NLC India Limited
'Navratna' - Govt. of India Enterprise
एनएलसी इंडिया लिमिटेड
भारत सरकार का 'नवरत्न' उद्यम
निदेशक (वित्त) – सेक्रिटेरीअट
DIRECTOR (FINANCE) - SECRETARIAT

CREATING WEALTH FOR WELLBEING

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150 YEARS OF CELEBRATING THE MAHATMA

Lr.No. DF/CERC/2nd Amend-19-24/comments/2020 Date:15.07.2020

To

The Secretary,
Central Electricity Regulatory Commission,
3rd& 4th floor, Chanderlok Building,
36, Janpath Marg, **NEW DELHI - 110 001 .**

Sir,

Sub: Hon'ble Commission's -Draft second amendment to Regulations on Terms and Conditions of tariff for the control period 2019-24- NLCIL comments -submitted - Reg.

Ref: (1) Hon'ble Commission's Draft second amendment to Regulations on Terms and conditions of Tariff Regulations for the period 01.04.2019-31.03.2024 vide. No. No.L-1/236/2018/CERC Dt: 01/06/2020.

(2) Lr.No.NLCIL/ED/Comm./ Draft Regulation 19-24/comments/2019 Date: 25.01.2019 issued by NLCIL.

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Pursuant to the notification of Draft second amendment to regulation on Terms and conditions of Tariff Regulations for the period 01.04.2019-31.03.2024 in Hon'ble Commission's website, inviting comments / suggestions of the stakeholders, NLCIL is hereby submitting its comments/suggestion for kind perusal and consideration, as Enclosure.

The above may please be taken on record.

Thanking you,

Yours faithfully,
for NLC India Limited

Director (Finance)

Encl : As above

Enclosure

NLCIL Comments on Draft second amendment to Regulation on Terms and Conditions of tariff for the control period 2019-24

1.0 Submission on Regulatory Jurisdiction:

1.1 It is submitted that the following comments on input price determination by the Hon'ble Commission in place of such determination being done in accordance with the guidelines of the Ministry of Coal, Government of India had already been submitted vide Lr. No. NLCIL/ ED/ Comm./ Draft Regulation 19-24/ comments/2019 Date: 25.01.2019, in response to suggestions/comments sought for, by the Hon'ble Commission on the draft tariff guidelines 2019-24

QUOTE:

" **K. Input Price for Variable Charge (36)**

- Generally, the guidelines for determining the price of the lignite from all the NLCIL Mines are being issued by Ministry of Coal/Govt. Of India once in every five years. For the Tariff period 2019-24, NLCIL Board has issued Lignite Transfer price guidelines based on directives from Ministry of Coal, Govt. of India. The said guideline has been considered for billing and accounting for the year 2019-20 and onwards till date.
- NLCIL calculates the price of the lignite based on these guide lines of MOC and submits the same to Central Electricity Regulatory Commission with necessary audit certificates for calculations of energy charges of NLCIL's Power Plants.
- The new draft Regulations proposes to entrust the scope of determining the coal/lignite price to Hon'ble Commission for integrated mines allotted to Generating Companies.
- As NLCIL has got both existing integrated mines and proposes for new coal and Lignite mines, the Hon'ble commission may consider to adopt MOC guidelines for fixing the Input price of lignite from integrated mines as in the current Tariff period due to the difficulties enlisted below:

- As multiple agencies deciding the price of coal/lignite from mines belonging to the same generating company may lead to inconsistency.

- The clause on COD of New mine viz., on achieving 25% rated capacity or the Financial year in which value of production exceeds Capital expenditure or 2 Years of touching coal applicable for Coal Mines will not suit Lignite Mines.
- O&M expenditure to be escalated based on WPI may not be suitable for Lignite Mines since the machineries involved in lignite mining are of special in nature.
- **In this context,** Hon'ble Commission **in an earlier orderdt.04.01.2000(Para5.6.2) for ABT has endorsed this view by stating that mining operations do not fall within the regulatory jurisdiction** of the Commission and in fact mining activities are being **regulated by the Ministry of Coal. The commission further stated that** Hon'ble Commission **could not regulate this activity**.
- Further the Govt. of India's Gazette notification dated 04.03.2014 which states that Government of India hereby do constitute the Coal Regulatory authority (CRA) under the overall administration of Ministry of Coal strengthens NLCIL's views. The primary function of the CRA shall be to formulate the principles and methodologies for determination of price of raw coal, formulation of policies in coal sector, Coal linkage, etc"

UNQUOTE

1.2 While reiterating the above, NLCIL submits the following to substantiate the above legal position.

a) Order dated 4.1.2000 of the Hon'ble Commission which inter alia reads as under :-

