

S.No.	Clause	Draft Regulations	Comments/Suggestions	Rationale
1	3(32)	<p>'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 transmission licensee taken reasonable care or complied with prudent utility practices:</p> <p>(a) 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</p> <p>(b) Any act of war, invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or</p> <p>(c) Industry wide strikes and labour disturbances having a nationwide impact in India; or</p> <p>(d) Delay in obtaining statutory</p>	<p>New sub-clauses may be added:</p> <p><b>(e) accident or breakage of transmission facilities to deliver power from the delivery points to the receiving sub-stations</b></p> <p><b>(f) radioactive contamination or ionising radiation originating from a source within or outside India.</b></p>	

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		approval for the project except where the delay is attributable to the project developer;		
2	3(41)	'Indian Governmental Instrumentality' means the Government of India, Governments of State (where the project is located) and any ministry or department or board or agency controlled by the Government of India or the Government of State where the project is located, or quasi-judicial authority constituted under the relevant statutes in India;	'Indian Governmental Instrumentality' means the Government of India, Governments of State (where the project is located <b>and/or affected</b> ) and any ministry or department or board or agency controlled by the Government of India or the Government of State where the project is located, or quasi-judicial authority constituted under the relevant statutes in India; <b>and all Statutory agencies/bodies and Agencies under direct or indirect control of the State or Central Govt.</b>	The definition may be amended by including <i>the Statutory agencies/bodies and Agencies under indirect control of the State or Central Govt.</i>
3	3(47)	'Investment Approval' means approval by the Board of the generating company or the transmission licensee or Cabinet Committee on Economic Affairs (CCEA) or any other competent authority conveying administrative sanction for the project, including funding of the project and the timeline for the implementation of the project: Provided that the date of Investment Approval shall be reckoned from the date of the resolution of the Board of the generating company or the transmission licensee where the Board is competent to accord such approval	'Investment Approval' means approval by the Board of the generating company or the transmission licensee or Cabinet Committee on Economic Affairs (CCEA) <b>or date of Financial Closure</b> or any other competent authority conveying administrative sanction for the project, including funding of the project and the timeline for the implementation of the project: Provided that the date of Investment Approval shall be reckoned from the date of the resolution of the Board of the generating company or the transmission licensee where the Board is competent to	It would be prudent if any appraisal of delay is COD is considered based on Financial Closure, because NTP (notice to proceed) is issued only after FC (Financial Closure).

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		<p>and from the date of sanction letter of competent authority in other cases;            Provided further that in respect of the integrated mine(s), funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval;            Provided further that where investment approval includes both the generating station and the integrated mine(s), the funding and timeline for implementation of the integrated mine(s) shall be worked out and indicated separately and distinctly in the Investment Approval.</p>	<p>accord such approval and from the date of sanction letter of competent authority in other cases;            Provided further that in respect of the integrated mine(s), funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval;            Provided further that where investment approval includes both the generating station and the integrated mine(s), the funding and timeline for implementation of the integrated mine(s) shall be worked out and indicated separately and distinctly in the Investment Approval.</p>	
4	3(56)	<p>'Operation and Maintenance Expenses' or 'O&amp;M expenses' means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, maintenance, repairs and maintenance spares, other spares of capital nature valuing less than Rs. 20 lakhs, additional capital expenditure of an individual asset costing up to Rs. 20 lakhs, consumables, insurance and overheads and fuel other than used for generation of electricity:            Provided that for integrated mine(s), the Operation &amp; Maintenance Expenses shall not include the mining charge paid</p>	<p>'Operation and Maintenance Expenses' or 'O&amp;M expenses' means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, maintenance, repairs and maintenance spares, other spares of capital nature valuing less than Rs. 20 lakhs, additional capital expenditure of an individual asset costing up to Rs. 20 lakhs, consumables, insurance and overheads and fuel other than used for generation of electricity <b>and Security charges:</b>            Provided that for integrated mine(s), the Operation &amp; Maintenance Expenses shall not include the mining charge paid to the</p>	<p>Security Charges may be allowed as a part of O&amp;M expenses.</p>

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		to the Mine Developer and Operator, if any, engaged by the generating company and the mine closure expenses.	Mine Developer and Operator, if any, engaged by the generating company and the mine closure expenses.	
5	3(57)	'Original Project Cost' means the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date, and as admitted by the Commission;	'Original Project Cost' means the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date, and as admitted by the Commission; <b><u>in case of expenditure beyond Original Scope of work, genuine expenditure may be allowed by Commission on case to case basis.</u></b>	There can be certain capital expenditure items that were not in "Original Scope of Work" but became necessary during the course of commissioning.
6	9(3)	<b>Application for determination of tariff:</b>  (3) In case an emission control system is required to be installed in the existing generating station or unit thereof to meet the revised emission standards, an application shall be made for the determination of supplementary tariff (capacity charges or energy charge or both) based on the actual capital expenditure duly certified by the Auditor.	<b>Application for determination of tariff:</b>  (3) In case an emission control system is required to be installed in the existing generating station or unit thereof to meet the revised emission standards, an application shall be made for the determination of supplementary tariff (capacity charges or energy charge or both) based on the <b><u>projected or</u></b> actual capital expenditure duly certified by the Auditor.	Capital expenditure can be certified by Auditor only after COD of such emission system. For reducing the time in tariff approval process, CERC may consider allowing provisional supplementary tariff based on cost estimates. The same may be allowed after due prudence check by CERC during the truing-up process.  This will reduce the cash flow mismatch for generators. This is in line with the practice of CERC in issuing provisional tariff for generation tariff.

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7	17	<p><b>Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation:</b></p> <p>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.</p>	<p>Recourse in the event of non agreement between the developer and beneficiary may also be specified. It is also suggested that this exercise may be completed prior to the completion of 25 years of the thermal generating station so as to have seamless transition.</p>	
8	19(3)	<p>(3) The Capital cost of an existing project shall include the following:</p> <p>....</p> <p>....</p> <p>....</p>	<p>(3) The Capital cost of an existing project shall include the following:</p> <p>....</p> <p>....</p> <p>....</p> <p><b>(i) <u>Expenditure on account of change in law and force majeure events.</u></b></p>	<p>Existing generating stations should be allowed capital cost for any change in law or force majeure, incurred during construction/operation as the case may be.</p>
9	19(5)	<p>For Projects acquired through NCLT proceedings, the following shall be considered while approving Capital Cost for determination of tariff:</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>It is evident that the projects which have been acquired post NCLT Proceedings were in financially stressed condition. The acquiring cost for a stressed project depends upon many factors such as location of the project, operational conditions of the plant, proximity to fuel source etc. Further, any capital</p>	

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			investment may or may not be required in the acquired plant depending on the operational conditions of the plant. Any investor which has invested in the stressed asset will be looking to recover the capital investment and should be ensured proper returns on its investment. Restricting the capital cost to the acquisition value will discourage the investors on investing in stressed assets and hence the acquisition value should not be considered.	
10	19(6)(e)	(6) The following shall be excluded from the capital cost of the existing and new projects: .... .... (e) Proportionate cost of land of the existing project which is being used for generating power from generating station based on renewable energy:	(6) The following shall be excluded from the capital cost of the existing and new projects: .... .... <del>(e) Proportionate cost of land of the existing project which is being used for generating power from generating station based on renewable energy:</del>	It would be a double hit for the project company as the benefit of lower cost shall be reflected in tariff of renewable energy generator and power sold.