UPPCL Comments on CERC Draft Regulation 2008

The Hon'ble Commission has issued public notice dated 29 Aug. 2008 and invited the comments latest by 15/10/2008 on Draft Regulations on Terms & Conditions of tariff for period 2009-14.

UPPCL is submitting its comments herein below:

Preliminary observations -

1. The guidelines for framing tariff regulation mentioned under section 61 of the Elec. Act 2003 provides for safeguarding the interest of consumer & the recovery of cost in reasonable manner under section 61(d)(g) of Act 2003. The tariff regulation must promote economy, efficiency and competition in the power sector and the utilities of generation, transmission, distribution & supply of electricity are able to conduct their business on commercial principles.

2. The regulatory mechanism needs to strike a balance between the purchaser and seller for overall development of power sector. At present the tariff orders are creating unbalance because the CGS & CTU are earning huge profit upto 76% R.O.E. whereas the Discoms and state generators are running into losses and have become unviable.

3. Tariff Policy stipulates to create balance in purchaser and seller:- Section 5.3(a) of the Tariff Policy stipulates that while laying down rate of return the Commission shall maintain balance between the interests of consumers and the need for investments. The Central commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. State discoms are running into huge losses from Rs. 2000 to Rs. 6000 crore in a year. The viability of State discoms, generator and interest of consumers is to be safeguarded as per Act 2003 & tariff policy dt.6/1/06.

4. **In view of above, the following suggestions may be incorporated in the draft Regulation 2008 so that the beneficiaries must be able to conduct their business on commercial principles**

    4.1 Tariff determination by ARR u/s 62 (5) in place of norm, needs to be implemented. The recovery of Hypothetical cost may be withdrawn (Normative cost which is higher than actual is Hypothetical cost since it is Non-incurred cost so its recovery with F.P.A. and I.Tax is illegal).

    4.2 Income tax recovery by NTPC/CPSU from beneficiaries may be withdrawn.

    4.3 Enhanced depreciation @ 4.7% in draft regulation 2008 (in place of earlier @ 3.6%) may be withdrawn.

    4.4 (a) Hike in O&M expenses due to 45% hike in salary of NTPC/CPSU employees,

    as proposed in draft regulation, may be withdrawn.

(b) Special compensation allowance @ Rs. 15000 –Rs. 65000/- MW/year for various item/works of additional capital expenditures (Below 25 yr. of Plant)may be withdrawn.

(c) **R&M expenses @ Rs. 5 lakh /MW/year for the work of enhanced life of plant beyond 25 yrs. (Thermal) may be withdrawn or reduced fto Rs. 1 lakh/MW/year.**

4.5 Projected capital cost, proposed in draft Regulation 2008 with truing up (in place of assets put to use & captialised) for tariff determination (Fixed Charges) may be withdrawn.

4.6 Incentive formula of draft regulation may be withdrawn. The incentive rate may be reduced to 15 Paise/unit for performance of power station above Target Availability.

4.7 Sale of 1% extra generation above schedule on U. I. Rate must be stopped so that the deviation from schedule may not be awarded being inconsistent with ABT order dt. 4.1.00 and Hon'ble Supreme Court Order dt. 17.8.07 in Appeal no. 21.04.06.

5. The new proposals of draft regulation regarding projected capital expenditure may be dropped because of following reasons.
   (a) The impact/amount of additional recovery is not known due to norms which is yet not decided. This would increase unknown burden of beneficiaries. This is new experiment. Any experiment by new regulation must be passed only after examining the cost & benefit of consumer. The Hon'ble commission has withdrawn some regulations (i) Development surcharge (ii) Sale of 1% extra generation above schedule on U.I. rate by putting cap of Rs. 4.06/kWh on generator, after their implementation were objected.
   (b) The justification of implementation is to be discussed in the light of other alternatives.
   (c) The norms of projected capital cost is required to be decided.
   (d) The 90% depreciation being collected for the power project may be utilised for additional R&M work.

6.1 Income Tax

The provisions of tariff regulation which have been in violation of Act2003, may be withdrawn.

6.1.1 The income tax of NTPC/CPSU must not be recovered from beneficiaries/consumers. The Act 2003 or tariff policy does not provide the recovery of income tax from beneficiary. It is against the income tax Act and Electricity Act 03 so pretax R.O.E must be prescribed in place of post tax R.O.E. The Pre tax R.O.E. of 14% may be prescribed for new power stations with tax holiday. The Pre tax R.O.E. of 19% may be prescribed for other old stations.

6.1.2.The recovery of income tax on savings of oil/coal/fuel etc must be stopped.

