
Submission of comments 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

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Subject : Submission of comments 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

To : Harpreet Singh Pruthi <secy@cercind.gov.in>, Puneet Arora <tariff-reg@cercind.gov.in>

Sir / Madam,

In reference to subject public notice dated 04.01.2024 and inviting public comments thereof, please find the comments of undersigned as follows :

1. The draft regulation 2 provides for closure of financial by 31.03.2024, however, interms of Tariff Policy, all beneficiaries shall procure power through competitive bidding on or after 05.01.2011. However, in contrast to this, inspite of enormous time has been passed, the date for financial closure is extended from one tariff period to other tariff period. Further, if the company cannot achieve financial closure even after 13 years from its proposal to invest and signing of PPA, there is no scope that the project get realized. Accordingly, date for Financial Closure shall be not be extended and retained as 31.03.2024 and mandate fresh consent from beneficiaries for achieving financial closure after 31.03.2019.

2. The draft regulation 3 (5) provides for ATQ as 85 % mining plan. In this regard, it is to mention that mining plan is being prepared after detailed studies and considering the all aspects, including the feasibility, risk, quantity of coal / lignite required for linked generating plant etc, certain margins are provided and the targets are realistic. Further, it is noted that the actual coal production of some mines in few years is around 1.4 times of ATQ. In case of any deficit in production in any year, on case to case basis, the same can be considered but reduction in ATQ w.r.t. mine plan for recovery of fixed charges is unwarranted and unnecessarily burden the public. Thus, the ATQ as provided in mine plan shall be retained and no deviation may be made.

3. The draft Regulation 3 (12) provides for capital spares individually costing above Rs. 20 lakh, however, as the items are procured from different vendors but not from single window, the cost of an item may vary from time to time and place to place. Thus, the same item may become capital spare for one utility, while for others it is not. Accordingly, instead of monetary limit, list of items to be considered under such category shall be provided and the O & M norms shall be revised. In addition, definitions for initial spares, mandate spares and maintenance spares shall be provided and also ensure that there shall not be any overlapping of the assets.

4. The regulation 3 (19) provides for Date of Operation for emission control system. As the ECS is to meet the emission norm and capital cost associated with these are huge, a clearance from concerned Pollution Control Board that the system is meeting the

standards and a prior notice shall be given to beneficiaries and the operation of ECS shall be performed in presence of beneficiaries. Further, in order to ensure the correct and same information submitted all concerned, CERC, MoEFCC, CPCB / SPCB, beneficiaries etc, the real time data may be made available to all concerned entities. In addition, necessary measures also shall be taken to ensure that the real time data is actual value of the live samples and not edited / modified by the entity.

5. The regulation 3 (20) provides for 'Date of Commencement of Production' for integrated mine. In this regard, it is to mention that unlike generation, mining is licenced activity and having commercial repercussions on DISCOMs and public thereof, a certificate from CCO may be mandated to that effect and beneficiaries may be intimated well in time and give an opportunity to witness the same with and avoid unwarranted disputes.

6. The Regulation 3 (32) provides for Force majeure, wherein, for the first time, operation of the project has been proposed to consider under Force Majeure. The power supply is essential service, the operation of the plant cannot be considered under Force majeure. It may also be noted that during the unprecedented situation of COVID 19 also, special provisions were made and sector was exempted from restrictions. Thus, the proposal is irrational and shall be dropped.

7. The Regulation 3 (53) defines, 'Mining Plan', wherein it was mentioned that plan prepared. However, mining plan is being approved by Ministry of Coal but not just prepared by utility, the word 'plan prepared' shall be replaced with 'plan approved by Ministry of Coal'.

8. Regulation 55 provides for 'Non Pit – Head Generating Station', wherein, other than pit head considered as non – pit plant. In this regard, it is to mention that some plants might use dedicated transportation system as well as public transportation system. In addition, some plants may operationalize the part of dedicated transportation system during initial operation of the plant and may avail coal fully through this dedicated system subsequently. Thus, there may be certain circumstances, wherein, plants operate in hybrid mode. Further, the Commission also acknowledged the multi mode transportation and also the definition is not in terms of CEA regulations. Thus, the definition shall be modified.

9. The Regulation 3 (74) mention that 'Schedule Drawl'. In this regard, it is to mention that as the ancillary services is for system requirement, unless and until beneficiary agrees, the ancillary services availed from generating stations cannot be levied on beneficiaries. In case ancillary services availed from generator and assigned to beneficiaries, it amounts to forced scheduling and would lead to disputes. Accordingly, definition may be modified.

