

To

Date: 31st July 2023

The Honourable Chairman and his Companion Honourable Members,
Central Electricity Regulatory Commission,
Chanderlok Building , 36, Janpath , New Delhi 110001.

Dear Sirs,

Sub: Comments / Suggestions on CERC's published Approach Paper on 2024-29 Tariff Regulations.

Ref: CERC's Public Notice No. L-1/268/2022/CERC dtd 26.5.2023 for comments on Approach Paper

At the onset, I would like to thank the Commission for continuing to follow it's democratic tradition of seeking stakeholder comments, feedback and suggestions on the Approach Paper describing the basic thought process while proposing the wholesale Section 62 Generation and Transmission Tariff for 2024-29 Period, which has a huge bearing on almost all the citizens of India.

1. Electricity has become a basic human necessity and is a very important input for any economy to flourish. The importance of Reliable, Affordable Electric Power availability for the overall economic development assumes much higher significance in a developing country like India, for actualizing the "Make in India", "Aatma Nirbhar Bharat", "Ease of doing Business" and "Startup India" visions of our Hon'ble Prime Minister of India and propel India into Top 3 Economies of the World by 2029.
2. The Commission is very much aware that, around 83% of per unit cost of Electricity, bought by Distribution companies from wholesale markets under the regulatory jurisdiction of Hon'ble CERC, for further distribution / sale to retail end users in India , consists of Power Procurement Cost (~72%) Transmission Cost (~11%) as per the Forum of Regulators [Report](#) on "Analysis of Factors Impacting Retail Tariff and Measures to Address " published in April 2021 under the aegis of CERC. This leaves no scope for any regulatory body in the electricity value chain for optimization and magnifies the key role of this Commission in "*protecting the interest of the consumers and rationalization of tariff*" as envisaged in the preamble of the Electricity Act 2003.
3. The Commission is well conscious of the economic ground reality of the sector by pointing at the Average Power Procurement Cost (APPC) figure in clause 2.9 of the Approach paper , which has increased from apxly Rs 5.03/unit to more than Rs 6.19/unit and is on a upward spiraling trend. Further the Commission is the right place to understand and control the paradox of simultaneous occurrence of around Rs 50,000+ Crores Combined Annual Profits of Wholesale market players (Gencos, Transcos) and Rs 75,000+ Crores of Combined Annual Losses of Retail market players (Discoms) each year in India.
4. In the circumstances described above and while discharging the great responsibilities entrusted to this Commission by the Act, you may consider my point wise feedback and suggestions as listed below.

1) Simplification of Tariff Determination Process (Cl 2.11 and Cl 3.1):

The Commission has rightly noted that Energy consumption has grown from 831 BU to 1514 BU in FY 2022-23, being served by our complex and diverse Indian Grid with size of apxly 420 GW and 4.8 Lakh Circuit kms of Transmission systems. While regulating this much large system, the Commission has been doing yeoman's service to the power sector with bare minimum resources and staffing of around 70. This is

abysmally low when compared to around 1455 staff employed by FERC of USA for regulating apxly 1300GW / 9 Lakh CKM sized US Grid.

Diligent work of checking the prudence of costs in a cost plus scenario, can not be performed by any other body in the sector except at nodal place of CERC and it can not be diluted or delegated in view of the serious ramifications for the country.

However, the same objective of simplifying the “*complex and cumbersome tariff determination process*” of RTM assets can be achieved by specifying the Regulatory Accounting Standards (as [done by TRAI](#) for Accounting and Reporting), by taking the help of ICAI or other experts in the field) which are to be followed by all regulated entities for electronic submission of audited data, fully (and in true sense) digitalizing the complete financial and other data submission process from all the regulated entities, using available IT tools like XBRL formats (Extended Business Reporting Language) , just like huge data handling being done by stock exchanges etc. All the regulatory decisions can be taken easily and quickly harnessing the power of IT.

In view of the above, Commission may kindly relook at the proposed deviation from time tested present approach to Simplification approaches 1 & 2 , its ramifications (likely even beyond 2029) and may consider improving the present approach with advanced tools for doing complex work without dilution of efficiency and diligence.