6.2 Tariff determination is to be done based on A.R.R. U/s 62 (5) in place of norms so the following may be considered

The recovery of non-incurred cost must not be done by NTPC or CPSU's through norms. Such recoveries are against the section 61 (d) (g) of Act 2003. The section 62 (5) of Act 2003 is required to be implemented.

6.2.1 The Hon'ble Commission is duty-bound to implement the provision of section 62(5) as per its own order dt. 31/7/08 in Petition N0 155/07. The Hon'ble Commission is required to consider following-

6.2.1.1 The Elec. Act 2003 mandates recovery of tariff by expected tariff and not by normative cost. It provides recovery of tariff based on Actual cost under section 61 and the determination of tariff based on expected revenue as per section 62(5) so that recovery of tariff based on hypothetical cost or normative cost may be stopped.

6.2.2 The following procedure for calculation of expected Revenue from tariff and charges, may be adopted for framing regulation under section 62 (5) and 178 (2) (u) of Act 2003 which may be called as A.R.R. (Annual Revenue Requirement)

(a) The interest on working capital, O&M expenses, specific oil consumption, station heat rate, Aux. Energy consumption & target availability may be determined from average of last three years subject to actual cost, after truing up exercise after the end of financial year. The deficit in tariff may be recovered based on specified ceiling norms and excess tariff be refunded/adjusted based on principle 'Normative or Actual whichever is lower'.
This will reduce recovery of non-incurred cost (+grossed up I. Tax @ 50%) which is being allowed through ceiling norms and is more than the average cost.

(b) The actual cost incurred may be taken from Cost Accountancy Records (Electricity Industry) Rules 2001, being maintained as mandated by notification dated 21.12.2001 by Ministry of Law, justice and company affairs for controlling the cost and operation of Electricity Industry under 209 (1) (d) of the company Act 1956 as per Annexure-1.

Example- The cost of oil for thermal generation must be recovered based on expected revenue under section 62(5) from the average of past (may be 3 years) which is 0 ·35 ml/ kwh in following table in column (5) but the Hon'ble Commission by its draft regulation is going to allow recovery based on ceiling norms of 1ml/kWh in column 6 by inflating the cost. NTPC may not be allowed incentive in advance by recovery of cost based on ceiling norms which is higher than average cost or expected cost. Incentive may be given only for performance better than the average cost/expected cost.

Table A

Operating parameters	Actual parameters Achieved				As proposed by CERC in Draft Regulation 2008	As proposed by UPPCL *	Remarks
				Average of 3yr.			
	2004-05	05-06	06-07				
1.	2.	3.	4.	5.	6.	7.	8.
S.O.C. (ml/Kwh)	0.30	0.31	0.44	0.35	1ml/kwh	0.5ml/kwh	Based on column 4&5
S.H.R. K.Cal/Kwh	2413	2401	2401	2405	2450	2400	
A.E.C. (%)	6.96	7.11	7.24	7.10	8.5%	8	
T.A. (%)	91	89	84	88	85%	90%	

- Better norms based on data of 2004-07 for Singrauli STPS have been proposed by UPPCL as these have been either achieved or expected to be achieved.

…4…..

6.2.2 (c) **Implementation of section 62(5) of Act 2003 by calculating the expected revenue from tariff and charges.**

The section 62(5) of the Electricity Act 2003 requires to be implemented as below. The calculation of revenue is based on average of 3 yrs. amount but due to non-implementation of section 62 (5) the consumer has been burdened with recovery of non-incurred expenditure + Income Tax because the norms are higher than the average cost of three years.

		Actual Consumption of Oil					
Sl. No.	Name of the Power Station	2004-05	2005-06	2006-07	Average for 3 years (2004-07)	Ceiling norms Specified by CERC	Non - incurred expenditure on average performance
1.	2.	3.	4.	5.	6	7.	8.

1	Singrauli (5x200+2x500)	0.30	0.31	0.44	0.35	1.00	1-0.35
2.	Tanda(4x110)	0.74	0.62	0.40	0.59	1.00	1-0.59
3.	Dadri Thermal (4x210)	0.16	0.21	0.11	0.16	1.00	1-0.16
4.	Kahalgaon(4x210)	0.53	0.41	0.61	0.52	1.00	1-0.52
5.	Unchahar I,II,III(210)	0.43	0.36	0.27	0.36	1.00	1-0.36
6.	Rihand I,II(4x500)	0.17	0.25	0.17	0.20	1.00	1-0.20
7.	Talchar(2+4x500)	0.65	0.50	0.27	0.48	1.00	1-0.48
8.	Simadri (2x500)	0.23	0.19	0.19	0.20	1.00	1-0.20
9.	Korba (3x200+3x500)	0.11	0.11	0.10	0.11	1.00	1-0.11
10.	Farakka (3x200+2x500)	2.42	0.90	0.90	1.42	1.00	1-1.42
11	Ramagundam (3x200+3x500+1x500	0.17	0.24	0.19	0.20	1.00	1-0.20
12.	Vindhyachal 6x210+4x500)	0.16	0.15	0.14	0.15	1.00	1-0.15
13.	Badarpur (3x95+2x210)	0.33	0.34	0.42	0.36	1.00	1-0.36
14..	Talchar(4x60+2x110)	0.78	0.40	0.44	0.54	1.00	1-0.54