10. The Regulation 3 (88) is regarding the useful life and operational life. In this regard, it is to mention that while the operational life is 35 years, how the useful can be lower than it i.e. 25 years. Further, there are many plants completed 35 years of operation and still serving / producing power and Commission allowing special allowance. Thus, the definitions need to be modified and treatment of plant after useful / operation life and applicability of special allowance, depreciation, RoE etc, shall be clearly mentioned.

11. The proviso 'ii' of regulation 8 (2) of 2019, Tariff Regulations was deleted. In this regard it is to mention that the proviso was for filing consolidated petition instead of individual petitions for each element / unit. The same is not only cumbersome but also led to lack of clarity and inconsistency in information furnished by parties and may facilitate to pass on unwarranted burden / losses on to consumers. Accordingly, the same may be restored.

12. The regulation 8 (4) and 14 (2) provides for determination of supplementary tariff (capacity charges and energy charges) for ECS system. In this regard, it is to mention that the capital cost for ECS is huge, the recovery of charges shall be determined purely on the basis of availability and operation of ECS but not on the basis of DC of the plant.

13. The 4th proviso to Regulation 9 (1) is proposed to provide interim tariff on first hearing. In this regard, it is to mention that the first hearing is always on admission and serving the notice but not to grant any relief. As the same is against natural justice of beneficiaries and consumer thereof, the beneficiaries may provide atleast one month time. Further the regulation 10 (3) proposes for upto 90 % of tariff claimed. In order to maximize the money, certain utilities may inflate the numbers and recover the excess money. This may invite unwarranted disputes and burden the consumer. Accordingly, these provisions shall be modified to facilitate one opportunity to the beneficiaries and allow only 75 % of tariff claimed.

14. The regulation 10 (6) was modified by inserting 'recognized' word prior to consumer association. In this regard, it is to mention that this insertion restricts the common and genuine public such as group of residents a premise, who are consumers. Further, the submission of group of consumers will reflects better view of the public than individual and also participation multiple individuals and hearing thereof will be cumbersome and may affect the proceedings. Accordingly, the word 'recognized' may be deleted.

15. The Regulation 13 provide for truing up of tariff. In this regard, it is to mention that the claims and amount thereof in truing up are at variance with that of tariff determination. However, the Commission allowing all such claims without much prudence in the pretext of necessary requirement and also under Power to Relax and Power to Remove Difficulty. As it is the duty of the utility to project appropriate expenditure, exorbitant claims cannot be allowed subsequently. Accordingly, only the claims allowed during tariff determination shall be allowed and all other claims shall be examined at depth and allowed on rarest cases.

16. In regards to Regulation 13, it is to mention that the capitalization of items allowed by Commission shall be subjected to availing special allowance. Thus, even though Commission allowed certain claims on projection basis, if the actual claim is for period, wherein special allowance is availed, the capitalization of subject asset shall not be allowed.

17. Further, the capitalization shall be allowed for the assets those are owned by owner of the plant / transmission system, but not transferred to any entity, and also put to use i.e. serving the consumers.

18. The regulation 17 (2) of 2019, tariff Regulation was deleted. In this regard, it is to mention that the liabilities of the parties would be for the period agreed in PPA but not beyond that. Further, during such PPA period and till useful life, the assets were being fully depreciated, the beneficiaries shall not be liable for any other fixed charges. Further, interms of Electricity Act, 2003, there shall be gradual move from section 62 (cost plus basis) to section 63 (competitive bidding), however, continued enforcement of PPA and liabilities thereof, is acting in contrast to such spirit of Act and tariff Policy. Accordingly, the beneficiaries shall be provided with first right to refusal, otherwise, the capital cost shall be bring down to salvage value, instead of prevailing continued RoE of 30 % of capital cost.

19. As it is noted that both parties generating companies as well as beneficiaries are raising their concern over regulation i.e. low RoE and exit PPA, it's the time for the Commission to come up with innovative solutions, including the bidding of the plants

which have completed their useful life and reimburse the 10 % of capital cost and some lumpsum RoE to generating entity and allow the successor to renovate and operate in section 63 mode.

20. The regulations 18 (6), 19(2)(p), 19(3)(g) etc provide for capitalization of certain items associated with ECS and flexible operation. In this regard, it is to mention that the regulations shall clearly mention the components to be / not to be considered under such provisions but cannot give blanket consideration for any of the additional capitalization on these accounts.

21. The Regulation 19(4)(c) and 24(1)(f) provide for expenditure towards local area development w.r.t. hydro plants. In this regard, it is to mention that the hydro plants offer 13 % free power to home state, including local area, the above provision over and above such free power and doubly burden the beneficiaries. Otherwise also, in case the same is necessitated, it is being a CSR kind in nature, may be reimbursed but not capitalized.

