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To

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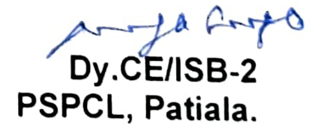
Memo. No.827 /ISB/pet/710 Dated: 12/7/23

Sub: Comments of PSPCL against the Approach Paper issued by CERC towards Tariff Regulations for period 2024-29.

In reference to subject cited above, please find enclosed herewith 3 copies of Comments of PSPCL towards the Approach Paper issued by CERC for Tariff Regulation for period 2024-29. Soft Copy of the comments has been e-mailed at tariff-reg@cercind.gov.in.

This is for your kind information and necessary action please.

DA/As



Dy.CE/ISB-2
PSPCL, Patiala.

Comments by PSPCL towards Approach Paper by CERC on Tariff Regulation for FY 2024-29

7.1.8 Computation of IDC

14. Existing mechanism wherein the pro-rata deduction (based on delay not condoned) is done on IDC beyond SCOD.
15. Pro-rata IDC may be allowed considering the total implementation period wherein the actual IDC till the implementation of the project is pro-rated considering the period upto SCOD and period of delay condoned over total implementation period.
16. IDC approved in the original Investment Approval to be considered while allowing actual IDC in case of delay.

(Refer 4.4.1)

Comments: For timely completion of project, Existing mechanism should be adopted as above point no 14 of approach paper.

7.1.23 Rate of Return on Equity

56. Possible options to encourage higher availability and generation from Old Generating Stations can be as follows.

Allowing additional incentive in the form of paise/kWh apart from those being currently allowed may be allowed to such generating stations against generation beyond the target PLF.

Comments: As majority of these old generating stations will be converted to pooling Tariff Mechanism scheme after due time, allowing any additional incentive to these old generating stations (for operating beyond PLF) may not appropriate as the generating stations under pooled mechanism will operate on entirely different way. These generating stations/developers are likely to be benefitted from uniform Energy Charges Mechanism as provided in Pooled Tariff Mechanism.

7.1.28 Sharing of Gains

66. Ways to increase non-core revenues through optimal utilisation of available resources.
67. Any modification in the sharing mechanism that may be required.

(Refer 4.21)

Comments: As per CERC Regulation 2014 Cluase 26 (7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

As per CERC Regulation 2019 Clause 61. Sharing of saving in interest due to re-financing or restructuring of loan :(1) If refinancing or restructuring of loan by the generating company or the transmission licensee, as the case may be, results in net

savings on interest after accounting for cost associated with such refinancing or restructuring, the same shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 50:50.

From above it is clear that the saving in interest to re-financing or restructuring of loan relates to particular Tariff block period of five years. So it should be clarified in new tariff regulation that these net saving sharing regulation apply to tariff period or to remaining period of debt since at start of tariff period all costs are taken on the basis of true up values of last tariff period.

7.1.30 Treatment of interest on differential tariff after truing up

69. Interest may be allowed to be charged on the differential amount by the utility only till the issuance of the order and no interest may be allowed during the recovery in six equal monthly instalments. (Refer 4.23)

Comments: In order to reduce conflict between parties, it is proposed that above should be further elaborated that due date of Ist Instalment should be as due date of supplementary bill i.e. 45[Th] day from date of presentation and there after five monthly instalments. Further in order to pass on negative bill in time to beneficiary It is further provided that in case of delay in submission of negative bill the first instalment will be due after 90 days from the date of decision by CERC.

7.1.38 Gross Calorific Value (GCV) of Fuel

79. In view of discussions held under Section 5.8, comments and suggestions are sought from stakeholders on ways to reduce the gap between GCV "as billed" and "as received". (Refer 5.8)

Comments: It is proposed that the determination of GCV at both the mine end and at the plant should be done by same agency.

7.1.40 Incentives & 7.1.41 Separate Norms for ROR/Storage Based Hydro Projects

81. Incentives linked to generation in excess of target PLF/NAPAF especially during peak periods, in the case of hydro stations and old pit head generating stations, may need a review in order to encourage higher generation from such plants. based may need a review in order to encourage higher generation from such plants. This will result in increased generation from such plants and will also benefit beneficiaries.

82. Considering the anticipated increase in peaking loads these stations may be incentivised to operate as peaking plants. One way to do so is by providing additional incentives for energy supplied during peak period.