- Calculation of expected revenue is to be done u/s 62 (5) by average of 3 years as per column No. 6.
- Non incurred expenditure = Ceiling norms - Average of 3 years.
- Truing up may be done after each financial year based on the established principle of Normative or actual whichever is lower. In case the actual expenditure is more than the average of 3 years then it may be allowed up to the level of ceiling norms as per UPPCL on the principles of normative or acutal is lower.
- In case the actual is less than average of 3 years, then it may be refunded/adjusted.

In case performance of NTPC is average and the actual oil consumption is 0.35 ml/Kwh then the difference 0.65 ml/kwh (1 ml/kwh – 0.35 ml/Kwh) is the oil which may not be consumed however its recovery shall be allowed by proposed regulation. Recovery of non-incurred expenditure for 0.65 ml/Kwh oil is illegal which work out as 1.95 Paise/kWh if rate of 1 ml oil is assumed as 3 paise.

6.2.3 The impact of such arbitrary recovery is as below-

As per above, a power station of 1000 MW which generates 7000 MU electricity in one year, the actual cost may be Rs. 7.32 crore however normative recovery of Rs 27.82 crore shall be made (Which contains non incurred expenditure Rs. 13.6 crore + Income Tax Rs. 6.9 crore at grossed up rate)

Table B

1.	2.	3.	4.	5.
	Cost of Oil for generating 7000 mu electricity assuming rate of oil @ Rs. 30000/kl 1 ml = 3 Paise	Profit	I.Tax	Total
Cost for Actual Consumption @ 0.35 ml/u	7.32 crore			
Cost for Normative Consumption @ 1 ml/u	20.92 crore		6.9	27.82
Non-incurred cost @0.65 ml/u	13.6 crore	13.6		

For 1000 MW, the actual cost of oil may be Rs 7.32 crore but arbitrary recovery is Rs 27.82 crore
For 20000 MW, the actual cost of oil may be Rs 146.4 crore but illegal recovery is Rs 556.4 crore
As per following table C -

Table C

Capacity of Power Station	The electricity generation in one year	Actual or expected cost	Normative Cost	Non-Incurred expenditure	Income Tax	Total Recovery
1000 MW	7000 MU	7.32	20.92	13.6	6.9	27.82
20000 MW	140000 MU	146.4	418.4	272	138	556.4

NTPC shall recover Rs. 556.4 crore arbitrarily against expected cost of Rs. 146.4 crore therefore the expected revenue Rs 146.4 crore u/s 62(5) based on average of 3 years for oil consumption of 0.35 ml/kwh may be recovered under section 62(5) to protect the interest of consumer.

Earlier the NTPC has been allowed to recover following arbitrary amount by regulation 2001 and 2004 however it may not be continued being in violation of section 62(5) & 61(d)(g) of Act 2003.

S.No.	Non-incurred Amt.	Income Tax	Period	Norms (ml/u)
1.	Rs. 2500 crore	Rs. 1250 crore	F.Y. 2004-09	2
2.	Rs. 1500 crore	Rs. 750 crore	F.Y. 2001-04	3.5

- Similarly about 2% cost of coal arbitrarily recovered with F.P.A. must be stopped as the norm for station heat rate is 2450 K.cal/Kwh and expected S.H.R. is 2400 K.cal/Kwh as per Table A.
- The arbitrary recovery through sale of 1% extra generation above schedule worth Rs 400 crore in one year must be stopped because the norm of Aux. Energy Consumption is 8.5% and expected/actual A.E.C. is 7.1% as per Table A.

Therefore the recovery based on average of 3 year as expected revenue under section 62(5) may be allowed for Interest on Working Capital, O&M Expenses specific oil consumption, station Heat Rate. Aux. Energy consumption & target availability as per previous table A at column no 5.

The truing up of such tariff may be done after receiving the information of actual cost after each financial year and refund or recovery may be allowed by the Commission. The Hon'ble commission has already allowed such adjustment as per CERC Tariff Regulation 2001 vide its regulation no 2.4 explanation for F.G Unchaher II and Vindhyachel STPS during the period 2001-04..

