



BSES Rajdhani Power Limited

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Ref.: RA/2023-24/01/A/533

Date: 20.02.2024

To,
The Secretary,
Central Electricity Regulatory Commission
Third and fourth floor, Chanderlok Building,
36, Janpath New Delhi-110001

Subject: Submission of comments/suggestions/objections to the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 for the tariff period from 1.4.2024 to 31.3.2029

Ref:- *Public Notice dated 30.01.2024 on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 for the tariff period from 1.4.2024 to 31.3.2029*

Dear Sir,

With reference to the above mentioned Public Notice of the Hon'ble Commission seeking comments/ suggestions on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 for the tariff period from 1.4.2024 to 31.3.2029, we hereby submit our comments attached as **Annex-1**.

Further, few additional points were also presented to the Hon'ble Commission on 15.02.2024 during the Public hearing. A copy of the presentation is attached as **Annex-2**.

We request the Hon'ble Commission to consider our comments while finalizing the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 for the tariff period from 1.4.2024 to 31.3.2029.

Thanking You,
Yours sincerely,

For BSES Rajdhani Power Ltd.

Rajul Agarwal
Head - Regulatory Affairs

Encl. As above in 3 hard copies + soft copy in pen drive

Annex-1 BSES Comments / Suggestions on the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
1.	<p><i>“1. Short title and commencement.</i></p> <p>....</p> <p><i>(2) These regulations shall come into force on 1.4.2024, and, unless reviewed earlier or extended by the Commission, shall remain in force for a period of five years from 1.4.2024 to 31.3.2029:</i></p> <p><i>Provided that where a generating station or unit thereof and transmission system or an element thereof, has been declared under commercial operation before the date of commencement of these regulations and whose tariff has not been finally determined by the</i></p>	<p><i>“1. Short title and commencement.</i></p> <p>....</p> <p><i>(2) These regulations shall come into force on 1.4.2024, and, unless reviewed earlier or extended by the Commission, shall remain in force for a period of five years from 1.4.2024 to 31.3.2029:</i></p> <p><i>Provided that where a generating station or unit thereof and transmission system or an element thereof, has been declared under commercial operation before the date of commencement of</i></p>	<p>Draft Regulation 1(2) provides that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 (<i>“Tariff Regulations, 2024”</i>) shall remain in force for a period of five (5) years with effect from 01.04.2024 and shall continue till 31.03.2029.</p> <p><i>Enforcement of revised norms in timely manner:-</i> There have been various instances in the past as elaborated herein below when Generating Companies had not timely implemented revised operational norms from the effective date of the previous Tariff Regulations. Further, providing credit for delay in implementation of revised norms attracts carrying cost which is not in consumer interest. This is apart from non-compliance of Tariff Regulations of this Hon’ble Commission by Generating Companies.</p> <p><i>E.g.:</i> Several Central Generating Stations had delayed implementation of operational norms in FY 2014-19 for over one and a half years. While the amount on account of such delay was credited to BSES Rajdhani Power Ltd. (<i>“BRPL”</i>) and BSES Yamuna Power Ltd. (<i>“BYPL”</i>) (collectively <i>“BSES Discoms”</i>), however, while giving credit</p>

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	<p><i>Commission till that date, tariff in respect of such generating station or unit thereof and transmission system or an element thereof for the period ending 31.3.2024 shall be determined in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 as amended from time to time.”</i></p>	<p><i>these regulations and whose tariff has not been finally determined by the Commission till that date, tariff in respect of such generating station or unit thereof and transmission system or an element thereof for the period ending 31.3.2024 shall be determined in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 as amended from time to time.”</i></p>	<p>for delayed implementation, the Generators did not provide the applicable carrying cost.</p> <p>In view of the above, to ensure timely compliance and implementation of revised operational norms to be specified under the Tariff Regulations, 2024 ought to be from date of enforcement i.e. 01.04.2024 itself. In case of non-compliance, penalty may be imposed by the Hon’ble Commission for each day of delay at the rate equivalent to rate of Late Payment Surcharge (“LPSC”) besides punishment for non-compliance Sections 142 and 146 of Electricity Act.</p>
2.	<p>“2. Scope and extent of application.</p> <p><i>(1) These regulations shall apply to all cases</i></p>	<p>“2. Scope and extent of application.</p> <p><i>(1) These regulations shall apply to all</i></p>	<p>Proviso to Draft Regulation 2(1) provides for fresh consent of the beneficiaries to be obtained by a Generating Company for determination of tariff of Stations for which</p>

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	<p><i>where tariff for a generating station or a unit thereof and a transmission system or an element thereof is required to be determined by the Commission under section 62 of the Act read with section 79 thereof:</i></p> <p><i>Provided that any generating station for which agreement(s) have been executed for the supply of electricity to the beneficiaries on or before 5.1.2011 and the financial closure for the said generating station has not been achieved by 31.3.2024, such projects shall not be eligible for determination of tariff under these regulations unless fresh consent of the beneficiaries is obtained and furnished.”</i></p>	<p><i>cases where tariff for a generating station or a unit thereof and a transmission system or an element thereof is required to be determined by the Commission under section 62 of the Act read with section 79 thereof:</i></p> <p><i>Provided that any generating station for which agreement(s) have been executed for the supply of electricity to the beneficiaries on or before 5.1.2011 and the financial closure for the said generating station has not been achieved by 31.3.2019, such projects shall not be eligible for</i></p>	<p>Power Purchase Agreement(s) (“PPA”) for supply of electricity have been executed on or before 05.01.2011 and financial closure has not been achieved by 31.03.2024.</p> <p><i>No more condonation of delay in financial closure and fresh consent of beneficiaries should be mandatory:</i> Presumably, if a Generating Station has not achieved financial closure, then there would not have been any major construction on the project site. In normal course, a project would achieve Commercial Operation Date (“COD”) in maximum period of five (5) years from achieving financial closure depending on type, size and technology used in the project.</p> <p>At the time when PPAs were signed for such Stations on or before 05.01.2011, the beneficiaries including BSES Discoms had signed the PPAs based on their estimated demand and projections considering these Stations. However, there are various instances of inordinate delay by Central Generating Stations in achieving financial closure of projects for which PPAs were signed on or before 05.01.2011 due to which beneficiaries have had to make alternate arrangements to meet their demand and Universal Supply Obligation under Sections 42 and 43 of Electricity Act. In addition to the cost of arranging alternate supply of power, beneficiaries are also made to bear</p>

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		<p><i>determination of tariff under these regulations unless fresh consent of the beneficiaries is obtained and furnished.</i></p>	<p>the cost of projects which have been inordinately delayed and are yet to achieve financial closure.</p> <p>An opportunity was already provided under Proviso to Regulation 2(1) of Tariff Regulations, 2019 to such Stations wherein “...<i>any generating station for which agreement(s) have been executed for supply of electricity to the beneficiaries on or before 5.1.2011 and the financial closure for the said generating station has not been achieved by 31.3.2019, such projects shall not be eligible for determination of tariff under these regulations unless fresh consent of the beneficiaries is obtained and furnished.</i>” As such, Stations which had executed PPAs on or before 05.01.2011 had the opportunity to achieve financial closure by 31.03.2019. Any further delay would be against consumer interest and tantamount to promoting inefficiency.</p> <p>Further, as on date, financial closure for such projects has been delayed for over 13 years (from 05.01.2011). Such delay adversely affects beneficiaries who are faced with higher capital cost which was never envisaged or agreed to while signing the PPA in 2011. The same is against consumer interest and is solely due to fault on part of the Generating Company. Therefore, fresh consent of the beneficiaries must be mandated where the financial closure has not been achieved by 31.03.2019.</p>

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3.	<p>“3. Definitions. - In these regulations, unless the context otherwise requires: -</p> <p>...</p> <p>(32) 'Force Majeure' for the purpose of these regulations means the events or circumstances or combination of events or circumstances, including those stated below, which prevent the generating company or transmission licensee from completing or operating the project, and only if such events or circumstances are not within the control of the generating company or transmission licensee and could not have been avoided, had the generating company or</p>	<p>“3. Definitions. - In these regulations, unless the context otherwise requires: -</p> <p>...</p> <p>(32) 'Force Majeure' for the purpose of these regulations means the events or circumstances or combination of events or circumstances, including those stated below, which prevent the generating company or transmission licensee from completing or operating the project, and only if such events or circumstances are not within the control of the generating company or</p>	<p>Draft Regulation 3(32)(a) recognises “exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years” as a force majeure event. The same needs to be re-considered by the Hon’ble Commission as: -</p> <p>(a) Various instances of adverse weather conditions such as drought, floods, cyclones, typhoons, tornados, etc. are already included in Draft Regulation 3(32)(a) to be deemed as an “Act of God”. The inclusion of a separate provision for “adverse weather conditions”- may be unnecessary.</p> <p>(b) Further, the provision is very widely worded and open to interpretation, which may lead to frivolous claims. For instance, in various cases before this Hon’ble Commission and appeals pending before Hon’ble Appellate Tribunal for Electricity (“Hon’ble APTEL”), several claims have been raised by Central Generating Stations for relief under force majeure allegedly due to adverse weather conditions which are in excess of the statistical measures for the last hundred years. Such claims have been rejected by this Hon’ble Commission and appeals against the same are pending before Hon’ble APTEL.</p>

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	<p><i>transmission licensee taken reasonable care or complied with prudent utility practices:</i></p> <p>(a) <i>Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or</i></p> <p>(b) <i>Any act of war, invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection,</i></p>	<p><i>transmission licensee and could not have been avoided, had the generating company or transmission licensee taken reasonable care or complied with prudent utility practices:</i></p> <p>(a) <i>Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather</i></p>	<p>(c) Retaining the said provision will lead to frivolous claims and litigation by parties seeking to misconstrue these words which are open to different interpretations.</p> <p>Hence, these words may be omitted / deleted by this Hon'ble Commission from the Draft Regulation 3(32)(a).</p>

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	<p><i>terrorist or military action; or</i></p> <p>(c) <i>Industry wide strikes and labour disturbances having a nationwide impact in India; or</i></p> <p>(d) <i>Delay in obtaining statutory approval for the project except where the delay is attributable to the project developer; ...</i></p>	<p><i>conditions which are in excess of the statistical measures for the last hundred years; or</i></p> <p>(b) <i>Any act of war, invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or</i></p> <p>(c) <i>Industry wide strikes and labour disturbances having a nationwide</i></p>	

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		<p><i>impact in India; or</i></p> <p><i>(d) Delay in obtaining statutory approval for the project except where the delay is attributable to the project developer; ...”</i></p>	
4.	<p>“3. Definitions. - In these regulations, unless the context otherwise requires: -</p> <p>...</p> <p>(88) 'Useful Life' in relation to a unit of a generating station, integrated mines, transmission system and communication system from the date of</p>	<p>“3. Definitions. - In these regulations, unless the context otherwise requires: -</p> <p>...</p> <p>(88) 'Useful Life' in relation to a unit of a generating station, integrated mines, transmission system and communication system from the date of commercial</p>	<p>Proviso to Draft Regulation 3(88) provides that in the case of coal / lignite based Thermal Generating Stations and Hydro Generating Stations, the Operational Life may be 35 years and 50 years, respectively. The term “Operational Life” has not been defined in the Draft Tariff Regulations, 2024. The said Proviso introduces ambiguity by not clearly delineating between the terms “Useful Life” and “Operational Life”, thereby diluting the intended meaning for each term.</p> <p>Proviso is an exception and not beyond the main provision: At the outset, it is noteworthy that a proviso is in the nature of an exception. It is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso</p>