Comments: It is submitted that, Availability for a day in case of Hydro Electric Plants (HEPs) is fixed/determined on the basis of Declared Capacity (DC) based on 3 hours peaking period generation (out of 24 hours of a day). HEPs for that 3 hours declare the DC over 100% and for rest of 21 hours their DC falls drastically at the level below 50-60%. Further, Since HEPs are already incentivized for DC over NAPAF, suggesting the incentive over and above already incentivized parameters does not seem balanced approach for end consumers.

Further, it is also observed that DC/PAF for a month of any HEPs remains over and above NAPAF fixed by CERC. HEPs are getting incentives for declaring DC/PAF over and above NAPAF even in the lean season. Accordingly, CERC should cap the incentive over NAPAF.

7.1.48 Necessity to Review the need of Regulation 17 (2)

90. The provision under Regulation 17(2) of Tariff Regulations, 2019 may result in further complication and being seen as inequitable for the generator, is required to be modified.

Comments:

As per Regulation 17 (2) of Tariff Regulations, the beneficiaries are allowed with the first right of refusal to enter into an arrangement (where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation) and can exit from the ongoing PPA.

With proposed review of Regulation 17 (2), discom may loose its right to exit from PPAs and same will not be equitable for discoms. This may be mis-utilized by generation companies through pooling of tariff scheme, which may force discoms to pay fixed costs of plants who have already recovered their capex and depreciated their assets. So Regulation -17 (2) may only be reviewed in a manner that Discoms are not compelled to relinquish their cheaper power after a period of 25 years simply to keep expensive generating units afloat through pooling.

Hon'ble CERC is considering the Regulation 17(2) as a tool to allow unilateral right to beneficiaries to exit from PPAs. However, if the said regulation is considered for deletion, the unilateral exit option shall shift from beneficiary to the generator. It is proposed that the Regulation 17(2) may be kept intact to enable the beneficiaries explore more efficient/ renewable energy sources/ environment friendly options and save on the fixed charge obligations of old/ inefficient sources and continue scheduling of power from cheaper power plants, thus minimizing the overall power purchase cost and tariff passed on to consumers.

Further, PSPCL has following reservations w.r.t. the creation of Common Pool as per MoP scheme:-

- The basis of Uniform Fixed/ Capacity charges of the common pool seems in line but PSPCL is strongly against the billing based on Uniform ECR and it is felt that quantum requisitioned by beneficiaries from individual Generating Station should be billed at respective ECR of concerned Generating Station.

  Further, billing based on uniform weighted average ECR shall defeat the whole purpose of Merit Order Despatch (MOD) based on ECR of individual generating station, as provided in clause 3 (i) of MoP Pooling Scheme.

  As such, Hon'ble CERC is requested to address this issue by intervening and suggesting requisite changes in pooling scheme to MoP.

- The scheme envisages billing based on Uniform Fixed Charges as well as Uniform Energy Charge Rate (ECR) based on weighted average. PSPCL has an apprehension that the billing based on uniform weighted average ECR of common poll (of both coal and gas based generating plants) will exorbitantly distort the ECR is case 100% gas power is scheduled by beneficiaries. As the ECR for Gas Based Generating Plants is exorbitantly high (avg. Rs. 14.30 per kWh), the purchase/ scheduling of power from such gas based generating stations by any beneficiary shall significantly increase the Uniform Wt.Avg. ECR (which may increase to more than Rs. 5.50 per kWh, in case of 100% PLF of Gas Stations). Thus, the effect of purchase/ scheduling of power from gas based generating stations by any beneficiary shall be in turn passed on to other beneficiaries also, who have not purchased such power. Moreover, the beneficiary purchasing such costly gas-based power at nominal rate of Uniform Wt.Avg. ECR may also opt to sell the power in the market (power exchange) at high rates, at the cost of other beneficiaries (who haven't purchased such power).

As such, Hon'ble CERC is requested to address the apprehensions of PSPCL concerning excessive scheduling by other beneficiaries (including from the Gas based Stations) at the cost of PSPCL by establishment of a mechanism/ deterrent for DISCOMS/beneficiaries intending to gain at the cost of the other procurers (similar to the deterrent for generating companies provided in clause 3 (i) of MoP Pooling scheme).

In addition to above proposed amendment as per approach paper, following amendment are also proposed in various clauses of CERC regulation 2019:

1) **Reduction in premium given in Bank rate of 350 basis points over and above SBI MCLR.**

Section 62 is cost plus regime, where assured return on equity (ROE) pre tax has been allowed to the generator and transmission companies. So, the other component must be on determined in such way so that no inefficiency of such companies shifted to consumer though efficiency may be shared. However, in case of Interest on working capital, rates have been fixed at much higher rates than the actual cost incurred by these companies. Most of the cost plus contract companies (section 62) are PSUs which have an access to funds at cheaper rates for working capital. Allowing higher rates than actual cost to them is against the interest of the end consumers in cost plus contracts. It is requested that a detailed study may be conducted to assess the actual interest rate on working capital .

