Annexure-A

<table>
<tr><th colspan="4">Comments / Suggestions from APNRL on Draft CERC (terms and conditions of tariff) Regulations, 2024</th></tr>
<tr><th>Sl No</th><th>Draft Regulation No</th><th>Provision details</th><th>Comments / suggestions</th></tr>
<tr><td>1</td><td>33. Depreciation</td><td>(10) (11) Depreciation of the emission control system of an existing generating station that is yet to complete its useful life or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission control system based on the straight line method at rates specified in Appendix- I to these regulations;
“Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the date of operation of such emission control system shall be spread</td><td>It is pertinent to mention here that existing generating station like APNRL, who achieved its COD for unit-1 and unit-2 on 21.01.2013 and 19.05.2013 has already completed the life of 11 years from its useful life of 25 years, which means only 14 years of useful life is remaining.
As per the timeline provided by the MOEFCC the APNRL has to comply with the emission norms before the 31.12.2026, which implies that at the COD of the emission control system the remaining useful life will be 12 years.
The timeline provided by the MOEFCC is shown below:
<table>
<tr><th rowspan="2">Category</th><th rowspan="2">Location / Area</th><th colspan="2">Timelines for compliance</th></tr>
<tr><th>Non retiring units</th><th>Retiring units</th></tr>
<tr><td>Category A</td><td>Within 10 km radius of National</td><td>Upto 31st December 2022</td><td>Upto 31st December 2022</td></tr>
</table>
</td></tr>
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<tr><td></td><td></td><td>over the balance period of thirteen years or balance operational life of generating station, whichever is lower.”</td><td>
<table>
<tr><td></td><td>Capital Region or cities having million plus population[1]</td><td></td><td></td></tr>
<tr><td>Category B</td><td>Within 10 km radius of Critically Polluted Areas[2] or Non-attainment cities[2]</td><td>Upto 31st December 2023</td><td>Upto 31st December 2025</td></tr>
<tr><td>Category C[3]</td><td>Other than these included in category A and B</td><td>Upto 31st December 2024</td><td>Upto 31st December 2026</td></tr>
</table>
[1] As per 2011 census of India
[2] As defined by CPCB
[3] APNRL comes under the category C
The Regulation specify the first 12 years of operation of emission control system, the depreciation of the</td></tr>
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			system shall be computed annually from the date of operation of emission system based on the straight line method at rates specified in Appendix-I in the regulations (i.e., 5.28 % for plant & machineries), which means upto 12 years the 63% of the capital cost of the system will be depreciated and accordingly , APNRL shall not be able to recover the full assest depreciation in the plant operational life. In addition to the above, A. Clause 6.2 (5) of the Tariff Policy, 2016, provides that such thermal power plants (TPP) which are situated within a 50 km radius of the Sewage Treatment Plants (STPs), operated by municipalities or similar organizations are to mandatorily utilize treated sewage water from such STPs. Furthermore, the associated costs incurred on account of such utilization (such as construction of pipeline from STP to TPP) shall be allowed as a pass-through in the tariff. Subsequently, Ministry of Power (MoP) vide its letter dated 04.03.2020 (attached as **Annexure 2**) issued

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			detailed instructions regarding the mandatory usage of the treated sewage water by the Power producers, cost to be incurred by the **Utilities as well as Power producers and the mechanism for the recovery of the associated cost therein. Herein it was provided that the cost of the Tertiary Treatment Plant ("TTP") and associated facilities such as pipeline, pumps etc. to be borne by the thermal power plants**. The current draft regulation is not specifying how the equipment associated with Tertiary Treatment Plant will be depreciated. Considering the above grounds and making the balance between interest of end consumers / beneficiaries and reasonable recovery of cost for the generating station, APNRL suggest that the depreciable value (i.e., 90% of the capital cost) of the emission control system and STP shall be spread over the balance operational life of the generating station.
2	***34 Interest on Working Capital***	*(a) For Coal-based / lignite-fired thermal generating stations:*	It is pertinent to mention here that as per the current draft Regulation, the generating station can levy the late

