CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

No. L-1/236/2018/CERC

Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member

In the matter of

The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 - Statement of Objects & Reasons thereof.

Statement of Objects & Reasons

1. Introduction

1.1 The Central Electricity Regulatory Commission (hereinafter referred to as 'the Commission') had notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 and also notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020 (hereinafter collectively referred to as "the Principal Regulations") in exercise of the powers conferred under Section 178 read with Section 61 of the Electricity Act, 2003 (hereinafter referred to as the 'the Act') specifying the terms and conditions for determination of tariff under Section 62 of the Act in respect of the Central generating stations or the generating stations having composite scheme for generation and sale of electricity in more than one State, and inter-State transmission of electricity.

1.2 In the Principal Regulations, it was provided that where a generating company has the arrangement for supply of coal or lignite from integrated mine(s) for its specified end-use generating stations, the regulations for determination of input price of coal or lignite for the purpose of energy charges shall be notified separately by the Commission. Regulation 36(1) of the Principal Regulations is extracted hereunder:

> *"36. **Input Price of coal and lignite for energy charges**: (1) Where the generating company has the arrangement for supply of coal or lignite from the integrated mine(s) allocated to it, for use in one or more of its generating stations as end use, the energy charge component of tariff of the generating station shall be determined based on the input price of coal or lignite, as the case may be, from such integrated mines computed in accordance with the regulations to be notified separately by the Commission."*

1.3 The Commission initiated the process of amendment of the Principal Regulations to specify a regulatory framework for determination of input price of coal or lignite supplied to the generating stations from their integrated mines. On 01.06.2020, the Commission issued Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020 (hereinafter referred to as "the draft Amendment Regulations") in exercise of the powers vested under Section 61 and Clause(s) of sub-section (2) of Section 178 of the Act and in compliance of the requirement under sub-section (3) of Section 178 of the Act. To suggest regulatory framework for determination of input price or transfer price from integrated coal mines of generating companies, the Commission had constituted a Working Group on 22.04.2019. The report submitted by the Working Group is available on the website of the Commission. The draft Amendment Regulations were issued after considering the recommendations of the Working Group with regard to regulatory framework for input price of coal or lignite. Apart from providing

regulatory framework for input price of coal and lignite from integrated mine(s), certain additional amendments were also included in the draft Amendment Regulations. The Commission had also issued an Explanatory Memorandum accompanying the draft Amendment Regulations explaining the philosophy, necessity and reasons for the proposed amendment to the Principal Regulations. The Explanatory Memorandum is available at http://cercind.gov.in/2020/draft_reg/Draft%20EM-2nd_Amendment_TR_2020.pdf.

1.4 A public notice was issued by the Commission on 01.06.2020 soliciting views/ suggestions/ objections of the stakeholders on the draft Amendment Regulations. In response to the said public notice, the Commission received a number of submissions from the stakeholders which were also posted on the website of the Commission for the information of the stakeholders. Subsequently, public hearing on the draft Amendment Regulations was held through video conferencing on 07.08.2020 to solicit the views, suggestions and objections of the stakeholders and other interested persons including those representing consumer interests. List of the participants in the public hearing and presentations submitted during the hearing have also been hosted on the website of the Commission.

1.5 The Commission, in compliance with the provisions of the Act and the Electricity (Procedure for Previous Publication) Rules, 2005, and after due considerations of the views/ suggestions/ objections of the stakeholders, finalized the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 (hereinafter referred to as "the 2nd Amendment Regulations") and notified the same on 19.02.2021. The comments/ suggestions/

objections of the stakeholders including the persons representing consumer interests received on the draft Amendment Regulations along with findings of the Commission thereon are discussed in the subsequent paragraphs. This Statement of Objects and Reasons (SOR) has been issued with the intent of explaining the rationale behind various provisions included in the 2nd Amendment Regulations.

2. Scope of the 2nd Amendment Regulations

2.1 The 2nd Amendment Regulations provide for a regulatory framework for determination of the input price of coal or lignite supplied from integrated mine to be used for determination of energy charges in the tariff for the electricity supplied from coal or lignite based thermal generating stations. It provides for the financial and operational parameters, methodology for fixation of input price, recovery mechanism etc.

2.2 In the Principal Regulations, the Commission had allowed input price of coal (subject to revision as per notified regulations) based on notified price of Coal India Limited for interim period with effect from 01.04.2019 till notification of the regulatory framework of input price. Similarly, input price of lignite was allowed (subject to revision as per notified regulations) to be determined as per the prevailing guidelines of Ministry of Coal, Government of India. Since the provisions of this amendment will replace provisional billing already in vogue with effect from 01.04.2019, these regulations have been made applicable for the five-year tariff period from 1.4.2019 to 31.3.2024. However, amendment to Regulations 6 and 59 of the Principal Regulations which relate to treatment of mismatch in the date of commercial operation of generating station and transmission systems and prioritisation in

adjustment of payments respectively shall be made applicable from the date of notification of the 2nd Amendment Regulations in the official Gazette.

3. Chapter 1 – Preliminary

3.1 Scope and extent of application [Regulation (2(1a)]

3.1.1 Regulation 2(1a) was proposed to be inserted in the Principal Regulations as under:

> *"(1a) These regulations shall apply in all cases where a generating company has the arrangement for supply of coal or lignite from the integrated mine(s) allocated to it, for one or more of its specified end use generating stations, whose tariff is required to be determined by the Commission under section 62 of the Act read with section 79 thereof."*

3.1.2 The Commission has been vested with the functions of determination of tariff of the generating companies under clauses (a), (b) and (d) of sub-section (1) of Section 79 of the Act. Since new provisions have been introduced with regard to input price of coal and lignite through the 2nd Amendment Regulations, the scope of the regulations has been revised to cover all cases where a generating company has the arrangement for supply of coal or lignite from the integrated mine(s) to one or more of its specified end-use generating stations, whose tariff is required to be determined by the Commission under section 62 read with section 79 of the Act.

3.1.3 This provision has been retained in the 2nd Amendment Regulations.

3.2 Annual Target Quantity or "ATQ" [Regulation 3(4a)]

3.2.1 The draft Amendment Regulations defined 'Annual Target Quantity' as "*the quantity of coal or lignite to be extracted during a year from such integrated mine(s) as specified in the Mining Plan*".

3.2.2 Some stakeholders have suggested that margin is required to be provided due to demand constraints, uncertainties in mining operations and on account of uncontrollable factors such as force majeure.

3.2.3 The Commission is of the view that since the Mining Plan is prepared by of the generating company, the generating company would factor in the various uncertainties involved or likely to be involved in mining operations. However, there may still be cases where for reasons beyond control of the generating company, the annual target quantity as per the Mining Plan cannot be achieved. To take care of such an eventuality, it has been provided that annual target quantity may be relaxed by the Commission up to 15% of the quantity of coal or lignite to be extracted during a year as per the Mining Plan. Accordingly, the definition of annual target quantity has been modified by adding a proviso as under:

> *"(4a) 'Annual Target Quantity' or 'ATQ' in respect of an integrated mine(s) means the quantity of coal or lignite to be extracted during a year from such integrated mine(s) as specified in the Mining Plan:*
>
> *Provided that in case the integrated mine(s) of coal or lignite is ready for supply of coal or lignite as per the Mining Plan but is prevented due to reasons not attributable to the generating company, the Commission may relax the Annual Target Quantity up to a maximum of 15% of the quantity of coal or lignite to be extracted during a year as specified in the Mining Plan."*

3.3 Date of Commencement of Production [Regulation 3(15b)]

3.3.1 The draft Amendment Regulations proposed the following definition of "date of commencement of production":

> *"(15b) 'Date of Commencement of Production' in respect of an integrated mine means the date of touching of coal or lignite, as the case may be, as per the Mining Plan;"*

3.3.2 Suggestions have been received to remove reference to the mining plan as "date of touching coal' is not being indicated in mining

plan and to link the date of commercial production to third party certificate.

