

Ref: ED (C & GP)/Coal/GP-II/CERC/ 410

Date: 15.07.2020

To,
The Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor,
Chanderlok Building, 36, Janpath,
New Delhi -110 001

Sub: Submission of comments/ suggestions/ Objections against the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020.

Ref: 1) CERC Public Notice No. L-1 /236/2018/CERC dated 01.06.2020
2) CERC Public Notice NO No. L-1 /236/2018/CERC Dated 30.06.2020.
3) CERC Draft Notification dated 01.06.2020

Respected Sir,

As the Commission has constituted a working group under the Chairperson of West Bengal Electricity Regulatory Commission (WBERC) to examine various aspects and to suggest regulatory framework for determination of input price of coal or lignite from the integrated mines.

The recommendations of the working group have been considered by the Commission and amendments have been proposed in the Principal Regulations so as to put in place a regulatory framework for computation of input price of coal or lignite.

Accordingly, vide public Notice dated 01.06.2020 draft CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020 were issued for inviting comments and suggestions of stakeholders till 30.06.2020.

In view of above, Mahagenco is hereby submitting its reply/comments/suggestions i.e. Annexure-I on CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020. Annexure-I is attached herewith.

Thanking You.

Enclosures: As above

Yours faithfully,


Executive Director (C & GP)

Maharashtra State Power Generation Co. Ltd

Comments on Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020

1. General Observations of MSPGCL

In the preamble of the Regulations, Hon'ble CERC has mentioned its powers under Section 178(2) of the Electricity Act 2003 (Act) and has also cited a letter from Ministry of Power in which certain directions have been given to the Hon'ble Commission. According to MSPGCL's understanding, Section 178(2) provides power to the Central Commission to frame the Tariff Regulations. The relevant sections are reproduced below for ease of reference:

"178(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:-

(s) the terms and conditions for the determination of tariff under section 61;"

Further Section 61 of the Act provides that ,

"The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff...."

According to MSPGCL, none of the above provisions provide any power to the Hon'ble Commission to determine/calculate the transfer price of coal. The above provisions have on the contrary been always referred by the Hon'ble Commission to frame the tariff regulations and the principles for determination of tariff since 2001.

Further, we have perused through the excerpt of the MoP letter dated 16.4.2015 and is reproduced below for reference:

"The Ministry of Power vide letter dated 16.4.2015, under Section 107 of the Act, has issued a direction to the Commission, to review and determine the energy charges for supply of electricity by generating company to a distribution licensee under already concluded power purchase agreement (PPA) and where the coal is being sourced from coal mine auctioned or allotted under Coal Mines (Special Provision) Act, 2015 and rules framed thereunder. The relevant provision is extracted as under:

3.1 The Central Electricity Regulatory Commission, shall review and determine the energy charges for cost plus Power Purchase Agreements under Section 62 or that in tariff bid based Power Purchase Agreements under Section 63, as the case may be, and shall review the components of fuel price or energy charges including:

- a. Run of Mine (ROM) price of coal as per auction or allotment of coal mine; b. Transportation cost along with distance to the end use power plant (Rail, road and other modes separately), c. Washery Charges, if any; d. Crushing Charges; e. Royalty, Duties and levies etc; f. Other charges”

The Letter from MOP entrusts the Hon’ble Commission with the responsibility to only review the components of fuel price. As per MSPGCL’s understandings, the letter do not provide any directive to the Hon’ble Commission to determine the transfer price of coal.

Comments of MSPGCL on the proposed amendment are therefore without prejudice to its rights and remedies to seek appropriate relief in such matters.