In current scenario, even discoms, whose balance sheets are very weaker than PSU generating/transmission companies, are not paying more than 10.00 to 10.50 % for working capital requirement. So there is no merit in allowing interest on working capital on the basis of MCLR+350 basis point.

As such It is requested that margin may please be reduced to 200 basis point and interest on working capital may be worked out on actual weighted average interest rate actually paid subject to maximum bank rate prescribed in Tariff regulation.

2) **Fixing of working capital requirement of Thermal/Gas power stations on Normative annual plant availability factor irrespective of Actual plant load Factor (PLF)**

In this regard fixing the working capital requirement specifically related to regulation 34(a)(i)(ii)(iii) &(v) and 34(b)(i)&(iv) where the working capital requirement has been allowed on the basis of normative annual plant availability factor(NAPAF) for stock of Fuel and Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated. This method is hold good and near to actual if plant load factor (PLF) is near to NAPAF. But actually the PLF of Thermal plants are on very much lower side. General NAPAF rates is fixed at 83 as per Tariff regulation, 2019 where as average Actual PLF is in the range of 55-60% .Further, PLF factor for those plant who does Not fall in merit in MoD (merit order dispatch) is much lower due to Higher variable cost (energy charges) . This has allowed undue benefited to inefficient plants due to lower PLF as per prevalent regulations. Moreover this scenario is not expected to change in the near future as renewable energy will be available at much lesser rates than coal/gas based thermal power.

Moreover, there are many gas based plants, whose energy charges /variable cost are higher, which results in to non scheduling by the Discoms, hence such plants are not able to achieve even 20 % PLF. Whereas, generic NAPAF of Gap based stations is 85%. So calculation of working capital requirement for fuel stock and energy charge on the basis of normative availability is not in the interest of the end consumer and undue benefit to the generators must be reversed forthwith. There is 10-11% excess Annual Fixed Cost (AFC) paid only due to calculation of working capital requirement based on NAPAF than actual PLF.

Our suggestion in this regard that working capital requirement (Stock as well as Debtors) must be calculated as per PLF likely to be achieved by the plant in tariff period on the basis of past performance and must be trued up to the actual at the end of tariff period.

3) **Regulation No:-67 Page 128(Deferred tax liability with respect to previous tariff period)**

As per clause Deferred tax liability for the period up to 31st march 2009 wherever materialized shall be recoverable by the generating /transmission licensee from the beneficiaries. Identical clause was provided in CERC tariff regulation 2014-2019 clause no:-49 and CERC tariff regulation:-2009-2014 clause :-35

However it has been noticed that generating companies are misinterpreting these clauses and while recovering the deferred tax liability for the period up to 31st march

2009, materialized during the relevant previous year, wrong grossing up the tax at the prevalent income tax rate has been done on the amount due under this clause in the relevant previous year. It is brought to your kind information that as per the present/purposed regulations grossing up of the deferred tax liability materialized in the relevant year is not allowed, hence due clarification that grossing up of the deferred tax is not allowed may be added/inserted in the regulation 67. Further while truing up the account of the generation /transmission companies data for recovery of deferred tax liability by generation/transmission companies from beneficiaries for the period 2009-2010 to 2019-2024 may please be sought and wherever the recovery done by these companies is not as per the regulations, companies may be directed to refund the excess recovered amount on account of wrong grossing up of the deferred tax liabilities, along with interest.

4) **Regulation No:-31 Page 61 (Tax on return on equity)**

As per this clause, Return on Equity determined as per the clause 30 shall be grossed up by the tax rate determined under this clause. To determine the tax rate income from relevant business of generation/transmission and actual tax paid is required to be taken. The rate determined under this clause shall be used to get the rate of pre tax return on equity as per the following formula:-

Rate of Pre tax return on equity = Base rate/1-t

(Where t = tax rate calculated under this clause)

In present regulation main emphasis has been given to tax rate applicable in respective year and no consideration has been given to the absolute amount of income tax paid by generating/transmission company. By doing this in some cases the tax amount allowed to these companies in a particular year becomes higher than the actual tax paid. The Basic reason behind it is that as per CERC regulations fixed rate of return on equity in percentage term is allowed whereas the actual rate of return, earned by these companies on equity is lesser than return determined under these regulations. The Income tax is required to be paid on actual profits earned by these companies and not on the notional profit/Return allowed to these companies under CERC regulations. In our views the income tax grossing up must be restricted up to the actual tax paid by these companies in respective year.

