

● PRAYAS

Initiatives in Health, Energy,
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August 23, 2013

To,
The Secretary,
Central Electricity Regulatory Commission
3 rd & 4 th Floor, Chanderlok Building,
36 Janpath, New Delhi- 110001

Subject: Prayas submission related to Order(s) issued by the Commission regarding the petition No.159/MP/2012

Ref: CERC order(s) dated 15-04-2013 in case no 159/MP/2012, news items dated 19th and 20th August 2013

Dear Sir,

This submission is regarding the matter mentioned above and without prejudice to our rights to challenge these order(s) before the appropriate legal forum. As per the CERC letter No.2/7(22)/2009-Policy/CERC dated 28th November 2009, Prayas has been empanelled as an authorized consumer representative before CERC under section 94(3) of the Electricity Act 2003.

In our capacity as consumer representatives we have intervened in this matter, participated in most of the hearings and have submitted comments which are recorded in the said order(s) dated 15-04-2013 in case no 159/MP/2012 and relevant records of proceedings. Through the order it was directed to form a committee and based on the recommendations of the said committee, the Commission was supposed to decide the final tariff.

Last week newspapers like the The Hindu Business Line, Business Standard and Livemint¹ published reports stating that the committee process has concluded and a final report has been submitted to the commission. However, in spite of being one of the intervening parties in this matter, we have not received any copy of the said report.

Need for a due public process: In this regard we would like to draw the commission's attention towards our submission dated 22nd May 2013 (attached for ready reference) in which we have demanded that a thorough public process, similar to the one being undertaken for any other tariff revision, to be followed for this case as well. Given the unique nature of this matter, the need for detailed public process becomes even more critical for the following reasons:

¹ <http://www.thehindubusinessline.com/industry-and-economy/deepak-parekh-panel-suggests-hiking-tariff-for-adani-tata-power-plants/article5038015.ece>
http://www.business-standard.com/article/economy-policy/compensatory-rate-rise-for-tata-umpp-has-riders-113081901046_1.html
<http://www.livemint.com/Industry/HusNukX1kLARCARR0Ftu4O/Parekh-panel-submits-report-on-Tatas-Adani-tariff-issues.html>

1. **Financial impact:** As per the news report in case of CGPL the impact on tariff is projected to be in the range of 45-55 paisa per unit. Considering normative availability of 80%, this implies tariff increase of around Rs.1260 - Rs.1540 Cr per year for the respective discoms.
2. **Peculiar nature of this case:** As far as the petitioner's claims related to Force majeure and Change of law were concerned, the Commission has ruled as follows in Para 69:
"We have considered the submissions of the parties. For the reasons already recorded, the case of the petitioner does not fall under either Change in Law or Force Majeure.". The commission has thus clearly acknowledged that there is no scope for tariff revision within the contractual framework. In spite of this clear pronouncement regarding legal untenability of the petitioner's claims under the PPA, in para 86, the commission notes as follows:

*"The Electricity Act, 2003 vests in the Commission the responsibility to **balance the interest of the consumers with the interest of the project developers** while regulating the tariff of the generating companies and transmission licensees. Financial viability of the generating stations is an important consideration to enable them to continue to supply power to the consumers...In our view, under the peculiarity of the facts of the present case and also keeping in view the interest of both project developer and consumers, we consider it appropriate to direct the parties to set down to a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations." (emphasis added)*

Thus, the compensatory tariff being offered is beyond the relief permissible under the present contractual and policy framework.

3. **Process as per the Act:** The Electricity Act 2003 envisages two processes for tariff revision: 1) under section 62 as per process defined in section 64 and 2) based on competitive discovery as per section 63. As the above excerpts from the order show (refer to para 69), this so called compensatory tariff certainly is not as per section 63. Therefore, for any other revision in tariff, the commission will have to follow process under section 64, which requires publication of relevant data and need for public consultation.
4. **Shortcoming in the committee process:** The committee that was formed as per this order comprised of on one hand parties such as the procurers (Discoms) who have opposed the proposed tariff increase but can entirely pass on these costs to the consumers and on the other hand the project developer who has direct interest in revising tariffs over and above the PPA agreed terms and conditions. Though the order talks of balancing interests of consumers and investors, there is no representation of consumer interest in the committee process. The presence of independent banker and financial analyst can hardly be considered as adequate representation of interests of this most affected stakeholder, i.e. the Discom consumer. Therefore, consulting the consumers regarding the committee report and its findings becomes imperative.
5. **Legal precedent:** Further, this order and the process will have serious policy and governance implications for the sector, as there are other projects demanding similar reliefs and hence a

critical analysis and evaluation of the committee's recommendations through a transparent public process becomes indispensable.

6. **Established regulatory tradition:** Till date neither the CERC nor any other state commission has undertaken any major tariff revision without due public consultation. In light of this well established regulatory practice as well as legal and policy mandate for protecting consumer interest and encouraging transparency, the commission must follow the due regulatory procedure and consult all stakeholders, most importantly the consumers of all the five state discoms, who will have to ultimately pay for the increased tariff.

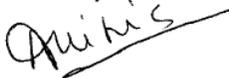
Hence, in light of the above reasons and considering the long term financial, legal and governance implications of this decision for the entire sector, there is a need for a thorough public process in this matter. Therefore, we **once again** pray to the Commission as follows:

1. Transparently share all the following information on its website. :
 - a. All the material, evidence and information made available to the committee for arriving at its final decision.
 - b. Minutes of the all the committee meetings.
 - c. All findings, observations and recommendations of the committee along with its final report
 - d. Working of the proposed compensatory tariff, if any, through excel based worksheet with all the underlying assumptions being explicitly stated.
2. Final tariff should be decided after undertaking due public hearing based on the above information.

Further, the order(s) issued by the Commission in respect of case no 155/MP/2012 are similar, in both their nature and recommendations, to the order(s) issued in case no 159/MP/2012 and hence the submissions made above also apply to the order in case no 155/MP/2012. Therefore, we request the Commission to follow a similar public process for deciding the final tariff in case no 155/MP/2012 as well. We request the Commission to take this submission on record and allow us to make further submissions based on subsequent proceedings in this matter, if any.

Thanking you

Sincerely



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