2. Specific Comments on the Regulations

S.No.	Regulation no.	Amended Regulation	MSPGCL’s Observations/Comments/Suggestions
1	3.3 Clause (9) of Regulation 3	3.3 Clause (9) of Regulation 3 of the Principal Regulations shall be substituted as under:- “(9)“Capital Cost” means the capital cost as determined in accordance with Regulation 19 of these regulations in respect of generating station or transmission system and Regulation 36D of these regulations in respect of integrated mine, as the case may be.”	In cases, where the generating companies are funding the expenses on development of mine on their own books, the capitalisation of expenses will be reflected in the audited accounts for the company as a whole. There should be formats in which auditor should certify the expenses and reconciliation statements that will be required for prudence check.
2	3.9	In Clause (36) of the Regulation 3 of the Principal Regulations, the word “lignite” in the first line shall be substituted with the words “price of lignite (including transfer price in respect of existing lignite mines)” and the word “determined” in the last line shall be substituted with the word “computed”.	MSPGCL understands that the word “computation” means that the Commission would take into cognizance the actual charges incurred by the generating company and review its calculation of cost of coal. The same by definition means that there will not be any disallowance in the actual expenses incurred by the company. Rationale for the above submissions of MSPGCL have already been shared in the initial comments.
3	3.13	The full stop (.) at the end of Clause (45) shall be read as colon (:) and a proviso shall be added under Clause (45) of Regulation 3 of the Principal Regulations as under: - <u>“Provided that for an integrated mine, the Operation & Maintenance Expenses shall be as admissible in accordance with these regulations.”</u>	Comments on O&M Expenses are provided in detail in the subsequent Regulations.
4	5.1 (3)	5.1 “(3) The date of commercial operation in case of an integrated mine, shall mean the earliest date amongst the following:	It is submitted that practically, the date of two years from the date of commencement of production is likely to arrive

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		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 <u>which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year;</u> or c) Date of two years from the Date of Commencement of Production;	first. However, the quantum of coal that will actually be getting extracted will be very minimal atleast in the initial 3-4 years. In case the admitted capital cost is proposed to be recovered (based on manner of determination of ROM costs) from 3 rd year, the same would translate into a very high cost of coal. It may not be possible to dispatch the units at such high variable cost. Accordingly, it is proposed that in case the cost of such expenses to be charged in a financial year makes the landed cost higher than the cost of CIL coal in the vicinity of such mine, the said marginal charges should be capitalised.
5	7A (b)	7. Insertion of New Regulation 7A in the Principal Regulations. 7A (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: <u>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."</u>	As suggested for Regulations 5.1 (3), it is reiterated 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 mine (ROM + MDO charges + statutory levies + crushing + transportation charges etc.) remains competitive in comparison to the CIL prices in the vicinity of the mine.
6	8.1	8. Amendment to Regulation 9 of the Principal Regulations: 8.1 <u>"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."</u>	MSPGCL believes that the powers conferred to Hon'ble Commission as per MoP letter is only confined to review of the cost of coal. Accordingly, the regulations should be revised to exclude the mention of "determination of input price of coal....".
7	10.1	10. Amendment to Regulation 11 of the Principal Regulations. 10.1 A new clause, namely Clause (2) shall be added after Clause (1) of Regulation 11 of the Principal Regulations as under: -	It needs to be specified whether that cap of 10% or Rs 100 crore is on an annual basis or cumulative basis for the entire control period.

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		“(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;”	
8	12.1	12. Amendment to Regulation 16 of the Principal Regulations. 12.1. A new proviso shall be added after second proviso of Regulation 16 of the Principal Regulations as under: - “Provided also that in case of supply of coal or lignite from the integrated mine, the landed cost of primary fuel shall be based on the input price of coal or lignite, as the case may be, as <u>computed</u> in accordance with these regulations.”	As per MoP letter, MSPGCL believes that the computation needs to be undertaken by the utility and the Hon’ble Commission is expected to review such landed cost of coal arrived at by the utility. The Regulations may therefore be appropriately modified.
9	36C (1)	36C. Additional Charges: (1) 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; <u>(iii) Handling charges = Annual Handling Cost/Quantity; and</u> <u>(iv) Washing Charges = Annual Washing Cost/Quantity.</u>	It would have been prudent if reference benchmarks of CIL were shared upfront so that the same can serve as guiding principles. In the absence of such norms, there will always remain regulatory uncertainty on pass through of such charges. Further, the escalation factor to be considered in such charges on a y-o-y basis may further be indicated based on actual charges of CIL subsidiaries. It is further requested specific comments may be taken from Ministry of Coal to work out the prudent norms for all such parameters proposed in these amendments.
10	36C (4)	36C. Additional Charges: (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.	
11	36D Capital Cost: (2)	36D. Capital Cost: (2) The capital expenditure incurred shall be admitted by the Commission after prudence check.	The Hon’ble Commission has only specified the broad framework in which such prudence check will be undertaken. For instance, capital cost for mine development