6.2.4 It is necessary to rationalise the tariff and limit profit of 14% ROE (pre tax) at Target Availability of 90% (or as prescribed) however NTPC/ utilities may be allowed incentive for performance above the T.A. This is required to be done under section 79 of Act 2003 & regulation no. 82 (b), 89 & 94 of CERC (CB) regulation 1999. So that the actual or expected cost is allowed u/s 61(d)(g) of Act 2003 safeguarding the interest of consumers.

Details Required

6.2.5 The following details about all the power station or transmission lines etc for 2004 to 09 are required for appropriate discussion

(1) The actual cost of generation as per cost Accountancy Records (Electricity industry) Rules 2001
(2) The interest on working capital
(3) O&M Expenses
(4) Interest on loan
(5) Profit after tax
(6) Actual cost of coal
(7) Actual cost of oil
(8) The MU & amount for sale of 1% extra generation above schedule

Regulation wise comments are as below

1. Comments an Regulation no 1 of Draft Regulation 2008

The tariff period may be for 01-04-09 to 31-03-12 for 3 years because the cost plus tariff is to be determined up to 5 years from dt. of issue of tariff policy i.e. 06-01-2011 only.

2. Comments on Regulation no 2 of Draft Regulation 2008
(Scope & extent of application –)

The regulation under section 62 (2) & 62 (5) of Act 2003 is required to be framed, in exercise of powers under 178 of Act 2003 as demonstrated in preliminary observations.

3. Comments on Regulation no. 3 of Draft Regulation 2008
(Definition)

The 'Core business' under Regulation 3 (12) is to be defined in a manner that the profit due to following is excluded from core business.

(i) Incentive
(ii) Sale of 1% extra generation on U.I.
(iii) Difference of normative cost & actual cost if the normative is higher than actual cost.
(iv) Delayed payment surcharge
(v) Other amounts from time to time.

4. Comments on Regulation no. 5 of draft Regulation 2008
(Application for determination of tariff)

The procedure of calculation of expected revenue from tariff and charges u/s 62 (5) read with section 178 (2) (u) and information in this regard u/s 62 (2) read with section 178 (2) (t) may be notified, for submitting the application for determination of tariff. Appropriate regulation under section 64(1), 64 (2) & 64 (3) read with 178 (2) (v), 178 (2) (w)& 178 (2) (x) must be framed, for appropriate determination of tariff consistent with the Act 2003 so that unreasonable recovery in the past may be stopped.

For the period or 2007-08 there is recovery of excessive profit up to 76.8% R.O.E. in place of 14% R.O.E. specified by the commission. Normally the profits are above 30% R.O.E. in following 8 power stations.

The amount of profit above 14% R.O.E. is Rs. 412 crore in some power station. The total amount of excessive profit + income tax in one year of 2007-08 is about Rs. 1746.96 crore for 8 power stations. Such excessive profit are required to be refunded to beneficiaries by implementation of section 62 (5) & 79 of Electricity Act 2003 and regulation no. 82 (b), 89 & 94 of CERC (CB) Regulation 1999.

Rs. In Crore

Sl. No.	Name of Plant (Equity amount)	Amount of Excess recovery	Specified by Regulation			Recovered by Tariff		
			14% R.O.E.	I.Tax on 14%ROE	Total	Profit	I.Tax	Total
1.	Singrauali STPS (569.92)	285.47	79.79	39.89	119.68	270.10 (47.4%)	135.05	405.15
2.	FG Unchahar -I (472.72)	115.44	66.18	33.09	99.27	143.14 (30.2%)	71.57	214.71
3.	Tanda (235.34)	193.35	33	16.5	49.5	161.90 (71%)	80.95	242.85
4.	NCTPS	36.1	120.14	60.07	181.0	144.94	72.47	217.41

	(858.11)					(16.8%)		
5.	Rihand STP-I (1186.28)	412.24	166.08	83.04	249.12	440.56 (37.1%)	220.28	661.36
6.	Dadri GPS (439.87)	414.6	61.58	30.79	92.37	337.98 (76.8%)	168.99	506.97
7.	Anta GPS (229.65)	88.86	32.16	16.08	48.24	91.40 (39.8%)	45.70	137.1
8.	Auraiya GPS (369.77)	200.9	51.77	25.88	77.65	185.70 (50.2%)	92.85	278.55
		1746.96 Crore						

Excess Recovery is due to

(1) Inflated fuel cost (Coal/Oil/Gas/liquid fuel)+F.P.A.
By normative cost being higher than actual cost.
(2) Incentive for performance above Target Availability.
(3) Sale of 1% extra generation above schedule.
(4) Grossed up Income Tax on non-core business.
(5) Unknown sources.

