FICCI Representation on

‘CERC (Terms and Conditions of Tariff) Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024’

Submitted to:

Central Electricity Regulatory Commission

Recommendations on 'Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024'

A) A Draft Concept Note on 'Terms and Conditions of Tariff Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024'was published by Central Electricity Regulatory Commission (CERC) on 14th December 2018 vide notification no. L-1/236/2018/CERC. CERC had invited comments/suggestions from the stakeholders on the Concept Note due for submission by 28th January 2019.

B) In this regard, we have solicited the feedback of our industry members. Based on the feedback, FICCI's comments/suggestions are the following:

S. No.	Clause	Draft Regulations	Comments/ Suggestions	Rationale
1.	3 (79)	'**Useful life'** in relation to a unit of a generating station, integrated mines, transmission system and communication system from the date of commercial operation shall mean the following: Hydro generating station including pumped Storage hydro generating stations: **40 years**	Increase in the life of project has direct impact on the rate of depreciation allowed by CERC. However, there is no change in the rate of depreciation allowed by CERC in draft regulations. Even if rates are not revised, depreciation from 13th year onwards will be revised downwards. Therefore, projects with pending loan repayments will be impacted by lower recovery of depreciation. We request that considering the increase in project life depreciation period of 12 years shall be increased (say 15 years) in case of hydro in order to match the actual loan repayment to some extent. Also rate of depreciation should not be revised downwards w.r.t change in the life of project.	*Change in useful life should have an impact on loan repayment profile. Since repayment is supported by recovery of depreciation in tariff, the depreciation period may be increased to match with the actual loan repayment tenure. Also, long term funding is being advocated by various agencies at different forums including the proposed hydro policy.* *Also, plants with pending loan repayment will be impacted as due to increase in project life, as per methodology, from 13th year, the remaining depreciation will be spread into 28 years instead of 23 years.*

S. No.	Clause	Draft Regulations	Comments/ Suggestions	Rationale
2.	9 (3)	**Application for determination of tariff:** (3) In case of emission control system required to be installed in existing generating station as per revised emission standards, the application shall be made for determination of supplementary tariff (fixed charges or variable charge or both) based on the actual capital expenditure duly certified by the Auditor;	**Application for determination of tariff:** 3) In case of emission control system required to be installed in existing generating station as per revised emission standards, the application shall be made for determination of supplementary tariff (fixed charges or variable charge or both) based on the actual ***or projected*** capital expenditure duly certified by the Auditor;	• Capital expenditure can be certified by Auditor only after COD of such emission system. For reducing the time in tariff approval process, CERC may consider allowing provisional supplementary tariff based on cost estimates. The same may be allowed after due prudence check by CERC during the truing-up process. • This will reduce the cash flow mismatch for generators. This is in line with the practice of CERC in issuing provisional tariff for generation tariff.
3.	13	**Truing up of tariff for the period 2019-24:** (3) The generating company or the transmission licensee, as the case may be, may make an application for interim truing up of tariff in the year 2021-22, if the annual fixed cost increases by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period. Provided that if the actual additional capital expenditure falls short of the projected additional capital expenditure allowed under provisions of Chapter 7 of these regulations, the generating company or the transmission licensee, as the case may be, shall not be required to file any interim true up petition for this purpose and shall refund to the beneficiaries or the long term customers, as the case may be, the excess tariff recovered corresponding to the projected additional capital expenditure not incurred under intimation to the Commission at the bank	**Truing up of tariff for the period 2019-24:** (3) The generating company or the transmission licensee, as the case may be, may make an application for interim truing up of tariff in the year 2021-22, ~~if the annual fixed cost increases by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period.~~ Provided that if the actual additional capital expenditure falls short of the projected additional capital expenditure allowed under provisions of Chapter 7 of these regulations, the generating	• Mid-term truing-up should continue to be allowed as in FY 14-19 regulations. Such truing-up helps generating companies in keeping their books updated and also helps in better cash flow management. • Keeping the truing-up due for 5 years may come as onetime write-off or gain in books.

