APP

Comments on Draft JERC (Generation, Transmission and Distribution Multi Year Tariff) Regulations, 2021

At present, investor sentiment in the Indian power sector is at a historical low and the sector has been badly bruised by the ravages of the COVID-19 pandemic. In this backdrop, it may be appreciated that the impact of Tariff Regulations on the Generators/licensees and general investor sentiment is not just limited to the Control Period but continues much beyond it.

Recently, Government of India has taken bold steps to bring much awaited reforms in the Distribution Business. Initiative to privatize the Distribution in Union Territories has potential to bring radical transformation leading to long term sustenance and commercial excellence of the sector. Success of the same will also set a precedence for the States to follow the footsteps and bring Pan India reforms. Distribution being the backbone of the Power Sector, there will be positive cascading effect on Transmission and Generation as well.

As the Regulator for UT discoms, we are sure that JERC will also ensure Regulatory certainty by continuing the provisions of the existing regulations as far as possible and aid the process by taking care of the issues that may arise in the initial phases of privatization.

With this background, our comments on important aspects of the Draft Regulations are as under.

Clause No/ Proposal in Draft Regulation		Suggestions
8	**Business Plan** - Distribution Licensee is required to submit the Business Plan	• Business Plan essentially captures the details of Sales, Trajectories of performance Parameters and Capex. These parameters are already taken care in the exercise of tariff determination. Hence, majority of State Commissions have

Clause No/ Proposal in Draft Regulation		Suggestions
		done away with the requirement of Business Plan. • Hence, to avoid duplication, it is suggested to discontinue with the process of Business Plan. This is also in line with one of the sovereign objectives to focus upon ease of doing business.
12.5 **(c)**	**Carrying Cost** Carrying cost is linked with mandatory submission of Documentary proof, if any. In case of no loan, Carrying cost allowing it at simple average interest rate of SBI MCLR (1-year) plus 100 basis point.	• Differentiating the rate of carrying cost based on mode of funding is discriminative. • APTEL has clearly held that Gap/ Surplus is derived based on Revenue and Expense which are approved by the State Commissions based on audited accounts during Truing up exercise. Hence, such resultant derivation need not be required to be substantiated with documentary proof. Therefore, continuing with such provision is contrary to the settled principle by APTEL. • Also, in catena of judgments of Supreme Court/ APTEL, it is held that Carrying cost has to be reimbursed on the principle of time value of money. Accordingly, CERC does not ask for such documentary evidence to allow carrying cost. Therefore, **we suggest to remove such requirement of seeking documentary evidences**.

Clause No/ Proposal in Draft Regulation		Suggestions
		• As regards to Rate of Interest for Carrying cost, APTEL has observed that rate for carrying cost has to be short term working capital interest rate. Therefore, while framing Regulation, it is imperative that such clear observation of higher forum is appreciated. Even CERC has specified Bank Rate i.e. SBI Base rate + 350 basis points for delayed payments.
15	**Sharing of Gains & Losses for Performance Parameters** Draft Regulations provide for sharing of Gains of performance parameters between utility & Consumers in the ratio of 1:1 and losses to be absorbed by the Utility.	• At present, sharing of gains and losses is in the ratio of 1:1 between licensee and customers whereas losses are required to be borne by Utilities. • Such sharing proportion is not prudent and needs to be revised to consider equal sharing of losses as well as being done in case of sharing of gains. • In case of utilities handed over through privatization, the gains / losses are required to be shared as may be notified in the Transfer Scheme by the Central Government. Necessary enabling provision is essential in the draft regulations.
8.5	**Capex** • Variation in Capex is considered as Controllable.	• The proposal is similar as in case of CERC Tariff Regulations. However, we would like to point out that in CERC, there is a provision of allowing interim tariff at certain % of proposed tariff or continuation of existing tariff till determination of final tariff. The said provision

Clause No/ Proposal in Draft Regulation		Suggestions
	• For variation in capitalization beyond 10%, it is proposed that over recovery shall be refunded with 1.2 times of carrying cost whereas under recovery of tariff shall be recovered with 0.8 times of carrying cost.	is applicable only on the differential of Interim Tariff and final tariff. However, there is no such provision for differential between final tariff and trued up tariff. • It may also be appreciated that any project is subjected to variation in capex due to number of reasons such as difference in actual contract price as against cost estimate, changes made in the Scheme during execution based on development/ issues being faced etc. Particularly, Capital expenditure in Discom is largely driven by the growth which is completely uncontrollable and cannot be the factor to indirectly penalize the Discoms. • Also, any gap or surplus in revenue is being taken care of in the carrying cost on yearly basis. Hence, there is no requirement of such separate provision in order to avoid uncertainty and confusion. • **Hence, we request to delete the proposed changes in the Regulation regarding 1.2 times/ 0.8 times of carrying cost for over-recovery/ under recovery of tariff.**

Clause No/ Proposal in Draft Regulation		Suggestions
28	**Return on Equity**	• Distribution Business carries comparatively higher risk in terms of implementation and maintenance of infrastructure, uncertainty of payments, political interferences etc. • Hence, considering these aspects and also to provide impetus to the initiative of privatization by Central Government, **it is suggested to consider additional RoE of 1.5% for both Wheeling and Retail Business.**
32/64	Interest on Working Capital - Deduction of Power Purchase Expense from Working Capital in case of Retail Supply - Interest rate of 1 year MCLR + 200 basis point on Working Capital	• Considering recent initiative of privatization of UTs, it is essential that Regulatory Certainty is maintained. Also, Forum of Regulator has not suggested such provision or revision in its Model Tariff Regulations. • Hence, **we request to continue with the existing provision of deriving Working Capital requirement for retail distribution business without deducting power purchase cost for 1 month.**
52,61	O&M Expenses	• In the existing/ proposed Regulations, O&M Expenses are considered as Controllable. However, for the purpose of achieving performance targets as captured in the Bidding Documents for privatization of UTs read with Rights of Consumer Rules, 2020 issued by Central Government, there is a requirement to provide necessary operational flexibility in

Clause No/ Proposal in Draft Regulation		Suggestions
		terms of manpower, preventive maintenance, safety measures, logistic supports etc. during initial period. • In view of above, **it is suggested to make enabling provision in the Regulation to consider actual O&M Expense for first 5 years in case of privatization of UTs by Government of India.** Existing Regulations already provides for similar dispensation to consider O&M expense on case to case basis in case of new licensee/ generating companies.