

# Oral hearing on Proposed CERC Draft MYT Regulations on Terms & Conditions of Tariff for the Tariff Period 2024

PRESENTATION BY CONSUMER

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# Mandate of the EA 2003

- The Electricity Act 2003 under Section 2 (23) which as follows:
- ***“(23) "electricity" means electrical energy-***
- ***(a) generated, transmitted, supplied or traded for any purpose; or***
- ***(b) used for any purpose except the transmission of a message;”***
- Matter was placed before CERC in the discussion of draft 2019 MYT Regulations of determination of coal price Regulations under Chapter 19 Regulation 36 to 45. CERC dropped the draft regulations, however nothing was mentioned in the discussion paper about it. CERC during lockdown period incorporated those Regulations surreptitiously without publishing the public notice as per law also against their own rules. In the RTI reply CERC informed that there was no any record of attending any officer in CERC during that time. Regarding other information CERC declined to reveal. This is not only against the provision of Law (79(3) of the EA 2003) but also against public interest. It needs to be investigated by an independent agency.

# Definition of Tariff

The Central Commission neither published the approach paper as well as this draft MYT Regulations in the print media not only violate the ACT but also their own Regulatory procedures and processes. It is not understood under what reasons and circumstances the CERC flouted their own rules. As per the rules initially the approach/ discussion paper for framing of Regulations are also to be published inviting comments and after receiving comments open public hearing must be carried out and then draft Regulations are to be framed which are to be published and uploaded in their website, then public hearing is to be performed. In this case the draft approach paper was not published and no public hearing took place. It is also observed that the central commission during last few years flouted all laws and their own rules, the reason best known to the Commission. Such act not only against the provisions of law but also against public interest. In this case it is worth mentioned that under the head of publication and advertisement head CERC spent Rs. 99.36 lakhs (Rs.11.11+Rs.88.25) as per their Annual financial reports 2021-22. It is a matter of concern that how such high amount was spent by the Commission.

## **Determination of Tariff:**

CERC to determine Tariff of the Interstate Transmission licensees and Generating companies of central governments under the principles prescribed under Section 62 of the EA 2003. Section 62(5) says that the tariff determined by the Commission is expected tariff for the future years and section 62(6) states that the tariff determined must be tried up by the Commission in the subsequent year/ years and the excess amount already recovered by the generating companies or licensees are recoverable along with the bank interest rates without prejudice to any other liability incurred by the licensee or the generating companies. Accordingly the MYT Regulations 2019 vide Regulation 13(2) the generating company or the transmission licensee, as the case may be, shall make an application, as per the Regulations for carrying out truing up exercise in respect of the generating station or a unit thereof or the transmission system or an element thereof by 30.11.2024.

Truing up exercise of preceding years is must for determination of the future tariff. However the Supreme Court judgement dated 18.10.2022 in the Petitions No. 4323 and 4324 of 2015 , it is said that it is not permissible to amend the tariff order for a particular period in guise of 'truing up' after relevant financial year. Under the above principle the Central Commission could not be able to re-determine tariff for the proposed MYT period 2024-29 after taking action on the true up petitions to be submitted by the utilities before 30.11.2024. The only remedy available to the Central Commission to extend the MYT Regulations 2019-24 for one more year up to FY2024-25 and also to extend the present tariff also till 31.03.2025 under Section 64(6) of the Act. In the mean while the utilities should submit the audited financial statements for period 2019-2023 immediately for truing up and remaining one year for 2023-24 to be submitted before 30.11.2024. Once the truing up exercises would be carried out, the excess amount of ARR must be considered under section 62(6) and the new efficient norms are to be re-determined considering the ARR petitions. Similar conditions are applicable to Regulation 13.

**Regulation 28.** This provisions were first made in the MYT Regulations 2009. However it is not known to the public that how many thermal generating stations availed this option and how many generating stations availed the other Renovation and modernization option. As per the regulations utilities were to submit detailed applications for approval. Neither such applications nor approval from the Commission is found in the CERC web-site on transparent manner which is against the provisions U/S 79(3) of the act. It is also not known that since inception of this Regulations how many times one generating station has been availing these allowances. Whether they have been availing in every MYT period or only once they availed. Regulation is also silent whether they can avail only for once or for every MYT period. It is also not known that after incurring such expenditure quantum of efficiency the generating stations achieved.