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	<p><i>commercial operation shall mean the following:</i></p> <p>(a) <i>Coal/Lignite based thermal generating station- 25 years</i></p> <p>(b) <i>Gas/Liquid fuel based thermal generating station- 25 years</i></p> <p>(c) <i>AC and DC sub-station - 25 years</i></p> <p>(d) <i>Gas Insulated Substation (GIS) - 25 years</i></p> <p>(e) <i>Hydro generating station including pumped storage hydro generating stations – 40 years</i></p> <p>(f) <i>Transmission line (including HVAC & HVDC) & OPGW – 35 years</i></p>	<p><i>operation shall mean the following:</i></p> <p>(a) <i>Coal/Lignite based thermal generating station - 25 years</i></p> <p>(b) <i>Gas/Liquid fuel based thermal generating station - 25 years</i></p> <p>(c) <i>AC and DC sub-station - 25 years</i></p> <p>(d) <i>Gas Insulated Substation (GIS) - 25 years</i></p> <p>(e) <i>Hydro generating station including pumped storage hydro generating stations – 40 years</i></p>	<p>is not interpreted as stating a general rule. A proviso should not be given a greater or more significant role in interpretation of the main part of the notification, except as carving out an exception. [<i>Ref. Casio India Co. (P) Ltd. v. State of Haryana, (2016) 6 SCC 209 (Para. 22 & 23)</i>]</p> <p>In the present case, while the Proviso to Draft Regulation 3(88) carves out an exception for coal / lignite based Thermal Generating Stations and Hydro Generating Stations by specifying their Operational Life to be 35 years and 50 years, respectively, however, it fails to qualify as to what exception is sought to be created through the term “Operational Life”.</p> <p>Upon perusal of other provisions of the Draft Tariff Regulations, 2024 (Regulations 33(8) and 70), it is discernible that the “Operational Life” has been used in the context of the remaining life of the Station beyond the “Useful Life” for which it would be operated. This ascribes a synonymous meaning to the terms “Useful Life” and “Operational Life”.</p> <p>Concept of “Useful Life” in the context of Thermal Generating Stations pertains to the anticipated duration during which the Station is expected to operate efficiently and economically. In the initial years of operation, capital costs are recovered through</p>

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	<p>(g) <i>Communication system excluding OPGW, IT and SCADA – 7 years</i></p> <p>(h) <i>Integrated mine(s) - As per the Mining Plan</i></p> <p><i>Provided that in the case of coal/lignite based thermal generating stations and hydro generating stations, the Operational Life may be 35 years and 50 years, respectively.”</i></p>	<p>(f) <i>Transmission line (including HVAC & HVDC) & OPGW – 35 years</i></p> <p>(g) <i>Communication system excluding OPGW, IT and SCADA – 7 years</i></p> <p>(h) <i>Integrated mine(s) - As per the Mining Plan</i></p> <p><i>Provided that in the case of coal/lignite based thermal generating stations and hydro generating stations, the Operational Life may be 35 years and 50 years, respectively.”</i></p>	<p>Depreciation. This allows Generating Companies to match the cost of the asset with the revenue it generates over time.</p> <p>Completion of “<i>UsefulLife</i>” of 25 years in the case of a Thermal Generating Station is a material change in the circumstances of such Station. The Station has completed its “Useful Life” and recovered its costs by way of depreciation. Thereafter, either more capital investment is required in the Station by way of Special Allowance or Renovation and Modernisation (“<i>R&M</i>”).</p> <p>Hon’ble Commission in its: -</p> <p>(a) Approach Paper on the Tariff Regulations, 2024 dated 26.05.2023 (“<i>Approach Paper</i>”) [<i>Para. 4.19; Pg. 66</i>], had <i>inter alia</i> observed that more and more coal based Thermal Generating Stations are operating efficiently even beyond 25 years, and therefore, the “<i>Useful Life</i>” of coal based Thermal Generating Stations may be increased to 35 years from 25 years.</p> <p>(b) Explanatory Memorandum to the Draft Tariff Regulations, 2024 (“<i>Explanatory Memorandum</i>”), has <i>inter alia</i> observed that observed that various coal / lignite based Thermal Generating Stations and Hydro Generating Stations are operating</p>

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			<p>beyond their stipulated useful life of 25 years and 40 years. To recognize the same, the operational life of these Generating Stations has been separately specified.</p> <p>In the Draft Tariff Regulations, 2024, Hon’ble Commission by way of Proviso to Draft Regulation 3(88) has only specified that in the case of coal / lignite based Thermal Generating Stations and Hydro Generating Stations, the Operational Life shall be 35 years and 50 years, respectively. However, the regulatory intent and effect of such a stipulation has not been specified by the Hon’ble Commission.</p> <p>As such, it is suggested that the Hon’ble Commission may only retain provision of “Useful Life” and omit the term “Operational Life” to remove any ambiguity and /or enlarge scope of the term “Useful life” as well as other provisions of the proposed Tariff Regulations, 2024.</p> <p>Without Prejudice to the above, in case Hon’ble Commission is of the view that coal based Thermal Generating Stations and Hydro Generating Stations, can operate even beyond 25 years and 40 years respectively, the “Useful Life” of such Stations may be increased while also spreading out the capital cost of the Stations over the period of</p>

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			<p>increase in “Useful Life” without compromising the efficiency of the Station and impact on tariff and environment.</p> <p>In addition, and without prejudice: -</p> <p>(a) In case the Hon’ble Commission allows a coal based Thermal Generating Stations / Hydro Generating Stations to operate beyond 25 years / 40 years, Hon’ble Commission may allow Generators to avail Special Allowance only after completion of the increased period of operation.</p> <p>(b) Such increase in “Useful life” may also be provided to Transmission assets providing connectivity of Generating Stations to the Pooling Stations beyond the period of its useful or operational life.</p>
5.	<p><i>“10. Determination of tariff</i></p> <p>...</p> <p><i>(7) Subject to Sub-Clause (8) below, the difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and</i></p>		<p>Draft Regulation 10(7) provides for the difference between the tariff determined in accordance with proposed Regulations 10(3) and 10(5) and proposed Regulations 10(4) and 10(5) to be recovered from or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at the rate equal to the 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments.</p>

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	<p><i>(5) above, shall be recovered from or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at the rate equal to the 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments.</i></p> <p><i>Provided that the bills to recover or refund shall be raised by the generating company or the transmission licensees within 30 days from the issuance of the Order.</i></p> <p><i>Provided further that such interest, including that determined as per sub-clause (8) of this regulation shall be</i></p>		<p><i>Interest be allowed to be charged on the differential amount by the utility only until the issuance of the order:</i> It is noteworthy that under the existing tariff regime (FY 2019-24), various Central Generating Companies while seeking recovery of <i>inter alia</i> differential fixed charges and other charges in their monthly invoices are arbitrarily imposing additional interest on the beneficiaries in case such amounts are paid in six equal monthly instalments despite Regulation 10(7) of Tariff Regulations, 2019 allowing for the same. Aforesaid issue of arbitrary imposition of additional interest was also taken note of by the Hon’ble Commission in the Approach Paper on the Tariff Regulations, 2024 [Para. 4.23 @ Pg. No. 69] dated 26.05.2023 and observed that interest be allowed to be charged on the differential amount by the utility only until the issuance of the order, and no interest may be allowed during the recovery in six equal monthly instalments and sought comments on this approach, as under: -</p> <p style="text-align: center;"><i>“4.23 Treatment of interest on differential tariff after truing up</i></p> <p style="text-align: center;">...</p> <p><i>As per the above, the differential amount of tariff needs to be recovered or refunded with simple interest in six equal monthly instalments. However, stakeholders have raised concerns over the method of charging interest on the differential amount up to the liquidation of the last instalment.</i></p>

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	<p><i>payable till the date of issuance of the Order and no interest shall be allowed or levied during the period of six-monthly instalments.</i></p> <p><i>Provided further that in case where money is to be refunded and there is a delay in the raising of bills by the generating company or transmission licensees beyond 30 days from the issuance of the Order, it shall attract a late payment surcharge as applicable in accordance with these regulations.”</i></p>		<p><i>In order to streamline the rate of interest on the differential amount, the current practice of allowing a simple interest rate as per Regulation 10(7) in the 2024-29 tariff block may be continued. Further, interest may be allowed to be charged on the differential amount by the utility only until the issuance of the order, and no interest may be allowed during the recovery in six equal monthly instalments.</i></p> <p><i>Comments and suggestions are sought from stakeholders on the above approach and alternative ways, if any.”</i></p> <p>In accordance with the above approach, it is suggested that proposed Regulation 10(7) in Draft Tariff Regulations, 2024 Hon’ble Commission may explicitly clarify that interest allowed to be charged on the differential amounts billed by the generating and transmission utilities would be limited until the issuance of the order, and no further / additional interest will be allowed during the recovery from the beneficiaries in six equal monthly instalments so as to avoid any imposition of additional interest on the monthly instalments beyond issuance of Order.</p> <p>Hon’ble Commission may also modify the provision of Regulation 10(7) to provide that the difference between the tariff determined in accordance with Regulations 10(3) and 10(5) and Regulations 10(4) and 10(5), shall be billed to or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at</p>

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			the rate equal to the 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments.
6.	<p><i>“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation:</i></p> <p><i>In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be</i></p>	<p><i>“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation: (1) In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where</i></p>	Detailed comments / suggestions on Draft Regulation 17 are annexed hereto as Annexure – A.