3.3.3 After considering the suggestions, the Commission is of the view that it should be the responsibility of the generating company to declare the "date of commercial production" from the integrated mine(s) of coal or lignite. Accordingly, Clause 15(b) of Regulation 3 has been modified as under:

> *"**(15b) 'Date of Commencement of Production'** in respect of integrated mine(s) means the date of touching of coal or lignite, as the case may be, as declared by the generating company;"*

3.4 Escrow Account [Regulation 3(20b)]

3.4.1 The term "Escrow Account" is used in context of accounting of mine closure expenses and it is a statutory requirement of the Coal Controller, Ministry of Coal, Government of India specifying deposit and withdrawal of amounts to ensure for the purposes of mine closure. The draft Amendment Regulations proposed Escrow Account to be defined as under:

> *"(20b) "Escrow account" in the context of integrated mines means the account specified by the Coal Controller, Ministry of Coal, Government of India, for deposit and withdrawal of mine closure expenses;"*

3.4.2 No comments have been received.

3.4.3 Proposed definition has been retained with slight modification to bring more clarity as under:

> *"(20b) 'Escrow account' means the account for deposit and withdrawal of mine closure expenses of integrated mine(s), maintained in accordance with the guidelines issued by the Coal Controller, Ministry of Coal, Government of India;"*

3.5 Investment Approval [Regulation 3(40)]

3.5.1 In the draft Amendment Regulations, the following was proposed to be added under clause 3(40) of Regulation 3 of the Principal Regulations:

> *"Provided further that in respect of the integrated mines, funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval."*

3.5.2 Suggestions have been received to include cost benefit analysis and mandate sharing of investment approval with the beneficiaries. The Commission is of the view that such details are not required to be included in the definition of investment approval. However, the Commission feels that where the investment approval of the integrated mine is combined with that of the end-use generating station, investment approval should clearly and separately show the funding and timeline of both. Accordingly, an additional proviso has been added. The new provisos under clause (40) of Regulation 3 of the Principal Regulations are as under:

> *"Provided further that in respect of the integrated mine(s), funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval;*
>
> *Provided further that where investment approval includes both the generating station and the integrated mine(s), the funding and timeline for implementation of the integrated mine(s) shall be worked out and indicated separately and distinctly in the Investment Approval."*

3.6 Loading Point [Regulation 3(41a)]

3.6.1 In the draft Amendment Regulations, definition of "Loading point" was proposed to be added by inserting clause (41a) under Regulation 3 of the Principal Regulations as under:

*"(41a) "**Loading Point**" in respect of an integrated mine means the location of railway siding or silo for storage of coal or the coal handling plant, whichever is nearest to the mine;"*

3.6.2 Suggestions have been received that loading point can also be identified by other arrangements such as truck loading point, ropeway loading point or transfer point. One of the suggestions received is for defining the loading point for lignite also.

3.6.3 We have considered the suggestions and find merit. Accordingly, Clause 41(a) of Regulation 3 has been modified as under:

*"(41a) '**Loading Point**' in respect of integrated mine(s) means the location of railway siding or silo or the coal handling plant or such other arrangements like conveyor belt, whichever is nearest to the mine, for despatch of coal or lignite, as the case may be;"*

3.7 Operation and Maintenance Expenses [Regulation 3(45)]

3.7.1 In the draft Amendment Regulations, a proviso was proposed to be added under Regulation 3(45) of the Principal Regulations as under:

"Provided that for an integrated mine, the Operation & Maintenance Expenses shall be as admissible in accordance with these regulations."

3.7.2 The charges paid to the Mine Developer and Operator are included in the mining charge. Mining charge and mine closure expenses are separately admissible. Accordingly, these expenses have been excluded from the O&M expenses admissible to the generating station for the integrated mines. Accordingly, the Regulation 3(45) has been modified as under:

"Provided that for integrated mine(s), the Operation & Maintenance Expenses shall not include the mining charge paid to the Mine Developer and Operator, if any, engaged by the generating company and the mine closure expenses."

3.8 **Year [Regulation 4(5)]**

3.8.1 In the draft Amendment Regulations, the meaning of the term "year" was proposed to be amended to clearly bring out the meaning of financial year and the first year in which commercial operation takes place. It was proposed to substitute the existing interpretation of year in the Principal Regulations with the following:

> *"(5) 'Year' means a financial year beginning from 1st April and ending on 31st March:*
>
> *Provided that the first year in case of a new project or integrated mine shall commence from the date of commercial operation and end on 31st March."*

3.8.2 Suggestions have been received to the effect that where the commercial operation occurs after 31st March, the first year can be expanded. In order to bring clarity, the meaning of the term 'year' has been modified as under in the 2nd Amendment Regulations:

> *"(5) **'Year'** means a financial year beginning from 1st April and ending on 31st March:*
>
> *Provided that the first year in case of new project or integrated mine(s) shall commence from the date of commercial operation and end on the immediately following 31st March."*

3.9 The changes proposed in the draft Amendment Regulations for remaining definitions under Regulation 3 and interpretations under Regulation 4 of the Principal Regulations, have been retained with editorial corrections and therefore, are not discussed here.

4. Chapter 2 –Date of Commercial Operation

4.1 Date of Commercial Operation [Regulation 5(3)]

4.1.1 In the draft Amendment Regulations, a new clause (3) was proposed to be added under Regulation 5 of the Principal Regulations as under:

"(3) The date of commercial operation in case of an integrated mine, shall mean the earliest date amongst the following:

a) First date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or

b) First date of the year succeeding the year in which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year; or

c) Date of two years from the Date of Commencement of Production;

Provided that in case the integrated mine is ready for commercial operation but is prevented from the declaration of date of commercial operation for reasons not attributable to the generating company, its suppliers or contractors, the Commission may approve another date of commercial operation, considering the reasons that prevented the declaration of the date of commercial operation."

4.1.2 TANGEDCO has suggested that after approval of the commercial operation of the integrated mines by the Commission, if there is delay in commissioning of linked generating station, then the cost of lignite/ coal excavated should not be included in the pooled cost and should be treated separately till the commissioning of the generating station. MSEDCL has suggested that the regulation appears to be on the basis of COD declaration prevalent in Coal India Limited (CIL). It further submitted that CIL's mines are designed to serve peak load capacity irrespective of the power plants to which it is selling coal whereas the integrated mines might be in a position to supply coal even without reaching 25% of the peak rated capacity and hence, the date of commercial operation should be in relation to the plant's requirement and mines' peak rated capacity and not a pre-defined percentage. GRIDCO has submitted that the date of commercial operation should be based on Model Contract Agreement dated 22.04.2015 which has been developed with reference to the coal blocks auctioned/ allocated under Coal Mines (Special Provisions) Act, 2015. NTPC has submitted that the regulatory provisions regarding date of commercial operation may be

aligned with industry practice. MAHAGENCO has submitted that the date of two years from the date of commercial production is likely to arrive first while the actual coal getting extracted for the initial 3 to 4 years will be very minimal and admitted capital cost would translate into very high cost of coal. In such cases, the marginal cost higher than the landed cost of coal of Coal India Ltd in the vicinity of such mines should be capitalised. KSEB has submitted that if the date of commercial operation is fixed as the date 2 years from the date of commencement of production, then a minimum capacity from the mines may be specified under sub-clause (c) of Clause (3) of Regulation 5. Further, methodology to deal with time overrun and cost overrun of mines should also be specified. PCKL has submitted that the date of commercial operation should be the date of commencement of production. Some stakeholders have suggested to put the beneficiaries under notice prior to declaration of commercial operation.

4.1.3 The Commission has considered the suggestions of the stakeholders. Clause (3) under Regulation 5 in the draft Amendment Regulations has been modified as under:

"(3) The date of commercial operation in case of integrated mine(s), shall mean the earliest of—

a) the first date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or

b) the first date of the year succeeding the year in which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year; or

c) the date of two years from the date of commencement of production:

Provided that on earliest occurrence of any of the events under sub-clauses (a) to (c) of Clause (3) of this Regulation, the generating company shall declare the date of commercial operation of the integrated mine(s) under the relevant sub-clause with one week prior intimation to the beneficiaries of the end-use or associated generating station(s);

Provided further that in case the integrated mine(s) is ready for commercial operation but is prevented from declaration of the date of commercial operation for reasons not attributable to the generating company or its suppliers or contractors or the Mine Developer and Operator, the Commission, on an application made by the generating company, may approve such other date as the date of commercial operation as may be considered appropriate after considering the relevant reasons that prevented the declaration of the date of commercial operation under any of the sub-clauses of Clause (3) of this Regulation;

Provided also that the generating company seeking the approval of the date of commercial operation under the preceding proviso shall give prior notice of one month to the beneficiaries of the end-use or associated generating station(s) of the integrated mine(s) regarding the date of commercial operation."

4.2 Treatment of mismatch in date of commercial operation:

4.2.1 Regulation 6 of the Principal Regulations dealt with mismatch between the commercial operation of (i) generating station and transmission system and (ii) upstream transmission system and downstream transmission system. Subsequently, the Commission took the view that since some of the generating stations and transmission systems are executed under Section 63 of the Act, this provision should form part of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 instead of the Principal Regulations. Accordingly, the following was proposed in the draft Amendment Regulations:

*"**6. Treatment of mismatch in date of commercial operation**: In case of mismatch between the date of commercial operation of the generating station and the transmission system, and between the transmission systems of two transmission licensees, the liability for the transmission charges shall be determined in accordance with provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 and as amended from time to time."*

4.2.2 Several suggestions have been received with regard to disproportionate liability of mismatch between generating company

and transmission licensee and between upstream and downstream assets.

4.2.3 We are of the view that mismatch provisions are proposed to be deleted from the Tariff Regulations and are to be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 and, therefore, the suggested comments cannot be dealt with in these regulations. Accordingly, Regulation 6 of the Principal Regulations has been deleted.

