एनएलसी इंडिया लिमिटेड
(भारत सरकार का 'नवरत्न' उद्यम)
135, ई.वी.आर.पेरियार हाई रोड,
कीलपॉक, चेन्नई- 600 010.

CREATING WEALTH FOR WELLBEING

NLC INDIA LIMITED
('NAVRATNA' Govt. of India Enterprise)
135, EVR Periyar High Road,
Kilpauk, Chennai-600 010.

वाणिज्य विभाग / COMMERCIAL DEPARTMENT

सी.आई.एन / CIN : L93090TN1956GOI003507 जी.एस.टी.एन / GST No : 33AAACN1121C1ZG पी.ए.एन / PAN : AAACN1121C
दूरभाष / Phone : 044-28369112 फैक्स / Fax : 044-28360057 वेबसाइट / Website : www.nlcindia.com
ई–मेल / E-mail : ed.commercial@nlcindia.in, commercial@nlcindia.in

Lr. No: NLCIL/ GM/ Comml./F-1149/029/2024-25 **Date: 06.09.2024**

To

The Secretary,
Central Electricity Regulatory Commission,
7th Floor, Tower B,
World Trade Centre,
Nauroji Nagar, New Delhi- 110029,

Sir,

Sub: NLCIL– Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2024 – Comments from NLCIL- Reg.

Ref: CERC Public notice: File No. **No. L-1 /268/2022/CERC** Dated: 02.08.2024

***

Pursuant to the public notice cited in the reference, Hon'ble Commission has invited comments/suggestions from the stakeholders on the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2024, NLCIL is hereby submitting its comments for kind perusal and consideration, as enclosed.

The above may please be taken on record.

Yours Sincerely,

For NLC India Limited,

General Manager/ Commercial

General Manager / Commercial
NLC INDIA LIMITED
('NAVRATNA' Govt. of India Enterprise)
No.135, EVR Periyar High Road,
Kilpauk, Chennai - 600 010.

Encl: as above

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

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INDIA NON JUDICIAL

தமிழ்நாடு तमिलनाडु TAMILNADU

EF 343500

5/09/2024 NLC India Ltd

Ph: 8056107370. 9840511775
V. RAJENDRAN, B.A.
L.No.44/B3/97
No.54/420, PANTHEON ROAD
EGMORE, CHENNAI-600 008

BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

IN THE MATTER OF:

Furnishing comments on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2024.

AND IN THE MATTER OF:

NLC India Limited,
135, EVR Periyar High Road,
Kilpauk, Chennai – 600 010
Tamil Nadu, India. .... **PETITIONER**

NOTARY
P. JAYARAMAN
CITY OF CHENNAI
G.O.M/S. No. 103/2023
GOVT. OF TAMIL NADU, INDIA

Affidavit verifying the Petition:

I, Vasughi. P, W/o Shri N. Murali Babu, aged about 59 years, resident of Flat no-2B, Block-5, 175 Kences Brindavan, EVR Lane, P.H. Road, Kilpauk, Chennai-600010 do hereby solemnly affirm and say as follows:

- I am the General Manager /Commercial of NLC India Limited (NLCIL), the Petitioner in the above matter and I am duly authorized by the said Petitioner to make this affidavit.
- The Hon'ble Commission has published Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2024 for the period from 01.04.2024 to 31.03.2029, and has invited comments/suggestions from stakeholders on the same.
- Accordingly, NLCIL is hereby submitting its comments on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2024, vide this affidavit.

I say that the statements made in the affidavit and format enclosed, containing a total number of pages 12 herein now shown to me are based on information and records of the Petitioner maintained in the ordinary course of business and I believe them to be true.

Solemnly affirm at Chennai on 6th September 2024, that the contents of the above affidavit are true to my knowledge, no part of it is false and no material has been concealed there from.

P. Vasughi
General Manager/ Commercial
NLC India Limited

General Manager / Commercial
NLC INDIA LIMITED
('NAVRATNA' Govt. of India Enterprise)
No.135, EVR Periyar High Road,
Kilpauk, Chennai - 600 010.

