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To
The Secretary,
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Subject: Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024.
Reference: No. L-1/236/2018/CERC Date: 7 th January, 2019

Sir,
In response to the public notice of the Hon'ble Central commission inviting comment/suggestion in the matter of Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff)
Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024 following comments are sent for consideration and incorporate/deletion in the final draft Regulation.
The Electricity Act 2003 under the Section 61 provides the principle of formulation of the Tariff Regulations which is legislative in Nature. As a consumer Tariff means unit rate of commercial unit of electrical energy. The Electricity Act 2003 under Section 2 (23) which as follows:

"(23) "electricity" means electrical energy-

(a) generated, transmitted, supplied or traded for any purpose; or
(b) used for any purpose except the transmission of a message;"

The Central Electricity Regulatory Commission must therefore restricted with the Electrical energy as it has no mandate of the law to regulate the coal energy sector as proposed under this draft Regulations. The proposed definitions (45) & (46) in the Regulation 3 and Entire Chapter 9 under the heading of "Computation of Capital cost of integrated Mine and input cost price" cannot be brought in the Electricity Tariff Regulations under this Act. The entire Regulations under the Chapter 9 Regulations from 36 to 45 must be deleted and hence no comment is offered. The Act has no mandate to make Regulations by the Central Commission for coal energy or in other words other than electrical energy , and hence shall be illegal and out of jurisdiction and shall not stand scrutiny of the court of law. The Hon'ble Central Commission seems to be over generous to the generating and Transmission utilities at the cost of consumers' interest and attempted to deviate from the existing Regulations though no such urgency and market condition has developed. It is pertinent to mention that the country is facing recession, jobless growth, farm distress and heavy joblosses due to various economic factors . Hence any liberty to hugely profit making organisation will have a deep deterring consequence on the consumers.

Presently Nyveli Lignite Corporation has been operating both mines and the generating stations and both are under two different ministries and different laws. The Electricity Generating unit is only under the Electricity Act 2003 not the mines. The Act provides legislative power to frame Regulations related to Electrical Energy only.

Section 61. (Tariff regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so ,shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

[1][(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

As was made to understand that the first Multy Year Tariff (MYT) Regulations 2001 was made for 3 (Three) years because therequisite data from the utilities were not available with CERC. Subsequently CERC MYT Regulations 2004 were made with elaborate discussion for a period of 5 (five) years. In the said Regulations effort was made to balance between the recoveries of cost by the generating and transmission companiesand protection of public interest. Unfortunately in the CERC MYT Regulations 2009, the public interest was totally ignored and the Tariff Regulations was predominantly made keeping in view of higher profit earning capacity by the Central and private ISGS generating companies and the ISTS licensees and also without any provisions of competition among the generating units. The provisions of efficiency gain and good performance was given go by. It is also observed the draft MYT Regulations were made without much study to achieve realistic efficiency gain, competiveness and use of resources economically and totally unrelated to the earlier MYT Regulations. The Commission in the draft Regulations has proposed the entire benefit to the generating companies and the licensees as per their claim without any prudence check which is against the interest of the consumers and the mandate of the Act. As for example the salary of NTPC employees of 19739 Nos. employees Rs.6028.27 Crores were spent as per the Annual financial report which means average salary of the employees is as much as Rs.30.54 Lakh per annum and Rs.2.55 Lakh per month. Therefore by allowing enormous amount of salaries where the BPL families bench mark of maximum limit is provided as Rs.32.00 per day or Rs.960.00per month or Rs.11520.00 per annum which divides the society economically, the entire salary amount is being a pass on to the consumers as Tariff. Too much profit is indisguised unjust profit and may bread the consequences that follow. This is unjust not only to the consumers but also to the nation. This draft MYT Regulation 2019 seems to have been framed keeping in view for providing more benefit to the private and Central ISGS and ISTS ignoring the interest of the consumers. The Comments and views are provided in the following table:

Regulation No.	Draft Regulation	Comment/Reply
3(26)(d)	Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;	Must be deleted and retained the earlier Regulations 2019 while certain addition that during prudence check it must be ascertain that whether the delay is attributable to the generating company or the licensee. In case the delay is attributable to the generating company or licensee the cost overrun due to time overrun cannot be passed on to the consumers and entire cost overrun must be on the account of generating company or licensee. If the time overrun is due to force majeure condition which is beyond the control of the generating company and licensee, then the cost overrun due to delay must be shared equally between the developers and the consumers equally i.e. in the ratio 50% : 50% (Ref: Para 7.4 of APTEL judgement dated 27.04. 2011 in the Appeal No. 72 of 2010). The definition must be modified accordingly.
3(27)	'Fuel Supply Agreement' means the agreement executed between the generating company and the fuel supplier for generation and supply of electricity to the beneficiaries;	The definition is contrary to the provisions of the Electricity Act 2003 (Act 2003). Under Section 7 of the Act states "Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies withthe technical standards relating to connectivity with the grid referred to inclause (b) of section 73."As per law there is no involvement of the beneficiaries in FSA, hence this is to be deleted or modified without involvement of beneficiaries.
3(41)	'Investment Approval' means approval by……..	May be amended as ' ***Initial*** investment approval' means approval by…………
3(42)	'Landed Fuel Cost'	New terminology and must be defined only for coal and lignite as in the liquid and gas fuel there is no scope of loss due to transit. Such Regulation, due may lead to wastage of fuel due to in efficient handling by gas transporter or the generating company which cannot be loaded to the consumer. The definition is against the provision Section 61 of the Act. Also a proviso may be incorporated that procurement of fuel must be made on competitive and transparent manner by the generating companies on public

		interest.
3 (45)& (46)	Mining infrastructure and Mining Plan	Mining and Generation of Power are two different activities. Mining is controlled by Indian Mining Act and Electricity generation is governed by the EA 2003. Mining of a coal fuel is outside the ambit the EA 2003
3(49)	Original Project cost	Original project cost cannot be the completed cost. The Commission's definition provides more benefit to the generating companies and against the interest of consumer. If at all this definition is adopted then, the completed cost is to be deleted. Because original cost gets revised even more than once,
3(61)	**'Scheduled Commercial Operation Date or SCOD'**	shall mean the date(s) of commercial operation of a generating station or generating unit thereof or transmission system or element thereof and associated communication system as indicated in the ***original*** Investment Approval ***or as benchmarking commissioning schedule made by the Central Commission in this Regulations*** as agreed in power purchase agreement or transmission service agreement as the case may be, whichever is earlier; or There must be also another term ***as 'Actual Commercial Date (ACOD)'*** which shall indicate actual COD and the difference between the SCOD and difference shall be the time overrun. In the earlier MYT Regulations both the terms were mentioned in the Regulations and the difference indicates the correct time and cost overrun correctly and it is must.
5	**Date of Commercial Operation:**	Provisions of Earlier Regulation are correct and complete and must retain. Proposed draft Regulations is not acceptable as scope of manipulation by the Generating companies and licensees would be provided in proposed form. Kindly Refer CERC orderdated Petition No. 130/MP/2015 along with IA No. 67 of 2017. The Regulation 5 of MYT Regulations 2014 is to be retained.

6 (2)		The two tariff part for the generating station which is to be supplied to the long term beneficiary is to be determined in proportionate to capital cost of the entire project and not the tariff determined on the basis of entire capital cost and then apportioned which is not proper and also not based on commercial principle. Therefore to protect the interest of the consumer the Regulation is to be modified. E.g. the tariff of ONGC Tripura Power Corporation Ltd. the tariff for entire project was determined considering entire capital cost of the project and then apportioned. 90 MW of Power is kept for merchant power which the developer is selling at higher rate as agreed by the two companies. Thus recovery of capital cost to consumers has been much higher than the capacity charges as determined by the Central Commission.
6(5) (6)	Cost of fuel from integrated mine to be determined by CERC	To be deleted as determination of coal price is not in the domain of the the Act.
9(1) 2nd proviso	Application for determination of tariff:	Auditor certificate can not be substituted by any other certificate of any other officer of the utility. Hence accepting the certificate to be submitted by officer of the entity shall be illegal. The 2nd proviso to be delated.
9 (4)	Application for determination of coal	Must be deleted as it has no mandate by law.
11	In-principle Approval in Specific circumstances:	Since the tariff determined is matter of projected tariff as per provisions 62 (5) of the Act. The cost due to change of law and the force majeure conditions during Multy Year Tariff(MYT) Period should be taken up during truing up for that period under the provisions 62(6). For force majeure condition occurred, the generating company or the licensee must be intimated to the beneficiary/beneficiaries immediately after its occurrence and must be mutually agreed that the force majeure condition/conditions occurred. The cost due to force majeure conditions must be shared equally i.e. 50%:50% between the Generating companies or licensees and the beneficiaries as per APTEL judgement dated 27.04.2011 in the Appeal No. 72 of 2010. The draft Regulation may be

