

**PMG Office:** 2<sup>nd</sup> Floor, B-Block, BSES Bhawan, Nehru Place, New Delhi – 110019  
Tel: 39999037, Fax- 011-39999454

Ref. No. HOD (PMG)/BRPL/2020-21/568

Dated: 15.07.2020

To,  
The Secretary  
Central Electricity Regulatory Commission  
3rd & 4th Floor Chanderlok Building,  
36 Janpath,  
New Delhi 110 001  
Tele No. 23353503, Fax No. 23753923

**Sub:** Comments on Draft Central Electricity Regulatory Commission (Terms and Conditions of tariff) (Second Amendment) Regulations, 2020.

**Dear Sir,**

With Reference to your letter no. L-1/236/2018/CERC dated 1<sup>st</sup> June 2020 & L-1/236/2018/CERC dated 30<sup>th</sup> June 2020(re-notified for extension of last date of submission of comments) we would like to submit BRPL comments on the Draft Central Electricity Regulatory Commission (Terms and Conditions of tariff) (Second Amendment) Regulations, 2020.

Please find enclosed our Comments on the same enclosed as **Annexure-1(Page no. 2-12)**.

Thanking You,

Yours faithfully

**For BSES Rajdhani Power Limited**

sd/-

Sanjay Srivastav

Vice President(PMG)

Enclosed: Annexure-1(Page no. 2 -12)

Annexure-1

S No	Tariff Regulation FY 2019-24	Proposal in Second Amendment	BRPL's Concerns
1		<p><b>36G. Capital Structure, Return on Equity and Interest on Loan:</b>                      (3) The return on equity shall be computed in rupee terms on the equity base arrived under Clause (1) of this Regulation at the base rate of 14%.</p>	<p>We appreciate the fact that CERC has rationalised the rate of ROE in comparison to what Generators are allowed for the plant. However considering the fact that under prevailing circumstances the rate of interest is very low. The ROE rate of 14% is still very high and has considerable scope of reduction. A further reduction would help in rationalising the cost of power produced from generators sourcing power from these captive mines</p>
2		<p><b>36H. Depreciation:</b>                      (2) (iii) lease hold land shall be amortized over the lease period or remaining life of the mine, whichever is lower.</p>	<p>Lease period or remaining life of mine has been considered for calculation of depreciation. This may vary from case to case. Hence we would request the commission to provide a normative period for useful life of plants</p>
3		<p><b>36K. Mine Closure Expenses:</b> (1) Where the mine closure is undertaken by the generating company, the amount deposited in the Escrow account as per the Mining Plan, after adjusting interest earned, if any, in the Escrow account shall be admitted as Mine Closure</p>	<p>The amount deposited in the escrow account has been considered for utilisation during closure of mine. We would request CERC to define a normative value of this amount for the purpose of standardisation.</p>

		<p>Expenses: Provided that,</p> <p>a) amount deposited in the Escrow account as per the Mining Plan prior to the Date of Commercial Operation shall be indicated separately and shall be allowed to be recovered over the useful life of the mine in the form of annuity linked to borrowing rate;</p> <p>b) amount deposited in the Escrow account as per the Mining Plan or any expenditure incurred towards mine closure shall be excluded from the capital cost for computing input price;</p> <p>c) where the expenditure incurred towards mine closure is short of or in excess of the reimbursement received from the Escrow account during the tariff period 2019-24, the same shall be allowed to be carried forward to subsequent years for adjustments; and</p> <p>d) where no expenditure has been incurred towards mine closure during the tariff period 2019-24, the amount deposited in the Escrow account shall continue to be recovered in subsequent years to be adjusted against the expenditure towards mine closure as</p>	
--	--	---	--

