
Fwd: Comments and suggestions regarding the Staff Paper on the "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations".

From : Sunil Kumar Jain <sunil_jain@nic.in> Fri, May 27, 2022 03:56 PM
Subject : Fwd: Comments and suggestions regarding the Staff Paper on the "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations". 📎 1 attachment
To : Suman Shiva <shivvasuman@nic.in>

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 3:26:40 PM
Subject: FW: Comments and suggestions regarding the Staff Paper on the "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations".

From: ashwini.chitnis@gmail.com <>
Sent: 27 May 2022 12:28
To: Harpreet Singh Pruthi <secy@cercind.gov.in>
Subject: Comments and suggestions regarding the Staff Paper on the "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations".

To,
The Secretary,
Central Electricity Regulatory Commission
36, JANPATH, NEW DELHI – 110 001

Subject: Comments and suggestions regarding the Staff Paper on the "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations".

Reference: Public notice dated 13th May 2022

Dear Sir,

With respect to the matter mentioned above, please find attached the comments and suggestions on behalf of Legal Initiative for Forest and Environment (LIFE). We request you to take this submission on record and to allow us to make further submissions in this matter, if any.

Thanking you

Sincerely

Ashwini Chitnis

Senior Advisor

Legal Initiative for Forest and Environment (LIFE)

N-71 LGF Greater Kailash-I, New Delhi-110048

Ph-91-11-49537774, 49536656, 9822517481



 **LIFE_Submission_CERC staff-paper_13052022.pdf**
151 KB

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
36, JANPATH, NEW DELHI - 110 001**

IN THE MATTER OF:

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

SUBMISSIONS OF LEGAL INITIATIVE FOR FOREST AND ENVIRONMENT (LIFE), NEW DELHI

1. The CERC vide public notice dated 13.5.2022 has invited comments and suggestions from all stakeholders on the “Staff Paper on the Methodology for Computing ‘Deterrent Charges’ for maintaining lower coal stock by coal based thermal generating stations”.
2. The present submission is in response to the said notice and the paper published thereunder. We request the Commission to accept this submission on record and to allow us to make further submissions in this matter, if needed.

Need for data and analytical basis to support the suggestions:

3. In the month of April 2022, the electricity demand increased significantly as compared to the same last year and in its wake many states experienced significant power shortages. The situation was soon dubbed as coal crisis by the media. However, the Coal Ministry has maintained that coal production is not an issue. See for instance the following:

“UNSTARRED QUESTION NO. 5666 TO BE ANSWERED ON 06.04.2022

(a) whether the Government was aware about the coal shortage at the power plants during the month of October 2021, if so, the details and the reasons therefor;

(b) whether the Government is currently facing any shortage in the production of coal in the country, if so, the details thereof including the current coal production to meet the demand;

MINISTER OF PARLIAMENTARY AFFAIRS, COAL AND MINES (SHRI PRALHAD JOSHI)

(a) & (b): There is no shortage of coal in the country. Due to increased demand of power, less power generation by imported coal based power plants and some interruption in supply of coal due to heavy rains, the coal stock at the power plants depleted to 7.2 Million Tonnes (MT) as on 8th October, 2021. Subsequently with increased coal supplies, the coal stock has started

increasing and has now reached 24.04 MT as on 01.04.2022 with respect to the plants based on domestic coal. During 2021-22, total raw coal production was 777.325 MT (provisional) against 716.08 MT during the same period of the last year. In addition, coal stock at Coal India Limited (CIL) and Singareni Collieries Company Limited (SCCL) pithead as on 01.04.2022 is 60.77 MT and 4.71 MT respectively.” (Emphasis added)

Press release issued by the Ministry of coal dated 12th April 2022:

“...The Nominated Authority, Ministry of Coal has reviewed the production of coal with allocattees of captive coal blocks whose coal blocks have either commenced production or are likely to commence production during the financial year 2022-23. The meeting was chaired by the Secretary, Coal, Dr. Anil Kumar Jain. It was appreciated that coal production from captive coal blocks during 2021-22 was 85 Million Ton (MT), an increase of around 35% over 63 MT produced during the previous year 2020-21. The enhanced coal production helped in shortening the demand-supply gap in domestic market...” (emphasis added)

Press release issued by the Ministry of coal dated 24th May 2022:

“...Total coal despatches (including non CIL coal producing units) have been to the tune of 71.77 MT for the entire month of April, 2022 registering a growth of 9.39% on year-on-year basis. The total coal production in the country has increased to 67 Million Tonnes (MT) in April 2022 registering an impressive growth of 29.80%.” (Emphasis added)

4. The newspapers are replete with commentaries and views from various stakeholders trying to analyse the said issue and many opinions and suggestions have also been provided. Additionally, not just the Ministries of Power¹, Coal², and Railways³, but even the Environment⁴ Ministry seems to

¹ Directions have been issued to generating companies under Section 11 of the Electricity Act, 2003.