		amendedaccordingly.
11(1)(b)	Truing up due to force majeure conditions and change of law	Since the tariff determination is on projection tariff as per provisions 62 (5) of the Act. Hence cost due to change of law and the force majeure conditions during Multy Year Tariff(MYT) Period should be taken up during truing up for that period under the provisions 62(6). For force majeure condition occurred, the generating company or the licensee must intimate the beneficiary/beneficiaries immediately after its occurrence and must be mutually agreed for such force majeure condition. The cost due to force majeure conditions must be shared equally i.e. 50%:50% between the Generating companies or licensees and the beneficiaries as per APTEL judgement dated 27.04.2011 in the Appeal No. 72 of 2010. The Regulation may be amended accordingly
11(3)	Truing up during MYT period	The proposed Regulations must be deleted and the existing Regulation is sufficient. The Regulations are made on Multi Year Tariff principle, therefore this would affect the principle of MYT. Tariff Policy mandates MYT principle because of the fact that there should not be uncertainty in retail tariff to the end consumers. Under MYT Principle tariff has been revised every year and the Act does not permit change of projected tariff more than once in a financial Year except fuel sur-charges under section 62 (4) of the Act. Therefore this proposed Regulation is contrary to law, therefore to be deleted.
11(4)	Truing up and recovery of excess or shortfall of Tariff	Truing up is to be carried out at the end of MYT period and the excess or shortfall may be adjusted in the next MYT period tariff determination as per law.
18 (1)	Capital Cost	During prudence check the Power Purchase Agreement (PPA) between the Generating Company or Licensee and beneficiary is to be considered. Benchmarking of Capital cost is essential. Further the Central Commission must make it mandatory that initially the generating company or the licensee would first utilize the equity capital and subsequently on exhausting the equity capital while capital expenditure is made must incurred equity capital the loan capital be utilized.

		There must be Regulation may be framed under this condition . Considerable amount of IDC can be shaved which may reduce the Tariff. This is in the interest of the consumers and as per Act.
18(4)(b)	RGGVY or DDUGVY	All the villages of India have already been electrified. Hence this provision needs to be deleted. If any village is to be electrified due to Replace and Rehabilitation (R&R), that is to be done in R&R expenditure which is already exist in the Regulation.
19(1)	Prudence Check of Capital Expenditure	Prudence check does not mean comparison of cost of similar project. The proposed amendment is not acceptable. This shall provide opportunity for acceptance of irregular cost overrun of the project, therefore existing provisions of MYT Regulations 2014 is sufficient. It was experienced that without carryout prudence check in the manner prescribed in the existing Regulations, huge amount of unjust capital expenditure was approved by the Central Commission in the Bongaigaon Thermal Power Station (BgTPS) of NTPC on the excuse of only by comparing the capital cost of certain high cost power stations including those own by private operators which is notpermissible as per law. The capital expenditure which is actually not permissible as per law would be regularized by this proposed Regulation against the commercial principle and against the interest of consumers. It is pertinent to mention that this draft Regulations that many provisions are proposed for unjust enrichment to the central and private utilities whose tariff would be determined by the Central Commission. The Central Commission should have been specified the bench mark norms for the capital expenditure which is yet to specify. Therefore propose draft Regulation is not acceptable which is indeed inferior to the earlier existing regulations.
20(1)	Interest During Construction (IDC) and Incidental Expenditure during Construction (IEDC)	The propose Regulation shall have stipulation for generating company or the licensee for incurring initial expenditure from their equity capital fund. Oncomplete utilization of Equity capital, loan capital shall be drawn from the financial institution. This