5. <u>Comment on Regulation no. 6 of Draft Regulation 2008</u>
(Truing up of capital expenditure and tariff)

The truing up of capital expenditure should be deleted as the capital cost projected to be incurred certified by auditors is in appropriate, as explained by comment on Regulation no. 8 of capital cost in the subsequent paragraph.

The truing up of tariff is to be done for tariff where the tariff is being determined u/s 62 (5) of Act 2003 by a procedure for calculation of expected revenue for tariff and charges. This truing up may be done by applying the principle of 'Normative or actual whichever is lower" after the tariff has been determined by expected revenue based on section 62 (5).

Whenever the final tariff is lesser than the provisional tariff, the excess amount charged by the CPSUs/NTPC is to be refunded to beneficiaries alongwith interest as SBI PLR rate as per section 62 (6) of Act 2003.

The provision for refund is not required to be made u/s 62 (6) where the final tariff exceeds the provisional tariff.

6. <u>Comment on Regulation no. 7 of Draft Regulation 2008</u>
(Components of tariff)

The fixed charge and variable charge is to be determined from expected revenue based on average of past (may be 3 years) u/s 62 (5). The ceiling norms shall be used for truing up after the end of financial year by implementation of the principle "Normative or actual whichever is lower".

7. Comment on Regulation no. 8,10,11 of Draft Regulation 2008 (Capital Cost/Additional Capitalization/renovation & Modernization)

we agree to capital cost to the extent of those assets which has been put to use and capitalised and reflected in the balance sheet, after getting their benefit. We do not agree for capital cost projected to be incurred' basis because they have not been put to use and capitalised and its cost benefit is yet to be decided.

Regulation no. 8 (1) (a) of Draft Regulation 2008 is quoted below. It is not agreeable because of reasons explained in subsequent paragraph.

Quote

8 (1) (a) "Capital cost for a project shall include (a) the expenditure actually incurred or projected to be incurred, including interest during construction & finance charges, up to date of commercial operation of the project, as admitted by the commission."

Unquote

(1) The capital cost must be allowed on actually incurred basis only after the asset has been put to use and capitalized.
Any tariff 1 to 5 year in advance can not be allowed from projected capital cost on the ground to avoid retrospective revision as mentioned by CERC, due to following reasons.

(a) The policy to determine the tariff has been always based on capital cost which is reflected in audited balance sheet, after the asset has been put to use and capitalized i.e. after ensuring its benefit to the consumer. The CERC ought not to force the consumer to pay in anticipation of any benefit.

(b) Earlier the CERC has allowed tariff to NTPC against various power station in anticipation however liability of such capital cost was not paid by NTPC. The CERC has issued various order with instruction to NTPC for mutual settlement with beneficiary however NTPC did not comply it & did not disclose such amount, inspite of persuation by beneficiaries.

(c) The Hon'ble CERC has allowed additional capital expenditure to NTPC which was not reflected in the balance sheet. The Hon'ble Appellate Tribunal vide its order dt. 6.6.07 in appeal No. 205/05 of Tanda TPS has held that the tariff should be allowed for capital expenditure of assets put to use & capitalised which is reflected in audited balance sheet. However Hon'ble CERC did not comply it so appeal has been again filed in Hon'ble Appellate Tribunal against CERC Order dt 9.4.08 in petition no. 8/05.

The Hon'ble CERC may exercise the powers of framing new regulation by specifying the appropriate procedure for accepting the capital expenditure of assets put to use and capitalised and reflected in audited balance sheet in order to implement the direction of Hon'ble Appellate Tribunal for electricity vide judgement dt. 6.6.07 (Para no. 31 & 32) in Appeal no. 205/2005 for Tanda TPS additional Capital Expenditure, against CERC Order dt. 24.10.05 quoted below:-

Quote

"31. The Appellant submitted that the additional capital expenditure is to be approved based on the balance sheet and the respondent has been allowed expenditure of those items appearing in the balance sheet in the instant case before us, the Petition was decided by the Central Commission when the audited balance sheet was available. Thus, the amount of capitalisation as reflected in the books of account of the respondent ought to have been taken into consideration.

"32. We accept the plea of the Appellant on this count and direct the Central Commission to re-look into the matter and restrict the amount of capitalisation to the extent reflected in the balance sheet subject to its prudence check."

Unquote

It would be better if the relaxed procedure for allowing the capital cost as 'projected to be incurred as admitted by the commission' is not implemented as it may be against the interest of consumers and established principles or observations of Hon'ble Appellate Tribunal for Electricity. Capital cost may not be allowed without proper analysis of cost benefit ratio and consent of beneficiaries. There is need for appropriate discussion on bench mark norms for capital expenditure which would have perpetual impact of tariff for long time. The Hon'ble CERC is humbly requested to adopt those provision which may provide minimum hike in tariff & maximum benefit to consumer. "Any risk" in adopting the new proposals be avoided by proper discussion on facts and figures.

