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Date: 15.07.2020

To,  
The Secretary,  
Central Electricity Regulatory Commission  
Third floor, Chanderlok Building,  
36, Janpath  
New Delhi-110001

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

Ref:- Public Notice no. L-1 /236/2018/CERC dated 01.06.2020 & 30.06.2020.

Sir,

We write in reference to the Public Notice No. L-1 /236/2018/CERC, published on the Hon'ble CERC's Website enclosing Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020.

By the said Public Notice Hon'ble Commission has invited comments / suggestions / objections from the stakeholders on the said draft amendment.

Accordingly, we hereby submitting our comments as Annex-1 for kind consideration of the Hon'ble Commission.

Thanking You,  
For BSES Yamuna Power Ltd.

For,  
Bajul Agarwal  
(Head- Regulatory Affairs)  
(Encl. As above)

*James Singh*

**I. Clause 15 (36.F)**

**1. Cost of coal from integrated mines = ((Annual Extraction Cost/ATQ) + Mining Charge) + Additional Charge. The charges explained below:**

- A. **Mining Charge-** 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, whichever is applicable.
- B. **Additional Charge-** These charges are applicable, where crushing, transportation, handling or washing are undertaken by the generating company without engaging Mine Developer and Operator.
- C. **Annual Extraction Cost-** Break up of these charges, applicable for determination of cost of coal in case mine has been allocated to generator as under:-
  - a) **ROE**- 14%
  - b) **Interest on Loan**- Weighted average rate of loan
  - c) **Depreciation**- Would be spread over either useful life of mine/ lease period
  - d) **Interest on working Capital (IWC)**- Following to be considered for computing IWC
    - Cost of 7 days coal production as per annual target quantity(ATQ)
    - For consumption of spares 15% of O&M cost has been considered
    - 1 month of O&M cost
  - e) **O&M**- Initially at 2% of capital value which would be increased by 3.5% per annum post March'24.
- D. **Mine closure expense**- Over and above the capital cost this amount be kept separately in an escrow account. The mine operator would be allowed to recover this amount along with monthly bills.

**BYPL Comments:-**

**1. ROE for Captive Mining**- We appreciate the fact that CERC has rationalized the rate of ROE in comparison to what Generators are allowed for the plant. However considering the fact that under prevailing circumstances the rate of interest is very low. The ROE rate of 14% is still

very high and has considerable scope of reduction. A further reduction would help in rationalizing the cost of power produced from generators sourcing power from these captive mines

**2. Depreciation-** Lease period or remaining life of mine has been considered for calculation of depreciation. This may vary from case to case. Hence we would request the commission to provide a normative period for useful life of plants.

**3. O&M Expenses:** Since it is a new concept, initially 1% of capital valued should be allowed and thereafter 2% per annum after March'24 or it may be reviewed during finalization of CERC 2024-29 regulation period.

**4. Mine Closure Expense-** The amount deposited in the escrow account has been considered for utilization during closure of mine. We would request CERC to define a normative value of this amount for the purpose of standardization.

## **II. Clause 15( 36 M)**

**1. Recovery of Input Charges:** The input charges of coal or lignite shall be  $\text{Input Charges} = [\text{Input Price} \times \text{Quantity of coal or lignite supplied}] + \text{Statutory charges}$ , 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;

### **BYPL Comments:-**

1. CERC has proposed to cap the difference of energy charge at 20% between coal produced by integrated mine & coal produced by CIL on monthly basis. However its been further stated that during the entire duration of PPA the cost of energy generated from coal sourced from integrated mine cannot exceed of energy of coal from sourced from CIL. To ensure implementation of this capping, we propose that an annual true-up be conducted to verify this, and this capping may proposed to be 10% in initial stage. Which will allow the timely identified excess energy charge, if any, and this can be credited to beneficiary's accounts on annual basis.

## **III, Clause 16.**

**1. Amendment to Regulation 59 of the Principal Regulations.** A new Clause shall be added after Clause (1) of Regulation 59 of the Principal Regulations as under

“(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

**BYPL Comments:-**

1. Regulation 59 of the 2019 Tariff regulations notified by the Central Commission on 07.03.2019 specifies the fixed rate of Late Payment Surcharge (LPSC). The intent behind fixing the LPSC, when payment of bill is delayed, is founded on the doctrine of compensation. This is clear from the reading of the Statement of Reasons (SOR) to the 2019 Tariff Regulations and the 2019 Tariff Regulations. Thus, the objective of specifying LPSC was akin to liability to pay interest, which is founded on the doctrine of compensation.

