

L-1/9/2009-CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram: Dr Pramod Deo, Chairperson
Shri S Jayaraman, Member
Shri V.S.Verma, Member

Date: 12.4.2010

In the matter of

Central Electricity Regulatory Commission (Procedures for calculating the expected revenue from tariffs and charges) Regulations, 2010.

STATEMENT OF REASONS

Background

The functions of the Central Commission, *inter alia*, include the following:

- “(a) to regulate the tariff of generating companies owned or controlled by the Central Government;
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c) to regulate the inter-State transmission of electricity ;
- (d) to determine tariff for inter-State transmission of electricity;”

2. Section 61 of the Act mandates the Central Commission to specify the terms and conditions for the determination of tariff, subject to the provisions of this Act and in accordance with the factors mentioned in the said section. The Central Commission has notified the Central Electricity Regulatory

Commission (Terms and Conditions of Tariff) Regulations, 2004 and 2009 in exercise of the powers vested under Section 178(2)(s) of the Act.

3. Section 62 of the Act provides that the Appropriate Commission shall determine tariff in accordance with the provisions of the Act for supply of electricity by a generating company to a distribution licensee, transmission of electricity, wheeling of electricity and retail sale of electricity. Considered in the context of the functions under Section 79 (1)(a) to (d) of the Act, the Central Commission is required to determine the tariff of the generating companies owned and controlled by the Central Government, of generating company having a composite scheme for generation and supply of electricity in more than one State, and inter-State transmission of electricity.

4. Section 62(5) of the Act provides as under:

“(5) The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from tariff or charges which he or it is permitted to recover.”

The Commission is empowered under Section 178(2) (u) of the Act to make regulations on the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62.

5. Thus the Commission has a statutory obligation to specify by regulation the procedure requiring the generating companies and transmission licensees covered under its jurisdiction to calculate the expected revenue from tariff and charges which they are entitled to recover under the provisions Act and regulations made thereunder.

6. In due discharge of the statutory obligations, the Commission made a draft regulation under Section 62(5), namely, “Central Electricity regulatory Commission (Procedures for calculating the expected revenue from tariffs and charges) Regulations, 2009” and published it under Section 178(3) of the Act

for inviting suggestions/comments vide No.L-1(1)/2009-CERC dated 07.10.2009. The Commission has received suggestions and comments from the 8 stakeholders/interested persons, as listed below.-

- (a) Jaipur Vidyut Vitaran Nigam Ltd. (JVVNL)
- (b) Ajmer Vidyut Vitaran Nigam Ltd. (AVVNL)
- (c) Jodhpur Vidyut Vitaran Nigam Ltd. (JdVVNL)
- (d) U. P. Power Corporation Ltd. (UPPCL)
- (e) National Hydro Power Corporation Ltd. (NHPC)
- (f) North Eastern Electric Power Corporation Ltd. (NEEPCO)
- (g) M. P. Power Trading Co. Ltd. (MPPTCL)
- (h) Er. Padamjit Singh, Retd. CE, PSEB.

7. Subsequently, the Commission held a public hearing on 28.1.2010 in which the following participated:

- (a) National Thermal Power Corporation Ltd. (NTPC)
- (b) Power Grid Corporation of India Ltd (PGCIL)
- (c) Neyveli Lignite Corporation Ltd. (NLC)
- (d) U. P. Power Corporation Ltd. (UPPCL)
- (e) Mumbai Grahak Panchayat (MGP)
- (f) Tamil Nadu Electricity Board (TNEB)
- (g) India Bulls Power Ltd. (IBPL)
- (h) Power Grid Corporation of India Ltd (PGCIL) (by power point presentation).

8. Based on the comments, objections and suggestions received from the stakeholders, the Central Electricity regulatory Commission (Procedures for calculating the expected revenue from tariffs and charges) Regulations, 2010 have been finalised and approved by the Commission for notification. The various provisions of the final regulation are discussed in the subsequent paragraphs

Objectives of the regulations

9. Tariff and Charges are calculated as per the norms specified by the Commission under section 61 of the Act. Once the tariff orders are issued, the utilities are entitled to recover the tariff and charges as per their actual performance. If the utility performs better than the norms, recovery of revenue through tariff and charges would be higher than the norm due to efficiency gain. Conversely, if the utility is unable to meet the bench mark, it may not be able to recover its annual fixed charges. The objective of these regulations is to keep a track on the performance of the utilities which would be helpful in determination of norms for the next tariff period. However, we want to clarify here that the scope of section 62(5) is limited to specifying the formats for calculating the expected revenue from the tariff and charges which a generating company or a transmission licensee is permitted to recover. It does not in any manner require or mandate that tariff determination should be re-visited on the basis of “lower of normative and actual.”