(d) The Hon'ble CERC in its order dt. 15.10.07 of Rihand STPs Stage-II in Petition 106/06 has held that the tariff is admissible, after the capital expenditure has been actually incurred.

(e) Consent of beneficiary must be taken for enhancing the capital expenditure after cut off date after discussion on cost benefit..

(2) The capital expenditure within the original scope of work up to cut off date and after the date of C.O.D. is being allowed by draft regulation no. 10 for additional capitalization which is agreeable if it has been actually incurred. It is not agreeable on the basis of "projected to be incurred' basis.

(3) The capital expenditure after the date of C.O.D. is not agreeable except at S.No. (2) above because

(i) it will increase the Annual Fixed Charges without increasing the capacity of the plant.

(ii) The depreciation collected against the plant may be utilized for replacement of assets without hike in tariff or other works, which is referred at para no. 13.3, page 20 of explanatory memorandum quoted below:-

Quote

"13.3 The word 'Depreciation' is interpreted differently by different stakeholder and professionals. From accounting point of view, in line with the Accounting Standard issued by the Institute of Chartered Accountants of India, 'Depreciation is a measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, efflux of time or obsolescence through technology and market changes'……………………….. Regulators have two view points on depreciation. One view is depreciation is the refund of capital subscribed, and the other view is depreciation is a constant charge against an asset to create a fund for its replacement.

Unquote

Example:- In Singrauli STPs about 85% of capital cost amounting Rs. 850 crore has been collected as depreciation. The balance depreciation is Rs. 350 crore after repayment of loan, which may be utilized for following proposed works, without increasing the tariff for projected capital expenditure explained by Hon'ble Commission at para 5.3, page no. 5 of Explanatory Memorandum.

(iii) for new works out of original scope and minor items like computers, cooler, ACs, tools, spares (as referred at para-5.14 at page no. 9 of Explanatory memorandum) is proposed to be allowed from a separate compensation allowance @ Rs. 15000/- to Rs. 65000/- MW/year. The burden of Rs. 13 crore /yr. may be avoided for plants below 25 years age.

(iv) For R&M works to be done after useful life of 25 years as referred at para no. 6.11 to 6.15 at page no. 13 of explanatory memorandom.

(v) The burden of Rs. 100 crore/year may be avoided. However the additional O&M expenses of Rs. 1 lakh/mw /yr may be considered, for running the plant.

….11…

(4) Global bids may be called from competent companies for running the plant so that proposed burden may be reduced or avoided.

In view of above it is humbly requested that Hon'ble Commission should not allow, advance tariff in anticipation of any expenditure . This may be allowed twice in tariff year as per tariff regulation 2004 after the asset has been put to use & capitalized.

10. Comment on Regulation no. 12 of Draft Regulation 2008
(Sale of infirm power)

It is not agreeable as the cost of infirm power should not exceed variable charges. This provision allows the generators to get the U. I. Charges which is sometimes more than the tariff determined by CERC (Terms and Conditions of Tariff) Regulation notified from time to time which is not desirable.

11. Comment on Regulation no. 13of Draft Regulation 2008
(Debt Equity Ratio)

- The debt equity ratio as mentioned in Regulation No. 13 (1) for power plant may be prescribed as 80:20 ratio for the reduction of tariff.
- Any expenditure projected to be incurred on or after 1.4.09 must not be admitted by the commission as mentioned in Regulation no. 13 (3) as additional Capital Expenditure ;for determination of tariff.
- Any expenditure actually incurred and allowed as additional capital expenditure needs to be considered in the ratio of 80:20 for determination of tariff for old and new power stations.

12. Comment on Regulation no. 15 of Draft Regulation 2008
(Return on Equity)

This may be allowed as profit on equity or (Pre tax) ROE 14% for new power stations with Income tax holiday & (Pre tax) R.O.E. 19% to old power station where income tax is recoverable.

The amount of equity may be derived from the capital cost as admitted/approved by competent authority or Hon'ble Commission, at the time of tariff determination.

13. Comment on Regulation no. 16 of Draft Regulation 2008
(Depreciation)

The Regulation No. 18 of the draft Regulation 2008 for charging the depreciation at higher rate @ 4.7% considering repayment of loan in 15 years is not agreeable. The earlier rate @ 3.60% for thermel and @ 2.57% for hydro etc. must be continued due to following reasons .

(a) The commission has earlier recovered rate of depreciation on straight line method by charging 90% historical cost of asset over the useful life. This policy should not be changed, as it will result higher tariff burden on consumer.

