**Annexure-A (DBPL Comments / Suggestions on the proposed CERC draft Tariff Regulations, 2024)**

| **Sr. No.** | **Clause Reference**  **– Draft Regulations** | Proposed CERC Tariff Regulations, 2024 | DBPL Comments / Suggestions on the proposed CERC draft Tariff Regulations, 2024 |
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| 1 | **Interim Tariff and modality of refund or recovery**  Clause No. 10 (3) & (7) of Draft Regulations | (3) If the information furnished in the petition is in accordance with these regulations, the Commission may consider granting interim tariff of up to ninety per cent (90%) of the tariff claimed in case of new generating station or unit thereof or transmission system or element thereof during the first hearing of the application: Provided that in case the final tariff determined by the Commission is lower than the interim tariff by more than 10%, the generating company or transmission licensee shall return the excess amount recovered from the beneficiaries or long term customers, as the case may be with simple interest at 1.20 times of the rate worked out on the basis of 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the financial year in which such excess recovery was made  ……………………  (7) Subject to Sub-Clause (8) below, the difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and (5) above, shall be recovered from or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at the rate equal to the 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments. | Tariff determination by Commission practically may take substantial period of time and the final order may reflect a refund or recovery, as the case may be. While the draft regulations provide for payment of difference amount by discoms (in case of additional recovery) in six monthly instalments and at an interest rate of 1-year SBI MCLR+100 basis points till the date of issuance of the Order along with waiver of interest for the period of such six months, the interest rate at 1.20 times of rate of interest as well as the modality of payment in case of refund by generation companies is unjust and unequal.  It is submitted that the Commission shall consider equitable provision for recovery of any variation of amount in finally determined tariff vis-à-vis interim tariff payable by either of the parties to another party under the PPA.  Further, the Commission must recognise that payment of interest is in the nature of time value of money which ought to be paid. When such interest remains unpaid, it incurs additional costs – effectively compounding on a monthly basis.  It is submitted that the Commission recognises time value of money on the unpaid interest also, and allow for interest on the outstanding LPS i.e. effectively allow the interest to be charged on monthly compounding basis. |
| 2 | **Capital Cost for Projects acquired through NCLT Proceedings**  Clause No. 19 (5) of Draft Regulations | …………For Projects acquired through NCLT proceedings, the following shall be considered while approving Capital Cost for determination of tariff:  (a) For projects already under operation, historical GFA of the project acquired or the acquisition value paid by the generating company, whichever is lower…………. | The valuation of an acquired project, whether operational or under construction, is based on ongoing contracts. These tariffs, in turn, necessarily rely on the historical/approved cost for Section 62 projects and the bid tariff for Section 63 projects.  Most importantly, the fundamental reason for a project to undergo resolution through the NCLT route is when revenue streams, based on the historical/approved cost, could not sustain the debt servicing obligations. Therefore, a lower valuation (than the historic cost) is discovered to make the project viable. The aim of resolution is to maximize valuation and minimize losses for bankers and financing institutions.  Any change in tariff principles for existing PPAs could significantly impact the viability of the resolution plan and even push such projects back into financial distress or bankruptcy, defeating the whole objective of resolution through NCLT proceedings.  It is submitted that the Hon’ble CERC should only consider approved capital cost by the Appropriate Commission based on historical cost, and should exclude the acquisition value from consideration. |
| 3 | **Return on Equity**  Clause No. 30 (3) of Draft Regulations | ………. Provided that return on equity in respect of additional capitalization beyond the original scope, including additional capitalization on account of the emission control system, Change in Law, and Force Majeure shall be computed at the base rate of one-year marginal cost of lending rate (MCLR) of the State Bank of India plus 350 basis points as on 1st April of the year, subject to a ceiling of 14%. | The need for additional capitalization arises from unforeseen events or legal changes, which are crucial for ensuring the continuity of a project. Recognizing that the capital expenditure resulting from such is beyond the control of generating utilities, any expenditure approved by the Commission after a prudence check should have the same Return on Equity (ROE) applicability as main project.  Since the additional capitalization under change in law, force majeure event and emission control system are legitimate and allowed under these Regulations, the current provision of denying adequate return on equity portion towards such additional capitalization could discourage equity investment in the sector, particularly, when the government is focusing on attracting substantial investment in coal-based generation capacity over next 5-7 years  It is submitted that the Rate of ROE for additional capitalization on account of emission control system, Change in Law, and Force Majeure is considered as 15.50%. |
| 4 | **Interest on loan capital**  Clause No. 32 (6) of Draft Regulations | In the case of New Project(s), the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio of the generating company or the transmission licensee, as the case may be;  Provided further that if the generating station or the transmission system, as the case maybe, does not have any actual loan, then the rate of interest for a loan shall be considered as 1-year MCLR of the State Bank of India as applicable as on April 01, of the relevant financial year.  …………………………………………………………….. | Any source of capital that is utilised to fund the project, in case it does not have any actual loan, is generally at higher than cost of bank debt for such project.  While the actual cost of such capital may not be relevant, it shall be at the very least in line with the pricing of the bank debt in similar projects that account in premium for credit risk as well as tenure of the loan over and above the base MCLR rate.  It is submitted that the rate of interest shall be considered as 1-year MCLR of the State Bank of India as applicable as on April 01 of the relevant financial year plus 150 basis points. |