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	<i>recovered based on scheduled generation.”</i>	<p><i>in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.</i></p> <p><i>(2) The beneficiary shall have the first right of refusal and upon its refusal to enter into an arrangement as above, the generating company shall be free to sell the electricity generated from such station in a manner as it deems fit.”</i></p>	
7.	<i>“21. Interest During Construction (IDC) and Incidental Expenditure</i>	<i>“21. Interest During Construction (IDC) and Incidental</i>	Proviso to Draft Regulation 21(5) provides for condonation of delay to be allowed to a Generating and Transmission Company to the maximum extent of 90% of the

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	<p>during Construction (IEDC)</p> <p>...</p> <p><i>(5) If the delay in achieving the COD is attributable either in entirety or in part to the generating company or the transmission licensee or its contractor or supplier or agency, in such cases, IDC and IEDC due to such delay may be disallowed after prudence check either in entirety or on pro-rata basis corresponding to the period of delay not condoned vis-à-vis total implementation period and the liquidated damages, if any, recovered from the contractor or supplier or agency shall be retained by the generating</i></p>	<p>Expenditure during Construction (IEDC)</p> <p>...</p> <p><i>(5) If the delay in achieving the COD is attributable either in entirety or in part to the generating company or the transmission licensee or its contractor or supplier or agency, in such cases, IDC and IEDC due to such delay may be disallowed after prudence check either in entirety or on pro-rata basis corresponding to the period of delay not condoned vis-à-vis total implementation period and the liquidated damages, if any, recovered from</i></p>	<p>delay associated with obtaining forest clearance, clearance from National Highways Authority of India, approval of Railways, and acquisition of government land, where delay is on account of delay in approval of concerned authority.</p> <p>It is incumbent on a Generating and Transmission Company to carry out due diligence and identify areas during the initial planning period where potential issues may arise in obtaining approvals / clearance. Based on due diligence, the Utility should assess all statutory requirements and compliance before setting up the project and accordingly estimate the time required for its construction and completion.</p> <p>In case delay in obtaining clearances is condoned by the Hon'ble Commission, the same may lead to promoting inefficiency and lackadaisical approach by the Utility in completion of projects, which would be against the principles enshrined in Section 61 of Electricity Act as well as consumer interest.</p> <p>In the alternative, Hon'ble Commission may consider condoning delays in obtaining approvals / clearance by Utilities on a case-to-case basis after considering the background facts where delay is on account of delay in approval of concerned authority.</p>

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	<p><i>company or the transmission licensee, in the same proportion of delay not condoned vis-à-vis total implementation period.</i></p> <p><i>[Note: For e.g.: In case a project was scheduled to be completed in 48 months and is actually completed in 60 months. Out of 12 months of time overrun, if only 6 months of time overrun is condoned, the allowable IDC and IEDC shall be computed by considering the total IDC and IEDC incurred for 60 months and allowed in the proportion of 54 months over 60 month period.]</i></p> <p><i>Provided that in case of activities like obtaining forest clearance, NHAI Clearance, approval of</i></p>	<p><i>the contractor or supplier or agency shall be retained by the generating company or the transmission licensee, in the same proportion of delay not condoned vis-à-vis total implementation period.</i></p> <p><i>[Note: For e.g.: In case a project was scheduled to be completed in 48 months and is actually completed in 60 months. Out of 12 months of time overrun, if only 6 months of time overrun is condoned, the allowable IDC and IEDC shall be computed by</i></p>	

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>Railways, and acquisition of government land, where delay is on account of delay in approval of concerned authority, in such cases maximum condonation shall be allowed up to 90% of the delay associated with obtaining such approvals or clearances.”</i></p>	<p><i>considering the total IDC and IEDC incurred for 60 months and allowed in the proportion of 54 months over 60 month period.]</i></p> <p><i>Provided that in case of activities like obtaining forest clearance, NHAI Clearance, approval of Railways, and acquisition of government land, where delay is on account of delay in approval of concerned authority, in such cases maximum condonation shall be allowed up to 90% of the delay associated with obtaining such</i></p>	

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
		approvals or clearances.”	
8.	<p>“27. Additional Capitalisation on account of Renovation and Modernisation</p> <p><i>(1) The generating company intending to undertake renovation and modernization (R&M) of the generating station or unit thereof for the purpose of extension of life beyond the originally recognised useful life for the purpose of tariff, shall file a petition before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package,</i></p>	<p>“27. Additional Capitalisation on account of Renovation and Modernisation</p> <p><i>(1) The generating company intending to undertake renovation and modernization (R&M) of the generating station or unit thereof for the purpose of extension of life beyond the originally recognised useful life for the purpose of tariff, shall file a petition before the Commission for approval of the proposal with a Detailed Project Report giving</i></p>	<p>Second Proviso to Draft Regulation 27(1) provides for prior consent of beneficiaries / long-term customers to be obtained by Generating Companies intending to undertake Renovation and Modernization (“R&M”). Generating Company is required to submit the response of the beneficiaries along with the application for approval of the proposal for R&M.</p> <p>Draft Regulation 27(2) provides that approval for R&M may be granted to the Generating Company after due consideration of the reasonableness of proposed cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, expected duration of life extension, the response of the beneficiaries or long-term customers, and such other factors as may be considered relevant by the Hon’ble Commission.</p> <p>In the Explanatory Memorandum, Hon’ble Commission at Para. 8.5.3 has <i>inter alia</i> observed that there has been cases of delay in the approval of R&M Expenses by the beneficiaries. Hence, the Hon’ble Commission has proposed modification to the existing provisions wherein the Generating Company proposing to undertake R&M</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, and any other information considered to be relevant by the generating company or the transmission licensee:</i></p> <p><i>Provided that the generating company making the applications for renovation and modernization (R&M) shall not be eligible for Special Allowance under Regulation 28 of these regulations;</i></p> <p><i>Provided further that the generating company intending to undertake renovation and modernization (R&M) shall seek the consent of</i></p>	<p><i>complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, and any other information considered to be relevant by the generating company or the transmission licensee:</i></p> <p><i>Provided that the generating company making the applications for renovation and</i></p>	<p>has to obtain consent from the beneficiaries before an application is made by the Generating Company before the Hon'ble Commission for approval. Hon'ble Commission has proposed that the Generating Company should submit the response of the beneficiaries on its R&M proposal and the Hon'ble Commission shall decide the same on merits.</p> <p>At the outset, it is submitted that there is no delay by BSES Discoms in providing their approval for R&M. In fact, in the Tariff Period 2019-24, none of the Generating Companies have approached BSES Discoms for approval of R&M Expenses.</p> <p>In the Draft Regulation 27(1), while beneficiaries have been provided a right to either provide their consent or reject the proposal for R&M by the Generating Company, however, such consent becomes redundant as the approval is ultimately to be provided by the Hon'ble Commission under Draft Regulation 27(2).</p> <p>As such, Draft Regulation 27(1) and (2) may be suitably amended to allow Generating Companies to file an application for approval of R&M by the Hon'ble Commission only after receiving the consent from the beneficiaries. Also, as highlighted by the Hon'ble Commission that there is delay in grant of approval by beneficiaries, a time limit may be provided for beneficiaries to provide their consent to address this issue.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>the beneficiaries or the long term customers, as the case may be, for such renovation and modernization (R&M) and submit the response of the beneficiaries along with the application.</i></p> <p><i>(2) Where the generating company, as the case may be, makes an application for approval of its proposal for renovation and modernisation (R&M), approval may be granted after due consideration of the reasonableness of the proposed cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, expected duration of life extension, the response of</i></p>	<p><i>modernization (R&M) shall not be eligible for Special Allowance under Regulation 28 of these regulations;</i></p> <p><i>Provided further that the generating company intending to undertake renovation and modernization (R&M) shall seek the consent of the beneficiaries or the long term customers, as the case may be, for such renovation and modernization (R&M) and submit the response of the beneficiaries along with the application.</i></p> <p><i>(2) Where the generating company, as the case may be, makes an application</i></p>	<p>In case the proposal of the Generating Company is not acceptable to the beneficiaries, no application may be filed before the Hon'ble Commission.</p> <p>This would ensure that the no unnecessary costs are passed on to consumers on account of R&M to be undertaken for old, obsolete, and costly Stations that have already completed their Useful Life and are lower in the Merit Order.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>the beneficiaries or long term customers, and such other factors as may be considered relevant by the Commission.</i></p> <p>... ”</p>	<p><i>for approval of its proposal for renovation and modernisation (R&M)after receiving consent from the beneficiaries or the long term customers, as the case may be,approval may be granted after due consideration of the reasonableness of the proposed cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, expected duration of life extension, the response of the beneficiaries or long term customers, and</i></p>	

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
		<p><i>such other factors as may be considered relevant by the Commission.</i></p> <p><i>... ”</i></p>	
9.	<p><i>“28. Special Allowance for Coal-based/Lignite fired Thermal Generating station</i></p> <p><i>... ”</i></p> <p><i>(2) The Special Allowance admissible to a generating station shall be @ Rs 10.75 lakh per MW per year for the control period. ... ”</i></p>	<p><i>“28. Special Allowance for Coal-based/Lignite fired Thermal Generating station</i></p> <p><i>... ”</i></p> <p><i>(2) The Special Allowance admissible to a generating station shall be @ Rs 9.50 lakh per MW per year for the control period. ... ”</i></p>	<p>Draft Regulation 28(2) provides for Special Allowance @ Rs 10.75 lakh per MW per year to be given to coal-based / lignite Thermal Generating Stations which do not wish to avail R&M Expenses.</p> <p>Special Allowance has been increased from Rs. 9.50 lakh per MW per year under the existing Regulation 28 of Tariff Regulations, 2019 to 10.75 lakh per MW per year, which is an increase of 13% that is considerably higher than that of O&M Expenses proposed by the Hon’ble Commission. Escalation rate for Special Allowance cannot exceed the escalation rate considered by Hon’ble Commission for O&M Expenses since both expenditures are similar in nature.</p> <p>It is suggested that Hon’ble Commission may consider retaining the exiting rate of Special Allowance @ Rs. 9.50 lakh per MW per year which would help in optimizing the tariff for end consumers.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
			<p>In the alternative, since Special Allowance is essentially in the nature of O&M Expenses and used for similar purposes, Hon’ble Commission may consider allowing Special Allowance by applying the weighted average annual escalation rate of 5.89% as has been done in the past by the Hon’ble Commission for FY 2014 to FY 2019 and accordingly consider weighted average annual escalation rate of 5.89% which has been considered while proposing O&M Expenses for FY 2024-25 to FY 2028-29 at Para. 15.6.2 of the Explanatory Memorandum.</p> <p>Without prejudice, as stated in the comments / suggestions hereinabove regarding Draft Regulation 3(88), in case the Hon’ble Commission allows a coal based Thermal Generating Stations / Hydro Generating Stations to operate beyond 25 years / 40 years, Hon’ble Commission may allow Generators to avail Special Allowance only after completion of increased period of operation.</p>
10	<p>“33. Depreciation: ... (8) The generating company or the transmission licensee, as the case may be, shall submit the details of</p>	<p>“33. Depreciation: ... (8) The generating company or the transmission licensee, as the case may be, shall submit</p>	<p>Draft Regulation 33(8) provides for spreading the depreciable value over the balance Operational Life of the Generating Station upon submission of details of capital expenditure proposed to be incurred during five (5) years before the competition of Useful Life of the Station.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>capital expenditure proposed to be incurred during five years before the competition of useful life along with proper justification and proposed life extension. The Commission, based on prudence check of such submissions, shall approve the depreciation by equally spreading the depreciable value over the balance Operational Life of the generating station or unit thereof or fifteen years, whichever is lower, and in case of the transmission system shall equally spread the depreciable value over the balance useful life of the Asset. ...”</i></p>	<p><i>the details of capital expenditure proposed to be incurred during five years before the competition of useful life along with proper justification and proposed life extension. The Commission, based on prudence check of such submissions, shall approve the depreciation by equally spreading the depreciable value over the balance Operational Life of the generating station or unit thereof or fifteen years, whichever is lower, and in case of the transmission system shall equally spread the</i></p>	<p>In line with the suggestions in respect of Draft Regulation 3(88) hereinabove, it is suggested that the Hon’ble Commission may only retain provision of “Useful Life” and omit the term “Operational Life” to remove ambiguity. In case Hon’ble Commission is of the view that coal based Thermal Generating Stations can operate efficiently even beyond 25 years, the “Useful Life” of such Stations may be increased while also spreading out the capital cost of the Stations over the increased period.</p> <p>Further, the “Useful Life” of Hydro Generating Stations as proposed by the Hon’ble Commission is 40 years. As such, for Hydro Generating Stations, allowing higher depreciation rates during first 12years results in front loading of tariff. Since “Useful Life” of Hydro Generating Stations is proposed as 40 years by the Hon’ble Commission, which is a substantial duration of time to keep the tariff on the lower side, the depreciation rate for Hydro Generating Stations be spread over the increased period of operation.</p>

