

**No. L-7/25(5)/2003-CERC**

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri A.H. Jung, Member**

**Re: Amendment of the terms and conditions of tariff applicable during 1.4.2004 to 31.3.2009 - Statement of Reasons**

The Commission had on 16.9.2005 published the draft of amendments to the regulations on terms and conditions of tariff applicable from 1.4.2004 to 31.3.2009 to invite objections/suggestions/comments from the stakeholders. The organisations listed in Annexure to this statement of reasons have responded to the draft amendments. The different issues arising out of the responses received are discussed in the succeeding paragraphs.

**EFFECTIVE DATE OF AMENDMENT**

2. It was proposed that the amendments would be deemed to have come into force on 1.4.2004, the date on which the principal regulations have come into force. The stakeholders have pointed out that the amendments may not be given retrospective effect. This suggestion has been considered. The Commission has decided to apply the amendments prospectively, that is, from the date of their publication in the Official Gazette.

3. The specific issues contained in the draft regulations are now discussed in the light of responses received.

## **PAYMENT OF INTEREST - REGULATION 5A**

4. It was proposed to insert Regulation 5A to provide for payment of interest @ 6% per annum whenever final tariff approved exceeds or falls short of the provisional tariff.

5. NLC has commented that interest payment may vitiate profitability due to uncertainty and has thus expressed a view against incorporation of such a provision in the regulations on terms and conditions of tariff. NTPC has suggested that interest should be chargeable @ 4.83% as applicable to Government of India securities. HPGCL on the other hand has suggested the interest rate should be SBI PLR and a time limit for payment/adjustment of excess/deficient amount should be specified.

6. We first consider the objection of NLC. The provisional tariff is allowed by the Commission based on certain assumptions. However, the final tariff may be different from the provisional tariff. There is a well established principle of law. that *actus curiae neminem gravabit* (the act of the Court should not prejudice anyone). The maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of law. The payment of interest is guided by the equitable considerations, even where the excess or deficit payment is made under the orders of the Commission. It is natural that no party should suffer by the order of the Commission granting provisional tariff which is less or more than the final tariff. In fact, Section 62(6) of the Electricity Act, 2003 also provides for payment of interest under certain circumstances. Accordingly, NLC's viewpoint has to be ignored. On the question of rate of interest, the suggestion of HPGCL cannot be accepted because of

the frequent fluctuations in SBI PLR. Similarly, rate of interest cannot be fixed at 4.83%, as suggested by NTPC, for the reason that it does not represent the applicable Bank rates. The rate of interest of 6% as proposed in the draft regulations is considered to be close to the prevailing market interest rates, and is considered to be just and fair. This shall be notified. The interest shall be calculated on monthly basis, but shall not be compounded. The excess/deficit payments along with simple interest @ 6% shall be adjusted within three months from the date of order for such adjustment. Any failure on the part of any one may attract penal rate of interest to be decided by the Commission on case to case basis.

#### **DEBT-EQUITY RATIO - REGULATIONS 20, 36 AND 54**

7. While publishing the draft amendments on debt-equity ratio, two major changes were proposed over the provisions made in the existing regulations. The original regulations on terms and conditions of tariff provided that in respect of the existing generating stations/transmission projects, debt-equity ratio as considered by the Commission while approving tariff for the period ending 31.3.2004 would be adopted for the period 1.4.2004 to 31.3.2009. It, however, subsequently transpired that in certain cases, for example, DVC and Badarpur Thermal Power Station, the Commission had not approved the tariff for the period ending 31.3.2004. Therefore, it was considered that the suitable provision needed to be made and accordingly, it was proposed that in case of the existing generating stations/transmission projects, debt-equity ratio considered by the Commission or any other authority, while approving tariff for the period ending 31.3.2004 would be considered.

8. Jharkhand State Electricity Regulatory Commission (Jharkhand SERC) has strong objections to the amendment that debt-equity ratio earlier considered by any other authority should also form the basis for computation of tariff for the period commencing on 1.4.2004. As an example, Jharkhand SERC has stated that prior to 1.4.2004, tariff of DVC was not approved by its Board on commercial considerations. Accordingly, DVC had not followed any specific principle for determination of tariff. In the opinion of Jharkhand SERC, adoption of the debt-equity ratio earlier considered by DVC will jeopardize the interest of the consumer.

9. In the cases of generating stations whose tariff has not been determined by this Commission for the period ending 31.3.2004, the Commission may not necessarily adopt debt-equity ratio considered for the prior period. Therefore, the amendment should provide that in cases where tariff for the period ending 31.3.2004 is not determined by the Commission, debt-equity ratio shall be as may be decided by the Commission while approving tariff for the period 1.4.2004 to 31.3.2009.

10. The second issue on debt-equity ratio is on additional capitalization occurring after 31.3.2004. The existing regulations are silent on the question of debt-equity ratio to be followed for the existing generating stations/transmission projects in which additional capitalization occurs after 31.3.2004. To meet this deficiency, in the draft regulations, it was proposed that in case of the existing generating stations/transmission projects where additional capitalization has been completed on

or after 1.4.2004 and admitted by the Commission, debt-equity shall be in the ratio of 70:30.