2. LPSC is a commercial mechanism to compensate the generating companies & transmission licensees. However, there are certain lacunae in the rate of LPSC of 1.5% in the year 2019-24 Regulations which are as under

- (a) LPSC is to compensate the generating companies (Gencos) and transmission licensees (Transcos) for loss of revenue on account of non payment of bills by beneficiaries. LPSC is at a fixed rate of 1.5%. However, the loss of revenue till receipt of payment from the beneficiaries against the bills is mitigated by Gencos and Transcos by availing loans at floating rates of interest. Therefore, the lacuna is that the beneficiaries are liable to pay LPSC at fixed rate, whereas the Gencos and Transcos avail loans at floating rate. This anomaly can be corrected by having the **LPSC at floating rate**.
- (b) The Gencos and Transcos would face burden when the lending rates applicable to them are higher than the fixed rate of LPSC. Similarly, the Gencos and Transcos would stand to profiteer when the lending rate applicable to them are lower than the fixed rate of LPSC. For eg, when **additional working capital interest rate is 21% as against 18% LPSC fixed rate**, the Gencos/Transcos are at loss. Similarly, when the additional working capital interest rate is **8% against 18% LPSC fixed rate**, the Gencos/ Transcos stand to profiteer. This shows that Gencos/Transcos could recover LPSC at a rate which is more than the interest payable by them for availing loans. Such excess recovery should be clawed back towards rationalization of tariff which would benefit the consumers at large. Hence, the excess recovery of LPSC vis-à-vis the actual rate of interest on loans be treated as non-tariff income of the generating companies and transmission licensee.
- (c) Initially, the loans were linked to SBI PLR of banks. RBI vide its notification dated 17.12.2015 had directed the banks to extend loans with reference to the marginal cost of funds based lending rates (MCLR). Hence, there has been a change from PLR to MCLR as the benchmark for determining interest rate. When the 2019 Tariff Regulations were

notified, the loans were linked to base rate of banks. Hence, the LPSC under **Regulation 59 requires to be reset to bring in line with the bank lending norms**

- (d) The rate of LPSC ought to be in sync with the current bank lending norm i.e. MCLR. The RBI's repo rate, i.e. the interest banks pay for short term borrowing from Central Bank has been recommended as the benchmark to price loan rates. In view of the change in the regime of PLR to MCLR/ RBI Repo rate, the Commission may require to step in to release the debtors from hardship, as there has been a subsequent fall in the interest rates since the fixation of the LPSC at 1.50% per month.
- (e) As per the 2009 Tariff Regulations, LPSC was charged at 1.25% per month and this Commission without any cogent or apparent reasons had increased the rate to 1.50% per month which is required to be aligned with the bank rates. As a result of alignment of LPSC rate with the MCLR bank rates, any excess recovery of LPSC vis a vis actual rate of interest on loans be treated as NTI of Gencos/Transcos

#### **ON THE ISSUE OF ADJUSTMENT OF PAYMENTS TOWARDS LPSC:-**

1. Further as regard to payment being 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, BYPL would like to submit that same should be in sync with the existing methodology being followed by various State regulator for their Discom's & Consumers.

It is submitted in this connection that the adjustment of the dues is a contractual matter to be worked out between the Genco's, Transco's and Discom's. In their commercial wisdom, Genco's and Transco's have already entered into PPA's which in most cases do not specify the waterfall of adjustments. There have been several instances of Genco's and Transco's trying to escape the consequences of such silence in the PPA's. The proposed amendments, it appears, therefore are sought to be made to unduly and exclusively favour such Genco's and Transco's and assist them in avoiding their contractual obligations. Hence, the said proposed amendments are ex-facie arbitrary and violative of Article 14.

In this connection it is further submitted that State Commission's across the country have already approved hundreds of PPA's which do not contain any such stipulation of a waterfall of adjustments since as per the law in force, in the absence of such stipulation, the debtor may make payments with the direction for their adjustment. If the proposed amendments were to be carried out, they would seriously impinge on the PPA's approvals accorded by the State Commissions across the country.

Having regard to the fact that such proposed amendment is going to seriously hamper the approvals granted by the State Commission's across the country and also the fact that such stipulations would tantamount to amending all existing PPA's whose approval process is completely within the ambit of the SERC's such amendment ought not to be made without the concurrence of the SERC's, The proposed amendment would be a glaring fetter on the federal nature of tariff determination under the Electricity Act and virtually tantamount to usurping part of the power of the State Commissions which alone have the power to approve commercial terms in PPA's under Section 86(1)(b) of the EA 2003. Hence, the proposed amendments would seriously impinge on the functions of the State Commissions under Section 86(1)(b) and on that score be *ultra vires* Section 79 of the Act.

In this connection, this Hon'ble Commission may also note that the proposed amendment would confer arbitrary powers on the Genco's and Transco's to treat the receipt of charges against accrued LPSC even though it is a universally accepted phenomenon in the power sector that **Genco's and Transco's do not account for LPSC accrued in their books** but only account for LPSC **on receipt basis**. Hence it would be extremely arbitrary and unfair for Genco's and Transco's to continue to **avoid booking LPSC on accrual basis** in their books and yet get the statutory right to adjust payments first against accrued LPSC (which is not reflected in their books). If at all, the proposed amendments were to be approved in their existing form, Genco's and Transco's ought also to be compelled to book accrued LPSC in their books not only out of fairness but also on account of transparency and accountability.

The proposed amendment virtually confer a *carte blanche* on the Genco's and Transco's to first hide their financials and then profiteer from such opacity.

It is further submitted in this connection that, if at all, the proposed amendments were to be made in their present form, the same ought to be made specifically prospectively, ie. for dues accruing post the date of the amendment. If the amendment were made applicable even to dues existing as on the date of the amendment, the said amendment would therefore operate retrospectively and be entirely *ultra vires* the Electricity Act since as the Hon'ble Commission is well aware, Regulations under the Act could not be made with retrospective effect.