



# महाराष्ट्र विद्युत नियामक आयोग

## Maharashtra Electricity Regulatory Commission

MERC/2020/Technical/

Date: 15 July, 2020

To,

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

Sub: MERC's Comments on the "Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020"

Ref: Public Notice dated 1 June, 2020 inviting comments and suggestions on the draft Regulations.

Dear Sir,

Please find attached herewith the MERC's comments on the "Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020."

We may kindly be permitted to submit additional comments (if any) within one week.

Your,

Sd/-  
(Abhijit Deshpande)  
Secretary, MERC

**Observations on Draft CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020**

<b>Sr. No.</b>	<b>Regulation No.</b>	<b>Proposed Provision in Draft Regulations</b>	<b>MERC Comments:</b>
1	1(2)	These Regulations shall come into force from 1 <sup>st</sup> April, 2019 except amendment to Regulation 6 and Regulation 59 of the Principal Regulations	<p>It is not clear as to whether these Regulations will also be applicable for coal mines for which Mine Developer and Operator (MDO) has been appointed between 1<sup>st</sup> April 2019 and date of notification of these Regulations.</p> <p>If these Regulations are also applicable for coal mines for which MDO has been appointed, clarity is required as to how the principles will be applicable for computation of Input Price as per these Regulations, if there is any contradiction in principles specified in these Regulations and Agreement signed between Generating Company and MDO.</p>

Sr. No.	Regulation No.	Proposed Provision in Draft Regulations	MERC Comments:
2	36 A, B and F	<p><b>36 A</b>  <b>Input Price of Coal or Lignite:</b>  (1) Input price of coal or lignite from integrated mine shall be computed based on the following components:  I) Run of Mine (ROM) Cost; and  II) Additional charges:  a. crushing charges;  b. transportation charge within the mine up to the washery end or coal handling plant associated with the integrated mine, as the case may be;  c. handling charges at mine end;  d. washing charges; and  e. transportation charges beyond the washery end or coal handling plant, as the case may be, and up to the Loading Point:</p> <p>Provided that one or more components of additional charges may be applicable on case to case basis, based on the scope and nature of the mining activities: Provided further that the input price of lignite shall be computed based on Run of Mine (ROM) Cost based on the technology such as bucket excavator-conveyor belt-spreader or its combination and handling charges, if any.</p> <p>(2) Statutory Charges, as applicable, shall be allowed.</p> <p><b>36 B</b>  <b>Run of Mine (ROM) Cost:</b>  .....  (2) The Run of Mine Cost of coal in case of integrated mines allocated through allotment order under Coal Mines (Special Provisions) Act, 2015</p>	<p>The provisions of these three Regulations indicates that the ROM Cost will be worked out based on Annual Extraction Cost and Mining Charges payable to MDO or any other sub-contractor appointed by Generating Company.</p> <p>Further, as per Regulation 36 F, Annual Extraction Cost is to be worked out based on Capital Expenditure including Additional Capital Expenditure.</p> <p>It needs to be noted that when the MDO is engaged for extraction of coal and other additional activities, a consolidated payment on per tonne basis is made for all the assigned activities.</p> <p>The Draft Regulations envisage a situation where extraction cost will be worked out separately based on Capital Cost.</p> <p>The situation where the extraction of coal is also a part of Scope of Work of MDO needs to be properly addressed and clarified in the Draft Regulations.</p> <p>It is requested to clarify the following aspects in this regard:</p> <ol style="list-style-type: none"> <li>a. If extraction is a part of Scope of Work of MDO, then the same shall be considered as part of Mining Charge.</li> <li>b. If extraction is a part of scope of work of MDO, whether extraction charges will be considered based on rates derived through competitive bidding for appointment of MDO <u>or</u> extraction charges will be worked out considering the Capital Cost and Additional Capital Expenditure as per Investment approval.</li> <li>c. If extraction is part of Scope of Work of MDO, the mechanism for carrying out the prudence check of rates discovered through competitive bidding needs to be included in the Regulation.</li> </ol>

