
FW: Tata Power's suggestions on The Staff Paper on "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock

From : Harpreet Singh Pruthi <secy@cercind.gov.in> Fri, May 27, 2022 06:22 PM
Subject : FW: Tata Power's suggestions on The Staff Paper on "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock" 📎 1 attachment
To : Sunil Kumar Jain <sunil_jain@nic.in>
Cc : sushanta chat <sushanta_chat@yahoo.com>

From: nandita@tatapower.com <>
Sent: 27 May 2022 18:04
To: Harpreet Singh Pruthi <secy@cercind.gov.in>
Cc: ajay.kapoor@tatapower.com; paramita.sahoo@tatapower.com
Subject: Tata Power's suggestions on The Staff Paper on "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock"

Dear Sir

Greetings from Tata Power

Kindly find attached Tata Power's suggestions on CERC Staff Paper on "Methodology for Computing 'Deterrent Charges' for maintaining lower coal stock by coal based thermal generating stations". Request you to consider our suggestions while finalizing the methodology.

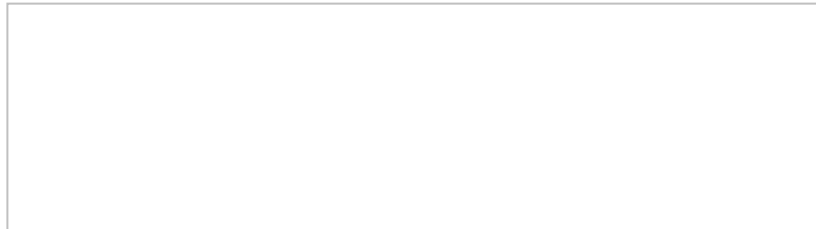
Regards,

Nandita Singh

Advocacy

The Tata Power Company Limited, Shatabdi Bhawan, B-12 & 13, Sector 4, Noida, UP-201301

Tel: 91-120-6102229 Mobile: 9250008925



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**2022 05 27 Tata Power's comments on methodology for computing
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705 KB

Tata Power's Comments on Methodology for Computing Deterrent Charges for maintaining lower coal stock by coal based thermal generating stations

1. At the outset we would like to mention that CEA in the revised coal stocking norms have amended the norms upwards i.e. pit-head plants have to maintain coal stock in the range of 12-17 days and non-pit head plants have to maintain the stock in the range of 20-26 days. However, the CERC (Terms and Conditions of Tariff) Regulations, 2019 (Tariff Regulations) allows working capital for only 10 and 20 days for pit-head and non-pit head plants respectively. In order to avoid additional financial burden on the generators, it is imperative that the regulations are aligned with the revised coal stocking norms and the compensation for maintaining the increased number of stock days is provided to the generating companies. As Tariff Regulations already capture impact of shortages of coal that impact Availability, in AFC recovery, and hence penalty mechanism is already in place. But there cannot be any penalty merely for not maintaining stocks as per norms unless it goes below 1 day affecting Availability, more so when coal stocking norms given by CEA are advisory only and cannot have force of law. While we do not support levy of additional penalty over and above existing penalty mechanism, it would be unfair to ask for anything more than the interest on working capital allowed for the actual shortfall in stock. The reasons for our disagreement are given in following paragraph.
2. It is respectfully submitted that from perusal of the public notice issued along with the Staff Paper, it is observed that the Hon'ble Commission has made the direction of the MoP, GoI under Section 107 of the Electricity Act ("Act"), 03 as the foundation for bringing out the proposed amendments in Tariff Regulations for providing disincentives to Thermal Power Plant ("TPP") for maintaining lower coal stock. Accordingly, in this context, we would like to make the following submissions for kind consideration of the Hon'ble Commission:

Direction under Section 107 is not binding:

- A. Though the Hon'ble Commission has issued the Staff Paper based on the direction under Section 107 of the Act, it is pertinent to mention that in catena of judgments by Hon'ble Tribunal/SC it has held that policy directions are not binding upon the Central/State Commission, which is an independent statutory authority, if it is interfering with their statutory functions.
In this regard, a reference can be made to the APTEL Judgment dated 31.01.2011 in the matter of Polyplex Corporation Ltd Vs Uttarakhand Electricity Regulatory Commission and Uttarakhand Power Corporation Ltd wherein Hon'ble Tribunal held/concluded that policy directions issued by the State Government are not binding on the State Commission as those directions cannot curtail the power of the State Commission in the matter of determination of tariff. The relevant extract from the order is reproduced below for ready reference:

"62. (1) The State Commission is independent statutory body. Therefore, the policy directions issued by the State Government are not binding on the State Commission, as those directions cannot curtail the power of the State Government in the matter of determination of tariff. The State Government may give any such policy direction in order to cater to the popular demand made by the public but while determining tariff the State Commission may take those directions or suggestions for consideration but it is for the State Commission which has statutory duty to perform either to accept the suggestion or reject those directions taking note of the various circumstances. It is purely discretionary on the part of the State Commission on acceptability of the directions issued by the State Government in the matter of determination of tariff."

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- B. Moreover, Central/State Commissions are bestowed with discretionary power under the Act to decide on issues after scrutiny of the situation and application of Judicial Mind. It cannot be debated that determination of tariff is one of the core functions of the Central/ State Commissions which is to be done in an independent manner and which is the very essence of the Electricity Act. It is settled law that the Central/State Commissions alone has the powers to determine the tariff by following the provisions of the Electricity Act, 2003 and the Regulations made thereunder.
 - C. Hence, in our humble view, proposed amendments in CERC Tariff Regulations, 2019 solely because of the direction of MoP is contrary to objective of the Electricity Act and settled position of law.
3. The proposed amendments are also in deviation to principle of Regulatory Certainty and in contravention to principles enshrined in Section 61 of the Act. Accordingly, in this regard, we would like to make the following submissions for kind consideration of the Hon'ble Commission:

Regulatory uncertainty:

- A. It is respectfully submitted that huge investment is involved in setting-up of Thermal Power Plant. Developers undertake such investment after evaluating the risk and importantly keeping in mind the Regulatory Certainty as being mandated under The Electricity Act, 2003 as well as the Tariff Policy. The Hon'ble Commission, since inception, has considered five components of Fixed Charges i.e., Depreciation, Return on Equity, O&M Expenses, Interest on Loan and Interest on Working Capital and in addition to it laid down Normative Plant Availability Factor ("NAPAF") for recovery of Fixed Charges. In case a TPP is able to achieve Plant Availability norms, it is entitled to recover full Fixed Charges else recovery of Fixed Charges are allowed in proportion to actual availability being achieved by the Plant vis-à-vis the Normative Availability Norms. So, inefficiencies of TPP on any count including maintenance of low coal stock has already been inbuilt in the existing Tariff Principles and the same has been followed by Hon'ble Commission since inception.
- B. However, the staff paper proposes to levy deterrent charges on generators for maintaining lower coal stock in addition to the existing disincentives as laid down in the Tariff Regulations. This is in deviation to the principle of Regulatory Certainty which is the soul of Regulatory Framework in India. MYT Framework was intended to provide Regulatory Certainty to the investors and consumers by promoting transparency, consistency and predictability of regulatory approaches thereby minimising perceptions of regulatory risk.
- C. In our view, the proposed amendment is none less than penalizing someone twice for the same fault which is not permissible in law. This will adversely impact the expected revenue over the useful life of the project and, hence, would be detrimental for the investor and viability of the project.

Contravention to Section 61 of the Act

- A. It is humbly submitted that the discretionary power so endowed upon the Hon'ble Commission ought to have been used in a manner which could have served the purpose of both the consumers and the Generators and considering the uncontrollable factors involved in it. When there is no impact on availability declaration for shortfall in average coal stock, there is no justification for levy of any penalty. It is a settled law that exercise of any discretion whether statutory or not, has to be just, fair and reasonable.