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		rate as on 1st April of the respective years. …..	company or the transmission licensee, as the case may be, shall not be required to file any interim true up petition for this purpose and shall refund to the beneficiaries or the long term customers, as the case may be, the excess tariff recovered corresponding to the projected additional capital expenditure not incurred under intimation to the Commission at the bank rate as on 1st April of the respective years. …	
4.	14 (2)	The supplementary fixed cost for additional capitalization on account of implementation of revised emission standards in the existing generating station or new generating station, as the case may be, shall be determined by the Commission separately;	Inclusion of an additional component towards capital expenditure for meeting revised emission standards as a specific item would also seem appropriate for existing projects.	-
5.	18 (3)	(3) The Capital cost of an existing project shall include the following: (a) Capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, as on 1.4.2019; (b) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these regulations; and (c) expenditure on account of renovation and modernization as admitted by this Commission in accordance with these regulations	(3) The Capital cost of an existing project shall include the following: (a) Capital cost ……., if any, as on 1.4.2019; (b) additional capitalization and de-capitalization ……. regulations; and (c) expenditure ……. this Commission in accordance with these regulations (d) capital expenditure ……	• Existing generating stations should be allowed capital cost for any change in law or force majeure, incurred during construction.

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		(d) capital expenditure on account of ash disposal including handling and transportation facility; (e) capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; (f) Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.	transportation facility; (e) capital expenditure …… appurtenant cost paid to the railway; (f) Capital …… PAT scheme with the beneficiaries. (g) Expenditure on account of change in law and force majeure events.	

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6.	21 (b)	**Controllable and Uncontrollable factors:** The following shall be considered as controllable and uncontrollable factors leading to cost escalation, IDC and IEDC of the project: i. (1) The "controllable factors" shall include but shall not be limited to the following: a. Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory levies or change in law or force majeure events; and **b. Delay in execution of the project on account of contractor, supplier or agency of the generating company or transmission licensee.**	**Controllable and Uncontrollable factors:** The following shall be considered as controllable and uncontrollable factors leading to cost escalation, IDC and IEDC of the project: i. (1) The "controllable factors" shall include but shall not be limited to the following: a. Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory levies or change in law or force majeure events; and **b~~. Delay in execution of the project on account of contractor, supplier or agency of the generating company or transmission licensee.~~**	• Delay in execution of project on account of contractor, supplier may not be classified as "controllable factors". • In cases where developer has made significant advance payments to the contractor /supplier, it is very difficult to ensure timely execution in case such supplier goes into bankruptcy. • Developer has no recourse but to go to NCLT for resolution and therefore such issue cannot be in control of the developer. • Commission may evaluate such issues on case to case basis instead of considering such issues as "Controllable".
7.	21(b)	(2) The "uncontrollable factors" shall include but shall not be limited to the following: a. Force Majeure events; b. Change in law; and c. Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating	2) The "uncontrollable factors" shall include but shall not be limited to the following: a. Force Majeure events; b. Change in law; and c. Time and cost over-runs on account of	• In case of time and cost overruns, there may be instances wherein reasons are beyond the control of developer, these should be considered like case to case

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		company or the transmission licensee;	land acquisition except where the delay is attributable to the generating company or the transmission licensee, any force majeure event or **any other reason beyond the control of developer like delay in providing enabling infrastructure by govt. etc to be determined on case to case basis**	basis. • Like in hydro, any natural calamity not covered in force majeure event such as moderate flood/snowfall impacting progress, enabling infrastructure to project area which is to be provided by state authorities etc should have impact in project schedule along with cost. These things should be considered on case to case basis.
8.	29.	**Additional Capitalization on account of Revised Emission Standards:** (1) A generating company requiring toincur additional capital expenditure in the existing generating station for compliance of the applicable revised emissions standards shall share its proposal with the beneficiaries and **file a petition for approval** for undertaking such additional capitalization; (2) The proposal under clause (1) above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company; (3) Where the generating company makes an application for approval of additional capital expenditure on account of implementation of Emission Control Standards, the Commission	**Additional Capitalization on account of Revised Emission Standards:** (1) A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the applicable revised emissions standards shall share its proposal with the beneficiaries and **file a petition for approval** for undertaking such additional capitalization; provided that *the projects where power is being supplied to beneficiaries under Sec-61 and Sec-63 of the act need not need to file a fresh petition.* (2) The proposal under clause (1) above shall …….. to be relevant by the generating company;	• The projects where power is being supplied to beneficiaries under Sec-61 & 63 of theact need not need to file a fresh petition for approval in case a petition is already filed for the same project. As it would lead to unnecessary burden of cases. •