		would not only ensure flowing of equity fund but also reduce IDC component considerably. It is established fact that in the starting period not much fund is required for awarding the packages and payment of mobilising advance maximum of 10% of contract value is sufficient. Subsequently till supply of the materials/equipment no money is paid in case of domestic supplier or contractors. For other activities such as civil packages etc. fund required is for payment of running bills for the completed works.Equity capital is adequate to meet up these expenditure. In the later part of the completion of the project more amount is needed and the loan capital may be drawn gradually from the financial institution which would reduce the IDC. This also restricts the generating company or licensee to against mis-utilization of project loan capital in the working capital of the existing running project. This would be conducive to the commercial principle and on the interest of the consumer. Therefore this modificationmay be incorporated in the draft Regulations.
20(2)	Do	IDC and IEDC components are to be calculated uptp SCOD and Actual COD (ACOD). If the delay is attributable to the Generating Company or licensee, the cost overrun shall not be passed on to the tariff. If the reason of delay is beyond the control of the generating company or the licensee, the cost over run is to be shared equally by the generating company or licensee as the case may be and the consumers. The draft Regulation needs amended accordingly.
20(3)	Do	To avoid uncertainty and correct accountal the discussion paper of CERC MYT Regulations 2004 where two dates were defined transparently one SCOD and another ACOD. This draft Regulation proposes only one i.e.SCOD which may result in unjust enrichment of the developers . SCOD is COD as per original approval of the project estimate and ACOD is actual COD whether project was commissioned before or after schedule COD. If the project is delayedthe reason attributable to the generating company or licensee no cost escalation

		is admissible to them. If the reason of delay is attributable to the force majeure conditions which is beyond the control of the generating company or the licensee, the cost overrun may be shared equally. Reqired amendment accordingly.
20(4)	Do	Delay due to reason attributable to the contractor is the delay certainly attributable to the project management. Contractor's delay cannot be considered separately and hence entire cost overrun due to contractor's delay shall be to the account of the project developers and cannot be passed on to the consumers. This is as per the APTEL judgement dated Dated 27th April, 2011 in Appeal No. 72 of 2010.
20 (5)	Do	Not only IDC and IEDC but also the entire cost overrun for the time overrun attributable to the generating company or licensee in the project cost cannot be passed on to the consumers but in the account of the generating company or the licensee as the case may be.
21(1)	Controllable and Uncontrollable factors 1. Controlable factors	Not acceptable. Existing Regulations MYT 2014 is adequate and no change desirable.
22	Initial spares	Initial spares should be percentage of ***Original*** plant and machinery cost not as proposed. In earlier CERC MYT Regulations 2009. The Regulations should be such that it provides better norms not worse for efficiency gain into the Electrical Industry.
23 (e)	Additional Capitalisation within the original scope and upto the cut-off date: (e) Force majeure events	Additional capitalization due to force majeure conditions are to be shared equally i.e. 50% and 50% between the project developers and the consumers. The insurance claimed by the company is to be should be subtracted from the 50% cost share of the consumers.
24	Additional Capitalisation within the original scope and after the cut-off date:	Provided the additional work and the cost escalation if any is not attributable to the generating company or the licensee. Cost of additional work due to force majeure condition is to be shared between the project developers and the consumers.
30	Return on Equity:	Reference of the discussion paper on draft CERC MYT Regulation 2004 took place on 10,11 and 12 Nov. 2003 and the CERC order dated 06.01.2014 wherein it was

		deliberated that bank interest that since the bank interest were falling and contemporary Bank interest was in the range of 10% to 11%, therefore return on equity was made at 14% on Equity capital in MYT Regulatins 2004. However the Central Commission subsequently arbitrarily increased to 15.5% and 16.5% for Thermal and hydro power project respectively in the subsequent MYT Regulations. Now prevailing Bank interest rates are in the range of 6% to 8%. Therefore considering the principle laid down by CERC in the order dated 06.01.2004; Return on equity capital is to be fixed at 10%. It is pertinent to note mention that risk capital in investment is realy negligible in view of the fact that generation and Transmission utilities have captive consumers. Considering the present market and economic conditions RoE at 10% shall be fully justified.
33(3)	Depreciation	Salvage value of asset can not be less than 10%. Proposed salvage value of 5% is against the interest of consumers.
34	Interest on working capital (IWC)	Since one months' O&M expenses is a part of 45 days receivables , inclusion of one month's O&M expenses additionally will be an extra burden on the consumers. Also the norms for capital cost include reasonable amount of capitalised initial spares, cost of spares should not be included in the working capital. Cost of 20% spare is very very higher side. Depreciation and the Return on Equity capital does not require any working capital. Therefore both the RoE and the Depreciation components are to be removed from the receivables. The time of 45 days should be reduced to maximum days of 15 day. This is because in the present circumstances the cycle from meter reading is not more than 10 Ten) days due to innervation of Information Technology IT) in every step till payment of bills. Moreover the bill payment through LC payment. Therefore 20 days time is more than sufficient for providing IWC. However this interest on WC is absolutely unnecessary as the companies have certain level of cash flow to finance a part of its working capital