22. In regards to regulation 19 (6), it is to mention that the beneficiaries are different for different plants and once the assets are transferred one plant to other, the same cannot be traceable and left unaccounted. Thus, the assets moved out of plant shall be decapitalized from the source plant and capitalized to receiving plant. In case the same is not considered, in order to bring transparency, the consolidated list of all assets transferred from one plant to other, for all plants, shall be obtained from parties.

23. In regards to regulation 22 on initial spares, it is to mention that the units are being standardized, the provision of initial in terms of percentage of Plant & Machinery is not rational. Instead the same may be fixed and may be given on normative basis. Otherwise, the higher plants with P & M gets higher margin for initial spares and vice versa. In addition, as the P & M is purely associated with COD of the plant, the cost as on COD of unit / plant shall be considered instead of any other date.

24. The regulation 24(1)(a) is to capitalization the expenditure associated with original scope of works but incurred after cut-off date. Therefore, the same shall be considered under regulation 25 but not under 24.

25. In regards to regulation 24 (e) and 25 (b) for capitalization of expenditure which is in compliance of existing law but not part of original scope of works, it is to mention that inspite of the existing law, the same is not considered in original scope indicates that the same is not required for the plant operation. Thus, implementation of existing law subsequent to investment approval only shall be considered. Accordingly, these may be modified.

26. In regards regulation 24, 25 and 26, it is noted that various claims are allowed for capitalization, however, the IDC, IEDC, delay in execution of such works, cost over run etc, are not accounted for. Further, the IDC and IEDC purely for under construction plants, these may be either disallowed or allowed on reimbursement basis, after prudence check, including time over run and cost over run. Accordingly, these may be modified.

27. The regulation 26(1)(f) providing for capitalization of works part of original scope of beyond cut-off. In this regard, it is to mention that the original scope of works are primarily shall be completed prior to COD of the plant. However, the same are allowed upto cut-off date. In contrast to this the proposed regulation proposes for capitalization beyond cutoff date. If a work envisaged under original scope is not necessitated till the cut-off date, the same shall not have any impact on the operation of the plant. Thus, the provision is defeating the very purpose of COD as well as cutoff date and encourage the capitalization of various assets, which might be part of original scope of works. Thus, the

same shall be dropped.

28. The regulation 26(h) providing capitalization of railway infrastructure and augmentation thereof, which is beyond original scope of works. In this regard, it is to mention that the capitalization of works not envisaged in original scope jeopardize the accountability of original scope and have larger repercussions on fixed and variable charges. As the same led to major deviation in cost envisaged in PPA, the same encourage beneficiaries to surrender the power or move out of the PPA.

29. The regulation 26(1)(i) provided for capitalization on account of efficient operation. As the efficient operation, benefits the entity, primarily the additional capitalization shall not be considered. Further detailed cost benefit analysis may be considered prior to taking any decision on the same and in case of capitalization of assets for such purpose, the full benefits shall passed onto beneficiaries. In addition, to avoid scrupulous claims, improvement in parameters over and above the norms provided only shall be considered for such claim.

30. The regulation 27 mentioned for the 'response of the beneficiary' for R & M. In this regard, it is to mention that previous regulations provided for consent. As the beneficiaries are being end users, their consent is important rather than response. Otherwise the same lead to disputes and NPA. Accordingly, the 'Consent' shall be restored.

31. The regulation 28 (2) provides for special allowance at Rs. 10.75 lakh / MW per year. In this regard, it to mention to mention that previous regulations provide for 9.5 lakh / MW and the utilization of these allowance as on date, even very old plants, is very poor and as low as 1 – 2 %, in some cases. In spite of such reality, instead of tightening the norms and make accountable, on contrary these were increased. The same is illogical and unfound. Accordingly, the same shall be reviewed and reduced. Further, in spite the special allowance are hefty but not yielding any additional benefit to beneficiaries, there is a need to review the continuation of such allowance and consider the plants at par with plant before useful life.

32. The regulation 30 mention the applicable RoE for different entities. In this regard, it is to mention that the fixed number of RoE is unfound and provides unwarranted advantage to utilities. In the ear of globalization and neutral market, the RoE may be linked to market / bank rate.

33. The regulation 36 provide for O & M expenses. In this regard, it is noted that the actual expenses of various utilities for last few years is lower than norms allowed by Commission. Accordingly, the wage revision was also not allowed. In contrast to this, the norms were increased and the escalation given was enormous. The head wise actual expenses of various plants shall be reviewed and also the same hall be compared with better performing plants / assets of private and states. Thus, the norms shall be realistic. Accordingly, the norms may be reduced.