"***5.6.2****As regards NLCs plea that the fixed charges of mining operations should also be considered, we have to state that mining operations do not fall within the regulatory jurisdiction of the Commission. In fact mining activities are being regulated by the Ministry of Coal.* ***<u>The Commission cannot step in to regulate this activity.</u>*** *Hence it would only be possible to admit a transfer price for lignite for the purpose of tariff of power.*

b) It appears that the Hon'ble Commission had retracted from it's earlier stance of not stepping into regulation of mining activity and had proceeded upon issuing guidelines for input price.

c) Govt. of India (Allocation of Business) Rules, 1961 (as amended upto December 2019) categorically stated that all matters pertaining to production, supply, and distribution as well as pricing of coal falls under the domain of Ministry of Coal.

d) The gazette notification wrt the constitution of Coal regulatory authority dt.04.03.2014 is reproduced below.

MINISTRY OF COAL

RESOLUTION

New Delhi, the 4th March, 2014

F. No. 13011/04/2007-CA II/Vol.V/pt. III. – The Government has on 27th June, 2013 approved the proposal to constitute the Coal Regulatory Authority.

Whereas, the Ministry of Coal has introduced the Coal Regulatory Authority Bill, 2013 on 13th December, 2013 in the Lok Sabha, and whereas the Government is satisfied that pending the enactment of a comprehensive legislation it is necessary to constitute and make operational an interim body till the proposed statutory Authority is constituted;

Now, therefore, the Government of India do hereby constitute the Coal Regulatory Authority (CRA) under the overall administrative control of the Ministry of Coal as follows.

(i) The primary function of the Authority shall be to advice the Central Government on the formulation of the principles and methodologies for determination of price of raw coal, washed coal and any other by-product generated during the process of coal washing; on the procedure for automatic coal sampling and weighment, on standards of performance of norms and operational efficiencies except to the area related to mines safety; on formulation of policies in coal sector, including allotment or earmarking of coal blocks for any purpose, through any mode, and coal linkage; on promotion of competition, efficiency and economy in activities of the coal industry; on promotion of investment in coal industry; on development of various mining technologies, beneficiation methods to improve mining and conservation of coal resources;

(ii) The Authority shall consist of a Chairperson and the following four Members, namely:-

(a) One Member (Legal),
(b) One Member (Technical),
(c) One Member (Finance), and
(d) One Member (Consumer interest),

to be appointed, by the Central Government.

e) While CRA(Coal Regulatory Authority) has been mandated for regulating the coal mining business activity as mentioned in the gazette including pricing, the proposed amendment envisages the regulation of Mining Business, which is under the ambit of MoC (Ministry of Coal)

f) The purport and intent of constitution of CRAI (Coal Regulatory authority vide gazette notification dt.04.03.2014) would be defeated, if this amendment is incorporated.

g) It is submitted that the Hon'ble Commission would appreciate the fact that the mining activity of integrated mine could not be under dual control i.e., of Ministry of Coal and Hon'ble Commission. While the jurisdiction and control of the ministry of coal in the determination of lignite mining price continues, particularly for integrated mining and power companies such as NLCIL as already taken note of by the Hon'ble Commission under the earlier tariff regulations since 2001 onwards and reasons for not determining the lignite transfer price the exercise of power under the present regulations will involve multiplicity of jurisdiction.

h) Further, this amendment would also bring an anomalous situation of regulation viz. regulating input cost of power generator having Integrated Mine and not regulating the input price of power generator, who purchases coal from Coal India Ltd./ other sources etc.,

i) Talabira II & III coal mines has been allotted to NLCIL. Coal from the said mine will be supplied to proposed Thermal Power Plant in Odisha apart from supply of coal to NTPL (A subsidiary Company of NLCIL) and open sale if any through Coal India. The Talabira Mine is not developed as an integrated mine for any specific Thermal Plant. The applicability of the proposed guideline for the above scenario need to be clarified.

j) Further after introduction of Real Time Market with effect from 1stJune'2020, the pricing of electricity mainly depends upon the demand supply situation at any block period of the day irrespective of the regulatory pricing mechanism. The generator having integrated coal/lignite mine will suo-moto regulate its price to have merit order of its power produced. Hence, market itself behaves as a regulator for the benefit of ultimate consumers.

k) In the light of the above, it is hereby submitted that instead of the proposed amendment on input price regulation with respect to lignite price, the Hon'ble Commission may kindly allow the continuance of the extant practice of determining Lignite transfer price determination based on MoC guidelines.

