

Ref.: APL/CERC/24072024

Date: 24.07.2024

To
The Secretary,
Central Electricity Regulatory Commission,
World Trade Centre, 6th, 7th and 8th floor, Tower -B,
Nauroji Nagar, New Delhi - 110029

Sub.: Submission of comments on Draft CERC Order dated 03.07.2024 in Suo-Motu Petition No. 4/SM/2024, sought vide notification No. L-1 /259/2021/CERC dated 03.07.2024.

Dear Sir,

With reference to the comments invited by the Hon'ble Central Electricity Regulatory Commission on the draft order in Suo-Motu Petition No. 4/SM/2024 in the matter of revision of the mechanism as set out in the order dated 13.08.2021, in Suo-Motu Petition No. 6/SM/2021 for recovery through tariff of the expenditure incurred on account of installation of emission control system by the generating companies in compliance of the revised emission standards of the Ministry of Environment, Forest & Climate Change, Government of India for the electricity supplied by the Coal based Thermal Power Generating station whose tariff is determined through competitive bidding under section 63 of the Electricity Act, 2003, we hereby submit our comments on the same with a request to kindly take the same on record.

Thanking You,
Yours Sincerely,

For **Adani Power Limited**



M. R. Krishna Rao
President

Adani Power Limited
Adani Corporate House
Shantigram, S G Highway
Ahmedabad 382 421
Gujarat India
CIN : L40100GJ1996PLC030533

Tel +91 79 2656 7555
Fax +91 79 2555 7177
info@adani.com
www.adani.com

Registered Office: Adani Corporate House, Shantigram, Near Vaishno Devi circle, S.G Highway, Khodiyar Ahmedabad – 382 421, Gujarat, India.

APL Comments on Draft CERC suo-motu order for recovery of tariff by Sec. 63 projects for Emission Control System

Sr. No.	Aspect	CERC Order 6/SM/2021 dated 13.08.2021	CERC Draft Order 4/SM/2024 dated 03.07.2024	APL Comments
1	Recovery of Depreciation	<p>90% of additional capital expenditure on account of installation of ECS (considering salvage value of 10%) shall be recovered by the generating company in 25 years as depreciation (straight line method @3.6% per year), from the date of operation of the emission control system.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • There are no thermal generating stations with competitively bid tariff which have completed more than 15 years of life after COD. • Based on 40 years of life of thermal generating stations, 25 years of life of emission control system would be available for recovery of depreciation. 	<p>70% of additional capital expenditure on account of the installation of the ECS shall be recovered by the generating company in 12 years as depreciation (@5.25% per year), from the date of operation of the emission control system.</p> <p>The balance depreciation shall be spread over the remaining operational life of the generating stations considering a salvage value of 10%.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • The Commission has specified the operational life of a thermal generating station as 35 years in the 2024 Tariff Regulations. • There are very few thermal generating stations under competitively bid tariffs that have completed 15 years of life after their COD, and their loan tenors are in the range of 12-15 years. • Recovery of 70% of the depreciation of the emission control system 	<p>We appreciate the step proposed by the Hon'ble Commission to recover 70% of additional capital expenditure of account of the installation of ECS in 12 years, as this will help the generators to repay the actual loan over a duration of 12 years and consequently will be able to service the debt considering a comparatively higher normative depreciation for initial 12 years.</p> <p>However, we humbly request the Hon'ble Commission that the recovery of balance depreciation shall be spread over the remaining tenure of the PPA and not over the remaining operational life of the generating station.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • Generation projects developed under section 63 have revenue visibility only for the tenure of the PPA. • Once the PPA expires, there is uncertainty about the price that shall be discovered either in future