		<p>and when it is incurred. Provided further that where the mine closure is undertaken by the generating company only for part of useful life of the mine, the treatment of mine closure for the period during which Mine Developer and Operator engaged by the generating company has undertaken mine closure, shall be as specified in Clause (2) of this Regulation. (2) Where mine closure is within the scope of Mine Developer and Operator engaged by the generating company and mine closure expenses are part of the mining charge of Mine Developer and Operator, the mine closure expenses shall be recovered through such mining charge and mine closure expenses shall not be admissible separately: Provided that,</p> <p>a) the amount deposited in the Escrow account by the Mine Development Operator or by the generating company and any amount received from the Escrow Account against expenditure incurred towards mine closure shall not be considered for computing input price; and</p> <p>b) the difference between the</p>	
--	--	---	--

		<p>borrowing cost, arrived at by considering the weighted average rate of interest calculated on the basis of actual loan portfolio in accordance with the methodology specified in Regulation 32 under Chapter 8 of these regulations, and the amount deposited in Escrow account and the interest received from Escrow account in a year shall be allowed to be adjusted in the input price of the respective year, as a part of mine closure expenses, on case to case basis;</p> <p>Provided further that where the mine closure is within the scope of Mine Developer and Operator engaged by the generating company only for a part of useful life of the mine, the treatment of mine closure for the period during which the generating company has undertaken mine closure shall be as specified in Clause (1) of this Regulation.</p>	
4		<p><b>36M. Recovery of Input Charges:</b> The input charges of coal or lignite shall be recovered as under: Input Charges = [Input Price x Quantity of coal or lignite supplied] + Statutory charges, as applicable. Provided that where energy charge rate based on input price of coal from integrated mine exceeds by 20%</p>	<p>CERC has proposed to cap the difference of energy charge at 20% between coal produced by integrated mine &amp; coal produced by CIL on monthly basis. However its been further stated that during the entire duration of PPA the cost of energy generated from coal sourced from</p>

		<p>of energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal in a month, prior consent of the beneficiary(ies) shall be required; Provided further that where such consent of beneficiaries are not available, input price of coal from such integrated mine shall be so fixed that energy charge rate based on input price of coal from integrated mine does not exceed by more than 20% the energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal; Provided also that energy charge rate based on input price of coal does not lead to higher energy charge rate throughout the tenure of power purchase agreement than that which would have been obtained as per terms and conditions of the existing power purchase agreement.</p>	<p>integrated mine cannot exceed of energy of coal from sourced from CIL. To ensure implementation of this capping, we propose that an annual true-up be conducted to verify this. This would allow the timely identified excess energy charge, if any, and this can be credited to beneficiaries on annual basis.</p>
5	<p><b><u>Determination of Annual Fixed Cost of Thermal Plants</u></b></p> <p><b>34. Interest on Working Capital:</b> (1) The working capital shall cover:  (a) For Coal-based/lignite-fired thermal generating stations:  (i) Cost of coal or lignite and limestone</p>	<p><b><u>For determination Annual Extraction Cost of coal excavated from integrated mines</u></b></p> <p><b>36J. Interest on Working Capital:</b> (1) The working capital of the integrated mines of coal shall cover:  (i) Input cost of coal stock for 7 days of</p>	<p>One of the components of working capital considered is 7 days cost of production of coal. We would urge CERC, that cost of coal for 7 days be considered for IWC calculation of both pit head and non pit head generators as</p>

	<p>towards stock, if applicable, for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;</p> <p>(ii) Advance payment for 30 days towards cost of coal or lignite and limestone for generation corresponding to the normative annual plant availability factor;</p>	<p>production corresponding to the Annual Target Quantity for the relevant year;</p> <p>(ii) Consumption of stores and spare including explosives, lubricants and fuel @ 15% of operation and maintenance expenses, excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer and Operator, engaged by the generating company; and</p> <p>(iii) Operation and maintenance expenses for one month, excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer and Operator, engaged by the generating company.</p> <p>(2) The working capital of the integrated mine of lignite shall cover:-</p> <p>(i) Input cost of lignite stock for 7 days of production corresponding to the Annual Target Quantity for the year;</p> <p>(ii) Consumption of stores and spare including explosives, lubricants and fuel @ 20% of operation and maintenance expenses, excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer or Operator,</p>	<p>well inline with this proposal.</p> <p>This would help rationalizing the potential increase in fixed cost burden due to installation of emission control system by coal fired thermal plants</p>
--	--	--	---