² As per the news reports, apart from ramping up coal production from CIL owned mines, coal supply from non-power sector was (at least partially) diverted to power sector consumers.

³ The Railways apparently cancelled 42 passenger trains in order to prioritise coal rake movement across country to deal with the coal shortage. Ref- https://www.business-standard.com/article/indian-railways/coal-crisis-railways-cancels-42-passenger-trains-some-to-be-restored-soon-122050501094_1.html

⁴ As per its notification dated May 7 2022, the Environment Ministry allowed a special dispensation to the Ministry of Coal to relax certain requirements namely, public consultations, so that mines could operate at increased capacities.

have taken steps to mitigate the so-called crisis. However, in spite of this flood of information and action, the core issue remains shrouded in ambiguity.

5. Given this background, it was very disappointing to see the present staff paper lacking in any data and analysis of the current situation and/or the factors responsible for it.
6. The paper attempts to address the current problem by imposing the said 'deterrent charges', however, it provides no data or analysis to demonstrate why such a deterrent is necessary or how it would be effective. In other words, there is no analysis to help understand why the crisis occurred in the first place and/or in what way the existing regulatory provisions were inadequate for managing it.

Stronger accountability mechanisms are necessary:

7. Given the information in public domain regarding the current issue and considering the past history of such periodic but predictable coal shortages, prima facie there seems to be a combined effect of inefficient demand assessment & planning on part of the electricity distribution companies and imprudent management of coal stocks by the thermal generating stations.
8. As the staff paper also notes, such issues should, at least in theory, be addressed by the existing tariff regulations (2019), which mandate various performance norms that should in-turn ensure timely planning and smooth operation of thermal power plants.
9. The explanatory memorandum that was published by the CERC along with the draft MYT regulations 2019 had stated:

“...The pricing framework should encourage generators to plan and adjust its generation resources to cater to diurnal variation/seasonal variation in demand of its beneficiary and also should facilitate power system operations to achieve load-generation balance in most optimal and efficient manner. Hence, the Commission has proposed to introduce the Capacity Charge in two parts (i) Capacity Charge for Peak period and (ii) Capacity Charge for Off-Peak period.” (Emphasis supplied)

10. Taking inspiration from the CERC, some state regulatory commissions have also introduced similar provisions in their tariff regulations. However, the current issue highlights the inability of the MYT 2019 framework to achieve its desired outcome.

11. It is evident that the existing norms have not been able to enforce prudent planning and efficient operation of the thermal sector as was envisaged by the 2019 MYT regulations. This begs the question that whether introduction of just another penal charge would be a sufficient deterrent to prevent such situation in future?
12. More importantly, it is not the case that just one or two thermal power plants failed to maintain the required coal stock. The more disconcerting aspect of the present shortage is the fact that it is a sector-wide phenomenon that affected many states. This suggests that it has deeper roots and a simple pecuniary measure may not be a sufficient deterrent.
13. Further, there is already enough evidence to show that financial penalties are not a strong deterrent for entities regulated under cost-plus regime. Delays in project commissioning and inefficiencies in power purchase planning practices of state distribution companies are just the most obvious examples of this.
14. Considering the above points, we feel that the commission should not hasten to fix the problem with a solution that is unlikely to be very effective. Being a crucial sector regulator overseeing the entire central sector thermal fleet, the Commission should first of all present a more detailed and evidence-based analysis of the current issue. This is extremely important for apportioning accountability and the inevitable cost impacts that would follow. Crucially, the cost of coal imports that the generating companies are expected to undertake are unlikely to be trivial⁵ and would in fact further worsen the problem of delayed payments.
15. In this context, it is important to highlight the provisions of the Section 40 of the CERC 2019 MYT regulations, which states as follows:

40. Gross Calorific Value of Primary Fuel:

...

(2) The generating company shall provide to the beneficiaries of the generating station the details in respect of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc. as per the Form 15 prescribed at Annexure-I (Part I) to these regulations:

⁵ https://www.business-standard.com/article/companies/imported-coal-likely-to-raise-ntpc-s-final-tariff-by-50-70-paise-122052500073_1.html

...

Provided further that copies of the bills and details of parameters of GCV and price of fuel such as domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel, details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. (Emphasis supplied)

At the time of filing this submission, we could not locate the above stipulated details and information on the website of NTPC.

