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Date: 15.07.2020

To

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

Sub.: Comments on Draft CERC Terms and Conditions of Tariff (Second Amendment) Regulations, 2020.

Dear Sir

With reference to the comments invited by the Hon'ble Commission on the above mentioned Draft Regulations, we hereby submit our comments on the same with a request to kindly take the same on record. We also request the Hon'ble Commission to provide us an opportunity to be heard at the time of Public Hearing in the matter.

Thanking You,

Yours Sincerely,

For **Adani Power (Mundra) Limited**



Authorized Signatory

Encl.: As mentioned above

Comments on Draft CERC (Terms & Conditions of Tariff) (Second Amendment) Regulations, 2020

Sr. No	Regulation No.	Existing Regulations (CERC Regulations, 2019-24)	Draft CERC (Terms & Conditions of Tariff) (Second Amendment) Regulations, 2020	Comment
1.	<p align="center">6.</p> <p>Treatment of mismatch in date of commercial operation</p>	<p>(1) In case of mismatch of the date of commercial operation of the generating station and the transmission system, the liability for the transmission charges shall be determined as under:</p> <p>(a) Where the generating station has not achieved the commercial operation as on the date of commercial operation of the associated transmission system (which is not before the SCOD of the generating station) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of the Regulation 5 of these regulations, the generating company shall be liable to pay the transmission charges of the associated transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the generating station or unit thereof achieves commercial operation:</p> <p>(b) Where the associated transmission system has not achieved the commercial</p>	<p>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.</p>	<p>It may be noted that the obligations of the transmission licensee (TL) are clearly defined in the Transmission service agreement (TSA) and once the TL has completed its obligations, as per TSA, then the TL has full right to claim the tariff defined under the TSA. Please appreciate the fact that if the tariff can be stopped or delayed for reason not attributable to TL, it will increase the risk associated with the project tremendously and no financial institute will be willing to finance such project with unclear sight of revenue generation.</p> <p>The responsibilities and liabilities of Transmission Licensee (TL) and the Generation Developers are defined in the TSA and PPA respectively. Therefore, in case of any delay, the TL or the Generation Developer should be held liable as per the provisions of TSA/PPA and accordingly LD should be imposed as per the provisions of these agreements. The TL or the Generation Developer cannot be</p>

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		<p>operation as on the date of commercial operation of the concerned generating station or unit thereof (which is not before the SCOD of the transmission system), the transmission licensee shall make alternate arrangement for the evacuation from the generating station at its own cost, failing which, the transmission licensee shall be liable to pay the transmission charges to the generating company as determined by the Commission, in accordance with clause (5) of Regulation 14 of these regulations, till the transmission system achieves the commercial operation.</p> <p>(2) In case of mismatch of the date of commercial operation of the transmission system and the transmission system of other transmission licensee, the liability for the transmission charges shall be determined as under:</p> <p>(a) Where an interconnected transmission system of other transmission licensee has not achieved the commercial operation as on the date of commercial operation of the transmission</p>		<p>held liable beyond what is specified and agreed in the TSA/PPA; otherwise this would tantamount to unlimited liability and it will become impossible to get these projects financed.</p> <p>It may also be appreciated that there may be a substantial difference between the Capex of TL & Generation Developer and one cannot compensate the other by any stretch of imagination.</p> <p>It was the decision of the beneficiaries through the planning agencies, to have separate contracts with Generation Developer and TL. Therefore, the benefits of such structuring of contracts accrue to the beneficiaries in the form of lower tariff. Therefore, in case of delay in CoD of any of the assets, the tariff for other assets should be borne by the beneficiaries, through the pool account.</p> <p>The obligations of all the parties are well defined in TSAs and all commercial decisions should be in line with the provisions of TSA. Moreover, one party cannot be made</p>

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		<p>system (which is not before the SCOD of the interconnected transmission system) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of these regulations, the other transmission licensee shall be liable to pay the transmission charges of the transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the interconnected transmission system achieves commercial operation:</p> <p>(b) Where the transmission system has not achieved the commercial operation as on the date of commercial operation of the interconnected transmission system of other transmission licensee (which is not before the SCOD of the transmission system), the transmission licensee shall be liable to pay the transmission charges of such interconnected transmission system to the other transmission licensee or as may be determined by the Commission, in accordance with clause (5) of Regulation 14 of these</p>		<p>to suffer on account of inefficiency of other party, on whose action the first party does not have. any control. In the past, there have been decisions wherein the defaulting parties have been asked to make payments beyond the provisions of TSAs, which is against the set doctrines of legal process.</p> <p>Proposed regulation also suggests that the concerned TL shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the TL. Practically, it would be very difficult for TL to make alternate arrangement for dispatch of power. Also, we would need to appreciate the fact that CTU is also one of the largest commercial player and is obviously conflicted.</p> <p>Overall, this will lead to increasing the risk associated with transmission projects tremendously, with the result that the financial institutions will either refrain from financing such project or will charge very high interest rates. Both of</p>

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		regulations, till the transmission system achieves the commercial operation.		<p>which are against the interest of sector as it will derail the entire process of developing transmission projects through TBCB process, which is against the spirit of the Electricity Act, 2003, which aims to promote competition in the sector.</p> <p>In view of above, we request Hon'ble Commission to please remove Regulation 6 from the existing regulation and accordingly, amend the CERC (Sharing of inter-state Transmission Charges and Losses) Regulation, 2020.</p>
2.	11. In-principle approval in specific circumstances	-	<p>A new clause, namely Clause (2) shall be added after Clause (1) of Regulation 11 of the Principal Regulations as under:-</p> <p>“(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</p>	<p>It is submitted that the presently proposed limit of expenditure towards additional capitalization at which Petition is required to be filed is substantially higher and should be reduced downward to one month's value of coal production i.e. 2% of admitted capital cost or Rs. 10 Crore, whichever is lower. Accordingly, the Clause may be modified as follows:</p> <p>“(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</p>