4.3 Supply of Coal or Lignite prior to the Date of Commercial Operation of Integrated Mine (Regulation 7A)

4.3.1 Regulation 7A in the draft Amendment Regulations had been proposed as under:

> *"**7A. Supply of Coal or Lignite prior to the Date of Commercial Operation of Integrated Mine:** The input price for supply of coal or lignite from the integrated mines prior to the date of commercial operation shall be:-*
>
> *(a) in case of coal, the estimated price available in the investment approval, or the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector, whichever is lower; and*
> *(b) in case of lignite, the estimated price available in the investment approval or the last available pooled lignite price as determined by the Commission for transfer price of lignite, whichever is lower:*
>
> *Provided that any revenue earned from supply of coal or lignite prior to the Date of Commercial Operation of the integrated mines shall be applied in adjusting the capital cost of the said integrated mines."*

4.3.2 TANGEDCO has suggested that the pooled price of lignite should not include the price of lignite excavated from the mines and sold in the market. MAHAGENCO has suggested that capitalisation of excessive cost of coal should be continued till the coal quantum mined exceeds a threshold limit (say 25%) so that the landed cost of coal from the integrated mine remains competitive in comparison to the CIL prices in

the vicinity of the mine. NTPC has suggested that the revenue earned prior to COD may be applied in adjusting the capital cost of the mine(s) after accounting for all expenditure such as MDO (Mine Developer and Operator) charges, incidental expenses and statutory charges. KSEBL has suggested to substitute the word "determined" with the word "approved" in Regulation 7A(b) since the pooled lignite price were so far determined by NLCIL as per the guidelines issued by Ministry of Coal, Government of India and were then approved by the Commission. NLCIL has suggested that in Regulation 7A(b), the words "whichever is lower" may be substituted with the words "whichever is higher".

4.3.3 After consideration of the suggestions of the stakeholders, the Commission is of the view that Regulation 7A does not need any modification and accordingly, the said provision has been retained.

4.4 Application for determination of tariff (Regulation 9)

4.4.1 In the draft Amendment Regulations, following proviso was proposed to be added under Regulation 9 of the Principal Regulations providing that the generating company shall file a petition within 60 days of the date of commercial operation of the integrated mines or date of notification of the regulations whichever is later, for determination of input price:

> *"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."*

4.4.2 Suggestions have been received to increase proposed timeline of 60 days for filing petition, to mandate filing of approved mining plan

and to provide option to file petition separately for integrated mine as well as integrated mine combined with generating station.

4.4.3 The Commission has considered the suggestions and is of the view that period of 60 days from the date of commercial operation of the integrated mines is adequate for filing the petition. The timeline of 60 days for filing petition is consistent with similar provisions for generating station and transmission system. The generating company has the liberty to either file a separate petition for determination of input price or a combined petition for determination of tariff of the generating station and input price for supply of coal or lignite from the integrated mines. Accordingly, the provision has been retained with slight modification as under:

> *"Provided that a generating company with integrated mine(s) shall file a petition for determination of input price of coal or lignite from the integrated mine(s) not later than 60 days from the date of commercial operation of the integrated mine(s) or from the date of notification of these regulations, whichever is later and may also seek determination or revision of tariff of the concerned generating station(s) in accordance with these regulations."*

4.5 In-principle approval in specific circumstances (Regulations 11)

4.5.1 In the draft Amendment Regulations, Clause (2) was proposed to be added under Regulation 11 of the Principal Regulations as under:

> *"(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;"*

4.5.2 Stakeholders have supported proposed provision and have further suggested to reduce or remove limit of "10% of admitted capital

cost or Rs.100 crore whichever is lower" for seeking in-principle approval of additional capitalization.

4.5.3 The Commission has introduced this provision to facilitate the generating companies to seek in-principle approval for incurring additional capital expenditure in integrated mines on account of change in law events or force majeure after intimating the beneficiaries. As regards the ceiling of 10% of capital cost or Rs.100 crore, whichever is lower, it is expected that the generating companies can incur the expenditure up to the said ceiling from their resources without seeking any in-principle approval and only above the said ceiling they can seek in-principle approval which will help them in arranging finances. Accordingly, the proposed clause has been retained.

4.6 Truing up of tariff for the period 2019-24 [Regulation 13(1a)]

4.6.1 In the draft Amendment Regulations, Clause (1a) was proposed under Regulation 13 of the Principal Regulations as under:

> *"(1a) The input price of coal and lignite from the integrated mines of the generating station for the period 2019-24 shall be trued up for: a) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, as allowed by the Commission; b) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, on account of Force Majeure and Change in Law, as admitted by the Commission."*

4.6.2 Suggestions have been received that in case lower price is charged by the generating company on their own to increase dispatchability, the same should not be trued up. Also, one stakeholder has suggested that clause (4) of Regulation 13 needs to be modified to include the input price also else application of this clause on input price gets excluded. Scope of truing up of expenditure on integrated mines excludes truing

up of O&M expenses since normative approach has been adopted for O&M expenses in Regulation 36O.

4.6.3 We have considered the suggestions of the stakeholders. Clause (1a) has been inserted under Regulation 13 for truing up of the expenditure incurred on integrated mines. In the draft Amendment Regulations, it was proposed to allow Operation & Maintenance Expenses on integrated mines on normative basis. However, the Commission has now decided to allow Operation & Maintenance Expenses on projected basis, subject to truing up. Accordingly, Operation & Maintenance Expenses has been added in the provisions for truing up. Clause (1a) of Regulation 13 has been modified as under:

> *"(1a) The input price of coal or lignite from the integrated mine(s) of the generating station(s) for the tariff period 2019-24 shall be trued up for:*
>
> *a) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, as allowed by the Commission;*
>
> *b) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, on account of Force Majeure and Change in Law, as admitted by the Commission.*
>
> *c) The Operation and Maintenance expenses in accordance with provisions of Regulation 36I."*

4.6.4 Further, a new clause (4a) has been added to take care of the settlement arising out of the truing up exercise pertaining to integrated mines as under:

> *"(4a) After truing up, if the input price already recovered exceeds or falls short of the input price approved by the Commission under these regulations, the excess or the shortfall amount shall be refunded or recovered, as the case may be, by the generating company along with simple interest at the rate equal to the bank rate as on 1st April of the respective years of the tariff period in six equal monthly instalments:*
>
> *Provided that the generating company shall refund such excess amount or recover the shortfall amount from the beneficiaries based on scheduled energy."*

4.7 Energy Charges (Regulation 16)

4.7.1 In the draft Amendment Regulations, a proviso was proposed to be added under Regulations 16 of the Principal Regulations as under:

> *"Provided also that in case of supply of coal or lignite from the integrated mine(s), the landed cost of primary fuel shall be based on the input price of coal or lignite, as the case may be, as computed in accordance with these regulations."*

4.7.2 MAHAGENCO has submitted that as per the letter of 2015 from the Ministry of Power, the computation needs to be undertaken by the Utility in case of auctioned mine and the Commission is expected to review such landed cost of coal arrived at by the Utility. The regulation may be appropriately modified.

4.7.3 We have considered the suggestion of the stakeholder. As per the provisions of the Principal Regulations, energy charges are determined by the Commission on the basis of landed price of coal or lignite at the generating station. Therefore, landed price has been linked to the input price of coal or lignite from the integrated mines. Accordingly, the proviso as proposed in the draft Amendment Regulations has been retained.

4.8 Amendment in Regulation 22

4.8.1 The word "project" has been substituted with the words "new projects" to exclude the existing project from the ambit of Clause (1) of the Regulation 22 of the Principal Regulations which pertains to controllable and uncontrollable factors for deciding time over-run, cost escalation, IDC and IEDC of the project.

4.9 Amendment to Title of Chapter-9

4.9.1 Title of Chapter 9 has been changed from "computation" to "determination" of input price of coal or lignite from the integrated

mines to correctly reflect the various provisions and processes specified under Chapter 9. Further, the word 'determination' is consistent with the function of the Commission to determine the tariff under Section 62 of the Act.

4.10 Input Price of coal and lignite for energy charges (Regulation 36)

4.10.1 In the draft Amendment Regulations, Clauses (2) and (3) of Regulation 36 of the Principal Regulations were proposed to be substituted with new Clauses to allow interim arrangements for payment of input price of coal based on the notified price of Coal India Limited for the corresponding grade of coal and for payment of input price of lignite based on available pooled lignite price as determined by the Commission for transfer price of lignite, till the input prices of coal or lignite are determined in accordance with the provisions of the regulations. Clause (4) was proposed for settlement of shortfall or excess recovery between the generating companies and beneficiaries. Clauses (2), (3) and (4) of Regulation 36 in the draft Amendment Regulations proposed were as under:

> *"(2) The generating company shall, after the Date of Commercial Operation of the integrated mine till the input price of coal is determined by the Commission under these regulations, adopt the notified price of Coal India Limited commensurate with the grade of the coal from the integrated mine, as the input price of coal for the generating station:*
> *Provided that the difference between the input price of coal determined under these regulations and the input price of coal so adopted prior to such determination, for the quantity of coal billed, shall be adjusted in accordance with Clause (4) of this Regulation.*
>
> *(3) The generating company shall, after the Date of Commercial Operation of the integrated mines, till the input price of lignite is determined by the Commission under these regulations, fix the input price of lignite for the generating station at the last available pooled lignite price as determined by the Commission for transfer price of lignite; Provided that the difference between the input price of lignite determined under these regulations and the input price of lignite so fixed prior to such determination, for the quantity of lignite billed, shall be adjusted in accordance with Clause (4) of this Regulation.*

(4) In case of excess or short recovery of input price under Clause (2) or Clause (3) of this Regulation, the generating company shall refund the excess amount or recover the short amount, as the case may be, with simple rate of interest, equal to the bank rate prevailing as on 1stApril of the respective year of the tariff period, in six equal monthly instalments."

