Regarding the cited subject, pl.find the comments Comments on Draft Tariff Regulations, 2024

From : mralokkumar222002@gmail.com Tue, Feb 20, 2024 09:48 PM

Subject : Regarding the cited subject, pl.find the comments Comments on Draft Tariff Regulations, 2024

To : Puneet Arora <tariff-reg@cercind.gov.in>

Dear Sir,
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The draft regulations mention that 'after previous publication' but these were neither notified in Gazette of India nor provided any publicity but confined to website of CERC only. These regulations are being backbone of the economics of power sector and have impact on all 143.6 Cr citizens of this country, wider publicity and awareness to the public through forums, workshops, civil societies etc could have been done, but it was not so. Further this public hearing may be held in different corners of the country to reach out mass instead of confining it to Delhi, wherein, access is available to selected and limited persons / entities. As per our understanding this is the practice in many sectorial regulators, including SERCs. However, the public hearing was held on 15.02.2024.

The draft Tariff Regulations with 172 pages, exclusive of forms, issued on 04.01.2024 and the Explanatory Memorandum with 289 pages issued on 29.01.2024 and huge data pertaining to various entities, which was the basis in arriving at various norms, was made available on public domain just two days before. However, confirmation to participate the public hearing was to be made by 08.02.2024. This kind phase wise release of information had created confusion and could not give sufficient time comprehend and offer better / appropriate comments. Accordingly, the commission shall extend the last date for submission comments atleast by 29.02.2024 and Commission may plan for another public hearing in the subject matter.

Though the Commission allows majority of claims on the basis of Auditor certificate, instead of detailed scrutiny, the auditors appointed by the companies may not aware of the requirement of the commission and repercussions thereof. However, the same is having direct impact on the public, certain norms and conditions shall be lay down by Commission to authorize qualified number of professionals to carry out the audit in prescribed manner and no claim shall be allowed, without audit by authorized auditor. Further certain checks and balances shall also be mentioned, including random checks, penalty for any kind of manipulation etc, Further also, observations of CAG, CVC, CBI etc, on concerned entities shall be considered and the loss of amount identified by entities shall be adjusted / recovered.

As the existing regulations provide for capitalization of IDC and IEDC till the actual COD of the plant, the same is incentivizing the time over run projects, at the cost of overburdening the public, unnecessarily. Accordingly, capitalization of IDC and IEDCs shall be allowed upto SCOD only and thereafter, these may be reimbursed, on prudence check.

The prevailing regulations primarily focuses on existing plants but not the under-construction projects, there is a need to lay down certain norms for under construction projects such as oil consumption, coal consumption, power consumption, water consumption, man power deployed, progress of various works etc, and incentivize the best performers and disincentivizing poor performers and control the capital cost and AFC allowed thereof.

Cut-Off date has been keep on increasing from one tariff regulation to other regulation i.e. 2014, Tariff Regulations mention 2 – 3 years, 2019, Tariff Regulations mention 3 years and 2024, Tariff Regulations mention 3 – 4 years. The purpose of cut-off date is to close the contracts of all works completed till the COD of the plant, but not to allow the works after COD of the plant. As such the COD of the plant means the plant had the capability to generate the full load power continuously, there shall not be any requirement for additional capitalization. Accordingly, no capitalization shall be allowed after COD, except final payment settlement and liabilities earmarked. In any case, if required, the list of works to be / not to be allowed after COD to Cut-off date shall be clearly mentioned in regulations. In regards to duration, it is to mention that the SCOD of typical plants are being 4 years, the duration of 3 – 4 years to cut-off date is illogical and shall be restricted to 2 – 3 years only.

As per the Tariff Policy, no new plant is envisaged under section 62 after January, 2011 and these regulations shall not applicable for the plant acquired through auction, all draft regulations associated with projects acquired through NCLT proceedings shall be dropped.