S. No.	Draft Regulation	Proposed Change	Comments / Rationale														
		depreciable value over the balance useful life of the Asset. ...															
11	<p>“34. Interest on Working Capital:</p> <p><i>(1) The working capital shall cover:</i></p> <p><i>(a) For Coal-based/lignite-fired thermal generating stations:</i></p> <p><i>(i) Cost of coal or lignite, if applicable, for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity, whichever is lower;</i></p>		<p>It is submitted that existing Regulation 34 of the Tariff Regulations, 2019 allows Interest on Working Capital to Generating Companies to maintain a Coal stock of about twenty (20) days for Non-pit Head Stations and ten (10) days for Pit Head Station.</p> <div data-bbox="884 824 1633 1235" style="border: 1px solid black; padding: 5px;"> <p>Draft Regulation 34 (a) (i) envisages that the working capital shall cover cost of coal for 10 days for pit-head generating stations and 20 days for non-pit head generating station.</p> <p>Actual Coal Stock Position of Plants (No of Day)</p> <table border="1" data-bbox="884 1016 1633 1235"> <thead> <tr> <th data-bbox="884 1016 968 1138">Coal Stock Position</th> <th data-bbox="968 1016 1052 1138">DADRI (NCTPP)</th> <th data-bbox="1052 1016 1167 1138">UNCHAHAR TPS</th> <th data-bbox="1167 1016 1297 1138">KAHALGAON TPS</th> <th data-bbox="1297 1016 1392 1138">FARAKKA STPS</th> <th data-bbox="1392 1016 1549 1138">CHANDRAPURA TPS DVC</th> <th data-bbox="1549 1016 1633 1138">MEJIA TPS DVC</th> </tr> </thead> <tbody> <tr> <td data-bbox="884 1138 968 1235">YTM Jan24</td> <td data-bbox="968 1138 1052 1235">10</td> <td data-bbox="1052 1138 1167 1235">12</td> <td data-bbox="1167 1138 1297 1235">9</td> <td data-bbox="1297 1138 1392 1235">9</td> <td data-bbox="1392 1138 1549 1235">14</td> <td data-bbox="1549 1138 1633 1235">6</td> </tr> </tbody> </table> </div>	Coal Stock Position	DADRI (NCTPP)	UNCHAHAR TPS	KAHALGAON TPS	FARAKKA STPS	CHANDRAPURA TPS DVC	MEJIA TPS DVC	YTM Jan24	10	12	9	9	14	6
Coal Stock Position	DADRI (NCTPP)	UNCHAHAR TPS	KAHALGAON TPS	FARAKKA STPS	CHANDRAPURA TPS DVC	MEJIA TPS DVC											
YTM Jan24	10	12	9	9	14	6											

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale																
	<p><i>(ii) Limestone towards stock for 15 days corresponding to the normative annual plant availability.</i></p> <p><i>(iii) Advance payment for 30 days towards the cost of coal or lignite and limestone for generation corresponding to the normative annual plant availability factor;</i></p> <p><i>(iv) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;</i></p> <p><i>(v) Maintenance spares @ 20% of operation and maintenance expenses,</i></p>		<p>Draft Regulation 34 (a) (vi) envisages that the working capital shall cover the receivables equivalent to 45 days of Capacity and Energy Charge calculated on the normative plant availability.</p> <table border="1" data-bbox="884 621 1633 964"> <thead> <tr> <th colspan="4" data-bbox="884 621 1633 708">Comparison of Actual & Normative PLF of Thermal Plants</th> </tr> <tr> <th data-bbox="884 708 1188 794">PLF</th> <th data-bbox="1188 708 1354 794">YTM Dec'23</th> <th data-bbox="1354 708 1493 794">FY 22-23</th> <th data-bbox="1493 708 1633 794">FY 21-22</th> </tr> </thead> <tbody> <tr> <td data-bbox="884 794 1188 880">Actual</td> <td data-bbox="1188 794 1354 880">68</td> <td data-bbox="1354 794 1493 880">64</td> <td data-bbox="1493 794 1633 880">58.87</td> </tr> <tr> <td data-bbox="884 880 1188 964">Normative</td> <td data-bbox="1188 880 1354 964">85</td> <td data-bbox="1354 880 1493 964">85</td> <td data-bbox="1493 880 1633 964">85</td> </tr> </tbody> </table> <p>To ensure compliance by Central Generating Stations to the Coal stock requirements, Hon'ble Commission may impose penal provisions to penalise Generating Stations that violate the requirements to be maintained even after being allowed adequate Interest on Working Capital.</p>	Comparison of Actual & Normative PLF of Thermal Plants				PLF	YTM Dec'23	FY 22-23	FY 21-22	Actual	68	64	58.87	Normative	85	85	85
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S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>including water charges and security expenses;</i> <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; and</i> <i>(vii) Operation and maintenance expenses, including water charges and security expenses, for one month. ...”</i></p>		<p>This would also enable beneficiaries such as BSES Discoms to fulfil their Universal Service Obligation under Sections 42 and 43 of the Electricity Act as well as conditions of License issued to BSES Discoms by the Hon’ble Delhi Electricity Regulatory Commission.</p> <p>In addition to the above, Hon’ble Commission may also provide for true up of actual Coal Stock maintained by the Generating Station and Receivables based on actual billing. Any benefit accruing therefrom may be passed on by the Generating Company to beneficiaries, which would invariably be passed on to the consumers. The objective is to rationalize the tariff in the end consumers’ interest.</p>
12	<p>“35. De-Commissioning <i>(1) In case a generating station or unit thereof, or a transmission system including communication systems or element thereof after it is certified by CEA or CTU or any other</i></p>		<p>Draft Regulation 35 provides for de-commissioning of a project wherein unrecovered depreciable value may be allowed to be recovered on a case-to-case basis after duly adjusting the actual salvage value post disposal of such project.</p> <p>It is submitted that since the salvage value of such projects is substantial, Hon’ble Commission, in the interest of consumers and to avoid tariff shock, may allow</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>statutory authority, that any asset cannot be operated or needs to be replaced on account of environmental concerns or safety issues or system upgradation or a combination of these factors not attributable to generating company or a transmission licensee, the unrecovered depreciable value may be allowed to be recovered on a case-to-case basis after duly adjusting the actual salvage value post disposal of such project.</i></p> <p><i>Provided that the manner of recovery, including a number of instalments in which such unrecovered depreciation will be allowed, shall be specified by the Commission on a case-to-case basis.</i></p>		<p>recovery in twelve equal monthly instalments without any interest to be charged on the payments.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale												
	<i>Provided further that no carrying cost shall be allowed on any delay associated with such recovery.”</i>														
13	<p><i>“36. Operation and Maintenance Expenses:</i></p> <p><i>(1) Thermal Generating Station: Normative Operation and Maintenance expenses of thermal generating stations shall be as follows:</i></p> <p>...</p> <p><i>(3) Open Cycle Gas Turbine/Combined Cycle generating stations:</i></p> <table border="1" data-bbox="254 1159 579 1349"> <thead> <tr> <th><i>(in Rs Lakh/MW) Year</i></th> <th>...</th> <th><i>Advance F Class Machines</i></th> </tr> </thead> <tbody> <tr> <td><i>FY</i></td> <td>...</td> <td><i>32.0</i></td> </tr> </tbody> </table>	<i>(in Rs Lakh/MW) Year</i>	...	<i>Advance F Class Machines</i>	<i>FY</i>	...	<i>32.0</i>		<p>Draft Regulation 36 provides for higher normative O&M Expenses for Advance F Class Machines as compared to other Open Cycle Gas Turbine / Combined Cycle Generating Stations.</p> <p>Notably, the normative O&M Expenses for Advance F Class Machines has been increased by ~5.89% from the existing Tariff Regulations, 2019 which provide as under: -</p> <p>“ ...</p> <p><i>(3) Open Cycle Gas Turbine / Combined Cycle generating stations:</i></p> <table border="1" data-bbox="1205 1127 1583 1364"> <thead> <tr> <th><i>(in Rs Lakh/MW) Year</i></th> <th>...</th> <th><i>Advance F Class Machines</i></th> </tr> </thead> <tbody> <tr> <td><i>FY 2019-20</i></td> <td>...</td> <td><i>26.34</i></td> </tr> </tbody> </table>	<i>(in Rs Lakh/MW) Year</i>	...	<i>Advance F Class Machines</i>	<i>FY 2019-20</i>	...	<i>26.34</i>
<i>(in Rs Lakh/MW) Year</i>	...	<i>Advance F Class Machines</i>													
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S. N o.	Draft Regulation	Proposed Change	Comments / Rationale																																
	<table border="1"> <tr> <td>2024-25</td> <td></td> <td></td> <td></td> </tr> <tr> <td>FY 2025-26</td> <td>...</td> <td>33.91</td> <td></td> </tr> <tr> <td>FY 2026-27</td> <td>...</td> <td>35.91</td> <td></td> </tr> <tr> <td>FY 2027-28</td> <td>...</td> <td>38.02</td> <td></td> </tr> <tr> <td>FY 2028-29</td> <td>...</td> <td>40.26</td> <td></td> </tr> </table>	2024-25				FY 2025-26	...	33.91		FY 2026-27	...	35.91		FY 2027-28	...	38.02		FY 2028-29	...	40.26			<table border="1"> <tr> <td>FY 2020-21</td> <td>...</td> <td>27.27</td> </tr> <tr> <td>FY 2021-22</td> <td>...</td> <td>28.23</td> </tr> <tr> <td>FY 2022-23</td> <td>...</td> <td>29.22</td> </tr> <tr> <td>FY 2023-24</td> <td>...</td> <td>30.24</td> </tr> </table> <p>...”</p> <p>In the Explanatory Memorandum, Hon’ble Commission at Para. 15.6.19 has <i>inter alia</i> observed that “...RGPPL and Sugem Power have not submitted their O&M data. Therefore, it would not be appropriate to consider the actual O&M expenses of a single power plant to determine the norm for the new tariff period. Accordingly, the Commission has decided to consider the O&M expenses norms for FY 2023-24 as the base figure.”</p> <p>As evident from the above, despite non-submission of data, the Generating Companies are being granted benefit through higher normative O&M Expenses. This is against</p>	FY 2020-21	...	27.27	FY 2021-22	...	28.23	FY 2022-23	...	29.22	FY 2023-24	...	30.24
2024-25																																			
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S. N o.	Draft Regulation	Proposed Change	Comments / Rationale								
			<p>consumer interest and violates the principles under Section 61 of Electricity Act mandating reward for efficiency. By allowing high normative O&M Expenses, Hon'ble Commission is encouraging inefficiency and non-adherence to directions of the Hon'ble Commission.</p> <p>Accordingly, Hon'ble Commission may consider allowing O&M Expenses for Advance F Class Machines commensurate to what is provided to other Open Cycle Gas Turbine / Combined Cycle Generating Stations.</p>								
14	<p>“59. Transit and Handling Losses: For coal and lignite, the transit and handling losses shall be as per the following norms: -</p> <table border="1" data-bbox="254 1065 569 1317"> <thead> <tr> <th data-bbox="254 1065 436 1252">Thermal Generating Station</th> <th data-bbox="436 1065 569 1252">Transit and Handling Loss (%)</th> </tr> </thead> <tbody> <tr> <td data-bbox="254 1252 436 1317">Pit head</td> <td data-bbox="436 1252 569 1317">0.20%</td> </tr> </tbody> </table>	Thermal Generating Station	Transit and Handling Loss (%)	Pit head	0.20%	<p>“59. Transit and Handling Losses: For coal and lignite, the transit and handling losses shall be as per the following norms: -</p> <table border="1" data-bbox="594 1065 854 1349"> <thead> <tr> <th data-bbox="594 1065 743 1284">Thermal Generating Station</th> <th data-bbox="743 1065 854 1284">Transit and Handling Loss (%)</th> </tr> </thead> <tbody> <tr> <td data-bbox="594 1284 743 1349">Pit head</td> <td data-bbox="743 1284 854 1349">0.20%</td> </tr> </tbody> </table>	Thermal Generating Station	Transit and Handling Loss (%)	Pit head	0.20%	<p>Draft Regulation 59 provides for transit and handling losses for coal and lignite based Thermal Generating Stations using “Non-pit head multi-modal transportation” to be 1%.</p> <p>It is suggested that in the interest of consumers, Hon'ble Commission may specify normative Transit and Handling Loss of 0.8% for all Non-pit head Stations. The specified value may be considered as a ceiling for transit and handling losses, subject to true-up at the end of the Control Period. Any benefits resulting from achieving transit and handling losses below the normative level should be shared equally between the Generating Company and the beneficiary, to be passed on to consumers.</p>
Thermal Generating Station	Transit and Handling Loss (%)										
Pit head	0.20%										
Thermal Generating Station	Transit and Handling Loss (%)										
Pit head	0.20%										