4.10.2 TANGEDCO has suggested for addition of a proviso under clause (4) of Regulation 36 to the effect that if there is any delay on part of the generating company in filing the petition, then the interest should not be applicable for the delayed period. MSEDCL has suggested that in Clauses (2) and (3) of Regulation 36 of the draft Amendment Regulations, instead of linking the input price to CIL price in case of coal or pooled prices in case of lignite, it would be prudent to link the input price with the investment plan due to the case specific price estimation in the plan. The Association of Power Producers has submitted that the rate of interest should be equal to the bank rate as per lender loan agreement with the company.

4.10.3 Based on suggestions of the stakeholders, Clauses (2) and (3) of Regulation 36 have been modified as under:

"*(2) The generating company shall, after the date of commercial operation of the integrated mine(s) till the input price of coal is determined by the Commission under these regulations, adopt the notified price of Coal India Limited commensurate with the grade of the coal from the integrated mine(s) or the estimated price available in the investment approval, whichever is lower, as the input price of coal for the generating station:*

Provided that the difference between the input price of coal determined under these regulations and the input price of coal so adopted prior to such determination, for the quantity of coal billed, shall be adjusted in accordance with Clause (4) of this Regulation.

(3) The generating company shall, after the date of commercial operation of the integrated mine(s), till the input price of lignite is determined by the Commission under these regulations, fix the input price of lignite for the generating station at the last available pooled lignite price as determined by the

Commission for transfer price of lignite or the estimated price available in the investment approval, whichever is lower:

Provided that the difference between the input price of lignite determined under these regulations and the input price of lignite so fixed prior to such determination, for the quantity of lignite billed, shall be adjusted in accordance with Clause (4) of this Regulation."

4.11 Input Price of coal or lignite (Regulation 36A)

4.11.1 Regulation 36A of the draft Amendment Regulations dealt with the various components of input price of coal or lignite from the integrated mines i.e., Run of Mine (ROM) cost, Additional charges and statutory charges. It was proposed as under:

*"36A. **Input Price of coal or Lignite: (**1) Input price of coal or lignite from the integrated mine(s) shall be determined 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:

Provided that one or more components of additional charges may be applicable in case of the integrated mine(s), 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) based on the technology such as bucket excavator-conveyor or belt-spreader or its combination and handling charges, if any.

(2) Statutory Charges, as applicable, shall be allowed."

4.11.2 Suggestions have been received from WBPDCL, MERC, TANGEDCO, GRIDCO, Association of Power Producers and NLCIL. Suggestions pertain to inclusion of any other unavoidable charges;

clarity with regard to mining charges; extraction charges; prudence check if extraction is within the scope of work of Mine Developer and Operator; admissibility of additional activities to be only on submission of proper justification and documentary evidence; damages due to deviation from the mining plan; inclusion of transit loss of 0.8%; and to allow additional charges of lignite mines on actual basis in view of peculiar characteristics of mines at Neyveli.

4.11.3 The Commission has considered the suggestions of the stakeholders and is of the view that the components of input price of coal or lignite are comprehensive and no further clarity or inclusion of any new provision is required. Accordingly, Regulation 36A has been retained as proposed in the draft Amendment Regulations.

4.12 Run of Mine (ROM) Cost (Regulation 36B)

4.12.1 Regulation 36B of draft Amendment Regulations deals with the formula for determination of ROM Cost of coal in case of integrated mines allocated through auction as well as allotment under Coal Mines (Special Provisions) Act, 2015 and ROM cost of lignite. It was proposed as under:

> *"36B. **Run of Mine (ROM) Cost:** (1) Run of Mine Cost of coal in case of integrated mines allocated through auction under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*
>
> *ROM Cost = [(Quoted Price of coal) + (Fixed Reserve Price).*
>
> *Where,*
>
> *(i) Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal Block or Mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement:*
>
> *Provided that additional premium, if any, quoted by the generating company in auction, shall not be considered in the Run of Mine Cost; and*
>
> *(ii) Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement.*

(2) The Run of Mine Cost of coal in case of integrated mines allocated through allotment order under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:

ROM Cost = [(Annual Extraction Cost / ATQ)+mining charge] + (Fixed Reserve Price).

Where,

(i) Annual Extraction Cost is the cost of extraction of coal as computed in accordance with Regulation (36F) of these regulations;

(ii) mining charge is the charge per tonne of coal paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable; and

(iii) Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement.

(3) The Run of Mine Cost of lignite in case of integrated mines for lignite shall be worked out as under:

ROM Cost = [(Annual Extraction Cost / ATQ) +(mining charge)]

Where,

(i) Annual Extraction Cost is the cost of extraction of lignite as computed in accordance with Regulation (36F) of these regulations; and
(ii) mining charge is the charge per tonne of lignite paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable.

(4) The generating company shall adhere to the Mining Plan for extraction of coal or lignite on annual basis and shall submit a certificate to that effect from the Coal Controller or the competent authority:

Provided that deviations from the Mining Plan shall be considered only if such deviations have been approved by the Coal Controller or the revised Mining Plan has been approved by the competent authority.
(5) The Run of Mine Cost of coal and lignite shall be worked out in terms of Rupees per tonne."

4.12.2 Suggestions have been received from WBSEDCL, CESC, DVC, KSEBL, NLCIL and PCKL. WBSEDCL has suggested to include "subsequent escalation" in mining charge. CESC has suggested for inclusion of the mining charge charged by MDO only to the extent of crushing, transportation, handling or washing in the ROM Cost of coal from the coal mines allocated through Coal Mines (Special Provisions) Act, 2015. DVC has suggested that mining charges to be taken for

computation of input price may be clarified since mining charge as per Coal Mining Agreement between the owner of mine and Mine Developer and Operator has price variation annually as per escalation indices issued by the Commission and also adjustable with regard to quality and quantity of coal and OB (overburden) removal. KSEBL has suggested that charges involved under 'mining charge' may be clearly specified. Further, annual extraction cost per tonne, mining charge per tonne, and reserve price per tonne may be calculated with respect to ATQ or actual quantity whichever is higher. NLCIL has suggested that OB removal expenses may be included under Regulation 36B(3) as it was allowed in guidelines dated 2.1.2015 (issued by Ministry of Coal) as a separate line item, taking into account cost efficient mode of mining operation. NLCIL has further suggested to change the periodicity of getting revised Mining Plan approved from Coal Controller once in five years instead on annual basis. NLCIL has also suggested to incorporate "Board of Company for the interregnum period till the Revised Mining plan is approved by the competent authority" for billing facilitation during the interregnum period. PCKL has commented that if the annual production of coal from the integrated mines is less than the normative plant availability factor of the generating station, the input cost of coal will be higher resulting in corresponding increase in energy charges.

4.12.3 We have considered the suggestions of the stakeholders. If the overburden removal is within the scope of Mine Developer and Operator, same would be serviced through mining charges. Where mine is allocated through auction route, the capital expenditure on development of mine and annual extraction cost are covered under quoted price except to the extent of additional charges applicable.

Accordingly, in the formula under clause (1) of Regulation 36B, a provision has been added as under:

"(iii) Capital cost under Regulation 36D and additional capital expenditure under Regulation 36E shall not be admissible for the purpose of ROM cost in respect of integrated mine(s) allocated through auction route."

4.13 Additional Charges (Regulation 36C)

4.13.1 Regulation 36C of the draft Amendment Regulations dealt with the admissibility and determination of additional charges for crushing, transportation, handling and washing of coal or lignite when such activities are undertaken by the generating company or by an agency other than the Mine Developer and Operator. Where these activities are within the scope of Mine Developer and Operator, additional charges for such activities are not admissible. Regulation 36C in the draft Amendment Regulations was proposed as under:

*"36C. **Additional Charges:** (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:-*

(i) Crushing Charges = Annual Crushing Cost/Quantity;

(ii) Transportation Charges= Annual Transportation Cost/Quantity:

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;

(iii) Handling charges = Annual Handling Cost/Quantity; and

(iv) Washing Charges = Annual Washing Cost/Quantity.

Where,

(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:

(i) Depreciation;
(ii) Interest on Working Capital;
(iii) Interest on Loan;

(iv) Return on Equity (RoE);
(v) Operation and Maintenance Expenses, excluding mining charge;
(vi) Statutory charges, if applicable.

(b) Quantity shall be the quantity of coal or lignite in tonne crushed or transported or handled or washed, as the case may be, during the year duly certified by the Auditor.

(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.

(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.

(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.

(5) The crushing charges, transportation charges, handling charges, and washing charges shall be worked out in terms of Rupees per tonne."