| 5 | **Depreciation for new projects**  Clause No. 33 (6) of Draft Regulations | (6) Depreciation for New Projects shall be calculated annually based on the Straight-Line Method and at rates specified in Appendix-II to these regulations for the assets of the generating station and transmission system…………... | The current climate change scenario and Environmental, Social, and Governance (ESG) constraints contribute to the hesitancy of banks as well as financing institutions to finance fossil fuel-based projects. The evolving energy landscape and changing energy mix suggest that loans to thermal generating stations may face constraints or be subject to higher interest rates. This is attributed to the heightened risk perception of fossil fuel generation during the transition to renewable energy and the increased exposure of domestic loans to the power sector, given the substantial fund requirement for Thermal generating stations.  Consequently, the prospect of securing longer-term loans from banks and financial institutions is expected to worsen with an increase in the tenor of term loans.  Nonetheless, even if the long repayment period of 15-18 years is to sanctioned, there is a substantial tenure premium over and above sector and credit risk premiums- rendering such long-term loans impractical for coal base thermal projects.  It is submitted that the rates specified in Appendix-II of the regulations shall be based on a period of 12 years as in Tariff Regulations, 2019 |
| 6 | **Water Charges**    Clause No. 36 (1) (6) of Draft Regulations | (6) The Water Charges, Security Expenses and Capital Spares for thermal generating stations shall be allowed separately after prudence check:  Provided that water charges shall be allowed based on water consumption depending upon type of plant and type of cooling water system or water agreement with state govt./utilities, and the norms specified by the Ministry of Environment, Forest and Climate Change subject to prudence check. The details regarding the same shall be furnished along with the petition; | In as much as the Commission provides for water charges to be determined based on actual consumption, considering plant configuration, water agreements, and specified norms, underscores the variable nature of these expenses, the Commission explicitly recognizes that the distinct treatment of these expenses is justified due to their variability and their direct correlation with the actual generation and supply of power.  Based on the rationale behind segregating these expenses from O&M expenses, it is logical to consider water charges as part of Energy Charge, while retaining the flexibility in approving these charges, considering the aforementioned factors. |
| 7 | **Ash transportation expenses**  Clause No. 36 (1) (7) of Draft Regulations  Clause No. 15.5.2 (d) of Explanatory Memorandum | (7) Any additional O&M expenses incurred by the generating company or transmission licensee due to any change in law or Force Majeure event shall be considered at the time of truing up of tariff.  d) Expense on account of ash transportation are allowed by the Commission on case-to case basis after due prudence, as transportation of ash is not a constant and predictable operational activity and may differ significantly by factors such as distance between the plant and the beneficiaries and the diverse nature of beneficiaries, such as Cement Industries, Traders, Brick Manufactures, among others. Further, the costs associated with handling and transporting ash are treated separately. Therefore, due to the variable and irregular nature of ash disposal activities, such expenses have not been considered for computing the O&M expense Norms. | The draft Regulations explicitly state that any additional O&M expenses incurred by the generating company or transmission licensee due to a change in law or Force Majeure event must be considered during the tariff truing-up process.  It is hereby submitted that, through a Notification dated December 31, 2021, the Ministry of Environment, Forest and Climate Change (MoEF&CC) has mandated every coal or lignite-based thermal power plant to be primarily responsible **for ensuring 100% utilization of ash**. The notification further mandates that all agencies (Government, Semi-government, and Private) involved in construction activities, such as road laying, road and flyover embankments, shoreline protection structures in coastal districts, and dams within 300 kms from lignite or coal-based thermal power plants, must compulsorily utilize ash in these activities. This obligation is contingent upon the ash being delivered to the project site **at no cost, with transportation expenses borne by the respective coal or lignite-based thermal power plants.**  Effectively, this constitutes a Change in Law; however, the draft regulations do not explicitly address the expenses associated with handling and transporting ash.  Clause 15.5.2 (d) of the Explanatory Memorandum provides that expenses related to ash transportation are allowed by the Commission on a case-by-case basis after due prudence.  In as much as the Explanatory Memorandum emphasizes the variable nature of these expenses and allows for expenses related to ash transportation on a case-by-case basis, the Commission explicitly recognizes that the distinct treatment of these expenses is justified due to their variability and their direct correlation with the actual generation and supply of power.  Considering the rationale behind excluding these expenses from O&M costs, it is submitted that the Commission may include expenses related to utilisation of ash **under Energy Charges** as well as any income from **sale of ash to be netted off from Energy Charges as well.** |
| 8 | **Threshold for impact of change in law and force majeure under Operation and Maintenance Expenses**  Clause No. 36 (1) (7) of Draft Regulations | (7) Any additional O&M expenses incurred by the generating company or transmission licensee due to any change in law or Force Majeure event shall be considered at the time of truing up of tariff.  Provided that such impact shall be allowed only in case the overall impact of such change in law event in a year is more than 5% of normative O&M expenses allowed for the year. | Inclusion of provisions for allowing impact of change in law and force majeure Events in the regulations is highly appreciated.  It is submitted that 5% of normative O&M expenses works out between Rs. 14.4 Cr to Rs. 18.6 Cr for a 1200 MW thermal power plant and denial of impact of any change in law or force majeure event by the generating station to the tune of this amount (in case of ceiling of 5% of normative O&M expenses) be highly detrimental to the financial health of the generation company.  It is submitted that the threshold may be capped at an amount of Rs 1 Crore and above for all the generating stations. |
| 9 | **Inclusion of MOP directions for blending of coal under computation of Supplementary Energy Charge**  Clause No. 64 (4) of Draft Regulations | (4) In case of part or full use of an alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power purchase agreement for the supply of contracted power on account of a shortage of fuel or optimization of economical operation through blending, the use of an alternative source of fuel supply shall be permitted to generating station up to a maximum of 6% blending by weight. …………………………………………………………….. | The draft regulations provide for use of an alternative source of fuel supply up to a maximum of 6% blending by weight on account of a shortage of fuel or optimization of economical operation.  It is submitted that the provision may be extended to the events where there is a direction from Ministry of Power for mandatory blending of imported coal. |