S. N o.	Draft Regulation		Proposed Change		Comments / Rationale
	<i>Non-pit head - Rail</i>	<i>0.80%</i>	<i>Non-pit head - Rail</i>	<i>0.80%</i>	
	<i>Non-pit head multi-modal transportation (using two or more than two mode of transport involving multiple trans-shipments)</i>	<i>1.00%</i>	<i>Non-pit head multi-modal transportation (using two or more than two mode of transport involving multiple trans-shipments)</i>	<i>0.80%</i>	
15	<p>“60. Gross Calorific Value of Primary Fuel: <i>(1) The gross calorific value for computation of energy charges as per</i></p>	<p>“60. Gross Calorific Value of Primary Fuel: <i>(1) The gross calorific value for computation</i></p>	<p>Second Proviso to Draft Regulation 60 provides that in the absence of any third party sampling through an agency certified by the Ministry of Coal, the GCV shall be considered on the basis of ‘as billed’ by the supplier less Actual loss in calorific value of coal between as billed by the supplier and as received at the generating station,</p>		

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>Regulation 64 of these regulations shall be done in accordance with 'GCV as Received';</i> <i>Provided that the generating station shall have third party sampling done at the billing end and the receiving end through an agency certified by the Ministry of Coal and ensure recovery of compensation as per Fuel Supply Agreement(s) and pass on the benefits of the same to the beneficiaries of the generating station;</i> <i>Provided further that in the absence of any third party sampling through an agency certified by the Ministry of Coal, the GCV shall be considered on the basis of 'as billed' by the Supplier less:</i></p>	<p><i>of energy charges as per Regulation 64 of these regulations shall be done in accordance with 'GCV as Received'</i> <i>less Actual loss in calorific value of coal between as billed by the supplier and as received at the generating station, subject to maximum loss in calorific value of 300 kCal/kg for Pit-head based generating stations or generating stations with Integrated mine and 600 kCal/kg for Non-Pit Head based generating stations.</i> <i>Provided that the generating station shall have third party sampling done at the</i></p>	<p>subject to maximum loss in calorific value of 300 kCal/kg for Pit-head based Generating Stations or Generating Stations with Integrated mine and 600 kCal/kg for Non-Pit Head based Generating Stations.</p> <p>In the interest of energy security, consumer interest and efficiency as enshrined under Section 61 of the Electricity Act, it is suggested that Hon'ble Commission may consider capping the maximum loss in calorific value even in case of GCV on 'As Received' basis i.e., 300 kCal/kg for Pit-head based Generating Stations or Generating Stations with Integrated mine and 600 kCal/kg for Non-Pit Head based Generating Stations.</p> <p>It is submitted that: -</p> <p>(a) This capping would invariably become an operational performance parameter for Generating Companies.</p> <p>(b) Hon'ble Commission may also encourage Generators to procure their own rakes to reduce loss in calorific value of coal.</p> <p>(c) This would also reduce the risk of depleted coal stock position arising out of domestic freight issues.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>i. Actual loss in calorific value of coal between as billed by the supplier and as received at the generating station, subject to maximum loss in calorific value of 300 kCal/kg for Pit-head based generating stations or generating stations with Integrated mine and 600 kCal/kg for Non-Pit Head based generating stations. ...”</i></p>	<p><i>billing end and the receiving end through an agency certified by the Ministry of Coal and ensure recovery of compensation as per Fuel Supply Agreement(s) and pass on the benefits of the same to the beneficiaries of the generating station;</i></p> <p><i>Provided further that in the absence of any third party sampling through an agency certified by the Ministry of Coal, the GCV shall be considered on the basis of ‘as billed’ by the Supplier less:</i></p> <p><i>i. Actual loss in calorific value of coal between as billed by the supplier</i></p>	

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
		<p>and as received at the generating station, subject to maximum loss in calorific value of 300 kCal/kg for Pit-head based generating stations or generating stations with Integrated mine and 600 kCal/kg for Non-Pit-Head based generating stations.</p> <p>... ”</p>	
16	<p>“62. Computation and Payment of Capacity Charge for Thermal Generating Stations:</p> <p>(1) The fixed cost of a thermal generating station shall be computed on annual basis based on the norms specified under these regulations and recovered on a monthly basis under</p>		<p>Draft Regulation 62 provides for computation and payment of capacity charges of Thermal Generating Stations. The existing Regulation 42 Tariff Regulations, 2019 include provisions regarding High Demand and Low Demand seasons, requiring Thermal Generating Stations to be available during the High Demand season for three months to recover full capacity charges. However, these provisions have been removed from proposed Draft Regulation 62. This may provide an opportunity to</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>capacity charge. The total capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share or allocation in the capacity of the generating station. The capacity charge shall be recovered in two parts, viz., Capacity Charge for Peak Hours of the month and Capacity Charge for Off-Peak Hours of the month as follows:</i></p> <p>...</p> <p><i>(5) In addition to the AFC entitlement as computed above, the thermal generating station shall be allowed an incentive of up to 1.00% of AFC approved for a given year, which shall be billed</i></p>		<p>Thermal Generating Stations to recover full capacity charges even if they do not achieve the desired availability during the High Demand season.</p> <p>Hon’ble Commission may consider retaining the existing segregation of High and Low Demand season to ensure full availability during High Demand season.</p> <p>In the alternative, Hon’ble Commission may consider providing for any under recovery during off-peak hours to be offset by additional declaration in cumulative plant availability factors during peak hours or off peak hours achieved during a financial year (PAFY) of the plant.</p> <p>Monthly Frequency Response Performance is critical for Grid balancing and serving a larger area or consumer base. Existing practice involves compensating Generating Stations for providing support under the ancillary service mechanism through the Demand-Side Management (“DSM”) pool account. It is proposed that incentives for Generating Station under this category should also be facilitated through the DSM pool.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>monthly as per the following.</i> $\text{Incentive} = (1.00\% \times \beta \times \text{CCy})/12$ <i>Where,</i> $\beta = \text{Average Monthly Frequency Response Performance for that generating station, as certified by RPCs, which shall be computed by considering primary response as per the methodology prescribed by the NLDC and shall range between 0 to 1.}$ <i>CCy= Capacity Charges for the Year.</i></p> <p><i>6) In addition to the capacity charge, an incentive shall be payable to a generating station or unit thereof @ 75 paise/kWh for ex-bus scheduled</i></p>		<p>In addition to this, Hon’ble commission has proposed via draft Regulation 62 (6)- Its proposed that incentive energy charge for peak hours be increased from the current Rs 65 Paise/Kwh to Rs 75 Paise/kwh. The premise explained in the explanatory memorandum was that cost of power in those hours are relatively higher in short term markets. We would humbly submit that most of the power available in the short-term markets are from plants which are merchant plant ie they do not enjoy the guaranteed return on ROE as do the plants which fall under section 62. Hence we would humble request the Hon’ble commission not to change rate of incentive energy especially because in the past 3 years the PLF of thermal plants have consistently increased hence (as shown below). Hence the burden of incentive energy which is already increasing due to additional energy scheduled would increase further due to increase in proposed rates.</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale																
	<p><i>energy during Peak Hours and @ 50 paise/ kWh for ex-bus scheduled energy during Off-Peak Hours corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) achieved on a cumulative basis, as specified in Clause (B) of Regulation 70 of these regulations. ...</i></p>		<table border="1"> <thead> <tr> <th colspan="4" data-bbox="884 435 1633 521">Comparison of Actual & Normative PLF of Thermal Plants</th> </tr> <tr> <th data-bbox="884 521 1186 607">PLF</th> <th data-bbox="1186 521 1354 607">YTM Dec'23</th> <th data-bbox="1354 521 1493 607">FY 22-23</th> <th data-bbox="1493 521 1633 607">FY 21-22</th> </tr> </thead> <tbody> <tr> <td data-bbox="884 607 1186 693">Actual</td> <td data-bbox="1186 607 1354 693">68</td> <td data-bbox="1354 607 1493 693">64</td> <td data-bbox="1493 607 1633 693">58.87</td> </tr> <tr> <td data-bbox="884 693 1186 779">Normative</td> <td data-bbox="1186 693 1354 779">85</td> <td data-bbox="1354 693 1493 779">85</td> <td data-bbox="1493 693 1633 779">85</td> </tr> </tbody> </table>	Comparison of Actual & Normative PLF of Thermal Plants				PLF	YTM Dec'23	FY 22-23	FY 21-22	Actual	68	64	58.87	Normative	85	85	85
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17	<p>“64. Computation and Payment of Energy Charge for Thermal Generating Stations and Supplementary Energy Charge for Coal or Lignite based Thermal Generating Stations: ...</p>	<p>“64. Computation and Payment of Energy Charge for Thermal Generating Stations and Supplementary Energy Charge for Coal or Lignite based Thermal Generating Stations: ...</p>	<p>Draft Regulation 64(4) provides that in case of part or full use of an alternative source of fuel supply by coal based Thermal Generating Stations other than as agreed by the generating Company and beneficiaries in their PPA for the supply of contracted power on account of a shortage of fuel or optimization of economical operation through blending, the use of an alternative source of fuel supply shall be permitted to Generating Station up to a maximum of 6% blending by weight.</p>																