(b) The investor may arrange loan repayment in 20 years or more by taking other loans, so the change in rate of depreciation for loan repayment in 15 years is not required for attracting/benefitting the investors who are available in sufficient numbers in the

present conditions. The hike in tariff on this ground is against the mandate of Act 2003 which intends to promote economical tariff.

(c) There is a need to reduce the present rate of depreciation (i) because the life of some of the assets is more than 25 years (Thermal), 35 Years(Hydro) (ii) the plant can be efficiently used for more than 25/35 years. (iii) the cost of colony/land may appreciate with time. In fact the tariff may be reduced by adopting depreciation rate lesser than 3.6% as the life of plant has increased by advancement in technology and planned maintenance.

(d) The consumers have been deprived of economical tariff due to reduction of equity from amount of depreciation (after full repayment of loan from depreciation) as per report of Sri K.P. Rao which was accepted by the Govt. of India long back in 1992 so the additional burden of increased rate of depreciation 4.7% may not be levied.

(e) (i) The depreciation rates is linked to the useful life of the asset, so it can not be increased on the pretext of loan repayment in 15 yrs. or lesser at the cost of consumer.
(ii) NTPC has been opposing in various appeals to delink the depreciation from repayment of loan.

(f) The tariff policy dt. 6.1.06 has opposed the payment of advance against depreciation, for repayment of loan. This clearly indicates that the burden on consumer has to be reduced due to A.A.D.

In case the Hon'ble Commission increases the rate of depreciation, the objective of tariff policy for removal of AAD is defeated. Such provision is not consistent to tariff policy therefore it should not be implemented, at the cost of consumer. Any hike in rate of depreciation linking it with early repayment of loan is in fact twisting the provisions of tariff policy, so it should not be implemented/enforced in arbitrary manner.

14. Comments on Regulation no. 19 of Draft Regulation (Operation & Maintenance Expenses)

1. The norms of O&M expenses needs to be reduced due to following reason:-
   1.1 The norms of O&M expenses related to Target Availability of 85% for recovery of full fixed charges need to be reduced by 10% because the actual O&M expenses of past period 2004-09 considered for arriving on O&M norms pertain to operation of plant availability up to 96%.

   1.2 The manpower engaged in the operation has remained nearly same despite capacity addition of about 3000 mw. This implies through rationlization of manpower and proper management, NTPC has been able to absorb escalation in prices over & above the 4% considered by the commission and also the impact of earlier pay revision.

1.3 The details of O&M expenses under various heads and datas submitted by CEA in the Hon'ble Commission have not been received so for as per UPPCL letter no. 705/ /SPAT dt.24-9-08. The Scruitney of many expenses are required further so that the inappropriate expenses may not be recovered by the generator.

1.4 The NTPC has spent R&M expenses of Tanda TPS for more than Rs 200 crore, which is being or shall be recovered from UPPCL, by hiking the tariff. There has been replacement of major components which are under guarantee and require very less amount in maintenance so there is scope for reducing the norm of O&M expenses of Tanda TPS by 25% so the base year (2009-10) norm for Tanda TPS may be considered as 16 lakh/mw/year (in place of 24 lakh/mw/year).

1.5 The depreciation are being paid in cash however there is no reduction of equity after repayment of loan. The generators are being allowed 14% R.O.E. on equity, which has increased due to additional capitalization. The higher equity considered for 14% R.O.E. provides undue profit which need to be considered for reducing the O&M expenses.

1.6 The generator have been allowed to earn profit up to 76% R.O.E. in the past in place of 14% R.O.E. specified by CERC so those amounts should be utilised to absorb the shock of 45% hike in pay revision in place of recovering from loss making beneficiaries who are not able to pay the hike in salary to their employees comparable to the employees of NTPC/CTU.

15. <u>Comments on Regulation No. 21 of D.R.-2008</u>
(Recovery of fixed change)

The fixed charge need to be calculated separately (without including the incentive). The incentive calculation may be 15 paise/unit above target availability. The calculation of incentive as provided in previous regulation shall be better for preventing payment of income tax on such incentive.
It is appreciated that Hon'ble commission has provided that income tax on incentive will not be recovered from beneficiary. For implementation of such provision the procedure for calculation of incentive should be simple without any complication.

16. <u>Comments on regulation no. 23</u>
(Incentive)

The incentive calculation may be provided separately as in previous tariff regulation 2004 at the rate 15 paise/kWh for electricity above target availability fixed by Hon'ble commission which may be 90% as plants have been able to perform on availability of 90% or above . These are achievable in normal course.