2) Capital Cost (CI 4.2.1) :

The Commission has rightly observed that “ *The approval of capital costs is one of the most important aspects of the tariff determination process, as almost the entire fixed charge throughout the life cycle of the project depends upon it. In the process of tariff determination, the Commission has been approving the capital cost of the projects on a case- to- case basis, which is dependent on the actual expenses incurred, **duly certified by the auditors**, and after carrying out due prudence on the reasonability of the expenses incurred* ”

The role of Auditors in certifying the actual costs, reports and various data is very important and the Commission can neither waste it’s time and energy in culling out the required data from voluminous statements nor be misled due to falsely certified data. CERC is the user of voluminous audited data , reports, statements, certificates.

The Institute of Chartered Accountants of India, vide a gazette notification had made generation of UDIN (Unique Document Identification Number) from ICAI website www.icaai.org mandatory w.e.f 1.7.2019 for every kind of certificate/tax audit report and other attests made by their members as required by various regulators.

Similarly, The Institute of Cost Accountants of India has also made UDIN (mandatory to be mentioned on the reports, certificates , attestations issued by a practicing Cost Accountant. The use of UDIN will be mandatory for all the reports, certificates, etc, issued on or after 1st October, 2019.

Above improvements in the quality of Audit function mandated by ICAI and ICMAI are to be incorporated in CERC’s regulations as well, by specifying that “*all data submissions to CERC under various provisions should mandatorily contain system generated UDIN of a practicing auditor mentioned on the certificate, statement, tariff form / format*” .

3) Capital Cost for Projects acquired post NCLT Proceedings (CI 4.3):

The Commission is very right in observing that the acquisition costs of assets under IBC CIRP process have been considerably lower than the historical value of the assets, some which are continuing under Section -62 determined tariff even under new owners even though large haircuts were taken by lenders and FIs.

It is suggested to redetermine the tariff based on lower of the IBC acquisition cost or historical cost for section 62 project cases from the date of such acquisition. Suitable details are to be mentioned in Regulations.

4) Prorata IDC and IEDC and LD for delays (CI 4.4):

Pro-rata IDC , IEDC may be allowed considering the total implementation period wherein the actual IDC, IEDC till implementation of the project is pro-rated considering the period upto SCOD and period of delay condoned over total implementation period after accounting for LD and Insurance receipts as per APTEL judgement in Appeal no. 72 of 2010. This fair and uniform practice is to be followed for all types of assets. As stated above Tariff forms should be modified to capture LD details in more details bearing Auditor certification with UDIN number mentioned on them.

5) Initial Spares (CI 4.7), mandatory spares and capital spares (CI 4.12.4) : Usually the initial spares allowed for capitalization are ordered as mandatory spares as included in the bid out project packages, whose value is frozen at the time of IA and award.

Hence, It is suggested that a specified % of the Plant and Machinery Cost as envisaged in Original Investment Approval may be allowed as Initial Spares cost for capitalization which can be permitted upto cutoff date. As the Cut off date is proposed to be increased to 5 years from COD from existing 3 years , and asset will be relatively new in that period, it is also suggested that no capital spares consumption shall be allowed till cut off date.

6) Differential Norms – Servicing Impact of Delay (CI 4.9):

The Commission has rightly observed that clearances like forest clearances etc require regular and constant followup and prolonged submission of data and are granted in phases / stages and it is always not possible for the Commission to ascertain if adequate efforts have been made at the senior level to get the clearances.

It is the ground reality in India that, Records of Forest are not fully digitized and field assessment of forest proposals requires time and effort. It is not correct to penalize the developers for the delays on account of delays on the part of forest administration.

However, it is important to note that at present, various one time crop / tree compensation amounts , CAMPA funds , statutory fees , Rehabilitation & Resettlement grant amounts paid to Forest Authorities and Project Affected People are included in the cost of land acquired for the project and capitalized as on CoD and earn RoE on the equity portion for the whole life of the project.

It is not logical to include such one time compensation payment in capital cost, as it may create perverse incentive for inflating the compensation and R&R payments and it will not encourage the project developers to complete on time.

Hence it is suggested that , for all projects whether delayed or not, above referred one time compensation and R&R amounts may be reimbursed at actuals separately with carrying cost till Approved COD date and any regular annuities required to be paid regularly in future may also be reimbursed based on amortised value as on COD.