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	<p><i>(4) In case of part or full use of an alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power purchase agreement for the supply of contracted power on account of a shortage of fuel or optimization of economical operation through blending, the use of an alternative source of fuel supply shall be permitted to generating station up to a maximum of 6% blending by weight.”</i></p>	<p><i>(4) In case of part or full use of an alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power purchase agreement for the supply of contracted power on account of a shortage of fuel or optimization of economical operation through blending, the use of an alternative source of fuel supply shall be permitted to generating station up to a maximum of 6% blending by weight upon prior</i></p>	<p>Under the current practices observed within generating companies, the blending of imported coal frequently surpasses the 6% threshold at individual stations. Plant wise blending percentages of YTM Jan'24 has been summarized below.</p> <table border="1" data-bbox="884 672 1917 1256"> <thead> <tr> <th colspan="9">Blending Percentage of Imported Coal by Thermal Plants</th> </tr> <tr> <th>Plants</th> <th>April'23</th> <th>May'23</th> <th>June'23</th> <th>July'23</th> <th>August'23</th> <th>September'23</th> <th>October'23</th> <th>Nov</th> </tr> </thead> <tbody> <tr> <td>Dadri-II</td> <td>22</td> <td>18</td> <td>15</td> <td>7</td> <td>3</td> <td></td> <td>6</td> <td>17</td> </tr> <tr> <td>Farakka</td> <td></td> <td>7</td> <td>4</td> <td>4</td> <td>11</td> <td>13</td> <td>10</td> <td>8</td> </tr> <tr> <td>Unchahar-I</td> <td>21</td> <td>21</td> <td>23</td> <td>22</td> <td>21</td> <td>20</td> <td>16</td> <td>20</td> </tr> <tr> <td>Unchahar-III</td> <td>21</td> <td>20</td> <td>20</td> <td>20</td> <td>17</td> <td>16</td> <td>11</td> <td>18</td> </tr> </tbody> </table>	Blending Percentage of Imported Coal by Thermal Plants									Plants	April'23	May'23	June'23	July'23	August'23	September'23	October'23	Nov	Dadri-II	22	18	15	7	3		6	17	Farakka		7	4	4	11	13	10	8	Unchahar-I	21	21	23	22	21	20	16	20	Unchahar-III	21	20	20	20	17	16	11	18
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S. N o.	Draft Regulation	Proposed Change	Comments / Rationale									
		<i>approval by the beneficiary.”</i>	Kahalgaon-I					5	2	2		6
			Kahalgaon-II					5	4	4		6
			<p>This proposed change ie restriction which was earlier applicable on generator company is now being proposed to be imposed on individual plant which is a welcome come change, as the implementation of the proposed restrictions at plant level would facilitate a more equitable distribution of the financial burden associated with the blending of imported coal among all stakeholders.</p> <p><i>Mandatory consent of beneficiaries for blending of imported coal:</i>It is crucial to recognize that the cost of imported coal is inherently higher than domestic coal. As such, considering the cost implication on the beneficiaries and the end consumers, any blending of imported coal must be after prior approval from the beneficiaries.</p>									

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
			<p>Generating Stations must endeavour to avoid blending and coal requirement should be met with domestic coal.</p> <p>In addition to the above, in the past, despite adequate working capital being allowed through tariff, Central Generating Stations have failed to maintain sufficient coal stocks in violation of existing Regulation 34 of Tariff Regulations, 2019 and Guidelines of the CEA.</p> <p>As such, Hon'ble Commission may consider amending the Draft Regulation 64(4) to make prior approval of beneficiaries mandatory for blending of imported coal.</p> <p>Further, the Hon'ble commission may consider either of the following ways to introduce a eligibility criteria for generators to bill compensation charge for part load operation</p> <ul style="list-style-type: none"> • The generators eligibility to bill compensation charge for part load operation in view of the efforts it has made to achieve higher PLF ie in case the Generator reduces the ECR to avail higher PLF, only then it shall be eligible to claim compensation charges for part load operations. Hence, every Generating Company must be allowed offer lower Tariff to try to fall in the Merit Order of beneficiaries/sell in short term markets to achieve higher PLF (market share). • Second alternative would be by comparing the cumulative energy charge billed by the plant with cost of coal billed by the coal company, if the energy charge

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
			<p>falls short of the cost of coal only in those circumstances should a generator be allowed to bill compensation charge.</p> <p>Hon'ble Commission may also kindly consider incorporating provisions to the extent that: -</p> <p>(a) In case un-requisitioned surplus power is not offered by the Generating Company in power exchange, the un-requisitioned surplus power to the extent not offered in the power exchange(s) up to the declared capacity shall not be considered as available for computing the payment of fixed / capacity charges.</p> <p>(b) Further, the liability of fixed cost / capacity charges associated with the quantum of power sold on the exchange should be transferred to the new beneficiary who intends to procure this power through the exchange.</p>
18	<p>“65. Computation and Payment of Capacity Charge and Energy Charge for Hydro Generating Stations: <i>(1) The fixed cost of a hydro generating station shall be computed on an</i></p>		<p><i>Capping of capacity charge on the basis of normative parameters; Double incentive for Hydro Generating Stations beyond Design Energy:</i></p> <p>(a) Hydro Generating Stations are getting incentive for generating energy beyond Design Energy both in Fixed Charges and Variable Charges as under: -</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>annual basis, based on norms specified under these regulations, and shall be recovered on a monthly basis under capacity charge (inclusive of incentive) and energy charge, which shall be payable by the beneficiaries in proportion to their respective allocation in the saleable capacity of the generating station, i.e., in the capacity excluding the free power to the home State:</i></p> <p><i>Provided that during the period between the date of commercial operation of the first unit of the generating station and the date of commercial operation of the generating station, the annual fixed cost shall provisionally be worked</i></p>		<p>(i) Through Fixed / Capacity Charges: By charging Capacity Charges based on PAFM which is beyond NAPAF, there is no capping of Fixed Cost based on normative availability.</p> <p>(ii) Through Variable Charges / ECR: In case the Station generates power more than the Design Energy, then the power is charged @1.20Paisa/Unit.</p> <p>(b) Hence, the Capacity Charges should be capped on the basis of normative parameters as provided for by the Hon'ble Commission for Thermal Generating Stations.</p> <p>It is further suggested that Monthly Frequency Response Performance is critical for Grid balancing and serving a larger area or consumer base. Existing practice involves compensating Generating Stations for providing support under the ancillary service mechanism through the DSM pool account. It is proposed that incentives for Generating Station under this category should also be facilitated through the DSM pool.</p> <p>Hon'ble Commission may also consider the following: -</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p>out based on the latest estimate of the completion cost for the generating station, for the purpose of determining the capacity charge and energy charge payment during such period.</p> <p>...</p> <p>(4) In addition to the AFC entitlement as computed above, the hydro generating station shall be allowed an incentive of up to 4% of the Capacity Charge approved for a given year which shall be billed monthly as per the following.</p> <p>$Incentive = (4\% \times \beta \times CCy)/12$</p> <p>Where,</p> <p>$\beta =$ Average Monthly Frequency Response Performance for that generating station, as certified by RPCs, which</p>		<p>(a) Staggering of free power to be given to Home State from 2 to 12% in 10 years: This will help in reducing front loading of tariff of hydro plants.</p> <p>(b) Exemption for Pumped Storage Projects (“PSPs”) from obligation of providing free power to Home State: PSPs may be kept out of the liability of providing free power by way of a Proviso in terms of the Guidelines to promote development of PSPs issued by the Ministry of Power (“MoP”) dated 10.04.2023 which provides that “...PSPS are fundamentally energy storage projects designed to cater the need of grid stability during the peak hours. Unlike conventional hydro projects, PSPs do not produce electricity. They are net consumers of electricity. Therefore, there is no question of imposing the requirement of free power on PSPs. ...”</p> <p>(c) Penalty in case of delay in commissioning of future Hydro Power Projects where there is inordinate delay in commissioning due to various reason: Home States are being provided incentive of free power under the Draft Tariff Regulations, 2024. To make the Home State accountable for commissioning of such Plants and sharing the benefit of free power with the Home State, there should be a provision of reduction of percentage share of free power to the Home State if the commissioning of Hydro Projects is hampered or delayed due to</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p><i>shall be computed by considering primary response as per the methodology prescribed by the NLDC and shall range between 0 to 1.</i></p> <p><i>CCy= Capacity Charges for the Year. ...”</i></p>		<p>reason which are within the control of the respective State Governments. This would be in the interest of the consumers who are burdened by <i>inter alia</i> increased IDC due to delay in commissioning of Hydro Project for reasons attributable to the State Government.</p>
19	<p><i>“70. The norms of operation as given hereunder shall apply to thermal generating stations:</i></p> <p><i>(A) Normative Annual Plant Availability Factor (NAPAF)</i></p> <p><i>(a) 85% for all thermal generating stations, except those covered under clauses (c), (c), (d) & (d)</i></p> <p><i>(b) 80% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024</i></p>	<p><i>“70. The norms of operation as given hereunder shall apply to thermal generating stations:</i></p> <p><i>(A) Normative Annual Plant Availability Factor (NAPAF)</i></p> <p><i>(a) 85% for all thermal generating stations, except those covered under clauses (c), (c), (d) & (d)</i></p> <p><i>(b) 80% for coal and lignite based generating stations completing 30 years</i></p>	<p>Draft Regulation 70 provides for NAPAF and NAPLF of 80% for coal and lignite based Generating Stations completing 30 years from COD as on 31.03.2024.</p> <p>It is submitted that rationale behind extending the useful life of older Stations is rooted in the assumption that these plants have been well-maintained by the Generating Company and are functioning efficiently. The proposed reduction to 80% in NAPAF and NAPLF is contradictory to this perspective and may impact the economic viability of these Stations.</p> <p>In addition to the above, Generating Stations are allowed benefit of Special Allowance after completion of Useful Life to be used for maintenance and upkeep of the Stations to maintain efficient performance. As such, there is no requirement for reducing the applicable efficiency norms of such Stations. Reduction in NAPAF and NAPLF would</p>

S. N o.	Draft Regulation	Proposed Change	Comments / Rationale
	<p>... (B) Normative Annual Plant Load Factor (NAPLF) for Incentive: (a) 85% for all thermal generating stations, except for those covered under clause (b) below (b) 80% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024. ... (E) Auxiliary Energy Consumption: ... (b) For other Coal-based generating stations: (ii) Chandrapur TPS (2x250 MW) (DVC) – 9.50% ... ”</p>	<p>from COD as on 31.03.2024 ... (B) Normative Annual Plant Load Factor (NAPLF) for Incentive: (a) 85% for all thermal generating stations, except for those covered under clause (b) below (b) 80% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024. ... ”</p>	<p>be against the objective of allowing Special Allowance to the Generating Stations to maintain efficiency and performance.</p> <p>This will also lead to an additional burden on consumers due to an increase in power purchase costs. It is crucial to strike a balance that safeguards consumer interests while ensuring the continued operation of these older Generating Stations as mandated by Section 61 of Electricity Act.</p> <p>As regards, Draft Regulation 70(E)(b), Hon’ble Commission may kindly clarify as to which Unit of Chandrapur TPS of DVC is being referred therein.</p>

Annexure – A: Comments / Suggestions on Draft Regulation 17

1. **Draft Regulation 17** provides that in respect of a Thermal Generating Station that has completed 25 years of operation from COD, the Generating Company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.
2. Hon’ble Commission in the Draft Tariff Regulations, 2024 has omitted the existing Regulation 17(2) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (“**Tariff Regulations, 2019**”) which provides as under: -

“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation: (1) In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.

