Regulations 3 (21),(38),(39),(45),(46),(52),(71)

1. Additional definitions with regard to **"Integrated mines", "Input Price" of coal or lignite, "Mine Infrastructure", "Mining Plan', "Development Period"** are incorporated for first time in the draft Regulations. Further, Integrated coal mine and "biomass pellet handling system" are incorporated in the definition of "**Project"**.

2. Co-firing of biomass with coal is considered under the definition of **"Thermal Generating Station"** in Regulation 3 (71).

Comments:

(i) Post cancellation of 204 coal blocks in the country vide Hon'ble Supreme Court's landmark Judgment/Order dated 24.09.2014 followed by **auction or allotment of coal mines to prior allottees under Coal Mines (Special Provisions) Second Ordinance, 2014 and Rules framed thereunder**, the Central Government/State Govt issued directives to ERC under Section 107/108 of the Act for review and re-determine the energy charges in light of various provisions under aforesaid Second Ordinance and Rules disallowing Additional premium and capping the base price to Rs 100/MT only besides several other parameters. The said directives issued by Central Government and the Orders issued by MPERC are challenged before Hon'ble APTEL as well High Court of Delhi also.

In view of all above and also looking to the limited in-house expertise/manpower with ERCs and the functions of ERCs under the Electricity Act vis-a-vis the Mines and Minerals (D&R) Act' 1957, it would not be appropriate for the Electricity Regulatory Commission to compute/determine the Capital Cost of Integrated Mine and Input price for variable charges. In fact this again emphasis the need for establishing a "Coal Regulator" in the country as an expert body, who will determine the capital cost of the Integrated Mines and input cost of coal in a most scientific and judicious manner, beside the other functions.

(ii) Co-firing of Biomass with coal is also considered in the draft Regulation which is not appearing appropriate due to following reasons:

(a) In Regulation 39 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017, **use of Fossil fuels is not allowed**.

(b) The tariff for conventional power plants and biomass based generating units are differently determined based on separate Regulations.

Regulation 3 (27)

3. Although definition of **"Fuel Supply Agreement"** is incorporated in draft Regulations but it is not at all appeared in the draft Regulations. Therefore, this definition is not required. Even then, if it seems necessary to incorporate this definition, it needs to be redrafted in light of several litigations related to fuel before several Forums. The ERCs do not approve FSA and the document which is approved by the ERC is "Power Purchase Agreement". Therefore, the conditions precedent and subsequent in the PPA with regard to **Fuel** only are significant for determination of tariff. Therefore, definition of fuel supply agreement needs to be modified as given below:

"Fuel Supply Agreement' means the agreement executed between the generating company and the fuel supplier **for the fuel specified under PPA** for generation and supply of electricity to the beneficiaries."

4. **Regulation 3(52) – Definition of Project**

Dedicated transmission line/ system for evacuation of power from the power plant be also included in the definition of Project. The cost incurred on dedicated transmission line/system is included/considered in the capital cost of project for determination of tariff. Despite inclusion of cost incurred on dedicated transmission system for power evacuation in the capital cost of the project, some of the generators are also seeking O&M cost for such dedicated transmission system. This unnecessarily causing litigations. This aforesaid arrangement would clarify be issue and avoid unnecessary litigations in future.

5. **Blending** – Definition of blending of fuel/ coal be also provided because in the prevailing Regulations, blending is meant to use the domestic coal with imported coal.

6. **Regulation 3(60) – Rated Voltage**

The Rated Voltage in respect of transmission system only is defined as manufacturer's design voltage. What is meant by manufacturer of transmission system needs to be clarified. Further, Rated Voltage may be used at many places in generating units also. Therefore, this definition may be reviewed for all purpose instead of transmission only.

7. **Regulation 3(67) – Stabilization period**

This definition is provided for integrated mine only. Therefore, the title of this definition may be "stabilization period for integrated mine."

8. **Regulation 3(70) – Target capacity**

This definition is also provided for integrated mine only. Therefore, the title of this definition may be "Target capacity for integrated mine."

9. **Regulation 3(79) – Useful life**

It is provided in this definition that the extension of project's life beyond completion of useful life shall be decided by the Commission on case to case basis. It is proposed that the extension of the project's life be decided by the Central Electricity Authority being an expert technical matters, instead of the Commission since the guidelines for "Residual Life Assessment (RLA)" and "Life Extension (LE")" for thermal generation projects are issued by the CEA.