4.13.2 APMuL has submitted that if the award of works for additional charges is undertaken through competitive bidding process, the actual charges paid should be considered. MERC has commented that washing yield is a critical parameter to arrive at the input price of coal which needs to be appropriately included. MERC has further commented that in case of coal, if charges of Coal India Limited or any other reference charges are not available, it may be elaborated as to how the prudence check of additional charges would be carried out. TANGEDCO has submitted that since lignite from the integrated mines are taken to the loading point through the conveyer system which are accounted as O&M expenses, transportation charges and handling charges need to be removed from additional charges in case of lignite mine. DVC has

suggested that transportation from coal stockyard at mine pit and up to loading point may be included under additional charges. DVC has further suggested that if crushing, transportation, handling or washing are not within the scope of MDO at the time of signing of the contract but are later on added in the scope of MDO with revised mining charges, then revised mining charges may be considered for computation of annual cost. MAHAGENCO has suggested that reference benchmarks of CIL need to be shared upfront to serve as guiding principles in the absence of which there will be regulatory uncertainty. NTPC has suggested that the charges paid to the MDO or any other agency for carrying out activities like crushing, handling, transportation, or loading may be allowed to the generating company in addition to the charges towards servicing of fixed cost. NLCIL has suggested that additional charges incurred due to specialised and unique activities pertaining to open-cast lignite mining carried out by the generating company without engaging MDO may be considered for inclusion at actuals.

4.13.3 The Commission has considered the suggestions of the stakeholders. Regulation 36C in the draft Amendment Regulations provides enough clarity that where an agency is engaged for only operation of activities such as crushing, transportation, handling or washing, with capital cost reflected in the books of generating company, expenses on such activities would not qualify as additional charges, as the same is recovered under operation and maintenance expenses of the generating company and has been dealt with under Regulations 36I. Further, if an agency is engaged for activities such as crushing, transportation, handling or washing, and the charges have been discovered separately through a transparent competitive bidding

process, it will be considered as additional charges. In order to bring clarity, the Commission has clearly made exclusion of charges for activities undertaken by agencies other than MDO under Regulation 36C and included the same in Operation and Maintenance expenses under Regulation 36I. Accordingly, the remaining provisions of Regulation 36C in the draft Amendment Regulations except clause (3) have been retained while Clause (3) has been modified as under:

> *"(3) Where crushing, transportation, handling or washing are undertaken by the generating company by engaging an agency other than Mine Developer and Operator, the annual charges of such agencies shall be considered as part of the Operation and Maintenance Expenses, provided that the charges have been discovered through a transparent competitive bidding process."*

4.14 Capital Cost (Regulation 36D)

4.14.1 Regulation 36D of the draft Amendment Regulations deals with the determination of capital cost of the integrated mines. It was proposed as under:

> *"36D. **Capital Cost:** (1) The expenditure incurred, including IDC and IEDC, duly certified by the Auditor, for development of the integrated mine up to the Date of Commercial Operation, shall be considered for arriving at the capital cost.*
>
> *(2) The capital expenditure incurred shall be admitted by the Commission after prudence check.*
>
> *(3) Capital cost of crushing infrastructure, transportation infrastructure and equipment, handling infrastructure, washing infrastructure and other mine infrastructure required for mining operations shall be arrived at separately in accordance with these regulations:*
>
> *Provided that in case mine development and operation, crushing, transportation, handling or washing are undertaken by the generating company, the expenditure incurred on infrastructure of these components shall be capitalized;*
>
> *Provided further that where mine development and operation, with or without any component of crushing, transportation, handling or washing are undertaken by the generating company by engaging Mine Developer and Operator or an agency other than Mine Developer and Operator, the expenditure incurred by such agency on infrastructure of these components shall not be capitalised and assets of such agency engaged by the generating company shall not form part of capital cost for the computation of input price.*

(4) The capital cost shall be determined considering, but not limited to, the Mining Plan, detailed project report, mine closure plan, cost audit report and such other details as deemed fit by the Commission.

(5) For integrated mine with Date of Commercial Operation prior to 1.4.2019, the capital cost already allowed by the Commission for the period ending 31.3.2019 shall form the basis for computation of input price."

4.14.2 TANGEDCO has suggested for addition of a proviso under Regulation 36D(1) providing that if the delay is attributable to the generator/ mining company, then IDC and IEDC pertaining to the delay period shall be borne by the generator/ mining company. MAHAGENCO has suggested that in view of huge variation in capital expenditure for individual mines, the framework for analysing the cost should be provided as a reference in the Regulations itself for guidance of the utilities. KSEBL has suggested that the generating company should be mandated to finalize the scope of work outsourced, if any, immediately after taking investment approval and make the details available in the public domain. NLCIL has suggested that capital cost incurred for the mine project may be considered on actual basis. NLCIL has further suggested that in case of existing lignite mine, capital cost as on 31st of March of previous control period is not approved categorically.

4.14.3 We are of the view that prudence check of the cost is mandated under the Regulations and it needs to be carried out on case to case basis due to diverse nature of each mine. Some criteria can be specified by the Commission based on experience gained after dealing with a few cases. Accordingly, it has been decided to retain the proposed regulations with minor changes.

4.15 Additional Capital Expenditure (Regulation 36E)

4.15.1 Regulation 36E of the draft Amendment Regulations provides the framework for admissibility of additional capital expenditure in

respect of integrated mine after date of commercial operation and up to date of achieving peak rated capacity; and additional capitalization after date of achieving peak rated capacity.

4.15.2 APMuL has suggested that de-capitalization of existing assets dis-incentivises the generators to invest in efficient operation of the integrated mine. MERC has commented that the life of HEMM equipment used in coal mining is 10 to 12 years which requires replacement thereafter and, therefore, there is need for specifying treatment of additional capital expenditure during the operation period for replacement of HEMM equipment for arriving at the input price of coal needs. TANGEDCO has suggested for an additional clause 3 under the Regulation to provide for the factors to be taken into consideration while admitting the additional capital expenditure. CESC has suggested to take into account the effects of additional capital expenditure incurred due to change in law or force majeure events or other similar reasons on the input price of coal from the coal mines allocated under Coal Mines (Special Provision) Act, 2015. DVC has suggested that expenditure for procurement or development of land as per the mine plan, detailed project report, mine closure plan, cost audit report and such other details as deemed fit by the Commission may be considered while admitting the additional capital expenditure. MAHAGENCO has suggested that additional capital expenditure should also include capitalization of the revenue expenses after COD of the mine if such charges make the overall landed cost higher than the cost of CIL mines in the initial years. NTPC has suggested that the enhanced compensation decided by the District Level Rehabilitation Committees and any expenditure on safety and security of mine as directed by the Government agency may be allowed as additional capitalization. NTPC

has further suggested inclusion of appropriate provisions to allow additional capitalization on account of replacement due to ageing, obsolescence of technology, change in law and force majeure. NLCIL has suggested to include the activities which were not part of the mining plan but arise while implementing the mining plan under additional capital expenditure.

4.15.3 After due consideration of the suggestions of the stakeholders, the Commission has modified Regulation 36E as under:

*"36E. **Additional Capital Expenditure:** (1)The expenditure, in respect of the integrated mines, incurred or projected to be incurred after the Date of Commercial Operation and up to the date of achieving the Peak Rated Capacity may be admitted by the Commission, subject to prudence check and shall be capitalized in the respective year as Additional Capital Expenditure corresponding to the Annual Target Quantity of the year as specified in the Mining Plan or actual extraction in that year, whichever is higher, on following counts:*

(a) expenditure incurred on activities as per the Mining Plan;

(b) expenditure for works deferred for execution and un-discharged liabilities recognized for works executed prior to date of commercial operation;

(c) expenditure for works required to be carried out for complying with directions or orders of any statutory authorities;

(d) liabilities arising out of compliance of order or decree of any court of law or award of arbitration;

(e) expenditure for procurement and development of land as per the Mining Plan;

(f) expenditure for procurement of additional heavy earth moving machineries for replacement, on completion of their useful life; and

(g) liabilities due to Change in Law or Force Majeure events;

Provided that in case of any replacement of the assets, the additional capitalization shall be worked out after adjusting the gross fixed assets and cumulative depreciation of the assets replaced on account of de-capitalization.

(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:

(a) expenditure incurred on activities, if any, as per Mining Plan;

(b) expenditure for works required to be carried out for complying with directions or order of any statutory authority;

(c) liabilities arising out of compliance of order or decree of any court of law or award of arbitration;

(d) expenditure for procurement and development of land as per the Mining Plan; and

(e) liabilities due to Change in Law or Force Majeure events;

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.

(3) The expenditure on following counts shall not be considered as Additional Capital Expenditure for the purpose of these regulations:

a) expenditure incurred but not capitalized as the assets have not been put in service (capital work in progress);

b) mine closure expenses;

c) expenditure on works not covered under Mining Plan, unless covered under sub-clause (g) of Clause (1) or sub-clause (e) of Clause (2) of this Regulation;

d) expenditure on replacement due to obsolescence of assets on account of completion of the useful life or due to obsolescence of technology, unless the original cost of such assets have been de-capitalised from the gross fixed assets."