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		may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors as may be considered relevant by the Commission. (4) After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.	(3) Where the …… by the Commission. (4) After completion …… of tariff. ***(5) The Provisional tariff may be determined prior to implementation of the revised emission Standards on specific request if the commissions deems it fit.***	
9.	30	**Return on Equity:** (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 17 of these regulations. (2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:	**Return on Equity:** 1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 17 of these regulations. (2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage: ***Provided that:*** ***i. in case of projects commissioned on or after 1st April, 2019, an additional return of 0.50 % shall be allowed, if such***	• Additional RoE provides incentive for timely commissioning of the projects and therefore should be continued for FY 19-24 period as well. • Hydro being a capital intensive project also involves lot of construction challenges/risk. To attract more investors in this domain, an additional RoE (say 0.5%) should be provided over and above the existing RoE

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			projects are completed within the timeline specified.	
10.	33	**Depreciation:** (3) The salvage value of the asset shall be considered as 5% and depreciation shall be allowed up to maximum of 95% of the capital cost of the asset: Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable. Provided further that in case of hydro generating station, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the Plant: Provided also that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff: Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life and the extended life. (5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in **Appendix-I** to these regulations for the assets of the generating station and transmission system:	**Depreciation:** (3) The salvage value of the asset shall be considered as 5% and depreciation shall be allowed up to maximum of 95% of the capital cost of the asset: Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable. Provided further that in case of hydro generating station, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the Plant: Provided also that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff: ~~**Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life and the extended life.**~~	• Reducing salvage value to 5% is in line with company' act and accounting practices. However, CERC may clarify that rate of depreciation will change because of such reduction in salvage value or only the depreciation post completion of first 12 years will undergo a change. • Disallowance of depreciation in case of lower availability, may be allowed to be recovered during later stage of life or life extension. Such allowance of depreciation on future date will correspond to availability of unit and is in line with the commercial principles.

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		Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.	(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in **Appendix-I** to these regulations for the assets of the generating station and transmission system: Provided that the remaining depreciable value as on 31st March of the year closing after a period of **15 years** from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.	Period of 12 years need to be reviewed in light of the actual loan tenure being provided by lenders. Generally it is higher than this and hence there is gap between depreciation & repayment amount post 12th year. In order to streamline, this period should be 15 years which is a generally accepted loan tenure among most of the funding arrangement concluded by lenders so far.
11.	34	**Interest on Working Capital:** (1) The working capital shall cover: (a) Coal-based/lignite-fired thermal generating stations (i) Cost of coal or lignite and limestone towards stock, if applicable, for 15 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;	**Interest on Working Capital:** (1) The working capital shall cover: (a) Coal-based/lignite-fired thermal generating stations (i) Cost of coal or lignite and limestone towards stock, if applicable, for 15 days for pit-head generating stations and ~~20~~30days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock	• Considering the severe coal shortage prevailing in country, plants should be encouraged to stock coal to ensure plants are not shutdown in case of shortfall in supplies by CIL (eg. During strike periods in mines) • Such reduction from existing 30 days is unfair and will discourages generators to

