

Date: 9<sup>th</sup> February, 2024

To

Shri Harpreet Singh Pruthi  
Secretary  
Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi- 110001

Sub: 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

Ref: Public Notice vide File No. L-1/268/2022/CERC dated: 04.01.2024

Dear Sir,

This is with reference to the Public Notice dated 4<sup>th</sup> January, 2024 seeking the Comments on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024

The undersigned has gone through the draft regulations and recorded some of my comments on the same. Additional suggestions are also provided for consideration of the Commission.

I would be pleased to submit any clarification, if need arises.

Thanking you,  
Yours sincerely,



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**Comments/suggestions/objections:**

**General:**

Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations primarily deals with determination/fixation of tariff under section 62 of the Electricity Act, 2003 for applicable Generating Stations, Transmission assets etc.

However, it is very surprising to observe that since first of such regulation, Hon'ble Commission has confined to determination of tariff without taking cognizance to Sub-section 3 of Section 62 of the Act.

Sub-section 3 of Section 62 of the Electricity Act, 2003 is reproduced hereinunder for kind reference:

*“(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”*

Apparently, it got attuned in the ecosystem that the Sub-section 3 of Section 62 of the Electricity Act, 2003 is applicable for retail tariff determined by Hon'ble State Commissions (SERC) only. However, simple interpretation of the provision doesn't make it inapplicable for Hon'ble Central Commission. **Rather, this is fully applicable for all tariff determined by Hon'ble Central Commission.**

It is very clear that Sub-section 3 of Section 62 of the Electricity Act, 2003 provides for the cross-subsidy aspect amongst different class/category of consumers. Concerned SERCs determine Aggregate Revenue Requirement (ARR) for a distribution licensee and then approve recovery of the same amongst different class/category of consumers at different rates factorizing the cross-subsidy to keep the tariff at a bearable limit for specific class of consumers. The matter is illustrated very simply with a simple example below:

With approved ARR of 100 to be recovered from sale of 50 units (to be consumed by different class of consumers), average recovery rate (simply retail tariff rate) shall be 2 per unit:

a. ARR Amount	100
b. Proposed Sale Units	50
c. Avg. Rate [a÷b]	2

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9/2/24*

**Comments/suggestions/objections:**

However, due to various factors *interalia* as mentioned in Section 62(3) of the Act, retail tariff is designed at differential rates for different category of consumers instead of same rate keeping the recovery amount same. A typical arrangement in the instant case may be as under:

Category	Proposed Sale Units	Avg. Tariff per unit	Recovery amount
Category-1	10	1.00	10
Category-2	10	1.50	15
Category-3	10	2.00	20
Category-4	10	2.50	25
Category-5	10	3.00	30
<b>Total::</b>	<b>50</b>	<b>2.00</b>	<b>100</b>

As such, some consumers are being charged at less than average rate and the differential amount is recovered in the form of cross-subsidy from others with more than average rates.

It is well known fact that beneficiaries of generating stations/transmission system for which tariff is fixed by Hon'ble Central Commission comprises of States with different user portfolio, load profile and other characteristics like financial capabilities (in terms of Per Capita Income) similar to consumer mix of a distribution licensee.

However, the governing regulation of Hon'ble Central Commission provides for equal tariff for all beneficiaries of generating stations/transmission system totally ignoring the provisions of Sub-section 3 of Section 62 of the Electricity Act, 2003.

For example, NTPC Farakka-I&II STPS has the following 17 beneficiaries:

Bihar	Haryana
Jharkhand	J & K
Odisha	Delhi
West Bengal	Assam
Sikkim	Nagaland
Telangana	Arunachal
Tamil Nadu	Mizoram
Gujarat	Uttar Pradesh
Bangladesh (NVVNL)	

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**Comments/suggestions/objections:**

It is very clear that the beneficiary States vary in many aspects exactly in line with retail consumer mix of a distribution utility. However, all the beneficiaries are billed at uniform rate in this case unlike a distribution tariff design.

Such scheme of affairs is apparently imbalanced with advantage to already advantageous and vice versa.

Power purchase cost (including transmission charges) is the major (75.90% for FY 21-22) cost component for distribution utilities. As such, any impact on the same will have direct implication on cost of supply vis-à-vis retail tariff with cascading effect on many other vital indices of the State.

It needs no further mention that such scheme of affairs is acting as one of the hindrances in removal of cross-subsidies in States with challenging consumer vis-à-vis sale mix. For example, the cross-subsidy amount in the state of Assam has exceeded Rs. 650 Crore for current year as compared to ~ Rs. 150 Crore a decade back with massive increase in cross-subsidy beneficiary consumer base in the said period vis-à-vis uniform input cost in respect of power purchase cost. On the other hand, the beneficiary states with favourable consumer vis-à-vis sale mix would have garnered benefit on the same count. But it is also true that the reduction of cross-subsidy as envisaged in initial tariff policy is yet to be attained nationally.