7) Additional Capitalisation (Cl 4.10):

As CERC has historically accepted that bench marking of capital cost of assets can not be done due to uniqueness of each project , it is logical to extend the argument to additional capitalization also , which should not be allowed on a some artificial norm or thumb rule and existing practice of allowing additional capitalization based on the prudence check of requirement and costs diligently by the staff of the Commission. This time tested existing practice should not be done away with in the name of simplification of tariff determination, as it balances the interests of both consumers and whole sale market players and is worth the effort.

8) O&M Expenses (Cl 4.12): The complex and cumbersome problem of handling 2016/2017 pay revision during truing up of 2014-19 period occurred due to non availability of back ground calculations and rationale of O&M norm fixation data in public domain. Necessity of further categorizing O&M norms into 2 parts to deal with the anticipated pay revision w.e.f 1.1.2026/2027 is not there , as it may create unnecessary complications.

Instead of 2 norms , a transparent and open method of determining the O&M norms for 2024-29 period from the raw actual data submitted by all the regulated entities, in compliance to the Commission's order ref no No. L-1/268/2022/CERC dated 29.3.2023 , may be followed by the commission and kept in public domain along with all audited supporting data in verifiable excel formats.

This shall certainly help in avoiding another complex and cumbersome process for handling the impact of future pay revision in 2026/2027 on O&M norms very easily at company level in one separate Miscellaneous Petition along with Audited and Certified actual company level pay revision impact calculations to be allowed for each asset on prorata basis on some metric.

9) Differential RoE (Cl 4.16.2):

Initial and Continual Risks associated with Thermal Generation , Hydro (incl PSP) Generation and Transmission are definitely different. As rightly pointed by the FoR Report referred in point 2 above and also in Approach paper, Transmission business risks are the lowest. Anyway most of the New Transmission capacity is coming up under TBCB route for whom these regulations are of no value.

Hence, It is suggested that

- a. Revised Base RoE for all Assets (Existing as well as New including Add Cap) may be allowed as RBI's 10 year G-Sec Bond Yield as on 1.4.2024 plus 5%. (likely to be 12.5%)
- b. For Thermal Generation to compensate additional risks, Additional 2% may be allowed over base RoE (14.5%), provided that additional capitalization including for emission control systems shall be at base RoE only.
- c. To Encourage Hydro Generation Additional 3 % may be allowed over base RoE
- d. For Pumped Storage Hydro Additional 5% may allowed over base RoE, to aid the RE integration in a much larger way (17.5%)
- e. Effectiveness of Additional RoE for timely completion of projects allowed vide Regulation 24 (2) (i) has not been demonstrable with data, hence that provision may be dropped
- f. Similarly Linking of 0.25% RoE to 1% per minute Ramping, introduced for the first time in Regulation 30 (2)(iii) may be dropped, as its effectiveness has not been established and plants could not be incentivized to upgrade or disincentivized for practical reasons with that provision even with voluminous

data capture and analysis by RPCs. It is worthwhile to note that CEA has notified CEA(Flexible Operation of Coal based Thermal Power Generating units) Regulations , 2023 w.e.f 31st Jan 2023, wherein it has been made mandatory to achieve certain ramp rates and minimum power levels. Hence the provision under Reg 30(2)(iii) is no longer relevant.

10) Rate of Return – Old Thermal Generating Stations (Cl 4.16.5):

As the Commission has noted in the Approach paper that around 50GW of capacity is going to complete useful life by 1.4.2024, out of which significant portion will be under Section 62 tariff under the jurisdiction of Hon'ble CERC, which are crucial for RE integration / assimilation into the grid.

Beneficiaries have paid the AFC (which includes Depreciation, Interest on Loan , Return on Equity among others) through out the useful life of the old thermal power plants and the "*financial advantage*" now visible in them is solely because of the Beneficiaries shouldering the AFC burden and servicing additional capitalisation for their upkeep , as determined by Hon'ble CERC from time to time in the over all interest of the country. It is the time for the Beneficiaries to enjoy the fruits of their long term investment by entering into PPAs long back, which can not be seen as too little incentive for Gencos now.