		<p>engaged by the generating company; and</p> <p>(iii) Operation and maintenance expenses for one month, excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer or Operator, engaged by the generating company.</p> <p>(3) The rate and payment of interest on working capital shall be as per Clause (3) and Clause (4) of Regulation 34 of these regulations.</p>	
6	<p>59. Late payment surcharge: In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary or long term customers as the case may be, beyond a period of 45 days from the date of presentation of bills, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be.</p>	<p><b>16. Amendment to Regulation 59 of the Principal Regulations.</b></p> <p>16.1. A new Clause shall be added after Clause (1) of Regulation 59 of the Principal Regulations as under:-</p> <p><i>“(2) The charges payable by a beneficiary or long term customer shall be first adjusted towards late payment surcharge on the outstanding charges and thereafter, towards monthly charges levied by the generating company or the transmission licensee, as the case may be, starting from the longest overdue bill”</i></p>	<p>The original 2019 provision provides for a late payment surcharge at the rate of 1.50% per month to be levied by the generating company / the transmission licensee for payment of any bill after a period of 45 days from the date of presentation of bills by beneficiaries / long-term consumers.</p> <p>Firstly, the interest rates have gone down globally and to continue the rate of 1.50% is against the interests of the</p>

			<p>consumers/public at large, because ultimately they will be paying the same. The Commission cannot be oblivious of the ground realities concerning the financial status of the distribution utilities where the beneficiaries are the long-term consumers and which situation is quite alarming as noticed by the Ministry of Power and Power Finance Corporation and various other concerned authorities. In the State of Delhi, there is an abnormal uncovered revenue gap in the tariffs of the distribution utilities inter alia on account of the State Electricity Regulation Commission not having granted cost reflective tariffs for several years, although required by the Appellate Tribunal for Electricity.</p>
--	--	--	---

			<p>The Central Commission has now proposed in the Second Amendment regulations a water fall mechanism by which the charges payable by beneficiary/long-term customers shall be first adjusted towards late payment surcharge on the outstanding charges, and thereafter towards monthly charges levied by the generating company or the transmission licensee, as the case may be, starting from the longest overdue bills.</p> <p>In our respectful submission, the draft amendment is not only bereft of the ground realities (as aforesaid) but is also bereft of the reality that not even a letter of credit is possible for the distribution utilities to be furnished inter alia on account of their financials as well as their credit rating going down. Moreover, and most importantly, such a mechanism (including any waterfall mechanism) should not be part of a statutory regulation, as these are terms and conditions that are truly contractual in nature that have to be agreed or disagreed only between the parties to</p>
--	--	--	---

			<p>the contract viz. beneficiary/long-term customer on the one hand and the generating company or the transmission company, as the case may be, on the other hand.</p> <p>It is submitted that the power to make regulation is to dwell upon areas which require to be enunciated. But, if this power is extended to over-regulate or eclipse the contractual rights and entitlements, then not only such a regulation would be an unruly horse, but would otherwise be amenable to challenge.</p> <p>The primary duty of the Commission is to uphold the sanctity of contracts. However, the Central Commission has no power in law to write or rewrite contracts.</p> <p>It is a fundamental settled law that Courts cannot make contracts or rewrite contracts in relation to a</p>
--	--	--	--

			<p>commercial transaction between the parties. It hardly needs to be emphasized that the purchase and sale of electricity by the beneficiary from the generating company or a contract for transmission of electricity, is purely a commercial contract and accordingly a regulation providing for a waterfall mechanism towards apportioning the charges payable in a certain manner would be to go into unchartered territories.</p>
--	--	--	--