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			storage capacity whichever is lower;	stock coal. Therefore, the prevailing norm of 30 days may be continued to for both pit-head and non-pit head plants.
12.	34	**Interest on Working Capital:** (1) The working capital shall cover: (a) Coal-based/lignite-fired thermal generating stations (v) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and (c) Hydro generating station (including pumped storage hydroelectric generating station) and transmission system: (i) Receivables equivalent to 45 days of annual fixed charges;	**Interest on Working Capital:** (1) The working capital shall cover: (a) Coal-based/lignite-fired thermal generating stations (v) Receivables equivalent to ~~45~~**90** days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and (c) Hydro generating station (including pumped storage hydroelectric generating station) and transmission system: (i) Receivables equivalent to ~~45~~**90 days** of annual fixed charges;	• Today most of the plants are struggling to get timely payments from Discoms with delay of 3-4 months on regular bills and more than 1-2 year for disputed bills. The fact can be verified from the portal (PRAAPTI) managed by Ministry of Power (MoP). • Therefore, CERC must increase the number of days of receivables to 90 days.
13.	35	**Operation and Maintenance Expenses:** (1) Thermal Generating Station: Normative Operation and Maintenance expenses of thermal generating stations shall be as follows: **Year** | **300/330/ 350 MW Series** **FY 2019-20** | 24.22 **FY 2020-21** | 24.99 **FY 2021-22** | 25.79 **FY 2022-23** | 26.62 **FY 2023-24** | 27.47	**Operation and Maintenance Expenses:** (1) Thermal Generating Station: Normative Operation and Maintenance expenses of thermal generating stations shall be as follows:	• For 300/ 350 MW units, O&M expenses allowed for FY 20 @24.22 lakhs/MW is less than allowed for FY 19 @25.47 lakhs/MW under existing regulations. Kindly clarify how the O&M cost for the starting year FY19-20 has been determined in Draft Regulations. • Further, average escalation considered in FY 14-19 was 6.30% whereas average

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• Considering the WPI and CPI data published which is in line with CERC projections, no new O&M contract can be finalized at a rate lower than the existing contract value. The quotes received for newer contract are always on a higher side compared to the existing contract value.
• Therefore, CERC may consider the existing escalation of 6.30% for FY 19-24 period</td></tr>
<tr><td>14</td><td>37 (2)</td><td>Date of Commercial Operation:

The input price for supply of coal from of the integrated mines prior to date of commercial operation shall be considered at the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector.</td><td><s>The input price for supply of coal from of the integrated mines prior to date of commercial operationshall be considered at the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector.</s></td><td>On technical considerations, it will not be in order if the input price prior to COD is calibrated at the CIL notified price for the corresponding power grade coal as because CIL prices are on an average basis across mines and according to grade analysis of individual coal seams, whereas integrated mines can differ according to their geology and stripping ratios, thereby increasing the cost. A different yardstick is to be applied based upon independent assessment and audit considering site particulars and production costs as will be given by the approved Mine Plan.</td></tr>
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15	45(1)	**Determination of input price:** (1) The input price of coal sourced from the integrated mine shall be derived based on the production cost and shall comprise following components: (a) Capital Cost; (b) Depreciation; (c) Interest on loan capital; (d) Return on equity; (e) Interest on working capital; and (f) Operation and maintenance expenses	**Determination of input price:** (1) The input price of coal sourced from the integrated mine shall be derived based on the production cost and shall comprise following components: ~~(a) Capital Cost~~; (b) Depreciation; (c) Interest on loan capital; (d) Return on equity; (e) Interest on working capital; and (f) Operation and maintenance expenses	Correction is necessary as 'Capital Cost' is shown to be a component of input price of coal.
16	51	**Computation and Payment of Capacity Charge for Thermal Generating Stations:** (1) The fixed cost of a thermal generating station shall be computed on annual basis, based on norms specified under these regulations, and recovered on monthly basis under capacity charge. The total capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share or allocation in the capacity of the generating station. Capacity Charge for the month shall be recovered in two parts viz., Capacity Charge for Peak period of the month and Capacity Charge for Off-Peak period of the month. ,..... (5) Achievement of PAF less than the specified NQPAF in "Peak" or "Off-Peak" periods shall result in pro-rata reduction in recovery of Capacity Charge for the appropriate period. Provided that if the cumulative peak period PAF achieved during a quarter is more than the specified NQPAF for peak period and the cumulative Off-Peak period PAF achieved during the quarter is less than the specified NQPAF for Off-Peak period, the loss in recovery of Capacity Charge for Off-Peak period shall be off-set against the notional gain on account of	CERC may continue with the existing process of Annual Plant Availability Factor.	• There are instances where plants faced long forced shutdowns (10-15 days) on account of water shortages *(for ex in Maharashtra),* failure in ash handling plant, collapse of junction towers in coal handling plant, failure of Generation Transformers. The concept of NQPAF fails to consider such practical difficulties. • Recovery of capacity charges based on cumulative Plant Availability allows generating stations to cover up any loss of availability due to economic or forced shutdown. Therefore, introduction of new concept of NQPAF would severely impacts recovery of fixed charges and the financial