As such, it is evident that application of Sub-section 3 of Section 62 of the Electricity Act, 2003 in recovery of charges from different beneficiaries at different rates will address the greater issue of the system in the interest of all stakeholders in equitable justice without putting any financial risk to generating/transmission entities. Rather, generating/transmission entities will be placed in administratively better position with exposure of lesser amount against relatively weaker beneficiaries in financial terms.

**In view of the aforementioned, Hon'ble Commission is requested kindly to develop and factorise a mechanism of recovery at differential rates from different beneficiaries on basis of in consistent with Sub-section 3 of Section 62 of the Electricity Act, 2003. In this endeavour, an index may be developed linking with load profile, weightage of indices for tax devolution and many ancillary parameters and the same may be reviewed with every MYT regime.**

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**Comments/suggestions/objections:**

**Observations on some critical points on the draft CERC MYT 2024-29 Regulations**

**Return on Equity (RoE):**

- ) Requirement of lucrative RoE to promote investment in the sector is undeniable. However, blanket retainment of 15.5% for thermal/hydro as well as transmission assets doesn't seem very prudent in the prevalent interest regime. Rather, it would have been prudent to allow recovery of return on equity (RoE) for new project in the MYT regime in gradually increasing manner linked with performance to ensure optimal performance vis-à-vis moderation of tariff throughout the project life e.g. 10% RoE for first 5 years, 12% for next 5 years, 15% for next 5 years etc. RoE of existing stations shall be kept at 100 basis points over the actual interest on debt capital.
- ) Increase of 50 basis point for hydro stations with storage/pumped hydro storage is a progressive proposition. However, the base rate may be considered in gradually increasing manner.

**NAPAF: (NEEPCO-AGBPP)**

- ) Reduction of NAPAF is a very detrimental proposition for the beneficiary Discoms. Arrangement of fuel is the full responsibility of the Generator and the FSA is not a back-to-back arrangement to the PPA. As such, any such relaxation will put undue benefits to the Genco at the cost of ordinary consumers.
- ) It is important to note that the project is already allowed a very low NAPAF in comparison to contemporary stations.
- ) In this context, reference may be drawn to actual PAF for the stations in recent years. Actual PAF for FY 2020-21 and FY 2021-22 as submitted by the entity in the course of proceeding in Petition No. 175/MP/2020 is shown below:

	<b>FY 20-21</b>	<b>FY 21-22</b>
Peak	69.34	71.12
Off peak	69.84	71.59

Similarly, actual Cum. Plant Availability Factor for the station for FY 22-23 and FY 23-24 (till January, 2024) as per REA issued by RPC are shown below:

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**Comments/suggestions/objections:**

	<b>FY 22-23</b>	<b>FY 23-24 (Till January'24)</b>
Cum. Plant Availability Factor (PEAK) upto current (Cum. PAFp) for High Demand Season	67.72	74.00
Cum. Plant Availability Factor (OFF-PEAK) upto current (Cum. PAFop) for High Demand Season	70.04	74.60
Cum. Plant Availability Factor (PEAK) upto current month (Cum. PAFp) for Low Demand Season	73.08	76.60
Cum. Plant Availability Factor (OFF-PEAK) upto current month (Cum. PAFop) for Low Demand Season	74.90	77.30

- ) It is clear that the prevalent PAF is more than the proposed 70% in the draft regulation.
- ) It will be prudent to operate the Generator at optimal capacity with available fuel at standard PAF of 85% and AFC shall be fixed on that capacity only.

**Award of Arbitration:**

- ) Regulation 91 over and above the connected provisions under regulations 24, 25, 26 and 28 is very discouraging for Discoms. Such blanket provision may lead to unnecessary cost escalation vis-à-vis financial burden to Discoms (eventually to ultimately ordinary consumers) without any role on its part. The provision may be utilised with malafide intent at the cost of ordinary consumers.
- ) Due diligence on part of the developer before conceiving a project is pre-requisite. Any such eventualities have to be assessed before furthering the project. Even in case of any unwarranted developments, there shall be some provision at the initial cost estimate. Any allowance more than the estimate can't be allowed to be recovered. It has to be absorbed by the developer out of its RoE.

**Special Allowance for Coal-based/Lignite fired Thermal Generating station:**

- ) Special Allowance under regulation 28 has proposed Rs. 10.75 lakh/MW giving 13% hike over existing Rs. 9.5 lakh/MW.
- ) Generating station which has availed the Special Allowance during the tariff period 2019-24 may be kept outside the purview of this regulation.

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**Comments/suggestions/objections:**

**Depreciation:**

- ) Alignment of relatively reduced depreciation for New Projects doesn't seem in sync with the useful life considered with 10% salvage value.
- ) 80% increase in depreciation rate for batteries to 9.5% from existing 5.28% will put excessive cost burden to Discoms without any real cash requirement for the developers which in turn will lead to undue enrichment for the developer.

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