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		(i)… *…..* *(vi)* ***Receivables equivalent to 45 days of capacity charge and energy charge*** *for the sale of electricity calculated on the normative annual plant availability factor;*	payment surcharge as specified in the MoP- Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 in case the non-payment of charges beyond a period of 45 days from the date of presentation of bills. Further it is also specifying that in case a different LPS mechanism is provided in the PPA, the same shall be governed by the provisions of the PPA. The related excerpt from the draft regulation is reproduced herein below: *"80.* ***Late payment surcharge:*** *In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary or long term customer as the case may be, beyond a period of 45 days from the date of presentation of bills, a late payment surcharge as specified in the Ministry of Power – Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 as amended from time to time shall be levied by the generating company or the transmission licensee, as the case may be.*

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			Provided that in case a different LPS mechanism is provided in the PPA, the same shall be governed by the provisions of the PPA." Considering the example of the PPA executed between the APNRL and JBVNL (Jharkhand Bijli Vitran Nigam Limited) dated 28.09.2012. The clause 8.3.4 of the said PPA specify: *" 8.3.5 In the event of delay in payment of a Monthly Bill by Procurer beyond 60 days from the date of billing, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of 1.25% per month……"* Considering the provision related to late payment surcharge specified in the draft regulation, in case the LPS mechanism is different in PPA the provision of PPA will be governed. Consequently, the APNRL can levy the LPS to the JBVNL in case of non-payment of charges beyond a period of 60 days from the date of presentation of bills.

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			It is crucial to mention here that as per the Regulation 34 (a) outlines the components considered for determining the working capital requirement for coal-based generating stations. Among these components is the inclusion of receivables equivalent to 45 days of capacity charges and energy charges for the sale of electricity, calculated based on the Normative Annual Plant Availability Factor. Working capital is provided to generators to effectively handle their operations during a specific period since there is usually a time lag between billing and payment recovery. In this context, working capital is allocated for a designated timeframe. However, if the beneficiary fails to make payment for the bills within that timeframe, the generator is entitled to charge a Late Payment Surcharge (LPS) in addition to the bill amount. As a result, these two tariff components are closely intertwined and interconnected. Hence, the APNRL is suggesting the following change in the Regulation 34(a)(vi):

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			"(vi) Receivables equivalent to ***45 days or days specified in the PPA, whichever is earlier, beyond which late payment surcharge shall be levied*** *of capacity charge and energy charge for the sale of electricity calculated on the normative annual plant availability factor"*
3	***36 Operation and Maintenance Expenses***	*(9) The operation and maintenance expenses on account of emission control systems in coal or lignite based thermal generating stations shall be 2% of the admitted capital expenditure (excluding IDC and IEDC) as on its date of operation, which shall be escalated annually @ 5.89% during the tariff period ending on 31st March 2029:* *Provided that income generated from the sale of gypsum or other by-products shall be reduced from the operation and maintenance expenses.*	It has been stated above that as per the direction received from the MoP, the generating stations like APNRL which are situated within a 50 km radius of the Sewage Treatment Plants (STPs), will have to mandatorily utilize the sewage treated water and for that the Tertiary Treatment Plant will build at the location of thermal generating station and cost of operation will be borne by the generating station. Consequently, the O&M expenses for the generating station will increase. The current draft regulation is not specifying any O&M cost for operating the Tertiary Treatment Plant in order to fulfil the directives of MoP. Hence, it is requested to this Hon'ble Commission to provide the norms for O&M expenses related to using