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			<p>over a period of 12 years from the date of operation of the emission control system is commensurate with the loan tenor in order to enable the generating companies of competitively bid projects to meet their debt service obligations.</p>	<p>bilateral or collective transactions.</p> <ul style="list-style-type: none"> • The additional capital expenditure incurred on account of the installation of the ECS by the generating stations is an event of Change in Law. • Change in Law relief is based on the Restitution Principle and requires the affected party to be restored to the same economic position as if the Change in Law event had not occurred. The important aspect to be considered by this Hon'ble Commission is that the restitution of the Affected Party shall take place within the term of the PPA. Otherwise the purpose of the said 'restitutive' provision of the PPA becomes redundant. Hon'ble Supreme Court in its judgement dated 11.04.2017 in Energy Watchdog vs. Central Electricity Regulatory

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				<p>Commission and Ors., (2017) 14 SCC 80 has held that on account of the Change in Law, the generating companies were entitled to compensation so as to restore the party to the same economic position as if such Change in Law had not occurred. This finding of Hon'ble Supreme Court implies that the affected party shall be restituted during the term of the PPA itself.</p> <ul style="list-style-type: none"> • Moreover, it appears the draft order assumes that the tenor of the PPA shall be extended by 10 years. In our view such assumption is arbitrary and there is no rationale for the same. In any case, if the price discovered in the collective transactions or bilateral transactions, after the expiry of the original PPA, is lower than the tariff required to compensate the generator towards cost

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				incurred for additional capital expenditure, then it shall defeat the principal of restitution.
2	Operation and Maintenance Expenses	<p>@2.5% of the additional capital expenditure for installation of ECS (excluding IDC and FERV) as admitted by the Commission and to be escalated at the rate of 3.5% per annum.</p> <p>Rationale:</p> <ul style="list-style-type: none"> O&M expenses are considered @2.5% of ACE, which is 0.5% higher than the norm specified in the 2019 Tariff Regulations on account of gypsum and water handling. 	<p>@2.0% of the additional capital expenditure for installation of ECS (excluding IDC, IEDC, and FERV) as admitted by the Commission and to be escalated at the rate of 5.25% per annum.</p> <p>The additional O&M expenses payable shall be worked out by reducing the income generated from the sale of gypsum or other by-products from the operation and maintenance expenses.</p> <p>Rationale:</p> <ul style="list-style-type: none"> Escalation rate of 5.25% has been worked out based on the inflation indices. Under the 2024 Tariff Regulations, the Commission considered the O&M expenses @ 2% of the additional capital expenditure as adequate to meet the expenses. The same has been considered 	<p>We request the Hon'ble Commission to provide an additional amount @0.5% of the additional capital expenditure for installation of ECS, for coastal plants for O&M expenses, over and above the proposed 2.0%.</p> <p>Coastal power plants, unlike river-water based power plants, get adversely impacted due to salinity and associated ecosystem challenges.</p> <p>Problems being faced by Coastal Power Plants are:</p> <ul style="list-style-type: none"> Equipment's getting damaged due to high corrosive environment. Leakages in Auxiliary Cooling Water line due to peeling of PU coating from the internal surface resulting in pipe damage and generation loss.

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			for competitively bid projects.	<ul style="list-style-type: none"> • Buried, Sea water pipelines and cooling water pipelines are prone to corrosion. • Plants experiencing the problem of silt carry over during monsoon period in sea water intake system affecting the plant equipment and operation. The problem of silt ingress has been held to be a valid problem faced by coastal power plants. The availability of water gets reduced compared to minimum requirement of water due to heavy deposition of silt in the sea water intake pipes during monsoon period. • Offshore pipelines are getting weakened and condition of these pipelines has been deteriorated due to frequent sea erosion in tidal zone, cyclones & storm.

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				<ul style="list-style-type: none"> • During every monsoon, station faces siltation in sea water due to higher turbidity & enhancement of mudflats & stirred into shore side due to turbulent sea. • Silt ingress in the sea water intake system leads to choking of intake pipelines and forced shut down of the station. This has increased in past five to seven years and had no such factors at the time of plant execution. Any leakage due to corrosion or any other damage in any of the lines will lead to environmental issues affecting the adjacent paddy fields and pollute the soil & ground water apart from outage of Power Station. • Pipes have also got eroded due to ingress of high abrasive silt, high turbid water and frequent sea erosion in tidal zone, cyclones & storm.