Identified before me by

NOTARY * INDIA
P. JAYARAMAN
CITY OF CHENNAI
G.O.M/S. No. 103/2023
GOVT. OF TAMIL NADU

06/09/24
P. JAYARAMAN, B.A., B.L.
ADVOCATE & NOTARY PUBLIC
EGMORE COURT ADVOCATES
ASSOCIATION, CH-600 008.
Cell: 94440 11605

<u>**NLCIL's Comments on Draft 1st amendment of Tariff Regulation 2024**</u>

1. **Regulation 51: Adjustment on account of Shortfall of Overburden Removal (OB Adjustment):**
   (1) The generating company shall remove overburden as specified in the Mining Plan.
   (2) Where the overburden removed in a year is less than the overburden to be removed as per the year wise schedule of extraction given in mine plan, the adjustment on account of the shortfall of overburden removal ("OB Adjustment") for that year shall be worked out as under:
   a) If Mine Developer and Operator is appointed:
   OB Adjustment = ***[Factor of adjustment for shortfall of overburden removal during the year] x [Mining Charge during the year]***
   b) If Mine Developer and Operator is not appointed:
   OB Adjustment = ***[Factor of adjustment for shortfall of overburden removal during the year] x [Operation and Maintenance expenses during the year]***
   Where,
   i) Factor of adjustment for the shortfall of overburden removal during the year shall be computed as under:
   [(Annual Stripping ratio as per mining plan) - (Actual Stripping ratio based on the actual quantity of coal and overburden removed during the year)] / ***(1 + Annual Stripping Ratio as per Mining Plan)***
   ii) Annual Stripping ratio is the ratio of the volume of overburden to be remove for one unit of coal or lignite as specified in the Mining Plan
   iii) Mining Charge is the quoted charge per tonne of coal or lignite paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable, without the OB adjustment as per contract with the Mine Developer and Operator.
   iv) Mining Charge and Operation and Maintenance expenses shall be in terms of Rupees per tonne corresponding to the stripping ratio and annual quantity of coal and overburden as per the mining plan.
   v) Where the generating company has engaged the Mine Developer and Operator for mining and the OB Adjustment is carried out as per the contract with the Mine Developer and Operator, the net OB adjustment as per this regulation shall be computed on the basis of the difference between the OB adjustment as per Regulation 51(4) of this regulation and the OB adjustment as per the contract of the generating company with the Mine Developer and Operator:
   Provided that if the OB adjustment as per the contract with the Mine Developer and Operator exceeds the OB adjustment as per Regulation 51(4), the OB adjustment shall be treated as NIL

   (3) In case of a shortfall or excess of overburden removal during a year, the generating company shall be allowed to adjust such shortfall or excess, as the case may be, if any, during the remaining years of the tariff period till 31.3.2029.

Provided that –

a) *the excess overburden as on 31.3.2029, if any, on account of the reasons not attributable to the generating company, shall be allowed to be carried forward beyond the end of the tariff period at the time of true up of the input price;*
b) *the generating company shall submit the details of the adjustment of overburden at the end of the tariff period for the purpose of truing up*

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

Principle Regulation:

1. *The generating company shall remove overburden as specified in the Mining Plan.*
2. *In case of a shortfall of overburden removal during a year, the generating company shall be allowed to adjust such shortfall against excess of overburden removal, if any, during the subsequent three years.*
3. *In case of excess of overburden removal during a year, the generating company shall be allowed to carry forward such excess for adjustment against the shortfall, if any, during the subsequent three years.*
4. *Where the shortfall of overburden removal of any year is not made good by the generating company in accordance with Clause (2) of this Regulation, the adjustment on account of the shortfall of overburden removal (OB Adjustment) for that year shall be worked out as under:*

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

   Where,

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

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

   ii. *Annual Stripping ratio is the ratio of the volume of overburden to be removed for one unit of coal or lignite as specified in the Mining Plan.*
   iii. *Mining Charge is the charge per tonne of coal or lignite paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable.*
   iv. *Mining Charge and Operation and Maintenance expenses shall be in terms of Rupees per tonne corresponding to the Annual Target Quantity.*

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

NLCIL Comments:

a) **Overburden Removal as per Mine Plan:** The overburden (OB) removal quantities specified in the mine plan are intended to ensure adequate exposure of the coal/lignite seam and to preserve the necessary mine geometry and bench configuration. This is a crucial requirement for open-cast mining operations.

b) **Difference between Estimated and Actual OB Removed:** The estimated OB removal figures included in the mine plan are based on initial surveys and exploration while preparing Detailed Project Report. However, actual OB removal during excavation may differ from these estimates due to practical constraints including availability of land, pumping if ground water, restrictions imposed by the state authorities for discharge of water during rainy season.

