

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Dated 10th September 2023

DRAFT NOTIFICATION

No.L-1/236/2018/CERC: In exercise of powers conferred under clause (s) of subsection (2) of the section 178 of the Electricity Act, 2003 (36 of 2003) read with Section 61 thereof and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations, to amend the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the Principal Regulations”), namely:-

1. Short Title and Commencement: (1) These regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Fourth Amendment) Regulations, 2023.

(2) These regulations shall come into force from the date of notification of these Regulations in official Gazette.

2. Amendment to Regulation 17 of the Principal Regulations:

2.1 Regulation 17 of the principal regulations shall be omitted.

(Harpreet Singh Pruthi)

Secretary

Note: (1) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 were published in Part III- Section 4, No.144 of the Gazette of India (Extraordinary) dated May 3, 2019.

(2) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020 were published in Part III- Section 4, No.53 of the Gazette of India (Extraordinary) dated Feb 3, 2021.

(3) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 were published in Part III- Section 4, No.394 of the Gazette of India (Extraordinary) dated September 13, 2021.

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Explanatory Memorandum for the “Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Fourth Amendment) Regulations, 2023”

1. Background

1.1 The Central Electricity Regulatory Commission (“the Commission”), exercising power under Sub-clause (s) of clause (2) of the Section 178 of the Electricity Act, 2003 (“the Act”) read with Section 61 and Section 62 of the Act, has notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as the “Principal Regulations”) specifying the terms and conditions of tariff for determination of tariff of the Central generating companies or the generating companies having composite scheme of sale or purchase to more than one State and inter-State transmission system.

1.2 The Commission has been regulating generation and transmission tariffs by specifying terms and conditions of tariff since 1998. Multi-year tariff (MYT) regulations have been issued for the tariff periods 2001-04, 2004-09, 2009-14, 2014-19 and 2019-24 for determination of tariff of the generating stations within its jurisdiction and for inter-State transmission of electricity.

1.3 During the course of tariff determination under different tariff control period, the Commission witnessed that there are several thermal generating stations which have completed 25 years of useful life or are at the fag-end of the useful life.

1.4 Accordingly, the MYT Regulations, 2019 provided (in Regulation 17) for special provisions for Tariff for Thermal Generating Station which have completed 25 years of operation from the Date of Commercial Operation and the same is reproduced as under:

“17. Special Provisions for Tariff for Thermal Generating Station which have Completed 25 Years of Operation from Date of Commercial Operation: (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, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation.

(2) The beneficiary shall have the first right of refusal and upon its refusal to enter into an arrangement as above, the generating company shall be free to sell the electricity generated from such station in a manner as it deems fit.”

1.5 As per Regulation 17, post completion of 25 years of useful life, the generating stations and beneficiaries have the option to enter into a mutual agreement to recover capacity charges inter-alia based on scheduled generation. However, clause (2) of Regulation 17, gives the beneficiaries the first right of refusal to such arrangement.

1.6 The intention for specifying the Regulation 17 as indicated in the Statement of Objects and Reasons (SOR) to the MYT Regulations, 2019, was to introduce an optional provision in respect of a thermal generating station that has completed 25 years of operation from the date of commercial operation, where the recovery of both capacity charges and energy charges can be linked to scheduled generation instead of the pre-existing arrangement of separate payment of fixed cost based on availability and energy charge based on schedule, if both the beneficiary and the generating company agree. The relevant portion of the SOR is reproduced as under:

“6.4.4 The Commission after reviewing the comments has decided to revise the Regulation to bring in the desired clarity. The objective of the Regulation was to introduce an enabling provision, where the recovery of both capacity charges and energy charges shall be linked to scheduled generation. Further, this provision is only optional, which may be exercised after completion of useful life of a thermal generating station, if both the beneficiary and the generating company agree. Accordingly, the Regulation has been amended to state that 'the generating company and the beneficiary may agree on an arrangement, including provisions for target availability and incentive, where in addition to the energy charge, capacity charges determined under these regulations shall also be recovered based on scheduled generation'.”

1.7 Commercial mechanisms and terms & conditions for transactions between a generator and beneficiaries are governed by the long term PPAs executed between them, which are generally valid through the life of the PPA. It is noted that a number of generating stations, at times, operate beyond the tenure of the PPA, and that such extended operations should also be governed by the PPA(as amended) as in the case of the original PPA period, and any interventions in the PPA through tariff Regulations, that too, every five-year, including such a unilateral exit clause, may not be desirable as it may violate contractual sanctity and could be inequitable.

1.8 This issue (Regulation 17) pertaining to contractual terms is being raised in different fora and is leading to avoidable legal disputes. It has been argued by stakeholders that irrespective of whether a provision on lines of Regulation 17 exists or not, the contracting parties are free to negotiate on their own after the PPA term is over. Fastening unilateral right on one of the contracting parties, through a regulation creates complications in the negotiation between the two equal parties to the contract and best be avoided. Further, it has been observed that rarely any arrangement has been worked out/agreed between the generator and buyer under Regulation 17.

1.9 In view of the above, it is proposed to omit Regulation 17 of the MYT Regulations, 2019.