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<tr><td></td><td></td><td></td><td>the sewage treated water similarly as provided for emission control system.</td></tr>
<tr><td>4</td><td>70. Norms of operation for thermal generating station</td><td>(E) Auxiliary Energy Consumption:
(a)..
...
...
(f) Norms of Auxiliary energy consumption for the emission control system (AUX_{en}) of thermal generating stations:
<table><tr><th>Name of Technology</th><th>AUX_{en} (as % of gross generation)</th></tr><tr><td colspan="2">For reduction of emission of Sulphur dioxide:</td></tr><tr><td>a) Wet Limestone based FGD system (without Gas to Gas heater)</td><td>1.0%</td></tr></table></td><td>The current draft regulation specifies the norms for Auxiliary Consumption for the emission control system. Similarly, it is requested to specify the norms for Auxiliary Consumption for operating the Tertiary Treatment Plant as generating station like APNRL is obligated to use sewage treated water as mentioned earlier.</td></tr>
<tr><td>5</td><td>76. Billing and Payment of charges:</td><td>(1)….
(2) Payment of the capacity charge for a thermal generating station shall be shared by the beneficiaries of the generating</td><td>Within the country, a number of thermal power stations are obligated to supply a part of their capacity only on a variable charge to the home state without getting any</td></tr>
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<tr><td></td><td></td><td>station as per their percentage shares for the month (inclusive of any allocation out of the unallocated capacity) in the installed capacity of the generating station. Payment
of capacity charge and energy charge for a hydro generating station shall be shared by the beneficiaries of the generating station in proportion to their shares (inclusive of any allocation out of the unallocated capacity) in the saleable capacity (to be determined after deducting the capacity corresponding to free energy to home State.</td><td>assured long term fuel support from the home state. A list of some such stations is provided below:
<table><tr><th>Station</th><th>Case</th></tr><tr><td>Adhunik Power and Natural Resource Ltd. (APNRL)</td><td>12% net capacity only on a variable cost to Jharkhand (home state)</td></tr><tr><td>Inland Power Ltd.</td><td>12% net capacity only on a variable cost to Jharkhand (home state)</td></tr><tr><td>Lanco Amarkantak Pvt. Ltd.</td><td>5% net capacity only on a variable cost to Chhattisgarh (home state)</td></tr><tr><td>DB Power</td><td>5% net capacity only on a variable cost to Chhattisgarh (home state)</td></tr><tr><td>Vedanta Ltd. (Jharsuguda)</td><td>5% / 7% net capacity only on a variable cost to Odisha (home state)</td></tr><tr><td>Jindal India Thermal Power Ltd.</td><td>12% net capacity only on a variable cost to Odisha (home state)</td></tr></table></td></tr>
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			The above scenario can be compare with hydro generating stations, where these plants also need to provide some share of power as free energy to home state as per Central government hydro policy. In case of hydro generating stations, Regulation provides the recovery of capacity charge from "**saleable capacity**". The Saleable capacity is determined after deducting the capacity corresponding to free energy to home state. On the similar grounds as of hydro generating stations, it is requested to this Hon'ble Commission to revise the Regulation 76 (2) as following: ***"Payment of the capacity charge for a thermal generating station shall be shared by the beneficiaries of the generating station as per their percentage shares for the month (inclusive of any allocation out of the unallocated capacity) in the saleable capacity of the generating station (to be determined after deducting the capacity corresponding to energy only on a variable cost to home state)"***

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6	**Allow discount offered under SHAKTI Scheme as a pass through in tariff**		The Ministry of Coal (MoC), under the SHAKTI (Scheme to Harness and Allocate Koyla Transparently in India), has effectively established a mechanism for the allocation of long-term coal linkages to power plants lacking fuel supply agreements (FSAs) through coal auctions. This policy implementation can be construed as the promulgation of an Indian law, thereby as per the draft CERC Tariff Regulation 2024, SHAKTI Scheme can be considered as a "Change in Law." *"13) 'Change in Law' means occurrence of any of the following events:* *(a) enactment, bringing into effect or promulgation of any new Indian law;"* In the matter of Maharashtra State Electricity Distribution Company Limited Vs Adani Power Maharashtra Limited and another, the Hon'ble Supreme Court of India has deemed the SHAKTI scheme as a "Change in Law". The relevant excerpt from the judgement again reproduced herein below:

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			"22. It can thus be seen that this Court has held that if there is a Change in any consent, approval or licence available or obtained for the project, otherwise than for the default of the seller, which results in any change in any cost of the business of selling electricity, then the said seller will be governed under Clause 13.1.1 of the PPA. As already discussed hereinabove, this Court has consistently held that modification to NCDP 2007 by the communication dated 31st July 2013 would amount to Change in Law and the generating companies would be entitled to compensation on account of such Change in Law. ***Undisputedly, SHAKTI Policy also reduces the ACQ as was assured under the 2007 NCDP. Consequently, SHAKTI Policy will also have to be held to be Change in Law." (Emphasis Supplied)"*** It is pertinent to mention here that, in the multiple cases, where Change in Law is approved, the economic position prior to bid due date has been protected by the

