

Draft Rajasthan Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019

Submitted to Rajasthan Electricity Regulatory Commission



The RERC vide public notice No. RERC/Secy./Notice/Regulation/D public notice has invited comments and suggestions from all stakeholders on the “Draft Rajasthan Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.” The present submission is in response to the said notice and the draft regulations published thereunder. We request the Commission to accept this submission on record.

Definitions

Regulation 2 (a) (15) of the Draft Regulations states as follows:

“Cut-off date” means the last day of the calendar month after three years from the date of commercial operation of the project:

Provided that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalisation could not be made within the cut-off date for reasons beyond the control of the project developer;”

Our Submission

It may be noted that the previous regulations provided a cut-off date ranging between around 1-2 years from COD for permitting additional capitalisation. In our opinion, it is detrimental for a fair proposition to give such a high duration for permitting additional capitalisation. Cut-off date is primarily specified for the completion of balance works and affecting balance payments and one year is an adequate period for the same. Any work not in progress at the time of COD is not essentially required for the power station and should be treated at par with new works. Therefore, it is requested to fix the cut-off date at 2 years from COD which would be more than enough.

Tariff Determination and Multi-Year Tariff Determination

D. Regulation 5 (3) of the Draft Regulations states as follows

“.....The applicant shall submit the forecast of Aggregate Revenue Requirement, expected revenue from existing tariffs and proposed tariff for the ensuing year and the Commission shall determine the ARR & tariff for the ensuing year of the Generating Company, Transmission Licensee and Distribution Licensee: ...”

Our Submission

The applicant may be asked to forecast Aggregate Revenue Requirement by providing a Power Purchase Plan incorporating the compliance of its RPO obligations as per RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations and any other regulations or orders by the commission.

Filings Under MYT Period

E. Regulation 6.1 of the Draft Regulations states as follows:

“ Provided further that in case the Generating Company or Licensee has opted for Multi-Year Tariff Determination, it shall file the Multi-Year Tariff Petition for approval of ARR and determination of tariff for each year of the Control Period within eight weeks of notification of these Regulations in the official gazette.”

Our Submission

The explanatory Memo explains the adoption of the Multi-Year Tariff Petition as it provides regulatory certainty for the next Control Period. However as per draft regulations, if the Generating Company or Licensee has opted for Multi-Year Tariff Determination, it shall also submit the Petition for truing up of ARR for the previous year during each year of the Control Period and may submit the Petition to re-determine the ARR and Tariff for ensuing year based on truing up of the previous year. This dilutes the purpose of regulatory certainty as mentioned in the Explanatory Memo and the rationale behind the Multi Year tariff Petition may please be explained.

Capital Cost and Capital Structure

F. Regulation 16.4 (c) of the Draft Regulations states as follows:

“The following shall be excluded from the capital cost of the existing and new projects:

.... (c) In case of the hydro generating station, any expenditure incurred or committed to be incurred by a project developer for getting the project site allotted by the State Government by following a transparent process;”

Our Submission

The kind of expenditure that is proposed to not be included in Capital Cost needs to be clarified. A hydro generating station might require local infrastructure development and other ancillary costs which might be part of capital cost and therefore, it needs clarification.

G. Regulation 16.4 (d) of the Draft Regulations states as follows:

“The following shall be excluded from the capital cost of the existing and new projects:

.... (d) Proportionate cost of land of the existing project, which is being used for generating power from generating station based on renewable energy;”

Our Submission

This needs clarification as the cost of any land that is part of an existing project and is being used for generating power from generating stations based on renewable energy has to be included in the Capital cost of either project. Any revenue thus generated might also be

considered as a part of Non-Tariff income in case the RE project's tariff is not determined on Cost-Plus or Competitive bidding.

Additional Capitalisation

H. Regulation 17.1 of the Draft Regulations states as follows:

“17. Additional capitalisation

(1) The following capital expenditure in respect of a new project or existing project, actually incurred or projected to be incurred within the original scope of work, after the date of commercial operation and up to the cut-off date and duly audited, may be considered by the Commission against the original scope of work, subject to prudence check:

- (a) Due to undischarged liabilities recognised to be payable at a future date;
- (b) On works deferred for execution;
- (c) Liabilities to meet award of arbitration or for compliance of direction or order of any statutory authority or satisfaction of order or decree of any court of law;
- (d) On account of change in law or compliance with any existing law within the cut-off date;
- (e) On procurement of initial spares included in the original project costs subject to the ceiling norm laid down in regulation 16(8);
- (f) Force Majeure events:

(2) The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

- (a) Liabilities to meet award of arbitration or for compliance with the directions or order of any statutory authority, or order or decree of any court of law;
- (b) Change in law;
- © Deferred works relating to ash pond or ash handling system in the original scope of work;
- (d) Liability for works executed prior to the cut-off date;
- (e) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments; and

Our Submission

Item (c) mentioned above should be checked prudently and it should be ensured that all works related to the ash pond or ash handling system as specified by MoEF Guidelines & Clearance and as mentioned in the original scope of works should be complete before the declaration of COD itself. Also, item (e) should specifically mention the liability of works approved as a part of additional capitalisation by the commission.

Further, the regulation has been modified to specify items to be considered by the commission for additional capitalisation before the cut-off date, after cut-off date, within the original cost and outside the original cost. In our view, this extreme legitimization of additional capitalisation expenditure incurred by the Generator beyond the cut-off date and further to the original cost is not appropriate and completely not favourable to a fair determination of tariff.

The high RoE that the regulated regime offers to Generators is more than sufficient to incorporate any minor deviation that may occur in the Capital Cost beyond the cut-off date and original expenditure. Therefore, any additional capital expenditure beyond the cut-off date or beyond the original scope of works should be treated as new works and taking up of these works should be subject to recommendations of the consultants and in principle approval of the commission after hearing affected parties as such works were not essentially required for the operation of the power plant.

In addition, it is also not appropriate to incorporate additional capitalisation costs for Force Majeure events. Given the high RoE and sufficiently liberal cut-off date of 3 years (suggested to be modified to 2 years in our submission), these costs should be shared in the ratio of 50:50 in our opinion. The insurance claimed by the company should also be considered while determining the share of the beneficiaries.