(2) The beneficiary shall have the first right of refusal and upon its refusal to enter into an arrangement as above, the generating company shall be free to sell the electricity generated from such station in a manner as it deems fit.”
3. As per existing Regulation 17(1), post completion of 25 years from COD, the Generating Stations and beneficiaries have the option to enter into a mutual agreement to recover capacity charges *inter alia* based on scheduled generation. Further, existing Regulation 17(2), gives the beneficiaries the first right of refusal to enter into an arrangement, as has been recognised by this Hon’ble Commission by its Order dated 01.07.2021 in Petition No. 60/MP/2020 and 65/MP/2020 as well as Hon’ble AAPTEL in **BRPL v. CERC & Ors. 2022 SCC OnLine APTEL 18**.
4. It is noteworthy that the proposal to omit existing Regulation 17(2) is prompted by the ‘**Scheme for Pooling of Tariff of those PPAs have expired**’ issued on 20.04.2023 (“**Pooling Scheme**”) issued by the MoP which specifically mandates that the Scheme shall take effect upon existing Regulation 17 being amended or revoked or withdrawn. This is against the objectives of the Electricity Act to *inter alia* distance the Government from regulatory functions of this Hon’ble Commission as held by the Hon’ble Supreme Court in catena of Judgments including **PTC India Ltd. v. CERC & Ors., (2010) 4 SCC 603**.

Re. Intent and purpose of existing Regulation 17 of the Tariff Regulations, 2019

5. Existing Regulation 17 was introduced for the first time under the Tariff Regulations, 2019 as a special provision permitting beneficiaries to seek an arrangement from Generating Stations that have completed 25 years from their COD.
6. Completion of useful life i.e., 25 years is a material change in the circumstances of a Generating Station. The Station has completed its useful life and recovered its costs by way of depreciation. Thereafter, more capital investment is required in the Station by way of Special Allowance or Renovation and Modernisation. Beneficiaries would have to incur additional costs for the said Station. In this regard, it is noteworthy that: -
 - (a) COD of a Generating Station has specific significance in tariff fixation as the capitalization of the assets and its usage has been accounted from this date. Developer has a specific significance of this milestone of COD as the project starts generating the revenue stream from this point for the purposes of tariff. The useful life of an asset is the period over which an asset is expected to be available for use by an entity as per the scheduled generation from the asset by the entity. Useful Life for thermal coal based generating stations has been specified in the respective Tariff Regulations as 25 years.
 - (b) Depreciation is a major component of the annual fixed cost. Para 5.8.2 of the National Electricity Policy, 2006 provides that “*depreciation reserve is created so as to fully meet the debt service obligation.*” Depreciation depends on three factors viz., rate base (gross fixed assets on which the rate of depreciation applied), which includes subsequent additions, method of depreciation and useful life.
 - (c) Depreciation is allowed to a maximum of 90% of the capital cost and the remaining 10% is considered as the salvage value. Therefore, once the station is fully depreciated i.e., it has recovered all the depreciation over its useful life, the capital cost of the station is fully recovered and what remains is the scrap value of the asset. Thus, once the capital cost has been recovered through depreciation and the original useful life is completed, the beneficiaries have fully serviced the capital cost of the Station.
7. Existing Regulation 17(1) enables parties to a PPA to either discuss and arrive at a mutual arrangement on completion of the 25-year term or exit the PPA. The right of refusal under existing Regulation 17(2) has been provided for the beneficiary and its end consumers who have already

paid towards the capital cost of the old generating stations including depreciation, servicing of debt and equity throughout its useful life. The arrangement can only be based on a mutual agreement and cannot be forced upon any party more particularly a beneficiary.

8. Section 61(c) to (e) of the Electricity Act provides for **protection of consumer interests, efficient and economical use of its resources, reward efficiency in performance and generation of electricity from renewable sources of energy**. Intent and purpose of the Electricity Act is to liberalize the electricity sector and to ensure that the distribution and supply of electricity is conducted on commercial principles. The legislature intended to promote factors to encourage efficiency, competition, economical use of resources, optimum investments, principles rewarding efficiency and safeguarding the interest of the consumers vis-à-vis recovery of cost of electricity in a reasonable manner as envisaged under Section 61.

9. Existing Regulation 17 furthers the aim and objectives of the Electricity Act to *inter alia* reduce undue burden of increased tariff of old, inefficient thermal generating stations upon the consumers. Existing Regulation 17 is not a mechanism to perpetuate costly and inefficient power purchase agreements with generating stations which are environmentally not benign. **This is perfectly aligned with the mandate of the Electricity Act** as it: -

- (a) **Promotes and rewards efficiency:** Being old and obsolete these plants are less efficient and require more coal to produce the same amount of station heat rate and power than new stations. Due to their high coal usage, these plants are environmentally hazardous. Ministry of Environment, Forest, and Climate Change by its Notifications has mandated installation of Emission Control System in these stations. Incurring additional expenditure on these stations will not be prudent and will lead to further increase in the tariff of these stations. Stations with new technologies are available as an alternative source of power.
- (b) **Safeguards consumer interest:** Power purchase cost from plants is a pass through in Tariff and is charged to the consumers. In spite of the fact that these stations have recovered their capital cost, tariff of these stations is comparatively higher than the market sources as well as Renewable Energy (“**RE**”). Existing Regulation 17(2) safeguards the consumers’ interests since once a Station completes 25 year from

COD, consumers cannot be compelled to pay higher tariff and bear the burden of running an old and financially unviable generating plant especially if the market offers more efficient, environmentally benign, competitive, and economical power, and

- (c) **Encourages generation of electricity from renewable sources:** Replacing power from the old and inefficient stations with Renewable Energy sources will encourage generation from renewable sources and also lead to substantial savings in the consumers' tariff.

10. Intent of existing Regulation 17 to replace old, inefficient, and polluting coal-based Thermal Power Stations is also aligned with the directions of the Hon'ble Supreme Court in W.P. (C) No. 1135 of 2020 titled as '*Aditya Dubey & Anr. v. Union of India & Ors.*', a Public Interest Litigation ("**PIL**") filed in the Hon'ble Supreme Court raising grave concerns qua quality of air in the NCT of Delhi due to several factors, including practice of stubble burning in the neighbouring States of Punjab, Haryana, and Western Uttar Pradesh as also running of power plants on coal around the NCT of Delhi. Notably: -

- (a) In furtherance of directions of the Hon'ble Supreme Court in the said PIL, on 12.08.2021, the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 ("**Air Quality Act, 2021**") was notified by the Central Government to provide better coordination, research, identification and resolution of problems surrounding the air quality index and for matters connected therewith or incidental thereto.
- (b) On 15.11.2021, Hon'ble Supreme Court by its Order in W.P. (C) No. 1135 of 2020 directed the Central Government to call for an emergency meeting with all stakeholders and examine what orders can be passed or steps they can take in order to control air pollution in Delhi, as under: -

*"...Taking into consideration the submissions advanced by the learned Solicitor General appearing for the Union of India and learned Senior counsels appearing for the States, we find that the major contributors of air pollution in National Capital Region are (i) construction activities, (ii) running of non-essential industries, (iii) transport and (iv) **running of power plants on coal etc.***

We find that some initiatives have been taken by the Commission for Air Quality Management in National Capital Region and Adjoining Areas as also by the Government of National Capital Territory of Delhi in compliance with the directions passed by this Court. We appreciate the steps taken by them.

However, after going through the actual exercise undertaken at the ground level, we find that the Authorities have not yet indicated the broader steps that they are going to take to control the factors which are responsible for poor air quality.

In view of the above, we direct the Union of India to call for an emergency meeting tomorrow with all the stakeholders and discuss the areas which we have indicated above and to state what further orders they can pass or steps they can take to effectively control air pollution and to ensure implementation. [Emphasis Supplied]

- (c) Thereafter, on 16.11.2021 and 30.11.2021, Orders were passed by the Commission for Air Quality Management imposing restrictions on operations of the thermal power plants within 300 kms of Delhi.
- (d) On 24.11.2021, Hon'ble Supreme Court by its Order in W.P. (C) No. 1135 of 2020 directed that “...instead of waiting for the air quality to deteriorate before initiating action under the graded response plan, necessary measures must be put into place in anticipation of a deterioration of air quality. ...”

11. As such, the proposal to omit existing Regulation 17(2), which aims to promote the generation of electricity from renewable sources by replacing power from the old and inefficient stations, is counter-productive to consumer interest as well as the steps taken by the Hon'ble Supreme Court and the Central Government to curb the deterioration of air quality in the NCT of Delhi. It is settled law that the interest of the consumers is equally important as that of the generating companies. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***A.P. Electricity Regulatory Commission v. R.V.K. Energy (P) Ltd., (2008) 17 SCC 769 [Para. 90 to 92]***.

12. Omission of existing Regulation 17(2) from Draft Tariff Regulations, 2024 would be against the objects and purpose of the Electricity Act since it would encourage continued operation of Stations that are old and obsolete, environmentally hazardous, have completed 25 years from COD and have fully recovered their capital cost. In case plants such Stations are allowed to continue without any option to exit and Discoms are forced to schedule power from these stations, it will come at the cost of consumers (health, environmental and monetary). It will discourage investment in the sector and also development of RE power.