Definitions { Section 2(1)}

(a) Assets:

11. PGCIL has submitted that though asset-wise data have been sought in the formats as per Appendix I, the term ‘asset’ has not been defined in the regulation. It has been suggested that ‘asset’ may be based on the actual or notional date of commercial operation (DOCO) of the transmission elements.

12. The term “assets” has not been defined in the tariff regulations of 2004 and 2009, though these regulations provide for the assets for which tariff is to be determined. The Tariff Regulation, 2004 provides for determination of tariff as under:

“4. Tariff determination: (1) Tariff in respect of a generating station under these regulations shall be determined stage-wise, unit-wise or for the whole generating station and tariff for the transmission system

shall be determined line-wise, sub-station-wise and system-wise, as the case may be, and aggregated to regional tariff.”

Similarly, the Tariff Regulations, 2009 provides as under:

“4. Tariff determination. (1) Tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station, and tariff for the transmission system may be determined for the whole of the transmission system or the transmission line or sub-station.”

12. We are of the view that there is a need to define term ‘assets’ in these regulations as suggested by PGCIL. Keeping in view the provisions of Regulation 4 of the tariff regulations of 2004 and 2009, the term “assets” has been defined as under:

“(c) ‘**assets**’ for the purpose of these regulations include (i) in respect of the generating company, the whole or part of the generating station; and (ii) in case of transmission licensee, the whole or part of the transmission system or the transmission line or the sub-station for which tariff is determined by the Commission in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and as amended from time to time including any subsequent regulations as may be specified by the Commission under Section 61 of the Act.”

(b) Auditor :

13. PGCIL has proposed that the definition of ‘auditor’ as provided in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2009 may be included in these regulations. In the tariff regulations of 2009, the word ‘auditor’ is defined as under:

*“**auditor**’ means an auditor appointed by the generating company or the transmission licensee, as the case may be, in accordance with the provisions of sections 224, 233B and 619 of the Companies Act, 1956 (1 of 1956), or any other law for the time being in force.”*

14. We are of the view that the definition of ‘auditor’ should be broad based in order to provide flexibility to the generating company or transmission licensee to prepare the formats and submit the same in time. Accordingly, we direct that the definition of ‘auditor’ may be defined as under for the purpose these regulations:

“(d) **‘auditor’** means a practicing chartered accountant or cost accountant or a firm of chartered accountants or cost accountants, qualified to carry out audit in accordance with the provisions of sections 224, 233B and 619 of the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, as the case may be;”

(c) Formats:

15. The generating companies and transmission licensees are required to submit the information in the format given in Annexure 1 to this regulation. We are of the view that for convenience of reference, the word format may be defined as under:

“(g) **“Formats”** mean the formats specified in Appendix-I to these regulations for the purpose of submission of information by the generating company or transmission licensee in respect of expected revenues and charges determined by the Commission.”

Regulation 3(2) – submission of information:

16. Regulation 3(2) of the draft regulation stipulated as under:

“(2) The aforesaid information shall be submitted annually under affidavit on or before 30th October each year to reflect the financial position for the previous financial year, current financial year and the ensuing years:

Provided that the aforesaid information for the previous financial year, shall be based on audited financial statements, and for the first half of the current financial year the aforesaid information shall be based on audited figures up to 30th September and for the balance period the information shall be based on provisional figures certified as such by a statutory auditor.

Provided also that in respect of the generating station or transmission assets commissioned after 30th September of the current year the information shall be submitted within 30 days of commissioning. “

16. The stakeholders like PGCIL, NTPC and NLC have submitted that the date of submission may be specified as 30th November each year, as the half yearly accounts are finalized by 31st October of the year. With the regard to auditor’s certificate, it has been suggested that the information for current year (2nd half) and ensuing year may be as per estimated tariff calculated as per norms of tariff regulations of 2009 through an affidavit instead of certification by statutory auditor. In case, auditor certificate is insisted, the same may be from an auditor as defined in tariff regulations of 2009. Further, with regard to the information for assets commissioned after 30th September of current year, it has been suggested that the information should be submitted within 3 Months from the date of commercial operation.

17. We find merit in the suggestions of these stakeholders and decide to modify the relevant regulation as under:

“(2) The formats shall be submitted annually under affidavit on or before 30th November of each year containing the financial position for the previous financial year, current financial year and the ensuing financial year:

Provided that the formats for the previous financial year shall be based on the audited financial statements of that year; for the first half of the current financial year shall be based on finalised statements of accounts up to 30th September and for the second half of the current financial year and the ensuing year shall be based on provisional/estimated figures duly certified through an affidavit.

Provided further that the information in respect of the assets commissioned after 30th September of the current financial year shall be submitted within 90 days of their commercial operation.”