The prevailing Regulations provides for recovery of 90 % of capital cost (10 % salvage value) within 15 years, but allow equity to be considered as 30 % till 25 years. In spite of this, after 25 years, the entity can avail special allowance in lieu of R & M but equity continued to be maintained at 30 %. Thus, the regulations provide multifold recovery for same asset, which is burdening the consumers unnecessarily. It is also to mention that the regulation 28 (4) of 2019, Tariff Regulations provides that Commission shall issue a detailed methodology for fund utilization towards R & M but the subject methodology was not published till date, however, huge amounts were allowed under special allowance. It is also observed that as per preliminary examination, the utilization of special allowance is less than 10 %. Accordingly, after the asset is fully depreciated, the depreciation should be discontinued and equity shall be reduced and the additional capital expenditure shall be allowed on prudence check and special allowance shall be discontinued. In case if not, as the assets were fully depreciated, prior to special allowance, the equity shall be recomputed on the basis of new capital cost and the AFC determined shall be adjusted from the balance special allowance.

In respect of Interest on Working Capital, it is to mention that though the Commission acknowledges that PLF is reducing year on year and provides certain compensation for such cases, it continues to allow the working capital for NAPAF (85 %). Further, although regulations provided for working capital to maintain coal stock, lack of actual coal stock at plants led to recent coal crisis and necessitated for urgent imports and abnormal surge in energy charges thereof. The Ministry of Power under section 107 of Electricity Act, 2003 has given directions to Commission to allow blending of imported coal beyond specified limit to allow higher ECR and impose penalty on plants, which don’t maintain specified coal stock norms. However, Commission allowed the higher blending of imported coal and inspite of providing working capital for the coal stock, it has not taken any action to ensure the entities maintain the prescribed coal stocks, including a penalty on the plants violating specified coal stock norms. Accordingly, the working capital shall not be allowed on assumptions but computed as per actuals i.e. Actual Advance given to coal supplier, Actual Coal / lignite / Gas Stock maintained, actual PLF, actual O & M etc, Further, as the consumption of maintenance spares, don’t have any correlation with water charges and

security charges, these shall be excluded in determining amount associated with maintenance spares.

In 2021, the Commission had notified regulations on determining input price of coal. Inspite of passing over 2 – 3 years, certain relaxations were provided in draft regulations but no improvements or better norms, including O & M expenses on normative basis, have been proposed.

In regards to RoR hydro plants, it is noticed that while the NAPAF is determined on the basis of all 96 blocks (24 hours) of day for last few years, the availability considered for recovery of fixed charges is based on the best 12 blocks (3 hours) and incentive is given for availability above NAPAF. This is inconsistent and both NAPAF as well as availability considered for recovery of AFC, shall be determined on the basis of same duration i.e. either best 12 blocks of each day or all 96 blocks of the day.

In case of transmission, it is noticed that though AFC is determined separately for different assets, the recovery of AFC is computed on combined average availability of all assets i.e. poor availability of one asset is compensated with better performance of other assets. In order to ensure all elements are available to the desired level, the recovery of AFC of asset shall be as per the availability of subject assets only.

In regards regulations to consider wage revision for each generating station, it to mention that as the man power is transferred one plant to other plant, books of accounts are maintained at company level and also reflected in annual report, and it would be cumbersome to analyse such aspect repeatedly and consistently for each station etc, wage revision impact shall be assessed at company level only and the deficit if any, shall be apportioned to all projects, may be as the apportionment of CC expenses is carried out.

It is noticed that the 'Power to Relax' and 'Power to Remove Difficulty' have been exercised regularly, without any specific requirement, which is in contrast to various pronouncements of Hon'ble Apex court and the same is impacting the tariff of consumers. Therefore, to exercise it in rarest cases, certain restrictions may be mentioned and list of all claims along with cost, which were allowed under such regulations along with the circumstances shall be exclusively provided on the website of the Commission for information of public.

The Regulation 103 is 'Issue of Suo-Moto orders and practice directions' is a new regulation in addition to existing 'Power to Relax' and 'Power to Remove Difficulty'. As the Tariff Regulations shall be notified after due process of previous publication, stake holder consultation, public hearing etc, the notified regulations cannot be set aside or altered by Suo-Moto order or directions. Hence the subject regulation may be dropped.