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			<p>will depend on the mining methodology viz. Surface miners, shovel-dumpers combination, bucket wheel mining, dragline mining etc,. Each of these technologies will depend on the topography, local considerations and cost economic analysis specific to the mine. Given that there can be huge variations in capital expenditure for individual mines, the framework in which such costs will be analysed (CIL benchmarks) should be provided as a reference in the regulations upfront so that the same can be taken into cognizance by the utility to undertake the mining activities on its own or while awarding the MDO contracts.</p>
12	36D (4)	<p>36D. Capital Cost: (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 <u>such other details</u> as deemed fit by the Commission.</p>	<p>In order to cover any additional cost, the regulations needs to be reframed as "such other cost incurred by the developer subject to prudence check by the Commission". It is further submitted that the actual expenditure on land acquisition, R & R costs, expenditure to remove encroachments etc. could materially vary from the estimated expenses in the initial plans/DPR as mentioned in the draft Regulations. Based on the submissions, the Hon'ble Commission has to review the calculations of transfer price, all such actual costs needs to be made a pass through in the cost of coal.</p>
13	36E (1)	<p>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 upto the date of achieving the Peak Rated Capacity may be admitted by the Commission, subject to prudence check and <u>shall be capitalized in the respective year as</u> 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:</p>	<p>This should also include capitalisation of revenue expenses after COD of the mine in case such charges make the overall landed cost to be higher than the cost of CIL mines in the initial years. The capitalisation may be allowed till such cut off period (say 25% of peak production or 5 years from date of COD) as deemed appropriate based on production targets as per Mining Plan.</p>
14	36(H)	36H. Depreciation:	A copy of depreciation rates prescribed by Ministry of

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		<p>(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.</p>	<p>Corporate Affairs should be annexed with the regulations.</p>
15	36(I)	<p>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:</p>	<p>While the O & M expenses have been proposed as 2% of the capital cost, however no basis has been provided for the same. In mining projects majority of the O & M expenses are towards consumption of diesel for various technologies of HEMM, electricity, explosives etc., however, nothing has been specified for norms of diesel consumption, explosives etc which form a bulk of such mining expenses. The currently prevailing O & M expenses for various mines of CIL could have been provided to ascertain the extent of O & M expenses particularly for their cost plus mines. As per MSPGCL's understanding, the same should be considered at a minimum of 3% for the initial years and should be reviewed based on actual expenses incurred by the utility.</p>
16	36(J)	<p>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</p>	<p>MSPGCL believes that the proposed norms for working out the IOWC are grossly inadequate. The norms do not provide any clarity on the actual IOWC requirement for CIL and its subsidiaries and whether the proposed norms are in same range as actually incurred by CIL. According to our estimates, the working capital requirement will increase with increase in production capacity and may become around 5-6% of the gross fixed assets when peak production targets are attained. Accordingly, the working capital requirement needs to be based on industry practices and no ad-hoc consideration should be provided in the Regulations.</p>

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		annual charges of any agency other than Mine Developer and Operator, engaged by the generating company.	
17	36(M)	<p>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;</p>	<p>This regulation defeats the overall objective of allocation of captive coal mines to the generating companies. Appointment of MDO essentially requires them to supply a certain quantum of coal as per mining plan. Further, in case generating company is not able to offtake such coal (minor variations are although allowed), the generating company has to bear fixed charges needs to be paid to MDO. A generating company having a dedicated mine cannot go for procurement of additional coal from market on a sustainable basis. Absence of periodicity for seeking such permission and the time limit by which discoms have to give such permissions is also not defined. According to MSPGCL, taking permissions from discoms is neither practical nor desirable and therefore must be omitted.</p>
18	36(N)	<p>36N. Adjustment on account of Shortfall of Overburden Removal (OB Adjustment): (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: - <u>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]</u></p>	<p>This regulation is in contradiction to Regulation 36(M) as in certain cases, shortfall in OB removal may be on account of discoms who have not given the permission to use the coal from such captive mine. Further, deviations in OB removal may be already getting governed by the contract with MDO. In such events, the same should be excluded from the regulatory purview.</p>
19	36(O)	<p>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.</p>	<p>It should be clarified that the GCV is to be considered on ARB. Further, responsible agency for measuring GCV should be specified and the point of measurement of GCV should be the unloading end.</p>

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		<p>(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:</p> <p>(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) <u>Declared GCV</u> of coal shall be the GCV of coal as specified or quoted in the auction.</p> <p>(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.</p>	<p>There should be provisions to deal with such matters in case change of GCV is already provided in the agreement with MDO.</p>