It is also to be noted that As per current Regulation 42(6) of the CERC 2019-24 Tariff Regulations , an incentive of 65 paisa / kWh in peak hours and 50 paisa / kWh in off peak hours is already being allowed for scheduled generation in excess of ex bus energy corresponding to NAPLF. Continuation of this provision in next control period will help address the increased operational risks of running old plants.

11) Life of Generating Stations and Transmission Assets (Cl 4.19):

Any decision on increasing the useful life of coal based thermal generating stations and transmission sub-stations years from the current specified useful life of 25 years to 35 years is welcome, but has to be accompanied by corresponding and proportional increase in depreciation recovery period to provide fair relief to the beneficiaries.

In case of acceptance of above proposal, Current "*Regulation 17 of 2019-24 Tariff Regulations, on Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation*" has to be modified accordingly to apply to plants which have completed 35 years.

12) Input Price of Coal / Lignite from Integrated Mines (Cl 4.20):

As the Approach Paper has acknowledged that "*not much actual data is available to review the current operational norms and other provisions*" as of now in this regard, it is logical to take the Approach that the Commission shall review relevant data after determination tariff for few mines and Separately notify the changes to applicable provisions in 2024-29 Tariff Regulations pertaining to input price of coal/lignite from mines , which shall be applicable retrospectively from 1.4.2024, as has been done by the Commission for notifying Input price provisions vide second amendment to the 2019-24 Tariff Regulations.

13) Sharing of Gains (Cl 4.21):

Ministry of Power , Gol has notified the Carbon Credit Trading Scheme 2023 w.e.f 30th June 2023 , which may be included in the list of non tariff incomes to be shared.

14) Peak and Off Peak Tariff (Cl 5.2):

As India's Transmission Network is strengthened in the last 10 years under One India One Grid, transmission congestion is a thing of past as can be seen from Power Exchange data, enabling free flow of power from any corner of India to the other.

Increasing thrust on Solar Generation and Resultant Policies to make most of the Sun are also gradually and permanently shifting the Peak periods of the load curve to day time from earlier period of evening/night.

It is worthwhile to note in this regard, that Ministry of Power has also notified Electricity (Rights of Consumers) Amendment Rules 2023 w.e.f 15th June 2023 mandating Time of Day (ToD) Tariff for C&I consumers from 1.4.2024 and for other consumers except Agricultural loads w.e.f 1.4.2025, with atleast 20% less tariff during 8 solar hours during the day. This is likely to further shift the peak load of the country, as a whole, towards the day time.

Similarly National coincident peak season is also clearly perceptible now towards the end of Summer season (May -June) every year when the All India Record peak of 223.23 GW occurred on 9th June 2023 at 14:52 Hrs during the day.

In view of the above , Declaration of peak hours / peak season is by RLDCs for each regionis no longer Relevant and may be replaced by declaration of 3 months National High or Low Demand Season / 4 hour National Peak Hours in a day to be declared by CEA in consultation with RPCs and NLDC after duly considering the comments of the stakeholders, and existing provisions to be continued with the following relaxation to take care of operational exigencies and regional / beneficiary requirements:

“Any under-recovery or over recovery of Capacity Charge as a result of underachievement or over-achievement, vis-a-vis the NAPAF in Peak and Off-Peak Hours of a Season (High Demand Season or Low Demand Season, as the case may be) may be adjusted with under-achievement or over-achievement, vis-a.-vis the NAPAF in Peak and Off-Peak Hours of the other Season, on Approval of the respective RPC with reasons recorded in writing.”

15) Operational Norms - Emission Control System (CI 5.6 and CI 6.2):

As the Approach Paper has acknowledged that “*only very few of such emission control systems have been commissioned, and sufficient data on actual operational performance and its impact on auxiliary consumption is absent*” as of now in this regard, it is logical to take the Approach that the Commission shall review relevant data after determination of supplementary tariff for ECS systems and Separately notify the changes to be applicable provisions in 2024-29 Tariff Regulations pertaining to Emission Control Systems , which shall be applicable retrospectively from 1.4.2024, as has been done by the Commission for notifying ECS vide first amendment to the 2019-24 Tariff Regulations.

5. I wish to express my gratitude once again for seeking the stakeholder suggestions and I hope that my suggestions are of use to the Commission and eagerly awaiting to see the Draft Regulations.

Yours faithfully,



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