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		over-achievement in Peak period, subject to the ceiling of full recovery of Capacity Charge for Off-Peak period; Provided further that if the cumulative peak period PAF achieved during the quarter is less than the specified NQPAF for peak period and the cumulative Off-Peak period PAF achieved during the quarter is more than the specified NQPAF for Off-Peak period, the loss in recovery of Capacity Charge for Peak period shall not be off-set against the notional gain on account of over-achievement in Off-Peak period; Provided also that carry forward of under-recovery of Capacity Charge shall not be allowed for recovery from one quarter to the subsequent quarter.		performance. • Further in the prevailing coal supply shortage scenario, generating stations are not in a position to ramp up and ramp down during peak and off-peak hours. Coal shortage is now prevailing for more than 2-3 years and this is a situation which is completely beyond the control of generators. • Therefore, it will be highly prejudiced to introduce peak and off-peak tariff in such an environment where generators are not in a position of full coal availability in spite of making 100% advance payments. • We feel peak and off-peak tariff for generators can be introduced once the market is more mature especially in context of ready / easy availability of coal and healthy (financially strong) power procurer.
17	52.	**Computation and Payment of Energy Charge for Thermal Generating Stations:** …… (3) In case of part or full use of alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power	**Computation and Payment of Energy Charge for Thermal Generating Stations:** …… (3) In case of part or full use of alternative source of fuel supply by coal	• Discoms are reluctant to pay any cost more than the linkage coal cost and there are payment disputes which go beyond 3 years and payment is withheld thereby

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		purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station: Provided that in such case, prior permission from beneficiaries shall not be a pre-condition, unless otherwise agreed specifically in the power purchase agreement: Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (7) of this Regulation. Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on based on weighted average fuel price for the previous month, whichever is lower shall be considered and in that event, prior consultation with beneficiary shall be made not later than three days in advance. 4… 5… 6…..	based thermal generating stations 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 alternative source of fuel supply shall be permitted to generating station: Provided that in such case, prior permission from beneficiaries shall not be a pre-condition, unless otherwise agreed specifically in the power purchase agreement: ~~Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (7) of this Regulation.~~ Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on based on weighted average fuel price for the previous month,whichever is lower shall be considered and in that event, prior consultation with beneficiary shall be	worsening financial situation of Generating companies. • Therefore, it is recommended to include provision for Discom to pay upto 80% of disputed amount. • Further, generator has no control over the procurement price of the fuel. Therefore, there should not be any condition on cost of usage of alternative sources of fuel in case of Linkage Coal Shortfall.

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			made not later than three days in advance. 4… 5… 6….. ***7.. However, it is clarified that in case of any dispute the DISCOMs shall pay the 80% of the disputed amount till the matter is finally settled. If post final settlement any excess amount is paid by either party the same shall be returned back to other party at the rate of late Payment surcharge as specified in these regulations.***	
18	59	**Norms of operation for thermal generating station;** The norms of operation as given hereunder shall apply to thermal generating stations: (A) Normative Quarterly Plant Availability Factor (NQPAF) (a) For all thermal generating stations, except those covered under clauses (b), (c), (d), & (e) - 83% Provided that for the purpose of computation of Normative Quarterly Plant Availability Factor, annual scheduled plant maintenance shall not be considered.	**Norms of operation for thermal generating station:** The norms of operation as given hereunder shall apply to thermal generating stations: (A) Normative Quarterly Plant Availability Factor (NQPAF) (a) For all thermal generating stations, except those covered under clauses (b), (c), (d), & (e) - 83% Provided that for the purpose of computation of Normative Quarterly Plant Availability Factor, annual scheduled plant maintenance shall not be considered ***and generating stations have to achieve the specified PLF excluding the annual scheduled maintenance.***	For abundant clarity, CERC may clarify that generators have to achieve PLF of 83% excluding or including the annual scheduled plant maintenance.
19	59	**Norms of operation for thermal generating station;** The norms of operation as given hereunder shall apply to thermal generating stations:	NQPAF should be set as per the Quarterly variation in Coal Supply as per the FSA. Further for gas plants the threshold for	In order to avoid generating plant's under-recovery on FC should include this aspect also.