4.16 Annual Extraction Cost *(Regulation 36F)*

4.16.1 Regulation 36F of the draft Amendment Regulations proposed to define the components of annual extraction cost as under:

*"36F. **Annual Extraction Cost:** The Annual Extraction Cost of an integrated mine shall consist of the following components:*

(i) Depreciation;
(ii) Interest on Working Capital;
(iii) Interest on Loan;
(iv) Return on Equity (RoE);
(v) Operation and Maintenance Expenses, excluding mining charge;
(vi) Mine closure expenses, if not included in mining charge; and
(vii) Statutory charges, if applicable."

4.16.2 DVC has suggested to consider the expenditure on account of Rehabilitation & Resettlement of the project affected people, corporate social responsibility, corporate environmental responsibility under annual extraction cost. NLCIL has suggested that water charges, security expenses, capital spares and FERV may be provided separately consistent with provisions of the Principal Regulations.

4.16.3 After consideration of the suggestions of the stakeholders, the Commission is of the view that no change is called for in the draft Regulation 36F and accordingly, the regulation as proposed in the draft Amendment Regulations has been retained.

4.17 Capital Structure, Return on Equity and Interest on Loan *(Regulation 36G)*

4.17.1 Regulation 36G of the draft Amendment Regulations deals with the capital structure, return on equity and interest on loan on the investment made in the integrated mines. It proposed as under:

> *"36G.* ***Capital Structure, Return on Equity and Interest on Loan:*** *(1) For an integrated mine, the debt-equity ratio as on the date of commercial operation and as on the date of achieving Peak Rated Capacity shall be considered in the manner as specified under Clause (1) of Regulation 18 of these regulations:*
>
> *Provided that for integrated mine in respect of lignite with Date of Commercial Operation prior to 1.4.2019, the debt-equity ratio already allowed by the Commission for the period ending 31.3.2019 shall form the basis for computation of input price.*
>
> *(2) For integrated mine, the debt-equity ratio for additional capital expenditure admitted by the Commission under these regulations shall be considered in the manner as specified under Clause (1) of this Regulation.*
>
> *(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 of14%.*
>
> *(4) The base rate of return on equity as allowed by the Commission in this Regulation shall be grossed up with the effective tax rate computed in the manner specified under Regulation 31 of these regulations.*

(5) The interest on loan, including normative loan if any under Clause (1) of this Regulation, shall be arrived at by considering the weighted average rate of interest calculated on the basis of actual loan portfolio, in accordance with the Clauses (2) to (7) of Regulation 32 of these regulations."

4.17.2 NTPC, WBSEDCL, NLCIL and Association of Power Producers have suggested to revise the rate of return to 15.5% on the ground that low return in integrated mines will discourage investment in mines. BYPL has submitted that ROE of 14% is very high compared to prevailing interest rate. TANGEDCO has suggested that in the event of cancellation of PPA with the generator who owns the integrated mines, the beneficiaries should not be liable to pay the return on equity or interest on loan of the integrated mines from the date of cancellation of the PPA. KSEBL has suggested that the provision for truing up of ROE may be included.

4.17.3 We have considered the suggestions of the stakeholders. The Commission is of the view that proposed rate of return adequately balances the interest of the investors and consumers and hence has been retained. Regarding the concerns of the stakeholders on burdening with payment of outstanding loan of mine in case of termination of PPA, it is clarified that liability of the parties arising out of the termination of the PPA will be decided in accordance with the terms and conditions of PPA. Accordingly, Regulation 36G has been retained with minor modifications.

4.18 Depreciation *(Regulation 36H)*

4.18.1 The Commission had proposed the following under "depreciation" in the draft Amendment Regulations:

"36H. Depreciation: *(1) Depreciation in respect of integrated mines shall be computed from the date of commercial operation by applying Straight Line Method.*

(2) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission: Provided that,

i) freehold land or assets purchased from grant shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset;

ii) where the allotment of freehold land is conditional and is required to be returned, the cost of such land shall be part of value base for the purpose of depreciation, subject to prudence check by the Commission; and

iii) lease hold land shall be amortized over the lease period or remaining life of the mine, whichever is lower.

(3) The salvage value of an asset shall be considered as 5% of the capital cost of the asset: Provided that the salvage value shall be:

i) zero for IT equipment and software;

ii) zero or as agreed by the generating company with the State Government for land; and

iii) as specified by the Ministry of Corporate Affairs for specialized mining equipment.

(4) The depreciation of integrated mine shall be arrived at annually by applying depreciation rates or on the basis of expected useful life specified in Appendix 1 of these regulations: Provided that specialized mining equipment shall be depreciated as per the useful life and depreciation rate as specified by the Ministry of Corporate Affairs."

4.18.2 WBSEDCL has suggested to insert "expenses in the nature of right to use of the respective mine" as Serial No.(iv) under Clause 3. TANGEDCO, MSEDCL and GRIDCO have suggested to fix the salvage value at 10%. DVC has suggested that expenditure incurred on acquisition of land as per Coal Bearing Area (Acquisition and Development) Act, 1957 and expenditure for acquisition of land outside coal bearing areas such as for rehabilitation and settlement colony, railway and road infrastructure may be considered as part of value base for the purpose of depreciation. NTPC has suggested to allow 5.83% depreciation for the first 12 years for the purpose of loan repayment. NTPC has further suggested that since some assets are required to be

left over after mine closure, their depreciation may be considered as zero.

4.18.3 The fixation of salvage value at 5% is consistent with the treatment followed in case of generation and transmission projects. Therefore, salvage value of 5% has been retained. However, the Commission has decided to protect the depreciation treatment of existing project of lignite mine. Accordingly, following additional proviso has been added under Clause (1) of Regulation 36H:

> *"Provided that depreciation methodology allowed in respect of integrated mine(s) of lignite which have been declared under commercial operation on or before 31.3.2019, shall continue to apply for determination of input price of lignite."*

4.19 Operation & Maintenance Expenses *(Regulation 36I)*

4.19.1 The Commission had proposed the following as Operation & Maintenance Expenses in the draft Amendment Regulations:

> ***36I. Operation and Maintenance Expenses:*** *(1) The Operation and Maintenance expenses of integrated mine for the tariff period ending on 31st March 2024 shall be 2%, escalated at the rate of 3.5% per annum, of the average capital expenditure up to the end of each year of the tariff period as admitted by the Commission towards mining, crushing, transportation, handling and washing subject to true up: Provided that where mining, crushing, transportation, handling or washing are undertaken by the generating company by engaging Mine Developer and Operator, or an agency other than Mine Developer and Operator, any capital expenditure incurred by Mine Developer and Operator or such agency shall not be included for working out the Operation and Maintenance Expenses.*
>
> *(2) Where the mine development and operation are undertaken by the generating company by engaging Mine Developer and Operator, the mining charge of such Mine Developer and Operator shall not be included in Operation and Maintenance Expenses;*
>
> *(3) Where the generating company has engaged agency(ies) other than Mine Developer and Operator, annual charges of such agency(ies) shall also be considered as part of Operation and Maintenance Expenses, subject to prudence check by the Commission, provided that such annual charges have been discovered through a transparent competitive bidding process."*

4.19.2 APMuL and WBSEDCL have suggested to fix the O&M expenses at 5% of the capital cost. TANGEDCO has suggested that O&M expenses of the most efficient mining company should be considered for benchmarking the O&M expenses instead of % of the capital cost at normative rates. DVC has suggested that there may be separate provision for expenses incurred annually towards rehabilitation and resettlement colony, corporate social responsibility and corporate environmental responsibility. MAHAGENCO has suggested that O&M expenses should be considered at a minimum of 3% for the initial years and should be reviewed based on actual expenses. NTPC has suggested that O&M expenses equivalent to 3.5% of the capital cost may be allowed with 7% escalation while for departmentally operated mines, O&M expenses equivalent to 15% of the capital cost with 7% escalation per annum should be allowed. NLCIL has suggested that O&M expenses be allowed with escalation of 11.50% over actual O&M expenses of the previous year.

4.19.3 After considering the suggestions of the stakeholders, the Commission has decided to review the approach for Operation & Maintenance Expenses in respect of integrated mine. Proposed approach of allowing O&M expenses based on percentage norm linked with capital cost has been dispensed with and it has been decided to allow it based on actual O&M expenses. The O&M expenses during initial period will be allowed based on projected basis which shall be trued up at the end of tariff period. The scope of true up is also expanded accordingly. Apart from this, the O&M expenses of existing lignite mine under operation prior to 1st April, 2019 will be allowed based on admitted O&M expenses as on 31st March, 2019. Further clarity has been brought to exclude the mining charge from operation and

maintenance expenses and include annual charges of agency other than Mine Developer and Operator. This has been done considering limitation on standardization of activities due to site specificity of mines and the fact that technology involved as well as number of mines to be covered for determination of input price are few. Accordingly, Regulation 36I has been modified as under:

"36I. Operation and Maintenance Expenses: (1) The Operation and Maintenance Expenses in respect of integrated mine(s) shall be allowed as under:

(a) The Operation and Maintenance expenses in respect of integrated mine(s)of coal, for the tariff period ending on 31stMarch 2024 shall be allowed based on the projected Operation and Maintenance Expenses for each year of the tariff period subject to prudence check by the Commission;

Provided that the Operation and Maintenance expenses allowed under this clause shall be trued up based on actual expenses for the tariff period ending on 31st March, 2024.