Our point can be better understand by the example given below:

Exp: A generating company invested 1,000 crore as equity and same is allowed as per the regulation.

Return on Equity allowed	15.5%
Actual Return on Equity	110 crore

Income tax paid	22 Crore
Income tax rate as per regulation 31	22/110*100=20%
Rate of pre tax return on equity	15.5/1-20% = 19.375
Absolute return on equity	1,000 crore *15.5% = 155 crore
Pre tax return on equity	1,000 crore * 19.375% = 193.75 crore
Tax allowed as per current provisions	193.75 - 155 = 38.75 crore
Actual tax paid	22 crore
Excess allowed under these provisions	38.75 - 22 = 16.75 crore

Accordingly, as per example given above the actual tax paid by the generating company is 22 crore whereas allowed under these regulation is 38.75 crore. In our views the total tax on return on equity must not be more than actual tax paid by the company. As the tax is an uncontrollable factor, So no benefits must be accrue to the generating/transmission company on account of tax paid by them. Hence the regulation may be amended accordingly.

Further as per Income tax act, companies pay Income tax/Advance Tax periodically, whereas tax allowed being a part of tariff accrues to generating/transmission companies on monthly basis, So some credit due to saving of interest accrues to this companies may also be passed on to Discoms.

5) **Regulation No:- 44 Page 92 Computation and Payment of Capacity Charge and Energy Charge for Hydro Generating Stations**

It has been noticed hydro electric plant (HEP) in many cases able to get fixed a lower NAPAF (Normative Plant availability factor in percentage) due to this they are able to recover additional fixed charges/ capacity charges as the actual PAFM is higher than NAPAF. As per the prevailing mechanism, HEPs are allowed Declared Capacity (DC) based on 3 hours peaking period generation (out of 24 hours of a day), due to which they are able to maintain higher PAFs for a month. The NAPAF for any HEP is being determined in CERC Tariff Regulation for 5 years on the basis of previous years data submitted by the generating company of HEP, which varies from year to year. Further, the data perused at the time of determination of NAPAF is not up to date, mainly has a gap of 2-3 years (old data), due to which NAPAF determined/notified in CERC Tariff regulation seems to have huge variation from the actual PAF. Over the time hydrology

of the HEPs are improving thus beneficiaries are paying huge amount as an incentive to the generating companies.

Some examples of HEPs having consistently higher PAF than Normative PAF are as under:-

- Salal HEP (of NHPC) having annual PAF of over 90% against NAPAF of 64% during FY 2019-20, 2020-21, 2021-22 & 2022-23.
- Tanakpur HEP (of NHPC) having annual PAF of in the range of 80 to 85% against NAPAF of 59% during FY 2019-20, 2020-21, 2021-22 & 2022-23.
- Uri HEP (of NHPC) having PAF of annual over 90% against NAPAF of 74% during FY 2019-20, 2020-21, 2021-22 & 2022-23.
- Dhauliganga HEP (of NHPC) having annual PAF of over 95% against NAPAF of 78% during FY 2019-20, 2020-21, 2021-22 & 2022-23.
- Uri-II HEP (of NHPC) having annual PAF of over 91% against NAPAF of 70% during FY 2019-20, 2020-21, 2021-22 & 2022-23.
- Rampur HEP (of SJVNL) having annual PAF of over 105% against NAPAF of 85% during FY 2019-20, 2020-21, 2021-22 & 2022-23.

Further, others HEPs for which NAPAF of 90% are fixed in the Tariff Regulations are having annual PAF of over 100% for the past few years.

The aforementioned issue has been repeatedly highlighted by PSPCL in its reply to Hon'ble CERC in various Generation Tariff (GT) petitions filed by above said generators from time to time e.g., Petition No. 28/GT/2020, Petition No. 144/GT/2020, Petition No. 229/GT/2020, Petition No. 255/GT/2020 etc. CERC vide its orders have rejected the submissions of PSPCL and stated that if the submission of the PSPCL is accepted, it would amount to review of the said regulation, which is not permissible in tariff determination proceedings.

Therefore, CERC may consider capping of the incentive being given to HEPs. For example:-

The incentive must be restricted to a fixed percentage e.g. 5%, Suppose if NAPAF of HEP is fixed at 60% then they must be allowed only incentive up to actual PAFM up to 60%+5% of 60% = 63%.