10. **Regulation 5(2)** – First Proviso to this Regulation provides that while seeking approval of COD of transmission system, the transmission licensee shall give prior notice to the generating company or other transmission licensee and long term customers of its transmission system. The notice period be also mentioned in this provision to avoid litigations.

11. Liability for payment of transmission charges due to delay in CoD by the generator is restricted to not before SCoD of the generator. The PPA between Generator and Procurer has provision for mutually revise date of SCoD. The Generator may use this provision to save payment of transmission charges. Hence, this must be taken care of appropriately in the Regulations to avoid litigations in future.

12. **Regulation 9** – Second Proviso to Regulation 9 provides that a certificate duly signed by an authorized person not below the level of Director of the Company may be provided by the generating company or transmission licensee for the capital cost incurred as on CoD as well as for the projected additional capital expenditure for respective year of the tariff period.

A certificate by statutory auditor would be more authentic and realistic in terms of Company's Act as the auditor is a responsible authority for such validation. It is proposed that the mandate of Auditor's Certificate certifying the capital cost or additional capitalization should not be relaxed by means of a certificate by an authorized person otherwise it may lead to tariff shocks while determining final tariff/true ups based on Audited Accounts subsequently.

13. **Regulation 18(2)(i)** – It is provided in this sub Regulation that the capital expenditure incurred on ash utilization, handling shall be included in the capital cost. It is to submit that expenditure on ash utilization should not be a part of the capital cost and only expenditure on ash disposal should be considered in the capital cost of new project because the scope of expenditure on ash utilization has so many options and has no limit so it would unnecessary increase the Annual fixed cost of the project.

14. **Regulation 20(5)** – The first sentence needs correction by replacing 'on' by 'or' so as to make the following intent: *"if the delay is attributable either in entirety **or** in part to the generating company….."*

15. **Regulation 25 : <u>Additional Capitalization beyond the original scope</u>**

In many places, **"Original Scope of Work"** is referred for prudence check whereas, the original scope of work is not defined in Regulations. The definition of original scope of work may be provided after the definition of **"Original Project Cost"**.

16. **Regulation 28 – Special Provision for thermal generating station which have completed 25 years of operation from commercial operation date:**

The following needs to be clarified in this Regulation

(i) Whether this provision is for the thermal generating station having its entire capacity tied up with single beneficiary only.

(ii) How Merit Order Dispatch (MOD) based on the total cost inclusive of both fixed and variable cost, shall be applicable to the procurer.

(iii) In case the generation from the unit is beyond MoD due to high generation cost, the unit will not be entitled for any tariff, and if such situation remains for longer duration and the generator would unable to sale in the market , how the generator would survive. This aspects needs to be seen.

17. **Regulation 31and 32: Tax on RoE and Interest on loan**

In case of some IPPs, there are number of generating units/projects as part of subsidiary or divisions of such IPP. The tax liability is discharged by Corporate Company as whole whereas; the RoE and other components of Annual Capacity Charges are to be passed on to the beneficiaries/end consumers for only the unit/project supplying power to them. Therefore, the applicable tax rate for the generating unit(s)/project which are subsidiaries / divisions of a Corporate Generating Company having number of transmission or generating projects and where the loss or profit of the Company may or may not be attributed by the loss or profit of such subsidiary/division, need to be addressed for the purpose of grossing up base rate so that the unnecessary grossing of base rate with the tax rate of the corporate company is avoided to load on consumers.

Further, the illustration at (ii) with regard to normal corporate tax needs to be revisit because tax is applicable on profit earned by the company but in the illustration effective tax is calculated on Gross Income.

18. In certain cases of tariff applications filed by IPPs, it has come to understand that the weighted average rate of interest on loan borrowed from a consortium of banks is filed upto 14.5% and there may be possibility for further increase in the weighted rate of interest. In view of the aforesaid, weighted average rate of interest may be capped at certain value based on the prevalent interest rate for power sector market.

19. Regulation 33(3)

From the **Depreciation schedule in Appendix I**, it is observed that the old depreciation rates are adopted which were not as per the Company Act . However, the salvage value of **5%** allowing depreciation upto maximum of **95%** of the capital cost of assets is as per Company Act. Allowing depreciation upto maximum of 95% would increase recovery of Annual fixed cost from the beneficiary/end consumers. The aforesaid provisions may be reviewed to make them consistent with each other.