2.0 Without prejudice of the above basic submissions for consideration of the Hon'ble Commission, NLCIL is hereby submitting the comments on second amendment to the Tariff Regulations 2019 as follows

2.1 General Comments on proposed regulations amendment wrt NLCIL Lignite Mines:

a) At the outset one of the salient aspects of determination of lignite price in an integrated lignite mining and power company is the consideration of the fact that there are significant and substantial fixed costs involved which cannot be considered proportionate to the quantum of lignite used for generation of electricity. This is in contrast to the coal supplied by CIL and its subsidiaries to the power companies wherein the entire coal cost including its transportation, loading unloading charges etc. are considered to be variable costs and the energy charge is paid based on the units of generation. The conceptual aspect in this regard is that the supply of coal is in short, whatever coal mined by coal companies is supplied, whatever coal is supplied to the power companies is used for generation of power and therefore there is no implication of any stranded cost at the hands of the power company so long the energy charges is allowed for the units of generation. In contrast in the case of integrated mining and power generation if the generation is not up to the normative availability to cover the entire cost of lignite, there will be stranded costs in the hands of the company. The entire cost cannot be equated for recovery as fuel costs. In other words, the fuel costs in such integrated mining and power generation consists of significant part of the fixed costs necessarily incurred by the company irrespective of the quantum of lignite used. There has to be clear recognition of the above in the extant regulations as otherwise the NLCIL and similarly placed companies will suffer seriously. This has been more fully set out hereunder.

b) NLCIL Lignite Mines are unique in nature and incomparable to other coal mines and are subjected to multifarious vagaries as depicted below.

❖ Dynamic Strata of Lignite Mines.

❖ Pressurized aquifer beneath the lignite seam

❖ Ground water control management to extract lignite

❖ The lignite seam thickness variance and now it has gradually reduced from 18 m to 11 m.

❖ The average Stripping Ratio envisaged in Feasibility Report has undergone drastic change. In case of Mine-I it has changed from 5.5 : 1 to 7: 1 (i.e., 11 T. of overburden is required to be removed for mining 1 tonne of lignite) and similar changes also encountered in other mines. High capacity excavators are used for handling large volume of overburden, after forward preparation.

❖ Washouts were also forecasted in the advancing face.

❖ Lignite deposit is not homogenous.

❖ Intrusions like coated lignite with sand, carbonaceous clay, Marcasite are present and their occurrence is sporadic.

❖ In certain areas deployment of SME machines might not be possible due to the fact that the debris present there could have caused damage to the expensive Specialized Mining Equipment (SME). To make the area conducive for SME working, pre stripping with Outsourcing needs to be carried out.

❖ Occurrence of hard bands in the top surface of the advancing area is experienced. This hard band could not be removed by SME system as it was not conducive for SME working and the possibility of damages to SMEs would be more. Hence Pre stripping in the hard band area was done by Outsourcing.

❖ Mines are moving in different direction at about 1KM/Annum. Mines conveyors, Bucket Wheel Excavators for OB & Lignite, Spreaders for OB & Lignite have to be moved continually to meet the mining requirement. Total length of conveyors in Neyveli Mines is about 126 KM

❖ Change of direction may be there due to hard strata, non-availability of land, Issue related to displacement, law and order etc which in turn increases the O&M expenses.

❖ A huge reservoir of ground water occurs below the entire lignite bed, exerting an upward pressure of 6 to 8 kg/cm2. Unless this water pressure is reduced before mining, it will burst the lignite seam and flood the Mines.

❖ This problem was overcome by continuously pumping out water round the clock through bore wells located at predetermined points and thereby reducing the water pressure at the lignite excavation area.

❖ The quantity of water pumped out is about 32,000 GPM. It means for mining one tonne of lignite, about 13 tonnes of water has to be pumped out

❖ **Hard overburden strata :**

The highly consolidated overburden stratum consists mainly of Cuddalore sandstone and is hard and abrasive in nature. This requires frequent change of bucket wheel teeth and systematic drilling and blasting programme.

❖ **Cyclonic area :**

The Mine is located in a predominantly monsonic and cyclonic area. The average rainfall in a year comes to about 1200 mm and the wind velocity goes upto 160 KM per hour. This requires evacuation of rain water from the mines as well as restriction in mining operation during high velocity wind flow.

❖ **Pooled Price of Neyveli Mines :**

In Neyveli, Mine-I was linked to TPS-I and other mines cost was pooled together to derived pooled cost for all thermal stations. After retirement of TS-I, all the mines cost to be considered for determining pooled price of Neyveli Mines which need to be considered for deciding transfer price of lignite. After closure of TPS-I and commissioning of NNTPP one to one lignite supply is not practically possible. Further the balance life of Mine-I is not commensurate to the life of any thermal plant, and being TS-II Expansion is operating at a lower capacity since last few years the mining capacity can't be kept under-utilisation in one mine and over utilization in other and a balancing scenario need to be developed to have efficiency as well as economics of scale in all the mines. Hence the concept of pooled price should be permitted to continue in all Neyveli Mines.