13. The intent and scheme of existing Regulation 17(2) is evidenced from: -

- (a) National Electricity Plan issued in January 2018 by the Central Electricity Authority under Section 3(4) of the Electricity Act and in accordance with the National Electricity Policy proposing for retirement of various generating stations during period 2022-27.
- (b) Consultation Paper on the Tariff Regulations, 2019 issued by this Hon'ble Commission in 2018 wherein options in respect of Thermal Generating Stations which have completed 25 years was discussed and it was noted that there was a need for a clear policy in view of a number of thermal stations crossing the age of 25 years.
- (c) Draft Tariff Regulations for Control Period 2019-24 issued on 14.12.2018 with proposed Regulation 28 (which came to be renumbered as existing Regulation 17) providing a mechanism to either extend or discontinue the agreement to schedule power from 25-year-old thermal power stations. This came in view of developments in the Sector related to promotion of renewable energy and schemes to curb air pollution as also increased awareness / concerns regarding phasing out of the old / inefficient thermal power plants.
- (d) Explanatory Memorandum on the Draft Tariff Regulations, 2019 issued in December 2018 by this Hon'ble Commission stating as under:

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“3.5.8 Besides Special Allowance, the Commission has also proposed an alternate provision for thermal generating station which have completed 25 years of operation. This provision will be available to those thermal generating stations, which have neither undertaken R&M nor availed Special Allowance. Under this special provision, the generating company and the beneficiary may agree to enter into an arrangement, wherein the total cost (fixed and variable) of the generating station, as determined under these regulations, shall be recovered on scheduled generation basis. Further, under this provision, the beneficiary shall have first right of refusal and in the event of such refusal, the generating company shall be free to sell the electricity generated from such station in a manner it deems fit.” [Emphasis Supplied]

- (e) Statement of Objects and Reasons for the Tariff Regulations, 2019 issued on 22.03.2019 wherein it was noted that *“The objective of the Regulation was to introduce an enabling provision, where the recovery of both capacity charges and energy charges shall be linked to scheduled generation. Further, this provision is only optional, which may be exercised after completion of useful life of a thermal generating station, if both the beneficiary and the generating company agree.”*

14. In addition to the above, it is submitted that: -
- (a) By the existing Regulation 17, this Hon'ble Commission is not providing an inequitable right to Discoms and is merely providing a special tariff regime for stations that have completed 25 years from the COD (as also the Useful Life under the Tariff Regulations). Throughout the useful life of the plant, the beneficiary and its end consumers pay the capital cost of the generating stations including depreciation, servicing of debt and equity.
 - (b) On completion of 25 years, both parties have the right to mutually discuss and arrive at a mutual arrangement. Arrangement can only be based on a mutual agreement and cannot be forced upon any party more particularly a beneficiary. If the arrangement is not agreeable by either of the parties: -
 - (i) Beneficiary has the right of refusal under existing Regulation 17(2); and
 - (ii) Generator is free to sell power in any mode.
 - (c) As such, refusal on the part of the beneficiary does not restrict the right of Generator to trade power by selling the power to other buyers either through PPA or through power exchanges. Further, this Hon'ble Commission specified existing Regulation 17 under the Tariff Regulations, 2019 after considering comments / suggestions from all concerned stakeholders.
15. It is pertinent to note that BSES Discoms have inherited legacy PPAs from Delhi Transco Ltd. ("**DTL**") after unbundling of Delhi Vidyut Board. Discoms have little or no negotiation powers to determine the terms and conditions of the PPAs with the Central Generating Stations on account of their dominant position and high dependency of Discoms on them. Therefore, the Discoms ought to be given the right to seek an arrangement and in case no arrangement is agreed on, then the right of first refusal. This reduces the tariff for the consumers and also promotes efficiency. Discoms are best placed to analyse their requirements and try and reduce the consumer tariff by reducing their power purchase costs. Power Purchase Cost is a major portion of the Annual Revenue Requirement of a Discoms, and it is the Discoms right to endeavour to reduce the same in consumer interest.

16. In view of the above, it is requested that the existing Regulation 17(2) may not be omitted by the Hon'ble Commission from Tariff Regulations, 2024.

17. Without prejudice to the above, it is submitted that in the Explanatory Memorandum issued along with the Draft Tariff Regulations, 2024 Hon'ble Commission has not provided any explanation for omitting existing Regulation 17(2). This is also in violation of Section 79(3) of the Electricity Act requiring this Hon'ble Commission to act in a transparent manner.

Date, 15st Feb, 2024

Key Points of BRPL's Suggestions on Draft Tariff Regulation FY 2024-29

Interest on Working Capital

Draft Regulation 34 (a) (i) envisages that the working capital shall cover cost of coal for 10 days for pit-head generating stations and 20 days for non-pit head generating station.

Coal Stock Position	Actual Coal Stock Position of Plants (No of Day)					
	DADRI (NCTPP)	UNCHAHAR TPS	KAHALGAON TPS	FARAKKA STPS	CHANDRAPURA TPS DVC	MEJIA TPS DVC
YTM Jan'24	10	12	9	9	14	6

Draft Regulation 34 (a) (vi) envisages that the working capital shall cover the receivables equivalent to 45 days of Capacity and Energy Charge calculated on the normative plant availability.

Comparison of Actual & Normative PLF of Thermal Plants			
PLF	YTM Dec'23	FY 22-23	FY 21-22
Actual	68	64	58.87
Normative	85	85	85

Recommendation - Hon'ble Commission may also provide for true up interest on working capital based on actual Coal Stock maintained by the Generating Station and Receivables based on actual billing. Any benefit accruing therefrom may be passed on by the Generating Company to beneficiaries, which would invariably be passed on to the consumers. The objective is to rationalize the tariff in the end consumers' interest.

Energy Charge for Coal based Thermal Stations

Draft Regulation 64 (4) Its envisaged that the use of an alternative source of fuel supply shall be permitted up to a maximum of 6% blending by weight for a generating station.

Blending Percentage of Imported Coal by Thermal Plants									
Plants	April'23	May'23	June'23	July'23	August'23	September'23	October'23	November'23	December'23
Dadri-II	22	18	15	7	3		6	17	16
Farakka		7	4	4	11	13	10	8	15
Unchahar-I	21	21	23	22	21	20	16	20	14
Unchahar-III	21	20	20	20	17	16	11	18	14
Kahalgaon-I						5	2	2	6
Kahalgaon-II						5	4	4	6

Under the current practices observed within generating companies, the blending of imported coal frequently surpasses the 6% threshold at individual stations. Therefore, implementing restrictions would facilitate a more equitable distribution of the financial burden associated with the blending of imported coal among all stakeholders.

Gross Calorific Value of Primary Fuel

Draft Regulation 60 - It's envisaged that regarding Gross Calorific Value of Primary Fuel, incase of absence of third party sampling report the actual loss of GCV shall be restricted to 300 Kcal/Kg for pit head stations & 600 Kcal/Kg for non-pit head stations.

Recommendation- In the consumer interest it is suggested that Hon'ble Commission may consider capping the maximum loss in calorific value even in case of GCV on 'As Received' basis i.e., 300 kCal/kg or Pit-head based Generating Stations or Generating Stations with Integrated mine and 600 kCal/kg for Non-Pit Head based Generating Stations. It is submitted that: -

- This capping would invariably become an operational performance parameter for Generating Companies.
- Hon'ble Commission may also encourage Generators to procure their own rakes to reduce loss in calorific value of coal.
- This would also reduce the risk of depleted coal stock position arising out of domestic freight issues.

Capacity Charge Computation

- Existing Regulation 42 Tariff Regulations, 2019 include provisions regarding High Demand and Low Demand seasons, requiring Thermal Generating Stations to be available during the High Demand season for three months to recover full capacity charges.
- Draft Regulation 62 -These provisions have been removed from proposed Draft. This may provide an opportunity to Thermal Generating Stations to recover full capacity charges even if they do not achieve the desired availability during the High Demand season/summer months
- Recommendation- Hon'ble Commission may consider retaining the existing provisions of High and Low Demand season to encourage generator to maintain full availability during High Demand season ie summer months

Incentives for Thermal Generating Stations

- Existing Regulation 42 (6)- Incentive energy charge for peak hours shall be charged at Rs 65 Paise/Kwh
- Proposed in Draft Regulation:
 - Draft Regulation 62 (5)- Its envisaged that a generator shall be entitled to an incentive up to 1% of its approved AFC for a given year for Frequency Response Performance
 - Draft Regulation 62 (6)- Its proposed that incentive energy charge for peak hours be increased from the current Rs 65 Paise/Kwh to Rs 75 Paise/kwh
- Recommendation:
 - Monthly Frequency Response Performance is critical for Grid balancing, however the as per the existing practice Generating Stations are compensated for providing support under the ancillary service mechanism through the (“DSM”) pool account. It is proposed that incentives for Generating Station under this category should also be facilitated through the DSM pool.
 - We would urge the Hon’ble Commission to retain the existing incentive energy charge rate for peak hrs at Rs 65 Paise/Kwh

Special Allowance

- Existing Regulation 28 (2)- Special allowance admissible to generating stations shall be Rs 9.5 Lakh/MW
- Proposed in Draft Regulation:
 - Under Draft Regulation 28(2), Special Allowance has been increased from Rs. 9.50 lakh per MW per year under the existing Regulation 28 of Tariff Regulations, 2019 to 10.75 lakh per MW per year.
 - This translates into an increase of 13% which is considerably higher than that of O&M Expenses proposed by the Hon'ble Commission ie 5.89%.

Recommendation:

- Hon'ble Commission may consider retaining the exiting rate of Special Allowance @ Rs. 9.50 lakh per MW per year which would help in optimizing the tariff for end consumers.
- As an alternative approach, given that Special Allowance functions akin to O&M Expenses and serves similar purposes, we suggest that the Hon'ble Commission contemplate limiting the rise in Special Allowance to 5.89%.

Renovation and Modernization (“R&M”)

- Existing Regulation 27 (1) (Second Proviso)- Generating companies were required obtain beneficiary consent.
- Draft Regulation:
 - Draft Regulation 27 (1) (Second Proviso)- Generating companies were required seek beneficiary consent.
 - Draft Regulation 27(2) Generating company shall file for approval along with response from the beneficiaries for R&M, with ultimate approval resting with the Hon’ble Commission.

Recommendation-

- Draft Regulation 27(1) and (2) may be suitably amended to allow Generating Companies to file an application for approval of R&M by the Hon’ble Commission only after receiving the consent from the beneficiaries.
- A time limit may be provided for beneficiaries to provide their consent to ensure that there is no delay by beneficiaries.
- In case the proposal of the Generating Company is not acceptable to the beneficiaries, no application may be filed before the Hon’ble Commission.

No more condonation of delay in financial closure and fresh consent of beneficiaries should be mandatory

- Existing regulation ie Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (*“Tariff Regulations, 2019”*) states that Stations that had executed PPAs on or before 05.01.2011 & have not achieved financial closure by 31.03.2019 required fresh consent of the beneficiaries for determination of tariff
- Proviso to Draft Regulation 2(1) provides for fresh consent of the beneficiaries to be obtained by a Generating Company for determination of tariff of Stations for which Power Purchase Agreement(s) (*“PPA”*) for supply of electricity have been executed on or before 05.01.2011 and financial closure have not been achieved by 31.03.2024.
- Any further relaxation in this provision would be against consumer interest. As on date, financial closure for such projects has been delayed for over 13 years (from 05.01.2011). Such delays adversely affects beneficiaries :
 - Time & cost overrun- Because of higher capital cost which was never envisaged or agreed to while signing the PPA in 2011.
 - Alternate arrangements- Beneficiaries would have invariably pursued alternate arrangements
- Recommendation- Fresh consent of the beneficiaries must be mandated where the financial closure has not been achieved by 31.03.2019.

THANK YOU

Participation of Consumers in Tariff Determination Process

Concerns

Limited involvement of end consumers in tariff determination process, leading to the following concern

- Tariff hikes on account of increase in Generation/Transmission costs are not well received by end consumers
- Leading to non-reflective tariffs, invariably affective the entire value chain of power sector

Recommendations

- Existing provision like section 94(3) of Electricity Act 2003, need to be strengthened to ensure participation of consumers
- Empanelment of consumer bodies from each state to represent their interest.