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- B. The Appropriate Commission while determining tariff under section 61 of the Act is required to be guided by the factors and parameters enshrined therein. Relevant clauses of Section 61 are extracted below for ready reference:

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:-

- a.
 - b. *the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
 - c. *the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
 - d. *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
 - e. *the principles rewarding efficiency in performance;*
 - f. *multi year tariff principles;*
 - g.
 - h.
 - i. *the National Electricity Policy and tariff policy:*
- C. In our view, Section 61 requires the Commission to set Tariff Principles keeping following in mind (i) commercial principles which are equitable, promote investment and viability,(ii) encouraging efficiency and economical use of resources and good performance, (iii) safeguarding the interest of the consumers and at the same time ensuring recovery of the cost in a reasonable manner, (iv) rewarding efficiency in performance, (v) MYT principles and (vi) National Tariff Policy.
- D. However, vide the proposed amendments, the Hon'ble Commission, after setting a norm of 85% Plant availability factor for recovery of Fixed charges, is going back to see the actual coal stock being maintained by the TPPs irrespective of the fact whether the underachievement of the desired norms is due to low coal stock or not as availability can be maintained even with low stock and with efficient supply chain/coal logistics or not. By doing so, the Hon'ble Commission is in disregard to the Tariff Policy and Settled law by Hon'ble Tribunal which says Normative Norms are binding on Hon'ble Commission as well as Generators and Hon'ble Commission cannot go back to lower of actual or normative while determination of Tariff.
- E. Further, Section 61(c) & (e) provides for promotion of efficiency by rewarding efficiency in performance. However, proposed amendment stipulate penalty for lower coal stock even if Generator manages coal stock efficiently, which have no impact on availability. In case penalty for coal shortages is to be levied additionally, a mechanism to compute impact of shortages on availability needs to be placed first.
- F. Even if Hon'ble Commission wishes to introduce the above amendments, the disincentives/penalty has to be reasonable and at the most to the extent it is being allowed in Tariff. The Tariff Regulations currently allow coal cost of 10 days and 20 days towards stock for pit head and non-pit head station respectively. So, in case of lower coal stock, the coal cost towards working capital ought to be computed based on actual coal stock position which is fair and just and in consonance with Section 61(d) in Cost Plus determination of Tariff. However, imposing a penalty in the range of 0.15% to 1.3% for shortfall in NAPAF being in the range of (5% to 25%) and more than 25% is not reasonable since interest on working capital allowed normally remains in the range of 0.05% per day of the normative 10/ 20 days.

¹(As illustrated in Staff Paper at para 8 i.e. 15.38 lakhs against AFC of 100 Crores for one day shortage and at Para 10 i.e. 2.609 Crore against AFC of 100 Crores for two day shortage)

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²Illustration :

- i. In MPL recent tariff Order, Working Capital for Cost of coal towards stock (20 days of generation at NAPAF) is approved as Rs. 112.66 Crores and interest thereon @ 10.5% works out to 11.83 crores annually.
 - ii. However, if we consider the actual coal stock is 19 days instead of 20 days, the working capital for cost of coal towards 19 days stock and interest thereon works out to be Rs. 11.24 Crores ($112.66 \times 19 \times 10.5\% / 20$)
 - iii. From (i) and (ii), it can be seen that for 1 day stock Hon'ble Commission allows 0.59 crores (11.83 Cr - 11.24 Cr) as interest on working capital towards coal stock which is about 0.05% of the AFC allowed for FY 22-23 (0.59 cr/ 1085.89 Cr)
- G. On the contrary, any additional cost which is to be borne by Generating Companies on account of Policy Directions to maintain higher coal stocks than norms needs to be separately allowed in Tariff as mentioned in the beginning of these comments.
- H. Therefore, in our humble view, proposed amendment is not in consonance with the various factors and parameters specified in section 61 of the Act.
- I. In view of the above, the levying of deterrent charges are not justified and reasonable. Also, it is not out of place to mention that the coal supply being a monopolistic business in India, which is an uncontrollable factor for a generator, imposing such harsh measures will be detrimental on Generating companies.

In addition to above, clause wise comments are mentioned hereunder for kind consideration:

Clause No	Matter	Suggestions	Justification
I. Background-Point No 3	As per the revised coal stocking norms, coal based pit-head thermal power plants are required to maintain coal stock in the range of 12 days to 17 days, depending on the month of the year, as against prevailing coal stock norm of 15 days. Power plants situated away from the mines i.e. the non-pit head plants are required to maintain coal stock in the range of 20 days to 26 days compared to the prevailing coal stock norms of 20 days to 30 days	It is suggested to allow working capital for 17 days for pit head generating stations and 26 days for non-pit head generating stations corresponding to normative annual plant availability factor making the norms in-line with stocking norms as specified by CEA.	The tariff regulations only provide for working capital for 10 days for pit head generating stations and 20 days for non-pit head generating stations. Increase in number of stock days would mean requirement of additional working capital and consequently, additional interest on working capital loan. To compensate the increase in the interest cost towards working capital, it is suggested that the regulations are realigned with the revised coal stocking norms as recommended by CEA
III. The Proposed Methodology-Point No.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 regulations already provide for the reduction in AFC on account of actual plant availability	