34. The regulation 36 (6) provides for water charges. In this regard, it is to mention that the water consumption is dependent on generation and MoEF& CC norms provide for 3.0 – 3.5 m³ / MWhr, the same shall be restricted independent of water agreement. Otherwise, the utilities may tie up for excess water and pass on unnecessary burden to consumers.

35. The regulation 59 introduced transit loss of 1.0 % for multi mode supply. In this regard, it is to mention that year on year with the technological upgradation, the transit losses have come down. Accordingly, the transit losses for dedicated transportation and public transportation shall be reduced. However, in contrast new mode was specified and

provided with 1.0 %. The same is without any basis and no rationality has been provided for such proposal. As the prevailing regulations provide max of 0.8 % loss, the proposed mode cannot be allowed for 1.0 %. Otherwise, the norm for single mode shall be reduced to 0.6 %.

36. The regulation 60 provide for loss in GCV from mine end to plant end. In this regard, it is to mention that as per data made available on Commission's website, the average loss in GCV for pit head is around 250 kcal / kg and for non pit head it is 450 kcal / kg. However, the loss allowed is 300 and 600 respectively. Further, as the sampling reports of third party are being challenged by generating entities as well as coal companies, the results are not sacrosanct and subjected to out come of referee sample. Accordingly, the loss in GCV with third party also shall be restricted. Accordingly, the loss in GCV may be restricted to 250 and 450 kcal / kg for pit head and non pit head plants, respectively. Further to avoid any confusion the quantity and mode of transportation of coal shall be considered in arriving at appropriate restrictions.

37. In order to address the losses associated with GCV, necessary security measures shall be imposed, including installation of CCTV, live streaming, witness by beneficiaries in sampling, mandate uploading of the sample reports in public domain etc, shall be introduced and the expenses thereof may be allowed.

38. Under the regulations 62, the earlier provision of high demand season and low demand season shall be reinstated. In absence of that, entities may offer full DC during off peak season and low DC during high demand season and divert the power. In case of any issues in implementation, the same may resolved but the regulation could not have been dropped.

39. The regulation 62 (6) provides for 75 paisa / kWh for energy supplied beyond NAPLF during the peak hours. In this regard, it is to mention that the envisaged NAPAL is 85 %, the incentives may provided for energy over and above 90 % NAPAL. Further the rate is more than FC / ECR of certain generating stations, the same may be linked with these components instead of fixed value.

40. The regulation 62 provided for 85 kcal / kg loss in GCV. In this regard, it is to mention that the basis of such margin is without any detailed deliberation and in contrast to CEA's recommendations made in 2014. Further with time and upgradation of technology and practices thereof, the samplings were improved and representing homogeneity. Thus, there must be improvements in these estimated / unaccounted losses. Thus, the actual loss on this account shall be assessed and margin provided need to be reviewed.

41. In regards to regulation 64 (5), the blending of imported coal quantity and cost thereof impacts the ECR, which is essential parameter in scheduling, the blending shall be allowed interms of rate but not quantity. Accordingly, the same shall be modified.

42. In regards to regulation 65 (10), it is to mention that the generation of RoR is intermittent and uncontrollable and mandated to utilize, the provision of 50 paisa incentive for energy supplied in peak hours is unwarranted and unnecessarily benefit the generating entity at the cost of consumers.

43. In regards to regulation 71 (C)(d), it is noted that the norms determined remain applicable for remaining life of the plants. In this regard, it is to mention that interms of act and Tariff Policy, the parameters shall reviewed at regular intervals and efforts shall be made to improve the norms. Further, CEA is mandated to give its recommendations for each every MYT regulations. In contrast to this, the regulation proposed for permanent norms. Further, the norms recommended by CEA for 2024 Tariff Regulations, without any

public consultation, the proposal to consider such norms permanently is illegal. The same shall be dropped.

44. In regards to regulation 70 for NAPAF, it is to mention that norm is less than technical minimum for few plants. Accordingly, the same may be modified. Further, this regulation provided lower NAPAF for old plants. In this regard, it is to mention that the old plants are either opt for R & M or special allowance, wherein, relaxation in norms shall not be considered, the proposal shall be dropped. Otherwise, compromised norms with special allowance amounts to doubly jeopardizing the interest of beneficiaries.

45. In regards to regulation 96, wherein, special provisions are provided for DVC, it is to mention that inspite of unbundling is the main objective of the Electricity Act, 2003, the DVC is allowed to be continued as integrated entity and passing the losses on to end consumer without any transparency. These perennial issues ned to be addressed and the entity shall be made accountable for expenses and interest of end consumer shall be protected.

Regards,
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