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			judgement of the Hon'ble Supreme Court / APTEL / CERC. Accordingly, the bidders under Section-63 have been getting pass through of additional cost which eventually protects their returns from the generation business. In the current regime, the tariff elements do not give any cognizance to discount offered under SHAKTI Scheme. It may be noted that the beneficiaries of power get an assured reliable supply of power using Shakti coal. For projects under Section-62, the fuel cost is allowed as a pass-through. Therefore, there was no obligation as such on generating companies to apply for coal under SHAKTI by offering discount. However, with the objective of safeguarding the interests of beneficiaries and ensuring a reliable long term coal supply, the generating stations are voluntarily procuring coal under the SHAKTI Scheme. Currently, the entirety of the benefit derived from the SHAKTI Scheme is being passed through to long-term

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			procurer i.e. discom, notwithstanding the financial losses incurred by the company which were already struggling with sustainability issues. In the earlier submission for comments / suggestions on "Approach Paper on Terms And Conditions Of Tariff Regulations, 2024 for the tariff period from 01.04.2024 to 31.03.2019" (Attached as **Annexure-3** herein), the APNRL has already computed that upon providing the SHAKTI discount and non-recovery of capacity charge for 12% of net capacity (i.e., supplied to home state Jharkhand only on variable cost) resulted in the reduced rate of return of ~8% from 15.50%. It is pertinent to note that the APNRL is currently paying interest on debt at an interest rate of 9%, which may increase further in near future. The current interest itself is more than the actual rate of return as stated above. It is important to recognize that a decrease in RoE can greatly discourage and it is worth

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			mentioning that a considerable number of companies have recently gone bankrupt as a result of financial crises. Hence, considering the above grounds it is requested to this Hon'ble Commission to kindly allow the SHAKTI Scheme discount as a pass-through in the Regulation.
7	**Assuring the minimal RoE of 15.5% as per Regulations**	*"30.* ***Return on Equity:*** *(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 18 of these regulations.* *(2) Return on equity for existing project shall be computed at the base rate of 15.50% for thermal generating station,…."*	As mentioned earlier, In the current regime, the tariff elements do not give any cognizance to discount offered under SHAKTI Scheme. It may be noted that the beneficiaries of power get an assured reliable supply of power using Shakti coal. For projects under Section-62, the fuel cost is allowed as a pass-through. Therefore, there was no obligation as such on generating companies to apply for coal under SHAKTI by offering discount. Adding to the above, non recovery of fixed charges of power supplied only at variable charges depletes the return which is not in alignment to Section 61 of the Electricity Act 2003 which provides 'safeguarding of consumers' interest and the recovery of electricity costs

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			in a reasonable manner. The relevant excerpt from the Electricity Act is reproduced herein below: *"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)……* *(c)…….* ***(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;……" (Emphasis Supplied)"*** Similarly, the National Tariff Policy, 2016 states that the rate of return should be attractive enough to encourage investments comparable to or even preferable to other sectors. This will ensure that the electricity sector can create sufficient capacity. Additionally, the rate

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			of return should be set at a level that allows for the generation of a reasonable surplus to foster the growth of the sector. The relevant excerpt from the policy is reproduced herein below: *"5.11……..* *a) Return on Investment* *Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector."* In light of the above argument, it is therefore proposed as follows:- **a. Allow pass-through of SHAKTI discount under Tariff elements as a separate cost.**

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			b. Allow recovery of fixed charges for power supplied only at a variable cost from the balance quantum of generating station. **c. Develop a mechanism similar to 'Change in Law' under the tariff structure, which can acknowledge discounts such as the SHAKTI discount and conditions like a certain share of power being available only at a variable cost to the home state. This way, any financial impact arising due to these conditions/situations can be passed through under the regulatory regime, while ensuring a minimum RoE of 15.50%.** It is imperative that the above will help in retaining the returns which will support the financial viability of the station. Given the stress in the thermal sector and several units already under NCLT, a positive consideration will help APNRL to sustain its operation in the long run.