> </tr> </table> <p>(2) For reduction of emission of oxide of nitrogen :</p> <table border="0"> <tr> <td>a) Selective Non-Catalytic Reduction system</td> <td>Nil</td> </tr> </table>	a) Wet Limestone based FGD system (without Gas to Gas heater)	1%	b) Lime Spray Dryer or Semi dry FGD System	1%	c) Dry Sorbent Injection System (using Sodium bicarbonate)	Nil	d) For CFBC Power plant (furnace injection)	Nil	e) Sea Water based FGD system (without Gas to Gas heater)	0.70%	a) Selective Non-Catalytic Reduction system	Nil	<p>We are of the opinion that normative auxiliary consumption defined by CERC for thermal plants are quite lenient. Further we would like to submit that installation of emission control system does not provide any efficiency gains for the discoms.</p> <p>With the objective to minimizing the incremental impact on consumer tariff on account of installation of emission control system, we would urge the Hon’ble commission to subject these values to annual true-up and any efficiency gain with respect to AUX be entirely refunded to discoms so that the same may be passed through to the end consumer.</p>
a) Wet Limestone based FGD system (without Gas to Gas heater)	1%													
b) Lime Spray Dryer or Semi dry FGD System	1%													
c) Dry Sorbent Injection System (using Sodium bicarbonate)	Nil													
d) For CFBC Power plant (furnace injection)	Nil													
e) Sea Water based FGD system (without Gas to Gas heater)	0.70%													
a) Selective Non-Catalytic Reduction system	Nil													

	<p>b) Selective Catalytic Reduction system</p> <p>Provided that where the technology is installed with Gas to Gas heater, auxiliary energy consumption specified as above shall be increased by 0.3% of gross generation.”</p>	<p>0.20%</p>
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