❖ **Revenue from Sale of Lignite(Mine-IA):**

In Neyveli, Mine-IA was developed to cater long term lignite requirement of M/s TAQA as well as for open sale in the market. Long term Fuel Supply Agreement has been entered with M/S TAQA. The concept of pooling of price for Mine-IA was also acknowledged by Ministry of Coal and accorded its approval to this. The said principle was also followed in previous tariff regime and recognised by the Commission. Hence, lignite sale from Mine-IA to be continued to M/s TAQA and Open Sale with pooled price concept and need not to be considered as non-tariff income under clause 36 (P).

❖ **Revenue from Sale of Lignite (Other Mines):**

In case of Neyveli Mines (Other than Mine-IA), any sale of lignite in the open market should not be considered as non-tariff income under clause 36 (P) rather the profit earned out of the same (within the normative capacity of 85% as proposed) can be shared with beneficiaries like sharing of profit on sale of URS power.

❖ **Cost of Land and R&R:**

In case of Lignite Mines, land is acquired under the Land Acquisition Act i.e., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, whereas land for coal mines are acquired under Coal Bearing Areas (Acquisition and Development) Act, 1957. In case of lignite mines the land is acquired in phased manner depending upon the requirement, to avoid huge displacement, law and order issue, loss of livelihood from agriculture activity etc. In the process the cost of land and Rehabilitation benefit and demand for employment increases many fold. To address the same huge expenditure is required towards the cost of land and R&R over the life of the mine which is continuous in nature. Further, to address social issues offer of employment is also considered in many instances. All these has a huge bearing on the Operation and Maintenance Expenses of the company. All these direct and indirect expenses need to be considered either for amortisation or otherwise as and when incurred.

❖ **Replacement of Equipment:**

The life of equipment used in mines are not aligned to the life of the mine itself. During the life of mine various equipment need to be replaced due to age, technology obsolescence. Further, new equipment's are required for maintaining safety and security apart from change in law and force majeure conditions. All these capital additions to be considered as add cap based on prudence check.

❖ **Expenses towards Water Management, Security:**

Being lignite Mining at costal area having high Ground Water Aquifer below lignite Bed, NLCIL is incurring huge expenditure for management of ground water, similarly huge expenditure is incurred towards safety and security of mines. The same need to be kept separate from O&M and to be considered for reimbursement based on actual like the provisions for Thermal Plants.

❖ **High level of Consumption of Stores and Spares:**

As mining equipment's are earth moving equipment's with high degree of mobility the wear and tear is very high compared to equipment's used in thermal power plants. Further due to hard strata and high OB ratio the life of the Specialized Mining Equipment's are shorter and need to be replaced frequently. The cost of spares for the specialized mining equipment's are also very high compared to conventional mining equipment's.

c) Furthermore, the input price computation provided in the draft regulations is primarily based on MDO model, in the context that the cost determinants are based on Capital Cost, whereas as mentioned in point (a) the reckoning capital cost for NLCIL mines linked to power plants would be based on NFA method, which is very meagre, depriving reasonable input price.

d) NLCIL's mining operation was based on labour intensive approach to cater the requirement of unemployment arises on displacement of substantial number of families due to land acquisition. Being a social responsible public sector, the prime focus was to address social distress and creating a conducive working environment for its operation. The same philosophy was also followed by most of the PSU operating in the Mining segment. In the MDO mode of operation, the

V

focus is towards capital intensive having lesser employment potential. The O & M expenses computation, based on capital cost does not reflect the reasonable expenditure of Mining business, the starkness being the Mining activity is O & M expenses and labour intensive.

e) Unlike total MDO operation which is considered in draft regulations, NLCIL's mining is being carried out by in-house/ contractual employees and only small portion of OB removal is carried out through outsourced mode. Total employees engaged in NLCIL mining is about 6000 Permanent and similar number of contractual workmen.

f) A comparative table depicting the differences between the mining activities of Coal vis a vis Lignite is submitted here below.

Comparative Analysis Between Coal and Lignite		
Parameters	**Coal (Coal India)**	**Lignite (NLCIL)**
• Stripping Ratio	1: 1 to 2	1: 5 to 7
• Production (Ton) per Manpower	0.02 (6021 LT / 277800 No's)	0.04 (250 LT/ 6000 No's)
• Ground Water Management	Negligible	About Rs.200 crore/PA
• OB Removal (Contractual Expenses)	Rs.222/Ton 1337799 Lakh/ 6021 LT	Rs.130/Ton 32544 Lakh/ 250 LT
• Crushing Charges	Crushing is carried out separately	Crushing is carried out in the process of mining
• Land Acquisition	Land is acquired under Coal Bearing Area Act- Consent of Land owners not required	Land is acquired under Land Acquisition Act where consent of land owners are necessary
• Moisture Content	Moisture content in Coal is between 10%- 30 %	Moisture Content of Lignite is between 50% - 70% which has a bearing in quantity of production / Transportation / consumption
• Market Avenue for Open Sale	Demand is more than the Supply and any upward Price Movement can be absorbed by the market	Alternative source of fuel is available and Price to be decided considering landed cost of alternative fuel for the buyer

