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**Fwd: DIL Comments on CERC Staff Paper on Deterrent Charges**

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**From :** Sunil Kumar Jain <sunil\_jain@nic.in> Fri, May 27, 2022 03:51 PM  
**Subject :** Fwd: DIL Comments on CERC Staff Paper on Deterrent Charges 📎 1 attachment  
**To :** Suman Shiva <shivvasuman@nic.in>

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**From:** "Harpreet Singh Pruthi" <secy@cercind.gov.in>  
**To:** "Sunil Kumar Jain" <sunil\_jain@nic.in>  
**Cc:** "sushanta chat" <sushanta\_chat@yahoo.com>  
**Sent:** Friday, May 27, 2022 3:22:34 PM  
**Subject:** FW: DIL Comments on CERC Staff Paper on Deterrent Charges

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**From:** aveek.chatterjee@rpsg.in <>  
**Sent:** 27 May 2022 15:04  
**To:** Harpreet Singh Pruthi <secy@cercind.gov.in>  
**Subject:** DIL Comments on CERC Staff Paper on Deterrent Charges

Dear Sir,

We thank the Hon'ble Commission for bringing out the Staff Paper dated 13.05.2022 on 'Methodology for Computing "Deterrent Charges" for maintaining lower coal stock by coal based thermal generating stations' and providing an opportunity to all stakeholders to provide comments on the same.

In view of the above, please find attached the comments on behalf of Dhariwal Infrastructure Limited (DIL) on the aforesaid Staff Paper for your kind perusal and consideration.

Regards,

Aveek Chatterjee

DGM (Corporate Regulatory Affairs & Power Sale)





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 **DIL Comments on CERC Staff Paper on Deterrent Charges.pdf**  
388 KB

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## **DHARIWAL INFRASTRUCTURE LIMITED**

### Comments on Staff Paper on ‘Methodology for Computing “Deterrent Charges” for maintaining lower coal stock by coal based thermal generating stations’

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The Hon’ble Commission has on 13.05.2022 brought out the Staff Paper on ‘Methodology for Computing “Deterrent Charges” for maintaining lower coal stock by coal based thermal generating stations’ and invited the stakeholders to provide comments/suggestions on the same. The comments and suggestions on behalf of DIL on the methodology proposed in Staff Paper are provided in the following matrix for the kind perusal and consideration of the Hon’ble Commission.

Paragraph	Particulars	Comments and Suggestions
<b>Comments on Specific Proposals</b>		
6 & 7	<p><i>6. In order to recover full annual fixed charges, it is the obligation of the Generating company to arrange sufficient fuel for its generating stations as per norms and maintain the availability of the plant as per the relevant regulations.</i></p> <p><i>7. Therefore, it is proposed that if coal based generating stations fail to maintain coal stock as per the revised coal stocking norms as specified by the CEA, the AFC of such generating stations is reduced. The existing regulations already provide for the reduction in AFC on account of actual plant availability being lower than NAPAF.</i></p> <p>....</p>	<p><b>The proposal for levy of penalty on account of maintaining low coal stock in generating stations in addition to the reduction in Annual Fixed Charges due to Plant Availability lower than Normative Availability would lead to double jeopardy for the generators and is, therefore, <i>ultra vires</i> to Article 20 (2) of the Constitution of India. We request the Hon’ble Commission to avoid levying such penalty on generating stations without comprehending the actual reason behind the reduction of coal stock.</b></p> <p><b><u>Justification:</u></b></p> <p>The Hon’ble Commission has, in the Staff Paper, proposed for penalty for the generating stations for not maintaining the coal stock as per the CEA norms (“<b>Deterrent Charges</b>”) in addition to the reduction in Annual Fixed Charges (“<b>AFC</b>”) in terms of the CERC Tariff Regulations, 2019 on account of actual Plant Availability being lower than the Normative Availability.</p>

## **DHARIWAL INFRASTRUCTURE LIMITED**

### Comments on Staff Paper on 'Methodology for Computing "Deterrent Charges" for maintaining lower coal stock by coal based thermal generating stations'

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		<p>It is submitted that the procurement and receipt of coal by the generating stations is not entirely within the control of the generating companies. Given the situation of scarcity of domestic coal due to various reasons, maintaining normative coal stock may not lead to availability of cheaper power for the beneficiaries as incremental coal needed to maintain normative coal stock is most likely to come from a costlier source such as import/e-auction. Procurement of such costlier coal will result in higher energy charges for the beneficiaries, thereby defeating the basic premise upon which Deterrent Charges have been envisioned.</p> <p>The Hon'ble Commission would appreciate the fact that coal stock in the generating station may get reduced also on account of any of the following reasons which are not in control of a generator:</p> <ol style="list-style-type: none"><li>1. Less coal supplied by the coal companies on account of low production</li><li>2. Less number of rakes allotted by railway for transportation of the coal</li><li>3. DISCOMs fail to make timely payment to the generator leading to working capital/cash shortage for the generator to make payment for coal procurement from alternate sources.</li></ol>

