

Before the Tamil Nadu Electricity Regulatory Commission

In the matter of:

Draft amendments to TNERC (Terms and Conditions for determination of Tariff Regulations) 2005

*Submission by Prayas (Energy Group), Pune*

*19<sup>th</sup> April 2021*

The Tamil Nadu Electricity Regulatory Commission (TNERC) issued draft amendments to the TNERC (Terms and Conditions for determination of Tariff Regulations) 2005 on 19<sup>th</sup> March 2021, and invited public comments on the same.

The draft proposes to amend TNERC's Tariff Regulations to be consistent with, and account for better norms in, the regulations of the central and other state electricity regulatory commissions. Tariff regulations are essential toward ensuring accountability and efficacy in the functioning of the state's power sector, and such revision of the regulations is a welcome step.

The Prayas (Energy Group) has some comments and suggestions towards better implementation and clarity of the suggested amendments and toward ensuring a robust power sector in the state. These are listed below:

1. **Changes in Operation and Maintenance (O&M) expenses**

The proposed change to Reg 2 alters the definition of O&M expenses to include other costs. Along with this clarity, it is important that the O&M norms themselves hold DISCOMs accountable for their performance.

Currently, as per Reg 25 of the principal regulations, the Commission uses the average of normative audited O&M expenses over the past five years along with a fixed escalation rate of 5.72%, presumably to account for inflation to determine the projection of O&M expenses. However, considering broader macro-economic trends, these escalation rates are not reflective of current inflation trends. At these rates, the allowed escalation is quite high and does not encourage efficient operations.

For instance, the O&M expenses of TANGEDCO's distribution function accounted for an average of 65% of the utility's gross ARR between FY12 and FY16. Given such significance, it is crucial that accountability of O&M expenses is maintained.

We propose that the escalation rate used to calculate O&M projections be based on a composite method which accounts for the Wholesale Price Index and the Consumer Price Index, as followed by Maharashtra ERC (Multi Year Tariff) Regulations, 2019. Projections based on such calculation will be lower than currently prescribed rate, and thus will ensure some efficiency improvements.

2. **Clarification on provision for bad and doubtful debts**

The draft amendment introduces Reg 29, a provision for bad and doubtful debts, under which the Commission may write off bad and doubtful debts up to 1% of receivables. It is a positive measure to include a limit on the allowable bad and doubtful debts of the utility. However, as per TNERC tariff regulations compiled till 2010, this limit was set at 0.25% of the utility's receivables, and this provision was done away with in the 2014 amendment of the tariff regulations. Towards transparency of process, the Commission should specify the rationale behind changing the limit of allowable bad and doubtful debts from 0.25% to 1% of the utility's receivables.

Further, the second proviso of the proposed Reg 29 stipulates that revenue subsequently realised from a written off bad debt shall be included as an uncontrollable item under non-tariff income of the year in

which such revenue is realised. However, since such an amount has already been disallowed for recovery from ARR, it should not be included again as non-tariff income to offset DISCOM expense in the present year. Thus, such a provision should be excluded, as the receivables of the utility from a written off debt should not be reflected in the books of the regulated business.

### 3. Regarding clause (vii) of Regulation 37

The draft additional clause (vii) of Reg 37 proposes a compensation to any generating station directed by the SLDC that operates below the target plant availability factor but at/above technical minimum. Given the changing generation mix in the state, this is a good and important measure. This provision should apply to all generators in the state to ensure parity and effective implementation. However, the tariff regulations apply to Section 62, cost plus plants.

In order to ensure parity among all generators and equal compensation, this measure should be included in the state's grid code instead of the tariff regulations, and referred to in the tariff regulations. This is seen in the tariff regulations of the Central ERC and Maharashtra ERC. Further, this provision should extend to short term, intra-state generators that have PPAs as well. These can be similar to the provisions stipulated in the Maharashtra ERC's grid code. Please see Regulation 34 and Annexure-4 of the MERC State Grid Code Regulations, 2020, enclosed with this submission as Annexure I.

### 4. Clarity on wheeling charges

The proposed amendment to Reg 68 includes the separation of wheeling charges as a distinct cost. This is a good provision as it can aid the reduction of HT/EHT consumer tariffs, as they do not have to pay wheeling charges, and in turn retain such consumers.

However, there must be clarity on such services, and they must be charged based on usage by the consumers. Further, in order to ensure smooth operation and clarity for the consumer, the levy of these charges must be clearly specified in tariff orders and bills.

As per the proposed amendment, *"...and the Commission shall determine these charges on an application from the Distribution licensee."* However, the determination of these charges must not be based on application of the distribution licensee alone, and must also provide for instances of suo-motu determination.

