Comments on Draft Central Electricity Regulatory Commission {Terms and Conditions of tariff} Regulations, 2019

S.No.	Draft Regulation	Comparative	Comments
1	Reg. 3{14} Cut Off Date	2014-19 Regulations : (13) „**Cut-off Date**" means 31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cutoff date shall be 31st March of the year closing after three years of the year of commercial operation: Draft 2019-24 Regulations: (14) **'Cut-off Date**' means the last day of the calendar month after three years from the date of commercial operation of the project;	Concept of 'calendar month 'introduced in draft regulations is not aligned with other regulations , which are applicable on financial year basis. It is submitted that audited financial statements , etc are also on financial year basis. Suggest that it should be on financial year basis.
2	Reg. 3{68}	2014-19 Regulations	Draft Regulations 3{68} needs to be read with Draft

	Statutory Charges	Nil 2019-24 Draft Regulations (68) **'Statutory charges'** comprises taxes, cess, duties, royalties and other charges levied through Acts of the Parliament or State Legislatures or by Indian Government Instrumentality under relevant statutes; **66. Recovery of Statutory Charges:** (1) The generating company shall recover the statutory charges imposed by the State and Central Government such as Electricity duty, water cess by considering normative parameters specified in these regulations. In case of the Electricity duty is applied in the auxiliary consumption, such	Regulation 66 . Definition has been introduced for the first time . Statutory Charges includes 'taxes'. Word 'taxes' is of wide import and includes both direct taxes {income tax } and indirect taxes { like GST, coal cess , etc.. Word Taxes needs to specifically exclude ' income tax' as recovery of income tax has been dealt specifically in Draft Regulation 31. **31. Tax on Return on Equity.** (1) The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the

		amount of electricity duty shall apply on normative auxiliary consumption of the generating station (excluding colony consumption) and apportioned to the each beneficiaries in proportion to their schedule dispatch during the month.	basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission, as the case may be) shall be excluded for the calculation of effective tax rate.
3	Draft Reg. 6{b}	2014-19 Regulations	Default of Transmission Licensee shall impose undue burden on beneficiaries of generating station.

	Treatment of mismatch in date of commercial operation	Nil 2019-24 Draft Regulations (b) Where the associated transmission system has not achieved the commercial operation as on the date of commercial operation of the concerned generating station or unit thereof, the transmission licensee shall make alternate arrangement for the evacuation from the generating station at its own cost, failing which, the transmission licensee shall be liable to pay the transmission charges to the generating company at the rate of the applicable transmission charges of the region as determined in accordance with the Sharing Regulations till the transmission system achieves the commercial operation. Provided that despite making alternative	In event of Default on part of Transmission Licensee in setting Associated Transmission System and failure of Transmission licensee in making alternative arrangement , the corresponding liability of Transmission Licensee is restricted to 'applicable transmission charges of the region'. This will impose undue burden on consumers/ beneficiaries of generating station as they shall have to bear capacity charges of generating station { which is substantially high} while corresponding reimbursement is restricted to transmission charges which is substantially less }. It is proposed that Default of Transmission licensee should not be passed to consumers of generating station and Transmission Licensee be mafe to bear corresponding capacity charges of the generating station.

		arrangement of evacuation, if the associated transmission system does not achieve the date of commercial operation within the six months of date of commercial operation of the generating station, the transmission licensee shall be liable to pay to the generating company the applicable transmission charges of the region as determined in accordance with the Sharing Regulations in addition to the above.	
4	Draft Reg.	2014-19 Regulations	We thank Ld. Commission for introducing this concept.

	17{6} Debt Equity Ratio	Nil 2019-24 Draft Regulations (6) In case of generating station or a transmission system including communication system which has completed its useful life as on or after 1.4.2019, the accumulated depreciation as on the completion of the useful life less cumulative repayment of loan shall be utilized for reduction of the equity and depreciation admissible after the completion of useful life and the balance depreciation, if any, shall be first adjusted against the repayment of balance outstanding loan and thereafter shall be utilized for reduction of equity till the generating station continues to generate and supply electricity to the beneficiaries.	We had raised this issue at the time of framing of 2014 Tariff Regulations. Ld. Commission has taken cognizance of my submission and has finally introduced this concept. As stated earlier it results in undue enrichment for the generator and is violative of principle of cost based tariff as provided in Electricity Act 2003 { Section 61{g}}. This may be determined from CERC order dated 28.7.2016 in Petition 290 of 2014 { Singrauli STPS}. While introducing the asset side approach { GFA} ,The Central Commission in its order dated 21.12.20111,Para 2.8.7 held as under :- " 2.8.7… As such in all matters of tariff under section 13{a} or {b} or {c} for valid reasons viz. , to promote

			investment in the sector and to plough back the funds within the sector either for replacement of capacity or addition to capacity a return on original equity has to be provided .The commission will monitor the non-core investment and regulate the return in case of application of funds in non-core activities ." Thus concept of GFA was to encourage investment in the sector . It was never meant to be source of profit. As tabulated below, it has become a source of profit . On net investment of Rs.126.84 crores as on 31.3.2015, during 2014-19 period , total RoE alone is Rs.592.70 crores .