g) The Lignite Mining of NLCIL at Neyveli was developed with the concept of in-house mining like that of Coal India and few other companies. The aim was to address the social issues of unemployment, huge displacement etc apart from mining. The capital investment was also planned accordingly considering the said philosophy of in-hose mining using internal manpower (direct and contractual). The said philosophy was also adopted by Ministry of Coal (MoC) and recognized by the Commission in the previous Tariff orders. Changing from the said principle to a capital investment approach, presently used through engaging MDO will jeopardize the mining activity and will completely become un-viable. In the present scenario if actual O&M expenses (with 2019-20 figures) is compared with O&M expenses proposed in the draft regulation, the estimated under recovery of O&M expenses will be more than Rs.3000 Crore. Thus the proposed amendment if notified would seriously jeopardize the economics and business interests of NLCIL and would render the operations of the mine totally unsustainable.

2.2 Specific Comments on the Draft Second Amendment:

A. *Regulation 1(Short Title and Commencement)*

(2) These regulations shall come into force from 1st April, 2019 except amendment to Regulation 6 and Regulation 59 of the Principal Regulations.

(3) The amendment to Regulation 6 and Regulation 59 shall be effective from the date of notification of these Regulations in official gazette.

NLCIL Comments

- NLCIL has issued lignite transfer price guidelines and raised bills based on the said guidelines and consequently accounted in 2019-20 and afterwards. Any major variation will have consequential impact on the previous period financials. It is submitted for consideration that regulation for input price should be effective from the date of gazette notification (i.e., Prospectively) to avoid any major variation in the accounting of the past period.

B. Mining Plan,

- Wherever it appears, the words "Mining Plan" may be substituted with words "including Revised Mining Plan" or "mining plan as revised and approved from time to time".

- In so far as the mining plan is dynamic and it is difficult to get the revised mining plan approved so frequently say year on year basis and hence approval authority may include "Board of Company for the interregnum period till the Revised Mining plan is approved by the Competent authority".

C. **COD (*Regulation 3(4a)*:**

"(4a) 'Annual Target Quantity' or 'ATQ' in respect of an integrated mine means the quantity of coal or lignite to be extracted during a year from such integrated mine as specified in the Mining Plan;"

NLCIL Comments

It is submitted for consideration that the ATQ shall be deemed to have been achieved, if the requirements of the linked power plant have been accomplished. Suitable mechanism/ algorithm may be devised and incorporated for reckoning the correlative quantity due to power surrender by beneficiaries for the purpose of ATQ computation. Further, revenue from sale of lignite in open market should not be considered as reduction from cost, rather the same need to be incentivized keeping into account the limited available market for sale of lignite.

D. **Regulation 3(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;"

NLCIL Comments

Mining Plan does not indicate the date of touching coal/ Lignite; May be revisited for defining the Date of Commencement of Production actual date of touching the coal/lignite.

E. **Regulation 3(43a):**

Mine Infrastructure

NLCIL Comments

It is submitted for consideration that all approach roads of the Mines may be included as part of Mine Infrastructure.

F. **<u>Regulation 5(3):</u>**

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

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

<u>NLCIL Comments</u>

It is submitted for consideration that "Peak rated Capacity" may be substituted with "Normative Capacity". NLCIL's mines was developed considering the maximum utilization by any thermal power plants. However, on an average Thermal plants also operated in and around 85% of its capacity so as the mines. The average capacity utilization of mines moves around 85%. The said logic was also considered by MoC during issue of Lignite Transfer Price guidelines and also recognized by the Commission while approving the Tariff. Hence, it is requested to consider 85% of the mine capacity as normative utilization capacity for recovery of Fixed Charges of Mines.

G. **<u>Regulation 7A:</u>**

"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:-

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>NLCIL Comments</u>

It is submitted for consideration that "Whichever is lower" may be substituted with "whichever is higher".

H. **<u>Approval for Additional Capitalization (*Regulation11(2)*)</u>**

"(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;"

NLCIL Comments

It is requested that in principle approval requirement may be reconsidered, keeping in view that such additional capital expenditure is on account of statutory compliance or force majeure conditions. The life of equipment used in mines are not aligned to the life of the mine itself. During the life of mine various equipment need to be replaced due to age, technology obsolescence. Further new equipment's are required for maintaining safety and security apart from change in law and force majeure conditions. Apart from the list mentioned in Para 36 E all these capital additions mentioned above need to be considered as add cap based on prudence check.

l. **Truing up (*Regulation13*)**

"(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:

the capital expenditure including additional capital expenditure incurred up to 31.3.2024, as allowed by the Commission;

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."