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			expenditure exceeds 10% of the admitted capital cost of the integrated mines or Rs.100 crore , whichever is lower;"	petition for in-principle approval for incurring such expenditure, along with underlying assumptions, estimates and justification for such expenditure, if the estimated expenditure exceeds 2% of the admitted capital cost of the integrated mines or Rs.10 crore , whichever is lower;"
3.	36C (1) – Additional Charges	-	<p>Additional Charges</p> <p>(1) Where crushing, transportation, handling or washing are undertaken by the generating company without engaging Mine Developer and Operator, additional charges shall be worked out as under:-</p> <p>(i) Crushing Charges = Annual Crushing Cost/Quantity;</p> <p>(ii) Transportation Charges= Annual Transportation Cost/Quantity: ...</p> <p>(iii) Handling charges = Annual Handling Cost/Quantity; and</p> <p>(iv) Washing Charges = Annual Washing Cost/Quantity.</p> <p>Where,</p> <p>(a) Annual Crushing Cost, Annual Transportation Cost, Annual Handling Cost and Annual Washing Cost shall be worked out on the basis of following components, for which</p>	<p>Additional Charges are used to compute the Input Price of coal.</p> <p>However, the given clause mentions that the Additional Charges shall be worked out based on the components related to the capital cost such as depreciation, interest on working capital and loan, etc.</p> <p>We understand that the Additional Charges shall be based on the actual costs incurred whereas the capital part of such Additional Charges shall be based on the capital costs for such Additional Charges.</p>

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			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	
4.	36 (C) 2 - Additional Charges	-	Additional Charges (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.	Many a times under MDO contracts, crushing, transportation, handling or washing activities are not wholly covered under a single Mining Charge, but are covered under respective heads for such activities. In such case, we understand the mentioned Additional Charges shall be admitted as they are not part of the Mining Charge of the MDO for the purpose of this Regulation.
5.	36 (C) 3 - Additional Charges	-	Additional Charges (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	Even if all activities of crushing, transportation handling and washing of coal may be required, they may not be covered under a single MDO contract. Mine Owners also assign separate contract for washing of coal through competitive bidding process.

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			transparent competitive bidding process.	<p>The separate agency which wins tender for washing of coal may even be the MDO itself.</p> <p>In such case, we understand the mentioned Additional Charges shall be admitted for the purpose of this Regulation.</p>
6.	36C (4) - Additional Charges	-	<p>Additional Charges</p> <p>(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.</p>	If the award of works for Additional Charges are undertaken through competitive bidding process, the actual charges paid shall be considered.
7.	36 E - Additional Capital Expenditure	-	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.	Additional Capitalization pertaining to replacement of existing asset is undertaken by Generators for the integrated mine for efficient and sustainable operations of plant. But the de-capitalization of value of existing asset as provided in the proposed draft Regulations disincentivizes the Generators to invest in efficient operation of the integrated mine, as de-capitalization of existing asset from the value of

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				<p>new asset leads to under-recovery of capacity charges, viz., Interest on loan, Depreciation (provided for repayment of loan), return on equity, etc.</p> <p>Hence, it is proposed that clause related to de-capitalization of asset may be modified to consider de-capitalization only to the extent of the scrap value of any asset.</p>
8.	36F – Annual Extraction Cost	-	<p>Annual Extraction Cost:</p> <p>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.</p>	<p>It needs to be clarified as to whether the Annual Extraction Cost is limited to the costs incurred by the Mine Owner / Generating Company and not including costs incurred by MDO, if development and operation of the mine is done through MDO.</p>
9.	36 I – O&M Expenses	-	<p>O&M Expenses</p> <p>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</p>	<ul style="list-style-type: none"> It is submitted that operation of a generating station and that of a coal / lignite mine are substantially different and O&M expenses associated with mining operations are significantly higher. Therefore, O&M expenses at 2% of capital cost is

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			<p>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>....</p> <p>(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.</p>	<p>substantially lower than the actual O&M cost that would be incurred by the Mine Owner / Generator. Moreover, the Explanatory Memorandum does not provide any rationale for considering the O&M expense as 2% of capital cost for integrated mines.</p> <ul style="list-style-type: none"> • Therefore, it is submitted that the O&M expenses for the integrated mine shall be 5% of the capital cost. • Further, it needs to be clarified that the annual charges payable to agencies other than MDO shall be allowed as additional O&M expenses over and above the O&M expenses allowed in Clause 36 I (1).
10.	36J - Interest on Working Capital	-	<p>Interest on Working Capital:</p> <p>(1) The working capital of the integrated mines of coal shall cover:</p> <p>(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</p>	<p>The generating company has to make timely payments for the Mining Charge to the MDO. Hence, the Mining Charge of MDO shall also be admitted for computing the interest on working capital.</p>

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			<p>expenses, <u>excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer and Operator</u>, engaged by the generating company; and (iii) Operation and maintenance expenses for one month, <u>excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer and Operator</u>, engaged by the generating company.</p>	
11.	59. Late Payment Surcharge	-	<p>A new Clause shall be added after Clause (1) of Regulation 59 of the Principal Regulations as under:-</p> <p>“(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.”</p>	<p>The proposed modification to the Late Payment Surcharge is a welcome step and it will lead to avoiding unnecessary litigation between buyers and sellers.</p>