It is very surprising to note that from the annual reports of the Central Commission it is observed that the fixed cost of the generating stations are goes on increasing but on principle it should be reduced as the loan capital gets reduced year to year. Following table is provided for few stations-

Sl. No.	Name of the station	2010-11 Rs.	2013-14 Rs.	2018-19	2022-23 Rs.
1	Rihand Sg.1	0.50	0.8206	0.8578	0.660
	Rihand sgII	0.79	0.9426	0.7117	0.884
	Kahalgaon Sg-I	0.55	0.9687	1.0753	1.089
	NTPC Dadri st.1	0.55	0.8850	0.9869	0.93
	NTPC Dadri stage II	1.49	1.5958	1.4499	1.393
	Dadri CCGT	0.33	0.5416	0.5825	0.515
	Assam GasPS	0.86	1.4670	2.3010	1.8835
	AartalaGasPS	1.34	1.2450	2.060	1.884
	Bongaigaon		2.9050	2.7142	2.406
	Loktak HEP	1.29	2.73	3.84	3.89
	Doyang HEP	2.95	4.06	5.0820	6.751
	Ranganadi HEP	1.25	4.20	1.67	2.745
	Anta Gas	0.36	0.6990	0.7173	0.709
	Auraya	0.25	0.5254	0.6419	0.0.365

**Regulation 30. Return on Equity:** The present RoE is very high and this should not be more than 10% at any cost. Considering the downward revision of Marginal Cost of Funds Based Lending Rate (MCLR) of the Public Sector Banks and 10-year G-Sec Rates, it is felt prudent to revisit and redetermine the Rate of Return on Equity for the control period FY 2024-25 to 2028-29 by the Central Commission. It is pertinent to submit that the overall interest rate has shown a declining trend during the past period mainly the RBI Repo Rate, Interbank Rate and SBI Base Rate/MCLR Rate have come down during this period. With better control over inflation, the interest rates have remained low and stable over short & medium term. SBI MCLR rates have gradually fallen down from April 2019 onwards.

A detailed analysis was made in the comments on the approach paper. It is unfortunate that the Central Commission violated its own Regulatory procedures and processes without conducting the open public hearing after before making this draft MYT regulations. Further in the EM it is mentioned that the comments were discussed in the CAC on held on 26.09.2023 but minutes are not uploaded in CERC website.



**Reg. 33 Depreciation:** It has been observed that many of the central generating station and transmission lines has already expired its useful life and huge amount accumulated in its depreciation accounts. Many of the generating stations are not running efficiently as it should be. As for example NTPC's anta which was Commission on 01.08.1990. Initially depreciation of the station was higher till 31.03.2003 which was prescribed under 1992 Govt. of India Regulations 1992 and 1994 where useful life was prescribed as 15 years for gas based power stations. Subsequently depreciations are calculated as per Central Commission's regulations. Similarly other stations like Auraiya, Dadri Gas, Jhanor Gandhar, Kawas gas, Kayamkulam, Assam Gas, Agartala Gas etc. However, the stations are not operating in efficient manner causing inflated consumer's tariff. As per CERC Annual report total tariff under which NTPC's Gas based stations of Anta, Auriaya, Dadri, gandhar and Kawas are Rs.19.979. Rs.19.769, Rs.14.733, Rs.12.597 and Rs.18.402 per Kwh respectively in the FY 2022-23. It is huge burden to the consumers. Those gas based stations are to be closed down immediately and the amount of depreciation account of those stations are to be utilized in establishing new cost efficient stations. The Central Commission failed to Regulate under Section 61 and 62 of the EA 2003 those central government entities and to protect public interest.

## Chapter-6. Computation of capital expenditure:

Capita cost of generating and the transmission projects completed within the schedule dates as prescribed by the commission. If there is any cost overrun due to occurrence of force majeure conditions the generating company or the licensee must intimate the beneficiary/beneficiaries immediately after its occurrence and must be mutually agreed for such force majeure condition. The cost overnrun due to force majeure conditions must be shared equally i.e. 50%:50% between the Generating companies or licensees and the beneficiaries as per APTEL judgement dated 27.04.2011 in the Appeal No. 72 of 2010. The draft Regulation may be amended accordingly.

Regulation 34: Interest on working Capital: The proposed draft Regulations are against the principles prescribed under Section 61 of the Act.