NLCIL Comments

It is submitted that the truing up exercise scope may be made applicable for a) Additional capitalization, b) OB removal expenses, as was available in MoC guidelines dt.02.01.2015. Further the scope of such additional capital expenditure should include those necessitated for reasons other than force majeure and change in law so long the cause for incurring such additional capital expenditure is not on account of failure or imprudence or otherwise a factor attributable to NLCIL or any negligence on the part of its contractors or sub-contractors. In the course of mining there will be number of uncertainties and surprises and the capital and other expenditure necessarily incurred should not be excluded from truing up.

J. **"36A. Input Price of coal or Lignite:**

(1) Input price of coal or lignite from integrated mine shall be computed based on the following components:

Run of Mine (ROM) Cost; and Additional charges:

NLCIL Comments

It is submitted for consideration that additional charges shall include charges which are unique for lignite opencast mining on actuals. In view of the peculiar characters of Mines in Neyveli, on account of high O&M cost of SME Equipment's, Conveyor systems and repairs where OEMs are involved, additional charges need to allowed at actual. As mentioned herein above the mining operation cannot be considered in a strait jacket projection of capital and revenue expenditure on in a normative basis and the Hon'ble Commission should consider expenditure on actual so long there is no imprudence, negligence, failure, default on the part of NLCIL.

K. **36B. Run of Mine (ROM) Cost:**

(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)]

NLCIL Comments

❖ Further, in the draft guideline, Overburden removal expenses has not been considered separately and only OB adjustment has been indicated in clause 36 N.

It is submitted that the OB removal outsourced expenses may be included as 36B(iii), as it was allowed in MoC guidelines dt.02.01.2015, as separate line item, taking cognizance of cost efficient mode of mining operation. The extent of OB removal outsourcing is dynamic and will depend on the circumstances prevalent and encountered at the time of mining. There has to be a flexibility of outsourcing the services instead of undertaking the same in house if it is considered expedient at the relevant time. These cannot be decided upfront. Accordingly, the MOC guidelines recognizes the OB removal cost to be allowed on actual basis. the only way the same should be regulated is to consider whether there is any imprudence on the part of NLCIL

36B. Run of Mine (ROM) Cost:

(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.

NLCIL Comments

It is submitted that it would be difficult to obtain revised mining plan approved every year from Coal Controller. Instead of Every Year, once in Five years may be substituted. The words "Board of Company for the interregnum period till the Revised Mining plan is approved by the competent authority" may be incorporated for billing facilitation during the interregnum period.

L. **36C. Additional Charges:**

36(C)(1): Additional Charges: By Generating Company without engaging MDO: Worked out based Depreciation, IOWC, IOL, ROE, O & M of Capital cost and statutory charges; Qty to be certified by auditor

36(C)(2): Additional Charges : if within the scope of MDO, no additional charges ; shall be recovered through the mining charges of the MDO

36(C)(3): Additional Charges : By Generating Company by engaging agency other than MDO: additional charges shall be worked out based on the annual charges of such agencies, if it discovered through competitive Bidding process.

NLCIL Comments

Additional charges, that are incurred due to specialized and unique activities pertaining to opencast lignite mining carried out by the generating company without engaging MDO may be considered for inclusion at actuals. The cost pattern of Coal India for similar mining considering stripping ratio, water management expenses etc can be taken into account while fixing the Tariff.

M. ***36(D) (4) Capital cost shall be determined considering Mine Plan, DPR, Mine closure plan, Cost Audit report***

NLCIL Comments

Capital cost incurred for the mine project may be considered on actual basis.

N. ***36D(5); If COD mine prior to 01.04.19, Capital cost allowed by Commission as on 31.03.19 shall form basis for computation of input price***

NLCIL Comments

It is submitted that the Hon'ble Commission has not provided for the approval of the capital cost of the mines categorically, while approving Lignite Transfer price during the previous control period for adoption and hence may be revisited.

O. ***36(E)(3) Additional Capital Expenditure not considered:***

- ***Expenditure not capitalised as not put in use***
- ***Mine closure expenses***
- ***Expenditure not covered under Mining Plan except 2(1)(e)/(g)***
- ***Obsolescence asset de-capitalised***

- **NLCIL Comments**

Many activities are arising out while implementing Mining Plan which may not be part of Mining Plan, which will become difficult to capitalize. As mentioned above, the mining activities cannot be planned in an absolute and precise manner in advance. There will be surprises and uncertainties during the actual mining activities. These need to be factored.