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	<p>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.</p> <p>Accordingly, the following provision is proposed to be inserted after Regulation 42 (7) of the 2019 Tariff Regulations.</p> <p>“42(8) (i) In case, the Plant Availability in any month is short by more than 5 % but up to 25 % of NAPAF and average coal stock availability for the last three months (month for which reduction in capacity charges are computed and two months preceding that month) is lower than the average coal stock norms specified by CEA for the respective three months:</p> <p>.....</p>	<p>lower than NAPAF. There is absolutely no rationale in penalizing the generator further on account of lower availability due to lower maintenance of coal stock. This is an additional burden on the generator and not in consonance with the spirit of Section 61 of Electricity Act'03, which emphasizes on economical use of the resources, good performance and optimum investments. It is about safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner</p> <p>It is also submitted that, IF AT ALL, the Hon'ble Commission decides to penalize the generator on account of lower coal stock, it should be done in a way that there is least possible financial implication for the generator.</p> <p>It is suggested that rather than deducting a substantial amount from AFC, only the interest on working capital may be deducted depending on the actual average coal stock availability (In Number of days) at the station. Further similar incentive should be given for</p>	<p>Request to refer our points mentioned under the headings Regulatory Uncertainty and Contraventions to</p>
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		<p>maintaining higher stock.</p> <p>It is also suggested that penalties on account of lower Average Coal Stock be considered on quarterly basis for the same Financial year rather than evaluating the same based on last three months. For Month of April and May, this will lead to penalty on current year AFC because of low coal stock in last financial year. Recovery should be relatable to current year performance. It is suggested that all tariff related computations be done for performance during that FY itself and should avoid spillovers from performance in other FYs for the sake of avoidable complications.</p>	<p>Section 61 of the Act of the instant submission.</p>
<p>III:Proposed Methodology & IV Illustrations</p>	<p>In the prescribed formulae, availability has been defined on monthly basis.</p> <p>$PAFM_{Actual} = \text{Monthly availability as per declared capacity}$</p>	<p>It is suggested that availability under consideration should be a cumulative figure for a quarter till the 3rd month of the quarter and not on monthly basis. Accordingly AFC should be considered for 3 months and settlement to be done on quarterly basis.</p>	<p>This should be in line with the 2019 Tariff regulations</p>
<p>Proviso</p>	<p>Provided further that the above reduction in capacity charges shall be effected from first calendar day of the third</p>	<p>Clarity may be provided whether the month of notification would be considered as first month or it will</p>	

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	month after the notification of these regulations"	be the succeeding month. It is suggested to consider the succeeding month after the notification of regulations as the first month. Further it should be aligned to quarterly determination as explained in our comments above. Hence, these Regulations should be implemented for stocking norms not before July and the first computation should be done for the quarter July – Sept, 2022.	
Additional Point	As per the coal stocking norms, number of days is the measurement parameter for compliance	It is suggested that instead of considering number of days in whole number, it should be calculated in decimal value (actual number, upto 3 decimal places)	Since now onwards the number of stock days would have financial implications considering the disincentives for lower availability due to lower stock. In light of above, it is imperative that stock is measured in fractions as well (may be upto 3 rd decimal value) rather than whole numbers. For example, currently the stock is rounded off to integer value 3, 7 etc (3.3 becomes 3 or 7.1 becomes 7). However, in view of the financial repercussion, it is suggested to be computed in actual may be upto 3 rd decimal value.
Additional Point	Applicability and treatment for coal based plants under Section 63 of Electricity Act'2003	With reference to the Clause II of the Staff Paper, which explains the treatment of charges for projects	

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		under purview of Hon'ble Commission, the treatment for charges may be clarified for the plants under Section 63 of Electricity Act'2003	
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