Therefore, PSPCL is of the view that NAPAF may be determined at the time of petition being filed by generator for Determination of Tariff. Further, NAPAF may also be reviewed at the time of trued-up petition filed by the generator, so that a balance view on same may be taken and beneficiaries may not be overburdened by huge incentives. CERC may also review determination of Declared Capacity for a month of HEPs. Further, considering the Plant Load Factor to be 50% of HEPs, PSPCL is of the view that Declared capacity (in ex-bus MW) for the any day of the month be revised and considered on the basis of at least Six (6) hours, as certified by the nodal load dispatch centre after the day is over.

6) **Determination of Short Fall of Energy**

As per Regulation 31(6) of CERC Tariff Regulation, 2014:-

(6) In case the ***actual total energy generated*** *by a hydro generating station during a year is less than* ***the design energy*** *for reasons beyond the control of the generating station, the following treatment shall be applied on a rolling basis on an application filed by the generating company:*

CERC in its Tariff Regulation, 2019 has amended the above said regulation in Regulation 44(6) as under:

(6) In case the ***saleable scheduled energy (ex-bus)*** *of a hydro generating station during a year is less than the* ***saleable design energy (ex-bus)*** *for reasons beyond the control of the generating station, the treatment shall be as per clause (7) of this Regulation, on an application filed by the generating company.*

CERC in its Tariff Regulation for 2019 has amended the methodology for calculation of Shortfall in Energy generation. PSPCL is of the view that said methodology was more accurate in Tariff Regulation, 2014 as it was purely the difference on Generator bus bar.

After the introduction of Tariff Regulation, 2019, Energy accounted in DSM also accounted/considered for calculation of saleable scheduled energy as the schedule is prepared by concerned RLDC. Generators put the energy provide under DSM in parameters for within control limit. However, sometimes it is learned that that segregating the energy for DSM have sometimes negative impact on the calculations. The same can be understand as under:

Suppose difference in saleable scheduled energy (ex-bus) and saleable design energy (ex-bus) is (-)134.71 Mus.
Shortfall due to reasons beyond the control of generator: (-)146.37 MUs.
Shortfall due to reasons with in the control of generator +11.65 Mus
Net Shortfall = (-) 134.71 Mus
The energy supplied under DSM is = (-)22.77 Mus
The same was considered in reasons within control head.
If the old methodology as per CERC Tariff regulation 2014, The energy supplied under DSM does have to be considered as the shortfall in energy is calculated purely on Generator bus bar.
Because of amendment, generator has added the energy supplied under DSM in "reasons with in the control", it has impacted the figure and the correct figure should have been = 11.65 + 22.77 = 34.42 MUs.
Net Shortfall should have to be = (-) 111.95 MUs instead of (-)146.37 MUs.

The above figures are taken from the petition no. 166/MP/2023 filed by NHPC for "recoupment of under-recovered energy charges due to shortfall in energy generation for reasons beyond the control of generating station during the FY 2021-22 in respect of Chamera-II Power Station."

Further, Hon'ble CERC vide its orders in following Petitions has decided that the energy under DSM and revenue earned under DSM ought to be adjusted after

considering it as part of scheduled energy while working out the amount of shortfall in energy generation of HEPs:-

- Order dated 04.02.2021 in Petition No. 348/MP/2018
- Order dated 09.02.2021 in Petition No. 328/MP/2018
- Order dated 19.03.2021 in Petition No. 329/MP/2018
- Order dated 19.03.2021 in Petition No. 369/MP/2018
- Order dated 25.04.2023 in Petition No. 320/MP/2019
- Order dated 26.05.2023 in Petition No. 550/MP/2020 & 609/MP/2020

However, HEPs in their respective Petitions filed from time to time, are still repeatedly praying for allowing shortfall in energy generation without excluding the energy and revenue in account of DSM. Some of these ongoing Petitions are: -

- Petition No. 458/MP/2019
- Petition No. 464/MP/2019
- Petition No. 66/MP/2022
- Petition No. 4/MP/2022

Keeping in view the above, it is proposed that CERC may consider extract of Regulation 31(6) of CERC Tariff Regulation, 2014 in the draft for CERC Tariff Regulation 2024. Further, as balance view taken by CERC in above stated petition while disposing the matters, CERC may incorporate the methodology to adjust the revenue by considering the Energy supplied under DSM as part of schedule energy for determination of shortfall charges.

Further, CERC may incorporate suitable provisions in the Tariff Regulations to take care of aforementioned issue and Regulation 44 (6) of Tariff Regulations, 2019 may be amended accordingly.

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