Regulation 3(3)(ii) – RLDC charges:

18. Regulation 3(3) (ii) of the draft regulation stipulated as under:

“(ii) The Transmission Licensee shall estimate the Transmission Charges, Open Access Charges, RLDC Charges, in case of RLDC being integral part of the Transmission Licensee and other charges and conditions as may be applicable to them.”

19. We have already issued a separate regulation for fees and charges of Regional Load Despatch Centre, namely, Central Electricity Regulatory Commission (Fees and charges of Regional Load Despatch Centre and other related matters) Regulations, 2009. As such, we are of the view that the phrase ‘RLDC Charges, in case of RLDC being integral part of the Transmission Licensee’ should not form a part of this regulation and as such

we decide to delete this part from the regulation. Accordingly, the said regulation has been modified as under:

“(ii) The transmission licensee shall estimate the transmission charges, open access charges, and other charges as specified by the Commission.”

Regulation 5 – Power to Relax

20. MPPTCL has suggested that Regulation 5, relating to ‘power to relax’ should not form a part of these regulations as the same is appearing in tariff regulation of 2009.

21. These regulations and the tariff regulations of 2009 are two different regulations made under different sections of the Act. In our view, no prejudice will be caused to anybody by keeping the “power to relax” in these regulations as this enabling provision will help the Commission to take appropriate decision in contingent circumstances.

Appendix- I :Format for information

(a)Form-1 & 2 (Generation)

22. The utilities like NTPC, NHPC, NLC and NEEPCO have opined that it will not be possible to estimate the UI charges and as such the utilities should not be asked to furnish ‘estimated UI charges’. We agree with the suggestions made and the formats have been modified accordingly.

23. Further, the utilities like NTPC, NLC and NEEPCO have opined that it will not be possible to estimate the energy charges. The energy charges can be

estimated on the basis of norms specified in the tariff regulations of 2009 and as such we do not see any justification in the reasoning of these utilities. In case of thermal generating stations, the utilities shall be required to furnish the fuel price assumed in calculation of the energy charge.

24. The utilities have also suggested that it may not be possible to estimate the income tax rate and therefore, asset-wise tax cannot be furnished. As per tariff regulations of 2009, the rate of return on equity is allowed on pre-tax basis and the utilities are no longer required to recover income tax from the beneficiaries. As such, we have decided not to ask the utilities to furnish information in regard to income tax. However, the utilities shall have to furnish information related to actual/expected return on equity and incentive recovered. The forms have been modified accordingly.

(b) Form No.3 (transmission)

25. In respect of the Form No.3, PGCIL has submitted as under:

- (i) The list of assets going to be indicated in Table shall be the assets for which the Commission has determined tariff (or) as per petitions being filed with the Commission based on DOCO.
- (ii) For transmission sector, the word 'capacity charge' may be replaced by Annual Fixed Cost (AFC).
- (iii) Estimation of the transmission charges may be based on the average monthly availability certified by RPC/Projected availability for different categories. The availability of transmission system in the Region is certified by Regional Power Committee in the following categories.

- a. Intra-Regional AC Transmission system
- b. Intra-Regional HVDC transmission system
- c. Inter-Regional AC Transmission system
- d. Inter-Regional HVDC Transmission system
- e. Bi-lateral transmission system

(iv) The actual availability may be average of twelve monthly availabilities certified by RPC for different categories of transmission system, on Regional basis and Inter Regional assets.

(v) The AFC shall include pass through components like FERV, floating rate impact on IOL etc., to be indicated separately in Lumpsum and not asset wise.

(vi) Asset wise Open Access charges are not available and hence a consolidated amount for each Region may be provided.

(vii) Network of telecom is at a national level and the voice/ data criss-cross the transmission systems across the entire country on main and alternative paths. Therefore, revenue from telecom can not be identified at asset / regional level. However, revenue on lump sum basis shall be provided for the entire network. Moreover, telecom revenue projections may not be insisted due to the dynamic/ competitive nature of telecom business. The projections however may be allowed to be submitted separately.

(viii) As per tariff regulations of 2009, Return on Equity (ROE) is based on Pre-tax Return. Thus the AFC recovered for each asset is inclusive of the tax amount. As such a separate consolidated figure of Tax as indicated at end of the table may not be insisted.

(ix) With regard to providing full details supporting forecast, proposed initiatives etc, the forecast shall be based on the projected commercial operation of the assets.