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		(A) Normative Quarterly Plant Availability Factor (NQPAF)	recovery of Fixed Cost should be set taking into consideration the availability of gas for power plants. As per CEA recommendations, Norms of operation may be considered for coal plants.	
20	**3(5)**	**'Auxiliary Energy Consumption' or 'AUX:** In relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, **such as the equipment being used for the purpose of operating plant and machinery** including switchyard of the generating station…….	**Auxiliary Energy Consumption' or AUX:** In relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, **such as the equipment being used for the purpose of operating plant and machinery *or installed in compliance of a Law/Directions from authorities*** including switchyard of the generating station…….	• This definition as per draft doesn't cover the FGD system as they are not used to operate the plant. Therefore, the Definition may be modified to that extent to cover the emission control systems also that are not necessary to operate the plant but are installed as a part of Compliance of law/directions from Govt.
21	**3 (26)**	**'Force Majeure'** for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee …. a).. b).. c).. d)…	**'Force Majeure'** for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee …. a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions ~~which are in excess of the statistical measures for the last hundred years; or~~ b)..	• The definition should also define that delays in execution of project for reasons not attributable to the developer qualifies as a Force Majeure event. • 100 years is a very long period and even future calamities /events may not the predicted. Therefore, this clause may be amended appropriately. • The definition may be amended accordingly.

S. No.	Clause	Draft Regulations	Comments/ Suggestions	Rationale
			c).. d)... ***e) reasons not attributable to the developer /generators***	
22	**3.**(35)	**'Indian Govt. Instrumentality'** means the Government of India, Governments of State (where the project is located) and any ministry or department or board or agency controlled by Government of India or Government of State where the project is located, or quasi-judicial authority constituted under the relevant statutes in India;	**Indian Govt. Instrumentality'** means the Government of India, Governments of State (where the project is located) and any ministry or department or board or agency controlled by Government of India or Government of State and any other State where the project is located, or quasi-judicial authority constituted under the relevant statutes in India; ***and all Statutory agencies/bodies and Agencies under direct or indirect control of the State or Central Govt.***	• The definition should also include the Statutory agencies/bodies and Agencies under indirect control of the State or Central Govt. • The definition may be amended accordingly.
23	**3 (41)**	(41) '**Investment Approval**' means approval by the Board of the generating company or the transmission licensee or Cabinet Committee on Economic Affairs (CCEA) or any other competent authority conveying administrative sanction for the project including funding of the project and the timeline for the implementation of the project: Provided that the date of Investment Approval shall reckon from the date of the resolution of the Board of the generating company or the transmission licensee where the Board is competent to accord such approval and from the date of sanction letter of competent authority in other cases;	'**Investment Approval**' means approval by the Board of the generating company or the transmission licensee or Cabinet Committee on Economic Affairs (CCEA) or date of financial closure or any other competent authority conveying administrative sanction for the project including funding of the project and the timeline for the implementation of the project: Provided that the date of Investment Approval shall reckon from the date of the resolution of the Board of the generating company or the transmission licensee where the Board is competent to accord such approval and from the date of sanction letter of competent authority	• NTP (notice to proceed) is issued only after FC (Financial Closure). Therefore, it would be prudent if any appraisal of delay is COD is considered based on FC.