11. NTPC has suggested that debt-equity ratio adopted for the purpose of tariff should also be adopted for the purpose of additional capital expenditure. The implication of the suggestion is that for old generating stations, debt-equity ratio of 50:50 will be considered for additional capitalization also. SJVNL is of the opinion that for the existing and newly set up hydro generating stations, debt-equity ratio should be adopted as approved by the approving authority and the expansion projects should be based on the existing debt-equity norms. According to NLC, under NFA method actual funding mix should be considered.

12. The Commission has consciously moved from “actuals” to “normative” basis for the purpose of determination of tariff to build incentives/disincentives in performance. The existing regulations on terms and conditions of tariff provide that in case of the generating stations/transmission projects for which investment approval was accorded prior to 1.4.2004 and are likely to be declared under commercial operation during the period 1.4.2004 to 31.3.2009, debt-equity in the ratio of 70:30 is to be considered. It is further provided that in such cases the Commission may in appropriate cases consider equity higher than 30%, for the purposes of determination of tariff where the generating company/transmission licensee is able to establish to the satisfaction of the Commission that deployment of equity of more than 30% was in the interest of general public. We have decided a similar approach in case of additional capitalisation cases of the existing generating stations/transmission projects. Thus, for additional capitalization of the existing generating stations/transmission projects being

completed on or after 1.4.2004 in stead of restricting debt-equity to the ratio of 70:30 in all cases it has been decided that additional capitalization of the existing generating stations/transmission projects occurring during the period 1.4.2004 to 31.3.2009 debt-equity ratio of 70:30 shall be considered unless the generating company/transmission licensee is able to satisfy the Commission that deployment of equity of more than 30% was in the interest of general public.

13. The existing regulations provide that in cases where investment approval is accorded on or after 1.4.2004, debt-equity ratio of 70:30 shall be considered for the purpose of determination of tariff and where deployment of equity is less than 30%, the actual equity deployed shall be the basis. A doubt has been expressed whether or not it is permissible to deploy equity of more than 30%. It is clarified that the regulations do not bar deployment of equity of more than 30%, but, for the purpose of tariff up to a maximum of 30% of equity will be considered. It follows that equity in excess of 30% shall be considered as notional loan for computation of tariff. A clarification to that effect is being incorporated in the regulations.

#### **INTEREST ON LOAN - REGULATIONS 21 (i), 38 (i) AND 56 (i)**

14. The draft on amendment to the provisions relating to interest on loan was published to give effect to the Commission's order dated 28.6.2005 in Petition No.17/2005 filed by NTPC for approval of borrowing on floating rate of interest, in which case it was decided that a utility could contract loans in the national and international markets at floating rate of interest, if necessary, and may swap loans having floating rate of interest at its discretion, the cost of which is to be borne by the concerned utility. It was also decided that gains or losses accruing consequent to

swapping of loans would be borne by the utility and the liability of the State beneficiaries would be limited to the interest as initially contracted. It was also proposed to substitute the word “swap” with the word “refinance” as the words “swap” has the connotation in the context of hedging of foreign currency loans.

15. SJVNL has suggested that cost associated with swapping of loans having floating rate of interest to fixed rate of interest should be borne by the beneficiaries. The draft amendment was based on the consideration and view that hedging and swapping of foreign loans was at the risk and cost of the generating company/transmission licensee. Subsequent to publication of the draft regulations, the Central Government has notified the tariff policy on 6.1.2006. The tariff policy provides that foreign exchange rate variation risk shall not be passed through and appropriate cost of hedging and swapping to take care of foreign exchange rate variations should be allowed for debt obtained in foreign currencies. The provision made in the tariff policy is presently under examination of the Commission and pending a decision thereon the amendment as proposed in the draft amendment may issue.

16. In the existing regulations under the heading “interest on loan” it has been provided that the depreciation recovered during moratorium period should be treated as repayment of loan. While publishing the draft amendments on “interest on loan” this provision was reproduced for the completeness of the provision.

17. NTPC has suggested that the depreciation recovered during moratorium period should not be treated as deemed repayment for the reasons that, firstly, depreciation is an internal resource available with a company for expansion, loan payment, etc.,

and should not be linked to repayment of loan, and secondly, depreciation recovered during moratorium period could be leveraged to raise more funds for creating additional capacity. On the contrary NLC has suggested that if the generator collects any tariff during moratorium period, the depreciation provided may be considered for repayment of loan. HPGCL has suggested that provision relating to depreciation recovered during moratorium period should be applicable to all loans with moratorium in the basket of loans.