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		<p>4. Inadequate availability of alternate options for procurement of coal at viable price in domestic/international market.</p> <p>5. Any other factors which are not in control of generator including the factors mentioned under Force Majeure clause of the FSA.</p> <p>Hence, it is not always the fault of the generating companies for which the coal stock dwindles below the average coal stock days. Generators can only ensure timely payments to the coal companies. The generator cannot be penalized with Deterrent Charges if the coal companies fail to supply full quantum of coal as per FSA. The availability and price of coal from alternate sources such as imported coal is subject to various uncertainties viz. geo-political risk, economy condition, pandemic factors etc. which are beyond the control of the generators. It is pertinent to note here that CEA has vide its revised coal stocking norms for coal based thermal power generation, observed that the generators cannot be held at fault if they have no outstanding dues. The relevant excerpts from the observation of CEA are reproduced hereunder:</p> <p style="text-align: center;"><i>“Exceptions: In case the Genco or IPP submits programme as per the MSQ (as per FSA) of the individual plant, but still not able to maintain coal stock due to reasons such as less coal supply by CIL, less rakes availability, running at very high PLF</i></p>

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### Comments on Staff Paper on 'Methodology for Computing "Deterrent Charges" for maintaining lower coal stock by coal based thermal generating stations'

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		<p data-bbox="1256 341 2033 411"><i>etc.(&gt;= 85% PLF), then such plant(s) will be kept in Green Zone."</i></p> <p data-bbox="1189 472 2033 756">Pertinently, as per the advice of CEA, no penal provision may be imposed in cases where the generator has duly requisitioned coal with necessary payments under FSA, but is still unable to maintain coal stocks. This aspect has been completely ignored in the present Staff Paper issued by the Hon'ble Commission under the proposed methodology of determination of Deterrent Charges.</p> <p data-bbox="1189 817 2033 1139">Further, the turnover of a generating station also gets impacted on account of holding up of claims by the DISCOMs on various issues pending adjudication. The working capital of the generating stations gets blocked which affects the cash flow and payment capacity of the generators. It is, therefore, essential to understand the reason for reduction in coal stock in generating stations before penalizing the generating stations which otherwise would be unfair.</p> <p data-bbox="1189 1200 2033 1394">Further, it is submitted that the Plant Availability of the generating station suffers when it fails to stock sufficient coal for generation up to Normative Availability. If the actual availability gets reduced below Normative Availability on account of low coal stock, the AFC of the generating station for the particular year</p>

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		gets reduced. The methodology proposed in the Staff Paper intends to levy an additional penalty on account of maintaining low coal stock. This would primarily mean a generating station would get penalized twice on account of the same cause, i.e., for maintaining coal stock lower than the CEA norms. <b>This would essentially violate the principle under Article 20 (2) of the Constitution of India (‘doctrine of double jeopardy’).</b>
10	<p><b><i>Shortfall in Plant availability factor is more than 25 % of NAPF during a month – Plant designed on domestic coal as well as imported coal</i></b></p> <p><i>Suppose the plant availability, coal stock availability and NAPAF of a non-pit head plant designed either for domestic coal or for imported coal are as follows:</i></p>	<p><b>The example considered by the Hon’ble Commission in the proposed Staff Paper can be analyzed with a different perspective which also shows the applicability of Deterrent Charges on generators even after meeting the demand of the beneficiaries. The Hon’ble Commission may therefore not implement the proposed Deterrent Charges which will unduly penalize the generators under certain circumstances.</b></p> <p><b><u>Justification:</u></b></p> <p>Suppose the plant availability, coal stock availability, NAPAF and PLF of a non-pit head plant designed either for domestic coal or for imported coal are as follows:</p>

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	<i>Month</i>	<i>Plant Availability Declared (%)</i>	<i>NAPAF (%)</i>	<i>Actual Coal Stock (Number of days)</i>	<i>Coal stock norms as per CEA (Number of days)</i>	<i>Month</i>	<i>Plant Availability Declared (%)</i>	<i>NAPAF (%)</i>	<i>PLF (%)</i>	<i>Actual Coal Stock (Number of days)</i>	<i>Coal stock norms as per CEA (Number of days)</i>
	<i>November</i>	86.0	85	18	22	November	99	85	95	7	22
	<i>December</i>	82.0	85	19	23	December	99	85	95	6	23
	<i>January</i>	59.5	85	26	24	January	59.5	85	55	26	24
	<i>Average</i>			21	23	Average	85.8	85	81.6	13	23
	<p>The shortfall in availability of plant in January = <math>\frac{(0.85-0.595)}{0.85} = 30.00\%</math></p> <p>The shortfall in plant availability is more than 25%. Considering the AFC during the January as Rs.100 Cr, the reduction in capacity charges for the month of January shall be</p> <p>= <math>100 \times \frac{(23-21)}{23} \times \frac{0.85-0.595}{0.85} = \text{Rs. 2.609 Crores}</math></p>					<p>The shortfall in availability of plant in January = <math>\frac{(0.85-0.595)}{0.85} = 30.00\%</math></p> <p>The shortfall in Plant Availability is more than 25%. Considering the AFC during the month of January as Rs 100 Crores, the reduction in Capacity Charges for the month of January shall be</p> <p>= <math>100 \times \frac{(23-13)}{23} \times \frac{0.85-0.595}{0.85} = \text{Rs. 13.043 Crores}</math></p> <p>In the above example the coal stocks were much lower than CEA norms during the month of November and December as the PLF of the plant was high. However, if the generator suffers a</p>					