S. No.	Clause	Draft Regulations	Comments/ Suggestions	Rationale
			in other cases;	
24	**3 (42)**	(42) **'Landed Fuel Cost'** means the total cost of coal (including biomass in case of co-firing), lignite or the gas delivered at the unloading point of the generating station and shall include the base price or input price, transportation cost (overseas or inland or both) and handling cost and applicable statutory charges;	**'Landed Fuel Cost'** means the total cost of coal (including biomass in case of co-firing), lignite or the gas delivered at the unloading point of the generating station and shall include the base price or input price, transportation cost (overseas or inland or both) and handling cost and washing charges applicable statutory charges;	• Many IPPs are forced to undertake washing of coal to comply with MoEF norm to achieve 34% ash content. • Therefore cost of washing may be included in landed cost.
25	**3 (49)**	(49) **'Original Project Cost'** means the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date, and as admitted by the Commission;	**'Original Project Cost'** means the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date, and as admitted by the Commission; in case of beyond Original Scope of work, genuine expenditure may be allowed by Commission on case to case basis.	• There can be certain capital expenditure items that were not in "Original Project Cost" but became necessary. Eg: Major accident like failure of equipment's requiring complete replacement of the equipment's.
26	**11**	**In-principle Approval in Specific circumstances:** The generating company or the transmission licensee undertaking any additional capitalization on account of **change in law events or force majeure conditions may file petition for in-principle approval** for incurring such expenditure after prior notice to the beneficiaries or the long term	**In-principle Approval in Specific circumstances:** The generating company or the transmission licensee undertaking any additional capitalization on account of **change in law events or force majeure conditions may file petition for in-principle approval** for incurring such expenditure after prior notice to the beneficiaries or the long term. ***In case Emission Control Systems are required to be installed the same may also be considered for In-Principal approval***	• As per draft regulation 9(3), for emission control system the Applicant has to file petition after the actual expenditure. The current provision is against the clause 9 (3) • Since MOEF notification 2015 is already declared as Change in law, resulting into substantial additional investment to the generators, therefore, it must be eligible

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				for in principle approval.
27	50	**Landed Price of Reagent (Limestone, Sodium Bi-Carbonate, Urea and Anhydrous Ammonia etc.):** Where the specific reagent such as limestone, Sodium Bi-Carbonate, Urea and Anhydrous Ammonia are used during operation of emission control system, the landed price of such reagents shall be determined based on normative consumption specified in clause	**Landed Price of Reagent (Limestone, Sodium Bi-Carbonate, Urea and Anhydrous Ammonia etc.):** Where the specific reagent such as limestone, Sodium Bi-Carbonate, Urea and Anhydrous Ammonia are used during operation of emission control system, the landed price of such reagents shall be ~~determined based on normative consumption specified in clause~~***considered.***	• It is suggested that the actual expenditure towards the Reagent must be allowed instead of Normative consumption basis in line with the primary fuel cost. • Availability, Transportation & the cost of these Reagents and the Disposal of By-products may be major issue once the emission control system is installed on all the thermal power plants in the country. Therefore, determining the landed price on normative basis could adversely impact the already poor financial situation of the generators.
28	52 (3)	In case of part or full use of 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 supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station: …… Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (7) of this Regulation.	It is suggested that that 30% criteria must be either removed or relaxed considering the shortage of coal supply and generator having no control over procurement prices of Coal.	• A generator doesn't have any control over the landed cost of the coal/lignite. • Base ECR determined by the commission in the beginning of the tariff period is determined based on data of past three months only which can undergo changes in the later months based on actual coal supply & demand scenario.
29	**59**	**Norms of operation for thermal generating station** The norms of operation as given hereunder shall apply to	• It is suggested that incentive must be payable based on Availability	• Since PLF is dependent on various factors which are not

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		thermal generating stations: **(B) Normative Quarterly Plant Load Factor (NQPLF) for Incentive:** (a) For all thermal generating stations, except those covered under clauses (b), (c) - 85%	declaration by Generator not on the basis of Off take by beneficiaries.	under direct control of a Generator i.e. off take of Power, Fuel Availability etc. Therefore incentive must be payable based on Declared Capacity.
30	New proposed	-	Tariff Regulations should also include specific clause for determination of tariff for cross border projects which will be supplying power to India	These regulations are essential as there are many bilateral projects in Nepal and Bhutan with future plans to supply power to Indian States. Inclusion of tariff regulations for such cross-border projects will help in sale of power at reliable prices compared to volatility of prices discovered on power exchanges or bilateral short/medium-term agreements.