18. There are different views as regards the principle for recovery of depreciation. One view is that depreciation is recovery for replacement of the asset when it becomes obsolete. The other view is that depreciation is linked to repayment of loan. The terms and conditions of tariff notified by the Commission leans towards the latter view, when these make provision for Advance Against Depreciation in case depreciation falls short of loan repayment. The provision made in the regulations should, therefore, stand. The views of NLC and HPGCL generally support the existing provision.

19. NLC has suggested that actual loan as on 1.4.2004 should be reckoned and actual repayment schedule should be considered for the purpose of calculating the interest. When tariff is determined by following GFA approach, normative loan may be different from actual loan and therefore, in all such cases, normative loan is to be considered. Accordingly, the suggestion made by NLC needs to be ignored.



### **LATE PAYMENT SURCHARGE – REGULATIONS 26, 44 AND 62**

20. In the draft regulations it was proposed that in case the payment of any bill, other than the bills for UI and VAR charges (which are covered in the Indian Electricity Grid Code), is delayed beyond 60 days from the date of such billing, late payment surcharge @ 1.25% per month is leviable. RPPC has suggested that rebate should be available on incentive payments as well. NLC seeks clarification on the inconsistencies in the tripartite agreement for one time settlement of dues and the Commission's orders with regard to rebate, interest for delayed payments.

21. The suggestion of RPPC is covered in the draft amendment proposed as it governs all bills, excluding bills for UI and VAR charges. Further, attempt has been made to bring the regulations at par with the provisions of the tripartite agreement. Accordingly, the draft amendment as proposed may be notified.

### **PRIMARY ENERGY RATE – REGULATION 39**

22. In the draft regulations, it has *inter alia* been proposed that rate of primary energy for all hydro electric power generating stations, except for pumped storage generating stations shall be equal to the lowest variable charges of the Central Sector Power Generating Stations of the concerned region for the previous year. SJVNL has suggested that rate of primary energy should be equal to **average** of the lowest variable charges of the Central Sector Power Generating Stations of the concerned region for **all the months** of the previous year. The expressions highlighted (in bolds) have been proposed to be added.

23. In actual practice, the methodology followed is same as suggested by SJVNL. For sake of clarity, amendments as suggested by SJVNL may be notified.

**FORMULA FOR MONTHLY CAPACITY CHARGES FOR THE HYDRO GENERATING STATIONS - REGULATION 48**

24. A revised formula for computation of monthly capacity for the hydro generating stations was proposed. No comments or suggestions have been received. The revised formula may, therefore, be finalized.

**SHARING OF CHARGES FOR INTRA-REGIONAL ASSETS – REGULATION 58**

25. The revised formula for sharing of transmission charges for intra-regional assets was proposed in the draft amendments. No comments or suggestions have been received. As such, the provisions made in the draft regulations can be finalized.

**SHARING OF CHARGES FOR INTER-REGIONAL ASSETS - REGULATION 59**

26. The existing regulation on sharing of transmission charges for inter-regional assets was proposed to be amended to bring it in tune with the provisions made in the regulations on open access. CEA has suggested the amendment as under:

“Out of the balance capacity of the inter-regional asset, Regional Load Despatch Centres may decide to keep certain capacity **in real time** operation as a reserve margin **based on guidelines issued by the Regional Power Committee**. The capacity of the inter-regional link after accounting for allocation from Central Generating Stations, long term contracts and reserve margin shall be made available for short term open access. The short term

transmission customers shall pay transmission charges as per Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 as amended from time to time”.

27. The suggestion made by CEA is not relevant to the sharing of the transmission charges for inter-regional assets. As such, there is no place to incorporate the amendment suggested by CEA. The revised methodology for sharing of charges for inter-regional assets may be notified.

#### **EXTRA RUPEE LIABILITY - REGULATION 9**

28. The existing regulation on recovery of FERV provides that the generating company /transmission licensee shall recover FERV on year to year basis as income or expenditure for the period in which it arises and FERV shall be adjusted on year to year basis. NTPC has suggested that the extra rupee liability on account of FERV on loan repayment and interest payment should be allowed on actual basis. As the provisions relating to recovery of FERV are not the subject matter of draft amendments, it is not desirable to notify any changes at this stage.

29. We direct that the amendments as approved may be published in the Official Gazette.

**Sd/-  
(A.H. JUNG)  
MEMBER**

**Sd/-  
(BHANU BHUSHAN)  
MEMBER**

**Sd/-  
(ASHOK BASU)  
CHAIRPERSON**

**New Delhi dated the 15<sup>th</sup> May 2006**

**Annexure to the Statement of Reasons dated 15<sup>th</sup> May 2006**

- (a) Jharkhand State Electricity Regulatory Commission (Jharkhand ERC);
- (b) Central Electricity Authority (CEA);
- (c) National Thermal Power Corporation Ltd. (NTPC);
- (d) Haryana Power Generation Co. Ltd. (HPGCL);
- (e) Neyveli Lignite Corporation Ltd, (NLC);
- (f) Satluj Jal Vidyut Nigam Ltd, (SJVN); and
- (g) Rajasthan Power Procurement Centre (RPPC).