26. We have considered the submission of PGCIL. With regard Sl. (i) above, we have already decided to incorporate the definition of 'asset' which addresses the concern of PGCIL. With regard to changing capacity charge to annual fixed cost, under Sl. (ii) above, the same has been corrected in the relevant forms. With regard to other matters related to availability, FERV, impact of floating rate of interest, open access charges and income from other businesses like telecommunication, under Sl. (iii) to (vii) above, we agree with the submission made by the PGCIL and allow the transmission licensees to submit the information accordingly. The licensee may furnish the projected income from telecommunication separately. With regard to furnishing the income tax recovered, under sl. (viii) above, as per tariff regulations of 2009, the rate of return on equity is allowed on pre-tax basis and the utilities are no longer required to recover income tax from the beneficiaries. As such, we decide not to ask the utilities to furnish information in regard to income tax. However, the utilities shall have to furnish information related to the actual/expected return on equity and incentive recovered. The forms have been modified to this extent. With regard to the basis of estimation, under Sl. (ix) above, as mentioned in the footnote of forms in the regulations, the utilities are required to furnish justification for projection.

General

27. JVVNL, AVVNL, JdVVNL, UPPCL and MPPTCL have suggested that with the availability of the actual financial and operational data, the Commission should be able to implement the various provisions of the 'CERC (Conduct of Business) Regulations. 1999' such as:

(i) Link tariff adjustment to increases in productivity of capital employed and improvements in efficiency so as to safeguard consumers' interest.

(ii) Rationalise tariff on the basis of actual costs of generation and transmission.

(iii) Unbundling of cost so as to enable rational allocation of cost.

(iv) Reassess the bases on which tariff was approved

(v) Carry out trueing up exercise annually on actual cost with norms prescribed as ceiling.

28. The stakeholders have also suggested that the Commission should:

a) determine the tariff based on expected revenue under this regulation for five years;

b) rationalise the tariff in each year based actual cost of that year to ensure reasonable cost and profit;

c) restrict the profit to the return prescribed in regulation

29. It has been further suggested that the Commission should apply the provisions of these regulations to pending petitions on additional capital expenditure and may also be applied along with tariff regulations of 2001, 2004 and 2009, or alternatively from 25th May 2003 when the Electricity Act, 2003 was passed by the Parliament.

30. We would like to clarify that the tariff is determined by the Commission, under section 62(1) of the Act, in accordance with the provisions of the Act including the tariff regulations framed by the Commission under section 61 of the Act. Determination of tariff by the Commission and submission of information by

the utilities are two different activities. As such, we feel that these regulations should not be linked with determination of tariff.

31. JVVNL, AVVNL, JdVVNL, UPPCL and MPPTCL have suggested that the objectives/purpose and implementation procedure of the draft regulations may be mentioned. We have already explained the objectives of these regulations in para 9 of this statement.

32. JVVNL, AVVNL, JdVVNL, UPPCL, MPPTCL and Er. Padamjit Singh have suggested to include detailed element-wise cost data and detailed technical, operational and financial data.

33. These regulations aim at collection of data in regard to the actual vis-à-vis expected revenue from tariffs and charges. As such, detailed element-wise actual cost data is not required under these regulations. The Commission collects and considers these cost data at the time of framing tariff regulations for specifying various norms of operation, O&M expenses, etc. However, the information related to 'Auxiliary Energy Consumption' and 'fuel price' has been included in the relevant forms.

34. UPPTCL and MPPTCL have suggested that the information should be collected for last three years whereas Er. Padamjit Singh has suggested to collect the information from 1st April 2001.

35. The tariff periods 2001-04 and 2004-09 are already over. We are of the view that it will not be prudent to apply these regulations retrospectively and as such it is not necessary to ask for submission of information related to these past periods. However the utilities are under obligation to provide information relating to collection of revenue from tariff and charges annually for the current tariff period and thereafter.

36. Mumbai Grahak Panchayat has suggested that the information in regard to input cost (raw materials) should be furnished as power cost varies with input cost and has proposed that the information be placed in the web-site. It has been further suggested that a penal provision may be provided for penalising the entity furnishing incorrect information and breach in furnishing information.

37. We are of the view that the information collected should be put in the public domain as they are based on published information for the past period. However, information relating to future period can also be put in public domain as it does not put the generating companies and transmission licensees in a disadvantageous position. We direct that the information collected shall be posted on the web-site of the Commission. With regard to incorporation of penal provisions, we are of the view that section 129 and 142 of the Act empower the Commission to impose penalty on any person for contravention of any of the provisions of the regulations framed under the Act.

38. TNEB has suggested that all information, like energy charges, and auditor's certificate should be furnished by the generating company and transmission licensees. We have already discussed this at relevant paras.

39. India Bull has suggested that the number of tripping in case of transmission entities may also be furnished by the transmission utilities.

40. We are of the view that submission of information requiring the number of tripping is not relevant for the purpose of these regulations.

41. Based on the discussion in the preceding paragraphs, the regulations on procedure for calculating the expected revenue from tariff and other charges have been finalized and notified.

Sd/
(V.S. Verma)
Member

Sd/
(S. Jayaraman)
Member

Sd/
(Dr. Pramod Deo)
Chairperson