P. ***36F: Annual Extraction Cost***

- ***Depreciation***
- ***IOWC***
- ***IOL***

- ***ROE***
- ***O & M Expenses***
- ***Mine Closure expenses if not included under mining charge***
- ***Statutory charges***

- **NLCIL Comments**
  - It is submitted that provision similar to that of 35(1)(6) of Tariff regulations, which provide for admission of the water charges, security expenses and Capital spares separately for power tariff may kindly be incorporated under O & M expenses for input price also.
  - It is submitted that provision similar to that of 68(4) of Tariff regulations, which provide for admission of FERV for power tariff may be included as separate item or suitable amendment may be incorporated in 68(4) of Tariff regulations for mining activity also.

Q. 36G(3) Capital structure, ROE, IOL

ROE at the base rate of 14%

- **NLCIL Comments**
  - Mining business is mired by various multifarious vagaries and risks associated with the implementation and operation. Unless, this industry is suitably rewarded, Mining business could not be able to sustain.
  - Hence, it is submitted that provision similar to that of 30(2) of Tariff regulations, which provide for 15.5% of ROE may be considered, which would be a reasonable return in line with the power generation activity. Further, mining industry associated with high risk and the time period of development is substantially high. Hence, any investor expected comparatively good return for investment. Considering these factors, the proposal need to be reviewed.

R. 36G(4) Capital structure, ROE, IOL

ROE to be grossed up with effective Tax rate as in 31

- **NLCIL Comments**

It is submitted for consideration that as per MoC guidelines dt. 02.01.2015, ROE need to be grossed up with corporate tax rate, which would facilitate reasonable return

S. ***36H Depreciation***

On SLM

- ***Value Base as capital cost admitted by the Commission***

Proviso

- ***Freehold land / assets purchased from Grant to be excluded***
- ***If Freehold land / assets allotment is conditional, cost considered subject to prudence check***
- ***Lease hold land to be amortized over lease period or remnant life whichever is lower***
- ***Salvage val 5% of capital cost***

Proviso

- ***Zero for IT, software, as agreed with State Govt; as specified by MCA for SME***
- ***On depreciation rates/expected useful life period as in Appendix***

Proviso

- ***SME on useful life and rate as per MCA***

- **NLCIL Comments**

T. No Comments***36I O & M Expenses:***

- ***2% of average admitted capital expenditure; escalated at 3.5% p.a of the average capital expenditure at the end of each year as admitted by the Commission towards mining, crushing, transportation, handling, washing subject to truing up***

Proviso

- ***IF mining, crushing, transportation, handling, washing by Generating Company by engaging MDO or other than MDO, such capex not to be included***

(2) if MDO operation by engaging MDO, mining Charge shall not be included in O & M expenses

(3) Where Generating Company has engaged agencies other than MDO, annual charges of such agencies shall be considered subject to prudence check by the Commission provided such annual

charges have been discovered through competitive transparent bidding process.

- **<u>NLCIL Comments</u>**
  - It is submitted that the methodology of fixation of O & M expenses as a percentage of capital cost does not appear to be reasonable and it would not reflect the reasonable incurrence of O & M expenses w.r.t mining activity. As mentioned herein above there are uncertainties, surprises, risk and vagaries to be faced during actual mining.
  - Mining business is O & M (labour) intensive as compared to other regulated industry like power generation.
  - NLCIL's mining operation has been based on labour intensive approach to cater the requirement of unemployment arises on displacement of substantial number of families due to land acquisition. Being a social responsible public sector, the prime focus was to address social distress and creating a conducive working environment for its operation. The same philosophy was also followed by most of the PSU operating in the Mining segment.
  - The economies of scale of operation of NLCIL Mines is furthermore jeopardized, since our old mines are to be reckoned with NFA method in accordance with amendment proposed for regulation 71, whose NFA values are very meager.
  - As per the draft regulation, all MDO expenses are part of the mining charges which covers all the expensed incurred by the MDO reasonably for the entire mining activity without any norms or limitation, whereas mining through in-house resources is being subjected to stringent norms as per the proposed regulation which is not realistic and is grossly inadequate to cover the actual cost which are incurred based on historical trend and which have also been within the transfer price guidelines of the MoC and also recognized by the commission. The cost of in-house mining can be considered based on the actual historical mining cost of the lignite mines and suitably considered in the regulation.