c) **Adjustments in MDO Agreements:** For mines operating under Mining Development Operator (MDO), any cost savings resulting from reduced OB removal are reflected in the MDO's costs and vice-versa. The MDO agreement includes a formula to adjust the mining charges based on the actual stripping ratio compared to the mine plan. If the OB removal is lower than planned, the payment to the MDO will automatically get reduced and when it is higher the same will get increased but limited to normative stripping ratio. Hence, the Costs related to normative stripping ratio will be recovered from the stakeholders.

d) **In view of the above, it is submitted that OB adjustment shall not arise when Coal/Lignite mining agreement provides for adjustment of mining charge on account of OB shortfall in the MDO contracts.** *(Relevant clause from MDO contract award of Talabira Mines for OB adjustment in mining charge is enclosed in Annexure-A for reference.)*

e) **Adjustment for Persistent Low Stripping Ratio:**

   a. In cases where the stripping ratio consistently falls below the normative levels, it is advisable to amend the relevant clauses to limit the OB adjustment to a certain percentage of the Mining Charge or O&M expenses. This adjustment recognizes that OB removal is only a component of these costs. For instance, the stripping ratio adjustment clause in the Talabira MDO agreement permits a maximum of 32% adjustment of the Mining Charge. Similarly, at Barsingsar Mines, where OB removal is outsourced, the OB removal expense constitutes approximately 30% of the total O&M cost, and typically does not exceed this proportion. Moreover, O&M expenses primarily consist of employee costs, which account for more than 50% of the total O&M expenses.

f) Therefore, applying adjustments to the **entire Mining Charge or O&M expenses for shortfalls in OB removal could impose a significant financial burden on mining companies** and deter investment in the sector. While we appreciate the recent amendment extending the adjustment block period to cover the entire control period and allowing excess OB removal to offset shortfalls in subsequent control periods, we request that the regulation be amended so as to address the concerns regarding adjustment from full Mining Charge or O&M expense as the case may be. *(Detail of O&M expenses from Barsingsar Mines is attached in Annexure-B for reference.)*

g) Suggested OB adjustment formula is as under:

a. In case of MDO operated Mines **when there is no clause for Stripping ratio variation:**

OB Adjustment = [Factor of adjustment for shortfall of overburden removal during the year] x [1/3 x Mining Charge during the year]

b. In case of Non-MDO operated Mines,

OB Adjustment = [Factor of adjustment for shortfall of overburden removal during the year] x [1/3 x O&M Expenses]

2. Regulation 70 Normative Annual Plant Availability Factor

"In Clause (b) of Regulation 70(A), the words "or thereafter" shall be added after the words "as on or after 31.03.2024"

Principle Regulation:

"(a) 85% for all thermal generating stations, except those covered under clauses (b), (c), (d) and (e);

(b) 83% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024;"

NLCIL Comments:

Regulation 70 (A) in specifies Normative Annual Plant Availability Factor (NAPAF) for Coal and Lignite fired stations.

Sub-clause (b) of Regulation 70(A) specifies NAPLF as:

"..(b) 83% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024 ***or thereafter..****"*

However, sub-clause (e) states that:

" .. (e) For following lignite fired thermal generating stations of NLC India Ltd:

1. TPS-II State-I and Stage-II :80%"

It may be noted that NLCIL TPS-II (7 x 210 MW) Thermal power station has already completed 30 years from COD and therefore the sub-clauses (b) and (e) are contradictory. Hence the same may be modified as:

"..(b) 83% for coal and lignite based generating stations completing 30 years from COD as on 31.03.2024 ***or thereafter except those covered under clauses (c), (d) and (e);****"*

3. Additional Comments:

(a) Regulation 70 (E) in Chapter-12, Norms of Operation, specifies Auxiliary Energy Consumption (AEC) for Coal and Lignite fired stations. The AEC for Lignite fired stations as given in Sub-clause (d) (iii) is reproduced below:

For TPS-I (Expansion) and TPS-II Stage-I&II of NLC India Ltd:

TPS-II Stage-I and Stage-II	*10.00%*
TPS-II (Expansion)	*12.50%*

The clerical error in the heading may be corrected as under:

"For TPS-II (Expansion) and TPS-II Stage-I&II of NLC India Ltd"