These regulations are more inclined towards Generating companies and licensees and against the public interest on all respect. Even the MYT Regulations 2004 were better norms for providing IWC. Maintenance spare was prescribed as 1% of the historical capital cost but here it is considered @20% of the O&M cost which is much higher. Even the Central Commission while framing these regulations that O&M operation comprises of Salay and benefit of employees, Repair and maintenance and administrative and general expenses. As such other two components of O&M and A&G has no role in spare maintenance. The Central Commission made these regulations to provide more benefits to the utilities. Receivables includes all the fixed components of fixed and fuel costs. It is important to note that fixed cost includes depreciation and Return on equity which do not require any working capital to operate. From that point of view and logic behind to provide IWC, the Central commission should exclude depreciation and RoE from the two months receivables. Other norms should also should be norms with gaining efficiency in operations under section 61 of the Act.

Regulations 36: O&M Expenses: Explanatory memorandum says that the average O&M expenses of preceding MYT period normative O&M is escalated with average annual inflation rate of 5.89% to normalize the O&M expenses of each generating stations. The methodology adopted by the Commission is not in consonance of the tariff principles prescribed under 61(d) of the Act as it is not safeguarding the public interest rather allows recovering cost of electricity in a unreasonable manner by the utilities as it gives more benefits to the generating utilities. The Central Commission could have made performance audit in all the generating stations based on audited financial reports for prudence check. The various unwanted expenditures such as advertisements and certain legal expenses are to be disallowed in A&G expenses. It has been observed that almost for each and every order by the Central commission the generating companies and transmission licensees went to the APTEL and also to the Supreme Court and spent hundreds of Crores of Rupees as legal expenses. No doubt every person has the right to approach the court but not at public expenses. Those costs are to borne by the utilities from their profit and not from the expenses of the public.

In regard to O&M of transmission licensee also Commission could have made at least last four years truing up of MYT period 2019-24 and find out the actual expenditure for those period and escalate for other two years. The transmission licensees are also challenge almost all orders of CERC before APTEL and the Supreme Court and incur huge legal expenses and pass on to the consumers as tariff. The Central Commission should disallow all such expenses under Section 61 (d) of the act. It is also fact that in a RTI reply vide ADMN-12038/3/2024-CERC/RTI cell dated 08.02.2024 it was stated that PGCIL earned revenue from consultancy & other income during FY2017-18,2018-19 as Rs.50.44 Cr ad 15.02 Cr. Respectively. But from the audited Annual financial report for the corresponding years it shows as Rs.662.18 Cr. and Rs.610.93 respectively. There is huge variation in the statements of CERC and PGCIL is a serious matter of concern. The Central commission repealing 2007 Regulations on sharing revenue from telecom business and replaced it with a utility friendly 2020 regulations which indicates serious compromise.

Reg. 37-56. Computation of input prices of fuel: It has already been mentioned in earlier slide that the Act has no mandate to determine the prices of coal energy. U/S 77 of the Act prescribes qualifications of all the members and sub-section (a) prescribes that one member must have qualifications and the experience in the field of engineering with specification in generation, transmission or distribution of electricity. There is no member qualified in the mining engineering or mining experience in the Commission. The manner under which the regulations are made for determination of tariff has no mandate of the statute and price determination of coal by CERC could not have legal scrutiny. Therefore in the interest of justice entire chapter to be dropped.

Regulation 59. Transit and Handling losses: In reference to the CAG report 36 of 2026 where CAG carried out a sample study on transit losses of 8 (eight) TPS under NTPC for assessment of transit loss through indirect method and found that ***“As per Fuel Supply Agreements (FSA), payment for the coal supplies was made as per weighment carried out at the delivery/loading point at mine end. The FSAs also provided for weighment at unloading point (power station) in order to ensure recalibration of weigh bridges at loading point. However, stations did not regularly weigh domestic coal, though inmotion weigh bridges were installed in the stations. Due to this, stations lost an opportunity to cross verify the quantity of coal received and ascertain the resultant transit loss.”*** It indicates that huge amount of coal get surplus and the end consumers are paying excess amount to the generating companies. NTPC at that time of audit was operating 26 nos. of TPS. It was the job of the Central Commission to carryout the performance audit of fuel of all the TPS under Central government in the line of CAG audit and provided norms of transit losses lesser than what is proposed. Moreover, due to Strick environmental norms bulk quantity of coal has been transit in closed wagon instead of open wagon. Therefore transit losses reduce drastically. The norms must be reviewed.