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3	36 C	<p><b>Additional Charges:</b></p> <p>(1) Where crushing, transportation, handling or washing are undertaken by the generating company without engaging Mine Developer and Operator, additional charges shall be worked out as under:-</p> <p>(i) Crushing Charges = Annual Crushing Cost/Quantity;</p> <p>(ii) Transportation Charges= Annual Transportation Cost/Quantity:</p> <p>Provided that separate transportation charges, as applicable, shall be considered from mine upto washery end or coal handling plant associated with the integrated mine and beyond washery end or coal handling plant associated with the integrated mine and up to the Loading Point, as the case may be;</p> <p>(iii) Handling charges = Annual Handling Cost/Quantity; and</p> <p>(iv) Washing Charges = Annual Washing Cost/Quantity;</p> <p>Where,</p> <p>(a) Annual Crushing Cost, Annual Transportation Cost, Annual Handling Cost and Annual Washing Cost shall be worked out on the basis of following components, for which the generating company shall submit the capital cost separately:</p> <p>(i) Depreciation;</p> <p>(ii) Interest on Working Capital;</p> <p>(iii) Interest on Loan;</p> <p>(iv) Return on Equity (RoE);</p> <p>(v) Operation and Maintenance Expenses, excluding</p>	<p>It is provided in the Draft Regulation that the prudence check of Additional Charges shall be carried out considering charges of Coal India Limited for similarly placed coal mines or any other reference charges.</p> <p>Typically, in case of coal mining, the charges of Coal India Limited or any other reference charges are not available and hence it needs to be elaborated as to how the prudence check of these charges will be carried out if these works are included in scope of work of MDO.</p> <p>Further, if Scope of Work of MDO includes extraction and other activities, the MDO is appointed on the basis of consolidated rate on per tonne basis for all the assigned activities. This aspect is also highlighted in the Report on Working Group. Under such circumstances, how will the prudence check of Additional Charges be carried out, as break-up of extraction cost and Additional Charges will not be available.</p> <p>Further, as regards coal washing, apart from washing charges, washing yield is also critical parameter to arrive at the input price of coal. The Draft Regulations do not include washing yield as parameter to assess the transfer price of washed coal and the same needs to be appropriately included in the Regulations.</p>

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		<p>mining charge; (vi) Statutory charges, if applicable.</p> <p>(b) Quantity shall be the quantity of coal or lignite in tonnes crushed or transported or handled or washed, as the case may be, during the year duly certified by the Auditor.</p> <p>(2) Where crushing, transportation, handling or washing are within the scope of the Mine Developer and Operator engaged by the generating company, no additional charges shall be admitted, as the same shall be recovered through mining charge of the Mine Developer and Operator.</p> <p>(3) Where crushing, transportation, handling or washing are undertaken by the generating company by engaging an agency other than Mine Developer and Operator, additional charges shall be worked out based on the annual charges of such agencies, provided that the charges have been discovered through a transparent competitive bidding process.</p> <p><b>(4) The crushing charges, transportation charges, handling charges, and washing charges shall be admitted by the Commission after prudence check, inter-alia, considering charges of Coal India Limited or similarly placed coal mines or any other reference charges.</b></p> <p>(5) The crushing charges, transportation charges,</p>	

Sr. No.	Regulation No.	Proposed Provision in Draft Regulations	MERC Comments:
		handling charges, and washing charges shall be worked out in terms of Rupees per tonne.	
4	36 ( E) (2)	<p>(2) The expenditure, in respect of the integrated mines, incurred or projected to be incurred after the date of achieving the Peak Rated Capacity may be admitted by the Commission subject to prudence check, and shall be capitalized as Additional Capital Expenditure, corresponding to the Annual Target Quantity of the respective years as specified in the Mining Plan or actual extraction in the respective years, whichever is higher, on following counts:</p> <p>(a) expenditure incurred on activities, if any, as per Mining Plan;</p> <p>(b) expenditure for works required to be carried out for complying with directions or order of any statutory authority;</p> <p>(c) liabilities arising out of compliance of order or decree of any court of law or award of arbitration;</p> <p>(d) expenditure for procurement and development of land as per the Mining Plan; and</p> <p>(e) liabilities due to Change in Law or Force Majeure events:</p> <p>Provided that in case of any replacement of the assets, the additional capitalization shall be worked out after adjusting the gross fixed assets, cumulative depreciation and cumulative repayment of loan of the assets replaced on account of de-capitalization.</p>	<p>In coal mining, only partial capitalization is completed during construction period, and remaining capital cost is spread over build up period and operation period. This aspect is also highlighted in the Report of Working Group.</p> <p>The life of HEMM equipment used in coal mining is typically 10-12 years and hence, after 10-12 years, replacement of most of HEMM equipment will require substantial capital expenditure. The aspect of how the additional capital expenditure during operation period for replacement of HEMM equipment will be considered for arriving at the input price of coal, which is related to typical characteristic of coal mining, needs to be elaborated in the Regulations.</p>
5	36 M	<b>Recovery of Input Charges:</b>	