(b) *The Operation and Maintenance expenses for the tariff period ending on 31stMarch 2024 in respect of the integrated mine(s)of lignite commissioned on or before 31stMarch 2019, shall be worked out based on the Operation and Maintenance expenses as admitted by the Commission during 2018-19 and escalated at the rate of 3.5% per annum;*

(c) *The Operation and Maintenance expenses for the tariff period ending on 31st March 2024 in respect of the integrated mine(s)of lignite commissioned after 31stMarch 2019, shall be allowed based on the projected Operation and Maintenance Expenses for each year of the tariff period, subject to prudence check by the Commission;*

Provided that the Operation and Maintenance expenses allowed under this clause shall be trued up based on actual expenses for the tariff period ending on 31stMarch 2024.

(2) Where the development and operation of the integrated mine(s) is undertaken by the generating company by engaging Mine Developer and Operator, the Mining Charge of such Mine Developer and Operator shall not be included in Operation and Maintenance Expenses under Clause (1) of this Regulation;

(3) Where an agency other than Mine Developer and Operator is engaged by the generating company, through a transparent competitive bidding process, for crushing or transportation or handling or washing or any combination thereof, the annual charges of such agency shall be

considered as part of Operation and Maintenance Expenses under clause (1) of this Regulation, subject to prudence check by the Commission."

4.20 Interest on Working Capital *(Regulation 36J)*

4.20.1 It was proposed in the draft Amendment Regulations that the working capital of the integrated mines of coal and lignite shall cover the input cost of coal or lignite for 7 days of production corresponding to ATQ for the relevant year, consumption of stores @15% of O&M expenses for coal and 20% for lignite and O&M expenses for one month excluding mining charge of MDO or annual charge of any agency other than MDO. The draft Amendment Regulations proposed as under:

"36J. Interest on Working Capital: (1) The working capital of the integrated mines of coal shall cover:

(i) Input cost of coal stock for 7 days of production corresponding to the Annual Target Quantity for the relevant year;

(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

(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.

(2) The working capital of the integrated mine of lignite shall cover:-

(i) Input cost of lignite stock for 7days of production corresponding to the Annual Target Quantity for the year;

(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, engaged by the generating company; and

(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.

(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."

4.20.2 APMuL has suggested that mining charge of MDO should also be admitted for computing interest on working capital. TANGEDCO has welcomed 7 days stock level of coal or lignite. MSEDCL has suggested to exclude the charges of MDO from the computation of IWC. KSEB has suggested that computation of spares @15% of O&M expenses be considered for lignite mines also. NLCIL has suggested that the norms as per MoC guidelines of 2.1.2015 may be considered for incorporation. NTPC has suggested coal stock for 10 days for mines located in the vicinity of the generating station and 20 days for the mines far away from the generating station and 20% of the O&M charges for stores and spares.

4.20.3 We have considered the suggestions of the stakeholders and do not consider it necessary to make any changes in the proposed regulations. Therefore, it has been decided to retain the proposed provisions of interest working capital.

4.21 Mine Closure Expenses *(Regulation 36K)*

4.21.1 The regulatory framework proposed for mine closure is to address the mandatory obligations of the generating company. In the draft Amendment Regulations, the following had been proposed:

"36K. 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:

Provided that,

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;

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;

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

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 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,

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

b) the difference between the 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;

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."

4.21.2 Suggestions were received to capitalize mine closure expenses; on bringing transparency; clarity on applicability of mine closure expenses in case of auction mines; clarity on treatment of mine closure

at terminal which is normally within the scope of generating company or developer; and the difference of borrowing cost and interest to be made applicable to 50% amount as per the circular of the Ministry of Coal.

4.21.3 The Commission has decided that the amount deposited in Escrow account towards mine closure is to be delinked with the expenditure incurred towards mine closure during any of the years of the tariff period. Further, it has been decided to exclude the mines allotted through auction route from the provisions of this Regulation. Further, an enabling provision has been included to decide on the treatment of mine closure at the end of the useful life of the integrated mine on case to case basis. Accordingly, Regulation 36K has been modified as under:

> *"**36K. 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, on the said deposits shall be admitted as Mine Closure Expenses:*
>
> *Provided that,*
>
> *a) the amount deposited in the Escrow account as per the Mining Plan prior to the Date of Commercial Operation of the integrated mine(s)shall be indicated separately and shall be recovered over the useful life of the integrated mine(s)in the form of annuity linked to the borrowing rate;*
>
> *b) the 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;*
>
> *c) where the expenditure incurred towards mine closure falls short of or is in excess of the reimbursement received from the Escrow account during the tariff period 2019-24, the shortfall or excess shall be carried forward to the subsequent years for adjustments.*
>
> *(2) The amount towards mine closure shall be deposited in the Escrow account as per the Mining Plan and shall be recovered as part of input price irrespective of the expenditure incurred towards mine closure during any of the years of the tariff period.*

(3) 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 met out of the Mining Charge and no mine closure expenses shall be admissible to the generating company separately:

Provided that,

a) *the amount deposited in the Escrow account by the Mine Developer and 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*
b) *the difference between the 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 of these regulations, and the amount deposited in Escrow account and the interest received from Escrow account in a year shall be adjusted in the input price of coal or lignite of the respective year, as part of mine closure expenses, on case to case basis;*

(4) 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 integrated mine(s)and the generating company undertakes the mine closure for the balance useful life, the treatment of mine closure during the period undertaken by the generating company shall be in accordance with Clause(1)of this Regulation and mine closure during the period undertaken by the Mine Developer and Operator shall be in accordance with Clause (3) of this Regulation:

Provided that the treatment of mine closure at the end of useful life of the integrated mine(s) shall be decided by the Commission on case to case basis.

(5) The mine closure expenses worked out in accordance with this Regulation shall not applicable in case of the integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015."

4.22 Computation and Recovery of Input Price *(Regulations 36L and 36M)*

4.22.1 In the draft Amendment Regulations, Regulation 36L and Regulation 36M deal with the computation of input price on per tonnage basis and mechanism for recovery of input price, respectively. It was proposed as under:

36L. ***Computation of Input Price:*** *(1) The input price of coal or lignite shall be computed as under:*

Input Price = [ROM Cost + Additional charges]

(2) The credit arising on account of adjustment due to shortfall in overburden removal, GCV Adjustment and Non-tariff Income, if any, shall be dealt separately in the manner specified in these regulations.

(3) Statutory Charges, as applicable, shall be allowed.

36M. ***Recovery of Input Charges****: 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.

4.22.2 Suggestions were received with regard to basis and justification of 20% of higher energy charges; approval of higher input price at the time of true up; request to delete provision of 20% of limit; and waive off requirement of prior consent from beneficiaries. Some suggested to cap input price at 10% below the Coal India Limited (CIL) notified price. Some others suggested that during entire tenure of PPA, energy charges as per input price should not exceed energy charges determined on basis of CIL notified price and that the regulations should mandate the generating companies to demonstrate compliance with this.

4.22.3 The Commission has considered the suggestions of the stakeholders. The intent and basis of the mechanism proposed in these Regulations is already elaborately covered in the Explanatory Memorandum issued with the draft Amendment Regulations and,

therefore, the same are not repeated again. The Regulations 36L and 36M have been retained with minor editorial corrections. However, it has been decided to add a new clause (2) to Regulation 36M requiring the generating companies to work out the comparative energy charge rate based on the input price of coal and notified price of Coal India Limited sharing the same with beneficiaries as under:

> *"(2) The generating company shall work out the comparative energy charge rate based on the input price of coal and notified price of Coal India Limited for the commensurate grade of coal for every month from the date of commercial operation of integrated mine(s) and share the same with beneficiaries."*

4.23 Adjustment on account of Shortfall of Overburden Removal (OB Adjustment) *(Regulation 36N)*

4.23.1 In the draft Amendment Regulations, the mechanism for adjustment on account of shortfall of overburden removal was proposed as it has implications on input price and energy charges of the electricity supplied from generating station. The draft Amendment Regulations proposed as under:

> ***"36N. Adjustment on account of Shortfall of Overburden Removal (OB Adjustment):*** *(1) The generating company shall remove overburden as specified in the Mining Plan.*
>
> *(2) In case of shortfall of overburden removal during a year, the generating company shall be allowed to adjust such shortfall against excess of overburden removal, if any, during subsequent three years.*
>
> *(3) In case of excess of overburden removal during a year, the generating company shall be allowed to carry forward such excess to adjust shortfall, if any, during subsequent three years.*
>
> *(4) Where the shortfall of overburden removal of any year is not made good by the generating company in accordance with Clause (2) of this Regulation, the adjustment on account of shortfall of overburden removal (OB Adjustment) for that year shall be worked out as under:-*
>
> *OB Adjustment = [Factor of adjustment for shortfall of overburden removal during the year] x [mining charge during the year + Operation and Maintenance expenses during the year]*

Where,

i) *Factor of adjustment for shortfall of overburden removal during the year shall be computed as under:*

[(Actual quantity of coal or lignite extracted during the year) -(Actual quantity of overburden removed during the year/ Annual Stripping Ratio as per Mine plan)]/ (Annual Target Quantity);

ii) *Annual Stripping ratio is the ratio of volume of overburden to be removed for one unit of coal or lignite as specified in the Mining Plan.*

iii) *mining charge is the charge per tonne of coal or lignite paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable.*

iv) *mining charge and Operation and Maintenance expenses shall be in terms of Rupees per tonne corresponding to the Annual Target Quantity."*

4.23.2 Suggestions have been received to remove adjustment on account of shortfall of overburden as it amounts to deviation from mining plan. Question of applicability of this provision in respect of mines allotted through auction route was also raised. One stakeholder suggested that it is out of regulatory purview of the Commission. Some suggested that adjustment may be allowed in five years and should be limited to mining charges only.