## 20(1) Interest During Construction (IDC) and Incidental Expenditure during Construction (IEDC)

The proposed Regulation shall have stipulation for generating company or the licensee for incurring initial expenditure from their equity capital fund. On complete utilization of Equity capital, loan capital shall be drawn from the financial institution. This would not only ensure flowing of equity fund but also reduce IDC component considerably. It is established fact that in the starting period not much fund is required for awarding the packages and payment of mobilising advance maximum of 10% of contract value is sufficient. Subsequently till supply of the materials/equipment no money is paid in case of domestic supplier or contractors. For other activities such as civil packages etc. fund required is for payment of running bills for the completed works. Equity capital is adequate to meet up these expenditure. In the later part of the completion of the project more amount is needed and the loan capital may be drawn gradually from the financial institution which would reduce the IDC. This also restricts the generating company or licensee to against mis-utilization of project loan capital in the working capital of the existing running project. This would be conducive to the commercial principle and on the interest of the consumer. Therefore this modification may be incorporated in the draft Regulations.



Regulation 60. Gross calorific value of Primary fuel: CAG in their performance audit Audit also worked out the difference in energy charges considering the 'as received' and 'as fired' stage for the same period (October 2012 to September 2013). It was seen that during this period, Energy Charge Rate (ECR) worked out on 'as fired' basis was higher than 'as received' basis by `0.03 to `0.96 per unit of electricity for the different stations, as per details given below. Audit also worked out the difference in energy charges considering the 'as received' and 'as fired' stage for the same period (October 2012 to September 2013). It was seen that during this period, Energy Charge Rate (ECR) worked out on 'as fired' basis was higher than 'as received' basis by `0.03 to `0.96 per unit of electricity for the different stations, as per details given below:

Table-5.2: Summary of higher energy charges due to GCV difference

Sl No.	Station name	Range of difference in ECR	Total impact Rs. (`in crore)
1.	Dadri Stage– I	(-)0.06 -0.43	135.64
	Dadri Stage – II	(-)0.07 -0.46	165.06
2.	Badarpur	0.58 -0.96	324.73
3.	Korba Stage -I&II	0.05 -0.18	161.01
	Korba Stage – III	0.03 -0.16	32.65
4.	Vallur	0.06-0.45	58.25
5.	Sipat	0.04 -0.23	144.36
6.	Rihand Stage I	0.09 - 0.17	87.26
	Rihand Stage II	0.11 -0.21	121.90
	Rihand Stage III	0.05 -0.25	30.89
7	Talcher	0.09-0.11	31.97
8	Farakka I & II	0.17-0.38	110.23
	Farakka III	0.17 -0.38	36.38
Total			1440.33

## **Chapter 11: Computation of Capacity charges and energy charges :**

Entire chapter is against the public interest and against the provisions of Section 61 of the Act. There is no norms prescribe for efficiency gain. The factors provided to recover capacity charges are against the consumers' interest and provided recovery of electricity charges in a unreasonable manner. For thermal generating stations. Incentives provided to Thermal generating stations @75 paisa/Kwh is very high. CEA in their report for recommendation of operating norms during 2014 mentioned that many of the NTPC stations were operated above 100% PLF and average availability was more than 90%. Proposed operating norms are made without due diligent. Even for many stations incentive is higher the fixed charges which is unreasonable. In one hand relaxed norms of operations are provided on the other hand incentives are provided. Similar in the case of Hydro generation also. Norms are proposed without due diligent without taking expert recommendation. It is also not understood why 5% relaxation provided for NE region. Already during computation of fixed charges and others compensations has been provided for operation in NE region. More compensation results more inflation of tariff, therefore must not allowed.

Employment in the Central commission (Staff and Consultants): It is pertinent to note that the central Commission becomes hub of retired personnel and their primary objective is to remain in employment rather than making any meaningful contribution and accountability. In a RTI reply CERC stated that there are as much as 111 section post which was increased recently from 88 by amendments. It is surprising that the work load gets reduced due to the mandate of the tariff policy 2006 that after 06.01.2011 even for the PSUs all the tariff should be on bidding process i.e. under section 63 of the Act. Therefore the staff should have been reduced. It is also pertinent to note that in addition to their regular staff there are as much as 33 nos. advisers & consultants with high monthly remuneration without assigning any assign duties. Many of the advisors and consultants are re-employed after retired from CERC only. On the other hand if we look into the performance of the Commission it is found that this draft was uploaded on 04.01.2024 without Explanatory memorandum. While pointed out by this consumer, it was uploaded on 29.01.2024. The performance data was uploaded on 12.02.2024 and public hearing is conducted to-day. Even the Commission did not mention in the website the date of uploading of those data. The Central Commission failed to discharge its duties transparently as mandates under section 79(3) of the Act.

Thank You