Sr. No.	Regulation No.	Proposed Provision in Draft Regulations	MERC Comments:
		<p>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% 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>Basis of 20% higher energy charges needs to be clarified.</p> <p>Generally the input price should be lower than the CIL price for equivalent grade of coal. However, only under exceptional circumstances, higher input price as compared to CIL price should be allowed on case to case basis.</p> <p>The Report of Working Group also highlights that the pricing formula of the coal supplied by Coal India Limited is not on individual mine basis but on total Company cost basis and is not specifically targeted towards minimizing generation cost. However, the purpose behind mines allotted to generating companies is to optimally generate power and thus, such mines should not be treated as commercial mines.</p> <p>As the objective of integrated mine allocated to power generation companies is to reduce the power cost, there is no reason for allowing 20% higher cost as compared to CIL price and the Regulation may be modified as follows:</p> <p><i>Provided that where energy charge rate based on input price of coal from integrated mine exceeds <del>by 20% of</del> 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;</i></p> <p><i>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 <del>by more than 20%</del> the energy charge rate based on notified price of Coal India Limited for the</i></p>

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			<p><i>commensurate grade of coal;</i></p> <p><i>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.</i></p> <p>Additionally, a provision may be included wherein under exceptional circumstances as a result of poor stripping ratio (may also be specified) and increase overburden the Commission may approve higher input price while carrying out truing up.</p>
6	9 (4)	<p>New provision proposed to be added as under:-  “Provided that a generating company with integrated mines shall file separate Petition for determination of input price of coal or lignite from the integrated mines not later than 60 days from the date of commercial operation of the integrated mines or from the date of notification of these regulations, whichever is later and may seek determination or revision of tariff of the concerned generating station(s) in accordance with these regulations.”</p>	<p>As per the Draft Regulations, the generating company has to file a separate Petition for computation of input price of coal or lignite from the integrated mine.</p> <p>It is suggested that in case of new Generating Station, where the COD of new Generating Station is likely to be achieved by utilising the coal from integrated coal mine, Generating Company should file a single Petition for Generation Tariff as well as Input Price of Coal. However, the Petitioner may be allowed to show the determination of input coal price as a separate section.</p> <p>This will avoid avoiding repetitive consultation process and will help in determining the generation tariff for supply of power, which may also help the beneficiaries in terms of power procurement. In case the Input price is determined later on, the same will affect the Merit Order position of Generating stations for the period for which such input price is not determined.</p>



Sr. No.	Regulation No.	Proposed Provision in Draft Regulations	MERC Comments:
7	11 (2)	The generating company undertaking any additional capitalization in integrated mine on account of change in law events or force majeure conditions may, after intimating the beneficiaries, file a Petition for in-principle approval for incurring such expenditure, along with underlying assumptions, estimates and justification for such expenditure, if the estimated expenditure exceeds 10% of the admitted capital cost of the integrated mines or Rs.100 crore, whichever is lower	<p>A proviso may be added to specify that no works of such additional expenditure may be undertaken unless the Commission accords its prior in-principle approval for the same.</p> <p>This is to ensure that no post-facto permissions are sought on regular basis and post-facto approval shall only be considered under exceptional circumstances.</p>
8	General	Standard Documents for Engagement of MDO	<p>The Report of Working Group highlights that for engagement of MDO, at present no Standard Documents or Statutory Guidelines are available.</p> <p>It would be better if some Model Bidding documents or Guidelines for appointment of MDO through competitive bidding are also issued by CERC as part of Regulations or separately. The Model Bidding Documents or Guidelines should also clearly specify the bidding parameter and the mechanism for arriving at the indicative price to be specified as part of bidding documents.</p> <p>Further, as the mechanism of reverse bidding is generally adopted for competitive bidding now for auctioning of coal blocks, transmission projects, procurement of power, etc., the reverse bidding should be made mandatory for competitive bidding to be carried out for appointment of MDO.</p>
9	Inconsistent Provisions	36(D)(4) The capital cost shall be determined considering, but not limited to, the Mining Plan, detailed project report, <b>mine closure plan</b> , cost audit report and such other details as deemed fit by the	Regulation 36(D)(4) states that the capital cost shall be approved considering mine closure plan which is also re-iterated in Regulation 36(F)(vi) wherein it has been recognised as part of extraction cost however Regulation 36(K)(b) states that mine

Sr. No.	Regulation No.	Proposed Provision in Draft Regulations	MERC Comments:
		<p>Commission.</p> <p><b>36F.</b> Annual Extraction Cost: The Annual Extraction Cost of an integrated mine shall consist of the following components:</p> <p>(i)</p> <p>...</p> <p>(vi) <b>Mine closure expenses, if not included in mining charge; and</b></p> <p>36 K. Mine Closure Expenses: (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 Expenses:</p> <p>Provided that,</p> <p>(a)...</p> <p>(b) amount deposited in the Escrow account as per the Mining Plan or <b>any expenditure incurred towards mine closure shall be excluded from the capital cost</b> for computing input price</p>	<p>closure expenses shall be excluded from the capital cost. The same may be clarified.</p>