17. <u>Comments on regulation no. 24</u>
(Unscheduled Interchange)

The Hon'ble commission may consider to implement the following which was earlier proposed by UPPCL letter no. 903/SPATC dt. 20/12/07 enclosed at Annexure-2.

<u>Quote</u>
"The UI ceiling rate @ Rs. 4.20/unit linked to frequency as per CERC Notification dt. 26-03-01 is proposed to (i) provide recovery of average cost Rs. 2/unit to surplus states etc. and (ii) the amount other than the cost (Rs 2.20/unit) shall be treated as penalty which will be deposited in national pool for increasing the generating capacity to reduce the gap of demand and supply or subsidizing the costliest generation or grid security or incentive for extra generation."
<u>Unquote</u>

The provisions for sale of 1% extra generation above schedule may be deleted as it is against the first CERC order dt. 4-01-2000 on ABT and Hon'ble Supreme Court of India order dt. 17/8/07 in Appeal No. 2104/06.

18. <u>Comments on regulation no. 25 of ….</u>
(Norms of operation)

The norms of operation specified by CERC in column no. 3 of Table A is requested to be modified as per column no. 4

S.No.	Operating parameters	Specified by CERC	Requested by UPPCL	Remarks
1	2	3	4	5
1.	Normative Annual Plant Availability Factor (NAPAF) for recovery of fixed charges (a) All thermal generating stations except those covered under clause(b) (b) Tanda TPS	 85% 85%	 90% 90%	Already Achieved more than 90% Already Achieved 91% in 2006-07
2.	Gross Station heat rate (K.cal/Kwh) (a) Coal based TPS other than clause (b) - 200/210/250 MW sets	 2450	 2400	

	- 300/300/500 MW sets	2400	2350	
	- 600/660 MW sets	2350		may be reduced
	Note-			
	For 200/210/250MW having C.O.D. on or before 31.3.2009	2500	2400	
	(b) Tanda TPS	2850	2750	Already achieved 2753
	(c) Open cycle gas turbine/combined cycle generating stations			
	Combined cycle K.cal/Kwh			
	Anta GPS	2075	2050	
	Dadri GPS	2075	1950	
	Auraiya GPS	2100	2075	
3.	(iii) Specified fuel oil consumption (ml/Kwh)			
	(a) Coal based Plants	1.0	0.5	

Sl. No	Operating parameters	Specified by CERC		Requested by UPPCL		Remarks
1	2	3	4	5	6	7
		With Cooling Tower	Without Cooling Tower	With cooling Tower	Without Cooling Tower	
4.	Auxiliary Energy consumption					
	a) Coal based plant					
	(i) 200MW series	8.5%	8.0%	8%	7.5%	
	(iii) 500MW&above steam driver BFP	7%	6.5%	6%	5.5%	
	(iv) Tanda TPs	12%	-	11.5%		
	(b) Gas Turbine /combined cycle	3%		2%		

The norms of the operation must be applied for truing up based on actual cost and implementing the principle of Normative or Actual whichever lower so that only the

reimbursement of actual cost may be done subject to ceiling norms. There should not be any profit recovery by generators while getting the payment of expenditure by beneficiary so that recovery of grossed up Income Tax from beneficiary is avoided.

19. <u>Comments on regulation no. 37</u>
(Norms of operation to be ceiling norms)-

The Hon'ble commission is requested to consider following to modify the provision appropriately.

The tariff may be determined u/s 62(5) of Act 2003 based on A.R.R. to be calculated as per procedure laid down by the commission. The calculation of expected revenue from tariff and charges shall be made from the average past three years.

The norms of operation specified in these regulations are the ceiling norms. The tariff shall be allowed on the principle of Normative or actual whichever is lower during truing up of tariff after the completion of financial year.

20. <u>Comments on regulation no. 39</u>
(Tax on Income)

The pre tax return on equity 14% for power station may be prescribed for new power station availing tax holiday. The pre tax return on equity 19% for old power station may be prescribed.

Income tax is post tariff incidence and is required to be paid by an assessee as per Income tax Act. The Hon'ble commission may not prescribe its recovery of income tax (pertaining to generator/transmission companies) from beneficiaries.

The Electricity Act 2003 does not provide recovery of income tax, which is a direct tax as per Income tax Act. The Act 2003 provides recovery of cost in reasonable manner u/s 61(d)(g) and safeguarding the interest of consumer. The Various State Discoms are running in loss so they will not be able to conduct their business in commercial manner & shall become unviable if they pay grossed up income tax of the generator/transmission companies.

The section 63 of the Act 2003 provides determination of tariff by bidding process. There is no provision for payment of income tax by the beneficiaries.
In view of above the provision for recovery of income tax may be withdrawn.

On behalf of UPPCL