16. It has been highlighted time and again that lack of clarity regarding coal requisitioning, supply, and allocation of coal shortage amongst the various coal consumers leads to obfuscation of responsibility and makes it difficult to hold the generating companies accountable for their coal procurement. In fact, the above provisions were perhaps introduced to address this very issue. However, the absence of such crucial data in the public domain makes it difficult to analyse the problem.
17. Since financial deterrents are often ineffective, transparency and public accountability are better tools for managing cost-plus utilities. Therefore, it is our submission that the Commission should enforce due compliance with the above provisions pertaining to transparency and accountability. This will at least bring in the much needed clarity regarding the root cause of the issue.

More comprehensive and robust measures are needed:

18. On one hand, the paper has proposed penal charges for inability to maintain adequate fuel stock, but on the other hand the current 2019 MYT regulations allow use of alternative fuel from sources other than those agreed by the generating company and beneficiaries in their power purchase agreement (PPA) for supply from the contracted capacity. Among other reasons, such use is permitted on account of shortage of fuel or optimization of economical operation through blending, but without any prior consent of the beneficiary, unless the PPA explicitly requires the generator to seek such consent. See the extract below:

43. Computation and Payment of Energy Charge for Thermal Generating Stations:

...

(3) In case of part or full use of alternative source of fuel supply by coal based thermal generating stations other than as agreed by the

generating company and beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station:

Provided that in such case, prior permission from beneficiaries shall not be a pre-condition, unless otherwise agreed specifically in the power purchase agreement:

Provided further that the weighted average price of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (5) of this Regulation:

Provided also that where the energy charge rate based on weighted average price of fuel upon use of alternative source of fuel supply exceeds 30% of base energy charge rate as approved by the Commission for that year or exceeds 20% of energy charge rate for the previous month, whichever is lower shall be considered and in that event, prior consultation with beneficiary shall be made at least three days in advance. (Emphasis added)

19. Since it is often difficult to ascertain whether there was a real shortage of coal or lack of coal availability arising out of poor planning on part of the generator or coal supplier, in effect, the provision allows the generating companies to use fuel from such alternative sources without establishing its need or prudence and more importantly, without any prior approval from the beneficiaries or the Commission.
20. Considering the current issue, we submit that the above-mentioned provision is inappropriate and would lead to dilution of not just any likely effect that the proposed deterrent charges might have, but also of the commercial responsibility of the domestic coal suppliers in ensuring coal availability as per their fuel supply agreements.
21. If the purpose of the said deterrent charges is to enforce generating companies to always maintain adequate coal stocks, the above-mentioned provisions of the current MYT regulations (Regulation 43) which in-effect allow 'no questions asked' procurement of alternate fuel, act counter to such requirement and hence need to be amended or revoked accordingly.

22. In the short and medium term, as the country adds more renewable energy-based capacity, and more consumers opt for suppliers other than their distribution company to meet their energy demand (completely or partially), such demand-supply fluctuations are bound to be frequent, if not severe.
23. Taking cognizance of these developments and being a key regulatory agency in the sector, the Commission should take lead in formulating regulations that can respond to such fluctuations not just nimbly, but also efficiently and prudently, and most importantly, in a transparent and accountable manner.
24. Considering the above points, we submit that the staff paper should include the following key points for the consideration of the Commission and for due action thereupon:
 - (a) Ensure and monitor due compliance with the provisions of the **Section 40** of the MYT regulations 2019. All regulated thermal generating companies should mandatorily publish fuel procurement data as per the formats prescribed in the 2019 regulations.
 - (b) Introduce suitable amendments to modify the provisions of the current MYT regulations (**Regulation 43**) that allow thermal power plants to source fuel from alternative sources without establishing its need or prudence, and without the consent of the beneficiaries or the Commission.
 - (c) Undertake a detailed data and evidence-based review to identify the root cause of the current issue and to explain why the current MYT 2019 regulations were not effective in mitigating the current coal shortage.
 - (d) Establish the need for the deterrent charges, if any, based on the such evidence and data and support it with analysis that can demonstrate its effectiveness in future.
 - (e) Taking into account the increasing role of renewable energy based capacity and open access, and based on the detailed data and evidence-based review mentioned in points (c) and (d) above, publish a fresh background paper and/or draft regulations to introduce provisions that would prevent such phenomena in future.
 - (f) Accept this submission on record and allow us to make further submissions in this matter, if any.

25. We once again request the Commission to accept this submission on record and to allow us to make further submissions in this matter, if any.

A square image containing a handwritten signature in blue ink. The signature appears to be 'Ashwini Chitnis' written in a cursive style.

Ashwini Chitnis

Senior Advisor

Legal Initiative for Forest and Environment

Date: 27th May 2022

Place: Pune