Rs. Lacs	2014-15	2015-16	2016-17	2017-18	2018-19	Total

	Closing Capital Cost	124747	124747	124747	124747	124747	
	Cumulative Depreciation	112063	112065	112067	112069	112072	
	Closing Net Fixed asset	12684	12682	12680	12678	12675	
	Closing Equity	60214	60214	60214	60214	60214	
	Closing Normative Debt	9950	9948	9946	9944	9942	
	Net Investment Being Serviced	70164	70162	70160	70158	70155	
	Investible Surplus	57480	57480	57480	57480	57480	
	Return on Equity	11808	11865	11865	11865	11865	59270
	Notional Interest on Investible Surplus	4598	4598	4598	4598	4598	22992
	Special Allowance	13714	14585	15511	16496	17543	77848
	Depreciation	2	2	2	2	2	11
	Interest on Loan	845	898	966	1019	1020	4748
	Total Cost of Servicing	30968	31948	32943	33980	35029	164869

5	Draft Reg. 18{2}{f}	Draft 2019-24 Regulations	Additional Capital Expenditure is incurred after CoD date.

	Capital Cost	(f) Expenditure on account of additional capitalization and de-capitalisation determined in accordance with these regulations;	Capital cost of new project is expenditure up to the date of commercial operation of the project. Logic of including of this element in capital cost of new project is incomprehensible. We request that this element may be excluded as component of capital cost.
6	Draft Reg. 28	2014-19	Ld. Commission has consistently followed Availability Based Tariff.

	Special Provision for thermal generating station which have completed 25 years of operation from commercial operation date	Nil 2019-24 **28. Special Provision for thermal generating station which have completed 25 years of operation from commercial operation date:** (1) In respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, the generating company and the beneficiary may agree on an arrangement where the total cost inclusive of the fixed cost and the variable cost for the generating station as determined under these regulations, shall be payable on scheduled generation instead of the pre-existing arrangement of separate payment of fixed cost based on availability and energy charge based on schedule. (2) The beneficiary will have the first right of refusal and upon its refusal to enter into an	Current Draft 2019-24 Tariff Regulations are also structured on Avail ability Based Tariff . Even in scenario of low demand , for initial useful life of generating station ABT is followed. Discoms shall continue to pay fixed cost based on availability for initial useful life. This imposes huge burden on Discoms as they have to incur huge expenditure for idle plants . This provision gives benefit to generator with no corresponding benefit to discom. This is against ethos of EA03 which mandates that 'the generation, transmission, distribution and supply of electricity are conducted on commercial principles'.{ Section 61{g}} It is proposed that this provision should be implemented

		arrangement as above the generating company shall be free to sell the electricity generated from such station in a manner as it deems fit.	after 12 years of COD , when debt amount has been paid. This shall give option to discoms to get out of PPAs which are not required. Also, since debt amount has been serviced, financial health of banks shall not be compromised. Since Only equity of promoter shall continue to remain invested , it shall balance risk reward equation between generator and discoms. Currently for Section 62 { cost based projects } have no incentive to reduce cost of tariff .
7	Reg. 51	Draft Reg. 51(2)	It is submitted that as per PPA , a generator is bound to

	Computation and payment of Capacity Charge for Thermal Generating Station	The Capacity Charge rate for Peak hours shall be 25% more than that of Off-Peak hours.	supply electricity ,as and when it is required by beneficiary. For this, generator is compensated by way of capacity charges in Availability Based Tariff regime. It is duty of generator to be available. Giving an incentive {25% additional capacity charges during peak hours } is against the basic ethos of Availability Based Tariff Regime. Ld. commission may kindly relook into this Regulation , as apparently there seems to be benefit to discoms nor any technical rationale for introducing time of day differential pricing for capacity charges . Also, there have been instances of gaming in the past . There is an apprehension that differential pricing for capacity charges may also give an opportunity for gaming to generators.

8	Draft Reg. 52{2}{g}	CVPF = (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations less 85 Kcal/Kg on account of variation during storage at generating station;	
9	Draft Reg. 59{A} Norms of operation for thermal generating station	2014-19 **36**. The norms of operation as given hereunder shall apply to thermal generating stations: **(A) Normative Annual Plant Availability Factor (NAPAF)** (a) All thermal generating stations, except those covered under clauses (b), (c), (d), & (e) - 85% Provided that in view of shortage of coal and uncertainty of assured coal supply on sustained basis experienced by the generating stations, the NAPAF for recovery of fixed charges shall be 83% till the same is reviewed. The above provision shall be reviewed based on	In 2014-19 , to meet condition of shortage of coal , NAPAF was reduced from 85% to 83%. However in Draft 2019-24 Regulations , there is unilateral reduction in NAPAF. Reason for reduction in NAPAF has not been elucidated . Further , this is not beneficial to Discoms. It is proposed that NAPAF at 85% should be considered. Further , NAPAF of 83%/85% was to meet exigencies like plant maintenance. In proposed draft regulation annual plant maintenance has been excluded to compute NAPAF. With exclusion of plant maintenance, NQPAF needs to be increased appropriately.