- Since equipment in mines are ageing, increased maintenance and replacement of equipment spares are required which leads to increase in the operation cost. Further, wage revision has been recently implemented for executive and non-executive, which has increased the employee cost. Adverse stripping ratio also leads to increase in O&M expenses.
- NLCIL Mines are Labour Intensive and manpower oriented, wherein most of Project Affected Persons already employed as Contract labours in Mines where NLCIL has to incur expenditure in all respects irrespective of actual level of production. The same need to be considered while fixing the O&M ceiling.
- NLCIL has been following Ministry of Coal guidelines for fixation of Lignite Transfer Price. Ministry of Coal has given 11.50% escalation in its Guidelines for the period 2009-14 & 2014-19. Hon'ble commission in its tariff order has approved the same escalation.
- Linking of O&M expenses with Capital Investment will not be rational or proper, as capital cost does not have direct relation in operation of mining. Operation in mining sector is completely different from power sector as mining is more of labor intensive and power sector is more of capital intensive
- O&M expenses may be allowed with escalation of 11.50% over actual O&M expenses of previous year.
- In present Merit Order Dispatch System, beneficiaries are scheduling the power on firm commitment basis and would not prefer to take additional commitment on-account of truing of O&M. Hence, provision for truing up of O&M expenses may not be incorporated in line with Thermal Regulation
- NLCIL is operating lignite mines through in-house manpower. Out of the total Mining expenses, about 40% is towards manpower expenses and about 20% used for removal of overburden through outsourcing mode.

- Hon'ble Commission in the previous years had also approved mining costs of lignite mines, which can be considered as reference point to start with.
- Annual charges of such agency(ies) may be considered as part of mining charges and shall be included under the definition of mining charges under regulation 36B (2)(ii).
- The Hon'ble Commission in Explanatory Memorandum under 2.22.1 has stated that the Operation and & Maintenance expenses are proposed to be considered based on actual expenses.
- Hence, it is submitted that the norms stipulated as in MoC Guidelines dt.02.01.2015 may be considered for adoption (i.e.,O & M expenses actual with 11.5% escalation will be base for 2019-20 and escalated for further years at 11.5% year on year);
- It is submitted that similar provision of 35(1)(6) of Tariff regulations, which provide for admission of the water charges, security expenses and Capital spares may be allowed to recover separately.

U. 36J IOWC: Interest on Working Capital

Integrated mine of coal

- ***Input cost of coal stock for 7 days of production corresponding to ATQ of the relevant year***
- ***Stores and spares at 15% of O & M expenses including explosives, lubricants and fuel excluding mining charge of MDO/annual charge of other agency.***
- ***O & M Expenses for one month excluding mining charge of MDO/annual charge of other agency.***

Integrated mine of lignite

- ***Input cost of coal stock for 7 days of production corresponding to ATQ of the relevant year***
- ***Stores and spares at 20% of O & M expenses including explosives, lubricants and fuel excluding mining charge of MDO/annual charge of other agency.***
- ***O & M Expenses for one month excluding mining charge of MDO/annual charge of other agency.***
- ***The rate and payment as in 34(3) & (4)***

- **NLCIL Comments**

- ❖ The quantum of working capital proposed in the draft regulation does not reflect actual scenario and does not cover reasonable level of working capital needs required for mining activity. .
- ❖ It is submitted that the norms as per MoC guidelinesdt.02.01.2015, IOWC (One month's O & M expenses, 12 month's spares, 20 days Lignite stock cost) may kindly be considered for incorporation

V. 36N: Adjustment on account of shortfall of OB removal

(1) Generating company shall remove OB as per Mining Plan
(2) In case of shortfall, to be adjusted against the excess during the subsequent three years
(3) In case of excess, to be adjusted against the shortfall during the subsequent three years
(4) If shortfall not made good as in (2), adjustment shall be worked out as under.

OB Adjustment = [Factor of adj for shortfall of OB removal during the year] x [Mining charge during the year + O & M expenses during the year]

- ***Factor of adj = [(Actual quantity of coal/lignite extracted during the year) – (Actual Qty OB removed during the year/ Annual stripping ration as per Mine Plan]/ATQ***
- ***Annual SR is the volume of OB to be removed for one unit of coal/lignite as specified in the mining plan***
- ***Mining charge per tonne of coal/lignite paid by the generating company to MDO***

Mining charge and O & M expenses in terms of Rs./Ton corresponding to ATQ

NLCIL Comments

NLCIL is acquiring land as per the provisions of Land Acquisition Act 2013. Acquisition of land depends on consent of land owners. The land proposed to be acquired as per mining plan may not actually have materialized because of various factors including consent of land owners, compensation, displacement, R&R, law and order and associate factors.

- Hence, the actual mining is different from the mining plan initially prepared and approved. The stripping ratio expected as per mining plan will not be the same in reality if proposed lands are not acquired. Due to this, changing mining plan frequently will not be practical.
- Instead of making adjustment for overburden, expenses of overburden may be allowed in the year when it is incurred.
- Further, in the draft guideline, Overburden removal expenses has not been considered separately and only OB adjustment has been indicated in clause 36 N. OB removal expenses may be permitted separately subject to truing up based on actual.

Director (Finance)
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