4.23.3 We have considered the suggestions. The objective of introducing this mechanism is already discussed in Explanatory Memorandum issued with the draft Amendment Regulations. Since it has implication on tariff to be recovered from the consumers, this mechanism is applicable to generating company irrespective of the contract entered by the generating company with any agency. Further, it has been decided to insert a clause to exclude mines allotted through auction route. Accordingly, Regulation 36N has been modified as under:

36N. Adjustment on account of Shortfall of Overburden Removal (OB Adjustment): *(1) The generating company shall remove overburden as specified in the Mining Plan.*

(2) In case of shortfall of overburden removal during a year, the generating company shall be allowed to adjust such shortfall against excess of overburden removal, if any, during subsequent three years.

(3) In case of excess of overburden removal during a year, the generating company shall be allowed to carry forward such excess for adjustment against the shortfall, if any, during subsequent three years.

(4) Where the shortfall of overburden removal of any year is not made good by the generating company in accordance with Clause (2) of this Regulation, the adjustment on account of shortfall of overburden removal (OB Adjustment) for that year shall be worked out as under:

OB Adjustment = [Factor of adjustment for shortfall of overburden removal during the year] x [Mining Charge during the year + Operation and Maintenance expenses during the year]

Where,

i) Factor of adjustment for shortfall of overburden removal during the year shall be computed as under:

[(Actual quantity of coal or lignite extracted during the year x Annual Stripping Ratio as per Mining Plan) - (Actual quantity of overburden removed during the year/ Annual Stripping Ratio as per Mining Plan)]/ (Annual Target Quantity);

ii) Annual Stripping ratio is the ratio of volume of overburden to be removed for one unit of coal or lignite as specified in the Mining Plan.

iii) Mining Charge is the charge per tonne of coal or lignite paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable.

iv) Mining Charge and Operation and Maintenance expenses shall be in terms of Rupees per tonne corresponding to the Annual Target Quantity.

(5) The provisions of this Regulation regarding adjustment on account of shortfall of overburden removal shall not be applicable in case of the integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015.

4.24 Adjustment on account of Shortfall in GCV (GCV Adjustment) *(Regulation 36O)*

4.24.1 Regulation 36O regarding adjustment on account of shortfall in GCV as proposed in the draft Amendment Regulations is as under:

"36O. Adjustment on account of shortfall in GCV (GCV Adjustment): *(1) In case the weighted average GCV of Coal extracted in a year is higher than the*

declared GCV of coal, no GCV adjustment shall be done. (2) In case the weighted average GCV of coal extracted in a year is lower than the declared GCV of coal, the GCV adjustment in that year shall be worked out as under:

(a) Where the integrated mine is allocated through auction under Coal Mines (Special Provisions) Act, 2015:

GCV Adjustment = (Quoted Price of coal) X [(Declared GCV of coal – Weighted Average GCV of coal extracted in the year)/(Declared GCV of coal)]

Where,

i) Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal Block or Mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement:

Provided that additional premium, if any, quoted by the generating company in auction, shall not be considered; and

ii) Declared GCV of coal shall be the GCV of coal as specified or quoted in the auction.

(b) Where the integrated mine is allocated through allotment order under Coal Mines (Special Provisions) Act, 2015:

GCV Adjustment = [(Annual Extraction Cost/ATQ) + (mining charge)] X [(Declared GCV of coal –Weighted Average GCV of coal extracted in the year)/(Declared GCV of coal)]

Where,

i) Annual Extraction Cost is the cost of extraction of coal as computed in accordance with Regulation (36F) of these regulations;

ii) mining charge is the charge per tonne of coal paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable; and

iii) Declared GCV of coal shall be the average GCV as per the Mining plan or as approved by the Coal Controller.

4.24.2 Suggestions have been received to clarify that this provision is not applicable to lignite mines; to consider all components of quoted price such as fixed reserve price; and as regards additional charges. Some stakeholders have suggested to remove provision or alternatively, to allow minor variations and also to allow adjustment for both sides.

One stakeholder has suggested to consider average value of declared grade of coal.

4.24.3 We have considered the suggestions. The provision is clear that it is applicable to only coal as the term lignite is not referred to in the provisions. The formulation proposed adequately captures all components. Accordingly, the proposed provision has been retained.

4.25 Adjustment on account of Non-tariff income (NTI Adjustment) *(Regulation 36P)*

4.25.1 In the draft Amendment Regulations, the following was proposed as Regulation 36P regarding adjustment of non-tariff income:—

> ***36P. Adjustment on account of Non-tariff income (NTI Adjustment):*** *Adjustment on account of non-tariff income (NTI Adjustment) for any year, such as income from sale of washery rejects in case of coal mine and profit, if any, from supply of coal to the Coal India Limited or merchant sale of coal as allowed under the Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*
>
> NTI Adjustment =(All Non-tariff income during the year)/(Actual quantity of coal or lignite extracted during the year)

4.25.2 Suggestions have been received to include profit from supply of coal to CIL or merchant sale of coal and also, if applicable, income from rent of land or buildings and income from advertisements.

4.25.3 The Commission is of the view that the provision is exhaustive and the non-tariff income will be decided on case to case basis at the time of determination of input price. To take into account the case of mines allotted through auction route, Clause (2) has been added as under under:—

> *"(2) The adjustment on account of non-tariff income worked out in accordance with this Regulation shall not be applicable in case of the*

integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015."

4.26 Late Payment Surcharge *(Regulation 59)*

4.26.1 The following clause was proposed to be inserted under Regulation 59 of the Principal Regulations in the draft Amendment Regulations:

> *"(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."*

4.26.2 PGCIL has suggested to add "medium term Open Access Customer" in the above clause. APMuL has welcomed the provision. TANGEDCO has suggested to remove the clause as it is against the interest of Discoms and consumers. GRIDCO has suggested to give first priority to the current electricity charges. BYPL has submitted that late payment surcharge being part of contractual terms and conditions should not be regulated and be left to the parties.

4.26.3 The proposed provision for manner of adjustment towards late payment surcharge on the outstanding charges was introduced to plug a grey area with regard to priority in adjustment of payment received. The Commission is of the view that wherever a mechanism is agreed between the parties under the contract, adjustment will be made as per the contractual provision. In all other cases, this provision will be applicable. Accordingly, the proposed clause has been modified as under:

> *"(2) Unless otherwise agreed by the parties, 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 billed by the generating company or the transmission licensee, as the case may be, starting from the longest overdue bill."*

4.27 Deviation in Ceiling Tariff *(Regulation 66)*

4.27.1 Though there was no proposal to amend Regulation 66 in the draft Amendment Regulations, but one of the stakeholders suggested that the mechanism for deviation from ceiling tariff and treatment at the time of true up needs to be specified.

4.27.2 The Commission has considered the suggestion and finds merit in it. It has been decided to introduce a new clause (6) to Regulation 66 of the Principal Regulations as under:

> *"(6) Where a generating company and its beneficiaries or a transmission licensee and its long-term customers have mutually agreed to charge lower tariff in respect of a particular generating station or transmission system in terms of Clauses (1) to (3) of this Regulation, the said agreed tariff shall not be revised upwards at the time of truing up based on the capital cost and additional capital expenditures in accordance with these regulations:*
>
> *Provided that where the trued up tariff is lower than the agreed tariff, the generating company or the transmission licensee shall charge such trued-up tariff only:*
>
> *Provided further that the difference between the agreed tariff and the trued-up tariff shall be settled between the parties in accordance with Clause (4) of Regulation 13 of these regulations."*

4.28 Special Provisions relating to NLC India Ltd *(Regulation 71)*

4.28.1 In the draft Amendment Regulations, it was proposed to add the words "and the associated integrated mine" after the words "TPS-I (expansion)" in the Regulation 71 of the Principal Regulations. The existing provision of the Principal Regulations are as under:

> *"71. Special Provisions relating to NLC India Limited: The tariff of the existing generating stations of NLC India Ltd, namely, TPS-I and TPS-II (Stage I & II) and TPS-I (Expansion), whose tariff for the tariff periods 2004-09, 2009-14 and 2014-19 has been determined by following the Net Fixed Assets approach, shall continue to be determined by adopting Net Fixed Assets approach."*

4.28.2 It has been decided that the existing provision needs to be retained and accordingly, the proposed amendment is dropped.

Sd/-	**Sd/-**	**Sd/-**
(Arun Goyal)	**(I. S. Jha)**	**(P.K. Pujari)**
Member	**Member**	**Chairperson**