20. Regulation 48

The norms for transit and handling losses for non-pit head stations are linked with the distance of generating station from source of fuel. The aforesaid proposition would be difficult to validate for application of these graded norms thus single norm for transit and handling losses in case of non-pithead may be provided.

21. **Regulation 51 Computation and recovery of capacity charges** :

Normative Annual Plant Availability Factor (NAPAF) is now replaced with Normative Quarterly Plant Availability Factor (NQPAF). Even the plant availability factor for a day is mentioned. The formula for computation of capacity charges in Regulation 51(2) is complex for peak and off-peak hours. The aforesaid formula talks about normative number of peak hours and off-peak hours in a day, NAPAF for peak and off-peak hours for a period and weighted factor for peak and off-peak period. The aforesaid formula needs to be simplified without leaving any discretion on the generator or to the beneficiary.

22. **Regulation 52(3)** –In this Regulation, "Alternative source of fuel supply" for a regulated tariff under Section 62 of the Act is an open ended provision. Simply providing "Alternative source of fuel supply" may allow the generating company to use any fuel which is not designated in PPA or which may not be permitted for Regulated power plant as per the policies issued by Central Government. In one instance, it has come to notice that the coal earmarked for Non-Regulated Sectors like Captive Power Plant (CPP) etc under the scheme document issued by Central Government was being used by an IPP for supply of electricity under Regulated tariff. Further, the energy charges of such fuel if used from alternative

sources may always be higher than MOD thus, the fixed cost would be payable without scheduling power in terms of several PPAs between the generator and procurer. In order to protect the interest of consumers by avoiding unnecessary burden of paying Fixed Cost without scheduling power, the Regulation 52(3) may provide as given below:

" *In case of part or full use of fuel from its alternate source of supply other than as agreed by the generating company and beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of fuel from its alternative source of supply shall be permitted to generating station provided that use of such fuel is as per extant policy /directives issued by the Government of India."*

In second Proviso of Regulation 52(3), it is mentioned that the weighted average price and the use of alternative source of fuel shall not exceed 30% of base price fuel computed as per "Clause (7) of this Regulation" whereas, the Clause (7) is missing in the draft Regulation which may kindly be corrected. Further, in certain instances, alternative source of fuel has been interpreted as alternative fuel also by the generating company. Therefore, it needs to be clarified that the alternative source of fuel does not mean alternative fuel beyond the scope of Regulations.

Third Proviso to this Regulation provides that "*where the Energy Charges rate based on weighted average price of use of fuel including alternative source of fuel….*" There appears to be a slight correction in the word "use of" in the aforesaid sentence.

23. **Regulation 53 – Declaration of Availability and Dispatch in case of thermal generating station**

The provisions in this Regulation are appearing very complex in nature as the declaration of availability or its revision thereof is to be made separately for each fuel source, its price and its calorific value. It would be difficult for the generator to declare its differential availability and also for the beneficiaries to schedule the power on such differentiation. It is therefore proposed that this provision may kindly be dropped to avoid complexity in existing arrangements.

24. <u>Regulation 59(A)</u>

Normative quarter availability factor is specified as 83% for most of the thermal generation stations whereas, the normative plant availability factor considered for the purpose of compensation in case of scheduling between normative and technical minimum is 85% in fourth amendment to IE Grid Code. Therefore, this may be reviewed to make it consistent with Regulation 6.3 (B) of Fourth amendment to the Grid Code notified on 06.04.2016.

25. **Regulation 59(A)(a)** – Computation of Plant Availability Factor includes the duration of annual scheduled plant maintenance and based on that norms of 85% has been fixed. Leaving duration of scheduled maintenance period would have an impact on the fixed charges payable by the procurer and ultimately end user consumer would have to pay additional fixed charge amount. Generator may also play gaming by declaring more duration for AOH/COH as it will benefit in PAF computation. Therefore, this proviso needs to be deleted.

26. **Regulation 59(C)(a)(i)** – Separate norms for Gross Station Heat Rate in this sub-Regulation for generating stations **above 500 MW** capacity have not been incorporated. This should also be provided.

27. **Regulation 59(C)(b)** – In title of this sub-regulations, **01.04.2009** needs to be corrected to **01.04.2019** and such corrections are required in the subsequent sub-Regulations also.

28. **Regulation 72 – Sharing of non-tariff income** – "Income from sale of fly ash" is to be considered under non-tariff income.