		actual feedback after 3 years from 01.04.2014. Draft 2019-24 Regulations **59.** 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.	
10	Draft Reg.	Draft Reg. 59{C}{a} provides Gross Station	It is proposed that types of generating station for which

	59{C}{a} Gross Station Heat Rate	Heat Rate { GSHR} for 200/210/250 and 500 MW sets. Draft Reg. 59{E}{a} provides Auxiliary Energy Consumption norms for 200/300/330/350/500/600 and 600 MW and above generating stations	norms of GSHR and Auxiliary Energy Consumption are specified need to be aligned.
11	Draft Reg. 69	2014-19 regulations	The period of payment has been reduced from 60 days to

	Late payment surcharge	**45. Late payment surcharge:** In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary of long term transmission ustomer/DICs as the case may be, beyond a period of 60 days from the date of billing,a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be. 2019-24 Draft Regulations **69. Late payment surcharge:** In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary or long term transmission customers as the case may be, beyond a period of 45 days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company or the transmission licensee, as the case may be.	45 days. This reduction in credit period would adversely affect finances of Discoms. Draft Reg. 68{2} provides rebate of 1 %.within 30 days from date of presentation of bills. Draft 69 levies Late Payment surcharge of 1.25% for payment beyond 45 days from date of billing . It is proposed that Draft Reg. 69 should restore period for levy of Late payment surcharge to 60 days from date of presentation of bills. This shall align provisions of rebate and Late payment Surcharge.
12	Draft Reg. 72		Central Commission has introduced this much awaited

	Sharing of Non-Tariff Income	**72. Sharing of Non-Tariff Income**: The non-tariff income in case of generating station and transmission system on account of following shall be shared in the ratio of 50:50 with the beneficiaries and the long term customer on annual basis: a) Income from rent of land or buildings; b) Income from sale of scrap; h c) Income from statutory investments; d) Interest on advances to suppliers or contractors; e) Rental from staff quarters; f) Rental from contractors; g) Income from advertisements;	concept in Tariff Regulations. However, it is apprehended that proviso proposed in Regulations shall be difficult to implement. Thus , it is proposed that Draft Regulations without proviso may be considered .

		h) Interest on investments and bank balances; Provided that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income.	

13	Three Part Tariff	Consultation Paper on Terms and Conditions of Tariff Regulations . 7.2.2 In view of decreasing PLF of thermal generating stations, a need has been felt to look into two part tariff structure being followed now. As discussed in following paragraphs, inter alia, one option may be to introduce three part tariff structure. The two part tariff structure for generating station provides the right to use the infrastructure on payment of fixed component irrespective of quantum of electricity generated and the payment of energy cost for procuring each unit of electricity. However, with this tariff structure, following issues emerge. The two part tariff system structure is suitable when the demand for power ensures utilization of capacity up to or around the target availability. It allows the procurer to get electricity at reasonable per unit	Concept of Three Part Tariff was introduced in consultation Paper. Consultation Paper identified key challenge of low demand faced by thermal plants . Key advantages of three part tariff are as follows :- The Tariff Policy 2016 provides for sale of surplus capacity in open market. Proposed three part tariff structure would have allowed the distribution licensee to give consent for say 10-15% capacity , beyond the target availability specified by the Commission. The Commission has come out with redesigning of day ahead market which provide the recovery of energy charges based on exchange clearing price. Flexibility of 10-15% would have introduced generators to market based pricing { on limited basis } and have helped in evolution of market determined energy market in India. Because of renewable penetration, the generating station

		cost through optimum utilisation of asset. Two part tariff operates well in power deficit scenario. Due to low demand, coal based power plants are running at a PLF of around 60%.Consequently, States have not been coming forward for long term power purchase to avoid fixed cost liability and rather they have been resorting to short term power purchase to meet their demand. 7.2.5 The tariff for supply of electricity from a thermal generating station could comprise of three parts, namely, fixed charge (for recovery of fixed cost consisting of the components of debt service obligations allowing depreciation for repayment, interest on loan and guaranteed return to the extent of risk free return and part of operation and maintenance expenses), variable charge (incremental return above guaranteed return and balance operation and maintenance expenses) and energy charges (fuel cost,	are fored to resort to part lad operation . Proposed three part structure will effectively address the flexible operation and pave the way for absorbing more renewable penetration by the distribution licensee. Three Part structure would have addressed the issue of peak tariff. The commission would have allowed generator to charge higher tariff during peak hours , with a ceiling limit of say 25%. In our view, three part tariff, is a concept whose time has come. It would have restored balance in energy markets. Today Distribution Licensee are saddled with Long Term PPA .Three Part Tariff would have reduced the burden of liability to pay fixed capacity charges. Generators would have benefited by recovery of 'base capacity charges' even when there is shortage of coal . Thus restoring risk reward equilibrium, which is currently skewed in favour of the

		transportation cost and taxes, duties of fuel). 7.2.6 The recovery of fixed component could be linked to target availability, whereas variable component could be linked to the difference between availability and dispatch. Fuel charges could be linked with dispatch.	generator , and detrimental to interest of end consumer.