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				<ul style="list-style-type: none"> • Cooling Tower is found to be inadequate for getting the design cooling water temperature at CW inlet. The cold-water temperature at CW inlet is found to be higher than the design value by @ 3-4°C. This is due to variation in the relative humidity which is due to changes in the local weather pattern.
3	Cost of Debt and cost of Equity	<p>NFA basis (derived by adjusting cumulative depreciation of emission control system).</p> <p>Rate of Interest – Lower of:</p> <ul style="list-style-type: none"> • Weighted average rate of actual interest on loans of the thermal generating station including ECS • SBI 1-year MCLR + 3.50%. <p>Rationale:</p> <ul style="list-style-type: none"> • Compensation for change in law cannot 	<p>NFA basis (derived by adjusting cumulative depreciation of emission control system).</p> <p>Rate of Interest – Normative rate of 1-year SBI MCLR + 2.50%.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • The existing approach of net fixed assets and servicing investment through cost of capital employed is appropriate, being consistent with the 	<p>The understanding of the CERC that the Debt-Equity ratio of Section 63 projects would not be available therefore RoE cannot be allowed separately is fundamentally wrong. Commission may please take note that the Change in Law compensation is to be allowed based on actuals and the affected party is obligated to provide the details of Debt & Equity to the Commission in the Petition filed for such approval. The Hon'ble Commission cannot equate the position related to non-disclosure of Debt-Equity at the time of bidding to the determination of Change in Law. These two are</p>

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		<p>be a mechanism to improve the financial position.</p> <ul style="list-style-type: none"> The proposed approach of net fixed assets and servicing investment through cost of capital employed is appropriate, being consistent with the principle of economic restitution. 	<p>principle of economic restitution.</p> <ul style="list-style-type: none"> The objective of the reduced normative rate of interest is to provide flexibility to the generating company and not to create an extra surplus. It will balance the interests of the generating company and procurer(s). 	<p>different situations. Secondly, as per the Tariff Policy, any equity infused has to be allowed the risk premium. The investment made by a generating company to comply with the requirements arising due to Change in Law are to be treated on par with the investment made by a Section 62 generating company. The investment made by a Section 63 generator for establishing a generating unit pursuant to becoming a successful bidder is different from the investment made by the same Section 63 generator for complying with Change in Law obligation. There is no logic in providing a different RoE for the capital or equity infused for the purpose of Change in Law discriminating from a Section 62 generator.</p> <p>Alternatively, the interest rate for cost of capital method shall be increased to MCLR plus 400 bps. Currently, one year SBI MCLR is 8.75% p.a. and rate of 250 bps above one year MCLR as stipulated by the Commission will</p>

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				effectively be 11.25%. This rate is very low and many developers may not be able to raise debt at such a low interest rate. Further, equity return of 11.25% is also not sustainable. The interest rates are almost at their peak levels and going forward, they are expected to come down. This will further reduce the equity return under this method. Therefore, the Commission shall increase the rate to 1 year MCLR plus 400 bps.
4	Interim Relief in the form of Provisional Tariff	A provisional tariff for the emission control system to be mutually agreed upon between generating companies and their respective procurers considering the compensation mechanism decided in this order.	A provisional tariff for the emission control system to be mutually agreed upon between generating companies and their respective procurers considering the compensation mechanism decided in this order. In the absence of mutual agreement, the generating companies may file petitions before the Commission after the installation of emission control systems with a specific prayer for an interim supplementary tariff.	Welcome Step.

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			<p>The Commission may grant interim supplementary tariff, which shall be applicable from the date of operation of the emission control system.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • In absence of supplementary tariff, the generating company will not be able to bill after the operational date of the emission control system. • This would create difficulties for the generating company as well as the procurers. The procurers have to pay the additional carrying cost, whereas the generating companies have to raise the finance for the interim period to meet the debt service obligations and working capital requirements. 	