### 5. Include reporting of fuel adjustment charges (FAC)

The current tariff regulations do not have a provision for reporting and tracking of FAC.

Towards ensuring better accountability, the Commission could include a framework requiring the reporting of FAC in the tariff regulations. Such a framework would require all licensees to submit details regarding FAC on a quarterly basis. This practise is already required as per the tariff regulations of the Maharashtra and Haryana ERCs.

### 6. Separation of accounts

Proposed regulation 70 (2) stipulates maintenance of separate records for the distribution wires and retail supply business. While such a measure would help furthering segregating and understanding operations of the DISCOM, this measure should be a subsequent step after separation of accounts of the generation and distribution function itself. TANGEDCO stated in 2017 that it was unable to do so as TNEB loans were not linked with any particular generating plant or project. Ten years post unbundling and given the methodology used for approving interest on loads in Suo-Motu Order dated December 11, 2014, the Commission should re-evaluate the capitalisation, interest on loans and gross fixed assets of the generation and distribution functions of TANGEDCO separately. This crucial step should be conducted before maintaining separate records for wires and supply.

## 7. Mandate for annual submission of crucial operational and performance data

In order to effectively regulate the licensees, especially TANGEDCO and TNTRANSCO, it is vital that the tariff regulations stipulate that utilities submit crucial financial, operational data to the Commission on an annual basis in stipulated formats. The data should:

- include data for the past year based on audited accounts, data for the current year based on estimates
- be submitted before May 31 each year.
- include crucial information on sales and revenue for each consumer category, station-wise power procurement data, expenditure in each major head, revenue gaps and cumulative revenue gaps (including carrying cost), working capital borrowing by the utility, open access and captive units wheeled, compliance with SoP regulations and status of compliance with commission directives. Some crucial formats have been outlined in our report 'Bricks without Clay', and can be adapted by TNERC. A few such examples have been included in Annexure II of this submission.

The data submitted should be publicly accessible on the commission's website. Based on the data, the Commission can issue directives to the utility and can also use the information to conduct a suo-motu tariff determination process.

## 8. Lack of clarity in tariff determination framework

Currently, there seems to be two parallel frameworks of tariff determination effective in Tamil Nadu, i.e., the Tariff Regulations 2005 and Multi Year Tariff (MYT) Regulations 2009. Both of these regulations have undergone multiple amendments since and there is no clear mention of either of these regulations being repealed. It is unclear as to which is held effective with regard to the tariff determination framework currently being implemented. This lack of legal clarity could lead to increased litigation. Especially because both the frameworks have inconsistent provisions. For instance, as per the Tariff Regulations 2005 (compiled as amended up to 31st December 2010), "the Commission may implement multi-year tariff for the Transmission and Distribution licensees for a period to be notified". However, the MYT Regulations 2009 (as amended on 28 November 2012) states that "The control period under the MYT framework shall be for a duration of 3 years". To avoid such ambiguity, there is a need to undertake a consolidated revision of tariff regulations such that the tariff determination process is clearly detailed and the process is reflective of the changes in the state and the sector. Given the significance and impact of the regulation, the consolidated amendment should be passed only after due public consultation.

A few suggestions towards comprehensive tariff regulations are listed as follows:

### *8.1. Five year control period for MYT process*

As mentioned earlier, the control period under the MYT framework is three years. TNERC could extend this to a five year period to ensure medium term planning and accountability of performance parameters. The MYT process also helps in ensuring tariff certainty and reducing risks. The Commission should continue to retain gain and loss sharing mechanism as part of the MYT process to incentivise improvements in efficiency.

### *8.2. Specify data formats for ARR process*

To ensure standard and consistent data reporting, TNERC's tariff regulations should specify data formats in which the licensee must report all required data. Such provisions are included in the tariff regulations of several states, such as Rajasthan ERC, as per Annexure III of this submission. Comprehensive and regular data records will help various stakeholders gain crucial insights on issues affecting the sector and also aid in policy making.

A consolidated MYT framework, that is easy to follow and avoids legal ambiguity, is pivotal. Towards this end, the TNERC has taken initial steps by proposing to amend its regulations to reflect some changes in the sector. It could further strengthen its actions by following the example of states like Maharashtra, Rajasthan, Gujarat, and formulating a comprehensive tariff regulation policy that reflects the changing sector while accounting for state practises.

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Annexure I : MERC Grid Code 2020

Annexure II: Bricks without clay example excel formats (more details can be found here: <https://www.prayaspune.org/peg/publications/item/372-bricks-without-clay-crucial-data-formats-required-for-effective-tariff-processes.html>)

Annexure III: Regulatory data forms as per RERC tariff regulations