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		<p>forced/planned outage during the month of January the coal stocks will rise automatically. As is evident from the above exhibit, the loss of Plant Availability during the month of January would certainly not be on account of low coal stock. Yet, the generator shall suffer a deterrent loss of about Rs 13 Crores under the proposed methodology since there is no mechanism to analyze the actual reason for low coal stock.</p> <p>Further, it may be noted that the directive of Ministry of Power vide the letter dated 22.02.2022 proposed monthly Deterrent Charges when reduction of quarterly availability was more than 5% of NAPAF. However, the illustrations given in the Staff Paper proposes Deterrent Charges even if the Declared Capacity is less in any month.</p>
<b>Comments on General Aspects</b>		
-	<i>No provision</i>	<p><b>Apart from the perspective of constitutional validity of the applicability of Deterrent Charges, the Hon’ble Commission may note that there are various other shortcomings in the proposed methodology which may lead to confusion and disputes if the Deterrent Charges are levied.</b></p> <p><b><u>Justification:</u></b></p> <ol style="list-style-type: none"><li>1. There is no clarity in the proposed amendment as to how the lower Plant Availability of the generating stations would be</li></ol>

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		<p>segregated as per the respective reasons. It is possible that a generating station conducts an annual overhaul during a period of two months when the Plant Availability of the station gets reduced. Generators usually reduce coal stock during annual overhauling or capital overhauling since unutilized coal stocks lying over a long period of time lead to high stacking loss. In such cases, the generating stations would get penalized for no relevant reason under the proposed formula. Hence, such methodology would lead to multiplicity of disputes over computation of Plant Availability of the generating stations during the periods of technical shutdown.</p> <p>2. The Normative Availability of a generating station is computed on an annual basis and the generators are allowed to secure the AFC in entirety if they achieve the Normative Availability on annual basis. However, the Deterrent Charges have been proposed to be levied monthly with monthly computation of Normative Availability. Hence, it is quite possible that a generating station which achieves Annual Availability of 85% on annual basis would get penalized on account of monthly computation of Deterrent Charges. Therefore, a Generating Station should also get credit for maintaining more than normative coal stock for a given</p>

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		<p>month which can be reconciled on annual basis which otherwise would lead to absurdity.</p> <p>3. The Annual Contracted Quantity (“<b>ACQ</b>”) under the Fuel Supply Agreement (“<b>FSA</b>”) is based on coal requirement at 85% PLF. Therefore, a generator can achieve Plant Availability maximum up to 85% (without considering the impact of GCV loss due to grade slippage) with coal received under the linkage. Under the New Coal Distribution Policy (“<b>NCDP</b>”) 2013, the coal companies are obligated to supply only up to 75% of the ACQ which therefore corresponds to <math>75\% \times 85\% = 63.75\%</math> PLF. Hence, the generators would anyhow be penalized under the proposed methodology if they depend solely on supply of linkage coal. The proposed methodology would implicitly push the generators for procurement of imported coal, after extinguishing its quota under domestic FSA, which would, in any case, be available at higher price. Hence, the generators would be put at a risk in defaulting Regulation 43 (3) of Tariff Regulations, 2019 in order to avoid levy of Deterrent Charges. This would lead to a contradiction in between the provisions under the same regulatory framework.</p> <p>4. In cases where a generating station/unit has multiple FSAs with coal companies as well as have multiple long-term</p>

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		<p>beneficiaries with distinct contracted capacities tied up through separate PPAs, the coal stock needs to be determined against each PPA rather than the whole generating station/unit since the stock against each PPA would be different based on requisitions of different beneficiaries. This would make the computation of Deterrent Charges cumbersome and prone to error.</p> <p>5. Adequate coal stocks as per the CEA norms can be maintained only if the coal companies can assure adequate supply of coal. During the period of shortfall in production coal, Coal India Ltd. (“<b>CIL</b>”) should act as coal aggregator for arranging additional coal to meet the shortfall. Further, the DISCOMs should also make regular payments which would facilitate adequate payment capacity for the generators. If the above issues are addressed suitably, it would eventually leave no requirement of imposition of any Deterrent Charges.</p> <p><b>In view of the above, we request the Hon’ble Commission to refrain from implementing the Deterrent Charges on the generating companies. The CERC Tariff Regulations 2019 stipulate the recovery of entire AFC linked to achievement of Normative Availability, which, in our considered opinion is an adequate incentive/disincentive mechanism. Therefore, an additional penalty in the form of Deterrent Charges on the</b></p>

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		already cash-starved generating companies is unnecessary and uncalled for as the concept of such double penal provision is against the provisions of the Constitution of India and also, against the spirit of the Electricity Act.