		requirement without need to take recourse to borrow from the market and also the Tariff determined is projected Tariff and subject to trued up with actual expenditure and any deficit if any in any how supposed to be paid with carrying cost.
35	Operation and Maintenance (O&M) Cost	While fixing up the O&M expenses the similar generating stations and the Transmission licensees are also be considered and best practices and the efficient least cost incurred by the state utility is to be considered for benchmarking. Salary component is a major part of O&M cost. NTPC incurred expenditure on an average more than Rs.30 Lakh per employee per annum. It is exorbitantly higher side. Therefore more prudence check is required in the O&M cost for benchmarking in this draft Regulations. Therefore mere receiving data from the companies cannot be taken as bench marking. Similarly in the administrative expenses lot many other expenses not related to the generation or transmission of power is shown which are to be removed before benchmarking the cost.
48	Transit and Handling Losses	In case of coal-based generating stations, there are losses mainly on account of theft during transit, windage losses and handling losses at the power generating station end, etc., and are unavoidable to some extent. After detailed deliberation on discussion paper for MYT Regulations 2004 and as per the data furnished by NTPC for the period 2000-01, transit and handling losses for the NTPC coal-based generating stations as 0.2% and 0.8% for pit and non-pit head station was fixed as transit loss. It is a well established fact that as the norms are relaxed the efficiency reduces which is contrary to the provisions of Act. Therefore existing Regulations 2014 is adequate and no changes required.
49	Computation of Gross Calorific Value:	No relaxation required which lead to inefficient and no change desired in MYT Regulations 2014.
50	Landed Price of Reagent (Limestone, Sodium Bi-Carbonate, Urea and Anhydrous Ammonia etc.):	No relaxation required which lead to inefficient and no change desired in MYT Regulations 2014.

	Norms and the O&M expenses of Hydro Generation and Transmission	Same principle may be applied for finalization of the draft Regulation.

It is pertinent to mention that subsequent to CERC MYT Regulations 2001 the performances of the Central and Private utilities had been increased drastically till 2008-09. Subsequently as the norms were relaxed in MYT Regulations2009 and the MYT Regulations 2014 relaxed many norms arbitrarily which provides benefit to the utilities the efficiency and performances of those utilities has been gradually decreasing affecting the entire Electricity Industry. In the other hand the Tariff determined by CERC for those utilities has been increasing very stiffly. Irony of this draft Regulations and the relevant document is that no where it is mentioned that what would be the implication in the Tariff by relaxing those norms. As a consumer I am paying the charges per unit cost of commercial unit of the electricity. This Draft Regulation failed to provide what may be the expected tariff for next MYT period 2019 to 2020 periods. The report of CEA is also very surprising that they submitted one report based on the data or information submitted by the utilities. It is also regretted CERC also seems to have framed this draft without much verification and scrutiny. Therefore under no circumstances no relax norms than existing one is provided which will provide more benefit to the utilities resulting lower performance and against the consumers. There is also big nexus existing between the project developers and the financial Institutions. Financial Institutions always very much comfortable to lend as much money to the government and private utilities in the Electrical Sectors as repayment is easier as the utilities have captive consumers. Therefore initially the developers brought one estimate with an estimate of smaller amount looks very viable project and once the loan is drawn the cost estimate is revised many times and additional loan amounts are drawn. The financial institutions are also happy to release additional loan amount and increase their volume of business. On the other hand the developers in connivance with the contractors misappropriate large amount of money in the name of price escalation and cost overrun which is passed into the capital cost of the project resulting stiff hike in the Tariff affecting the consumersthose issues may be eliminated by appropriate Regulations.

It is prayed before the Hon'ble Commission to take consideration of the abobe reply in the final MYT Regulations 2019.

Thanking you
Yours faithfully
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