Annexure -A

ARTICLE-35

MINING CHARGE AND OTHER CHARGES

35.1 **Mining Charge**

35.1.1 Subject to and in accordance with the terms of this Agreement, NLCIL shall pay to the Mine Developer and Operator the mining charge per tonne of Coal Delivered by the Mine Developer and Operator at the Delivery Point(s) in accordance with the provisions of this Agreement (the **"Mining Charge")**, which shall be calculated in the following manner:

a. The work component quoted is Rs. 221.10 (Rupees Two Hundred and Twenty One and Paise Ten only) Per tonne of coal exclusive of GST, levies, duties, Royalties, cesses and contribution to District Mineral Fund (DMF) and National Mineral Exploration Trust (NMET) and all other statutory charges applicable form time to time as per the applicable Regulatory frame work during the subsistence of Coal Mining Agreement (**"Base Mining Charge")**.

b. The Base Mining Charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision and Variation in stripping ratio subject to the Stripping Ratio Variation Charge spelt in clause 35.6 and the amount so determined shall be the **Mining Charge** for that quarter..

The "Base Mining Charge" shall include all activities for attaining Rated Production. Base Mining Charge also shall include all Pre commencement activities for commencement of Production, all Mines associated infrastructure construction.

35.2 **Additional Capacity**

35.2.1 The Mine Developer and Operator may, upon request from NLCIL and in accordance with Applicable Laws, Specifications and Standards and Maintenance Requirements, construct, install and operate any excavation capacity which is in addition to and in excess of the Contracted Capacity (the **"Additional Capacity")**.

35.2.2 The additional Coal produced under the Additional Capacity installed hereunder shall have the same Mining Charge otherwise payable for the Contracted Capacity.

35.3 **Taxes and duties**

35.3.1 It is expressly agreed by the Parties that the Mining Charge payable by NLCIL shall be exclusive of GST and GST will be paid as per the applicable Act. The Mining Charge shall also be exclusive of all royalties, statutory levies, cesses and duties and contribution to District Mineral Fund (DMF) and National Mineral Exploration Trust (NMET) and all other statutory charges applicable from time to time will be paid or reimbursed as per the applicable regulatory framework during the subsistence of Coal Mining Agreement.

Talabira (Odisha) Mining Private Limited

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NLC INDIA LIMITED NEYVELI

MDO shall comply with all the necessary tax related statutory compliances including but not limited to providing GST invoices or other documentation as per GST law relating to the above supply to NLC, uploading the details of the invoice, payment of taxes, timely filing of valid statutory returns for the tax period on the Goods and Service Tax Portal.

In case any demand is recovered from NLCIL on account of any act of the MDO, including but not limited to non-payment of GST charged and recovered, non-filing of Returns, non-uploading of valid invoices raised on NLCIL in the Returns etc. the MDO shall indemnify NLCIL in respect of all claims of tax, penalty and/or interest, loss, damages, costs, expenses and liability that may arise due to such non-compliance.

MDO shall maintain high GST compliance rating track record of at least 20% more than the prescribed lower limit at any given point of time failing which NLCIL reserves the right to unilaterally terminate the contract

35.3.2 **TDS (wherever applicable):** For the purpose of this contract, it is agreed **between** the parties that Tax deduction at source (TDS) at the rate of (specified rate) shall be deducted from all the payments made to the contractor including any advances paid, in accordance with the statutory requirement under GST laws and other applicable laws.

35.3.3 **Income Tax.**

NLCIL shall not be liable towards income tax of whatever nature including variations, arising out of this Agreement, as well as tax liability of the MDO and his personnel. Deduction / withholding of tax at source at the prevailing rate and other applicable taxes, if required to be made shall be effected by the NLCIL before making any payment, as per applicable law. The annual Certificates for the Tax deducted at Source shall be made available in NLCIL website. The PAN number of the MDO is AAGCK0963K.

35.4 Stockpiling and Delivery of Coal

35.4.1 In the event there is insufficient supply of wagons at the Delivery Point or for any other reason NLCIL opts to not take Delivery of Coal and instructs the Mine Developer and Operator in writing to stock the Coal otherwise available for Delivery, at the Coal Depot (the **"Undelivered Coal")**, then subject to and in accordance with the terms of this Agreement, NLCIL shall pay to the Mine Developer and Operator the following amounts:

(a) 75% (seventy five percent) of the Mining Charge per Ton of Undelivered Coal; and

Talabira (Odisha) Mining Private Limited

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NEYVELI NLC INDIA LIMITED

(b) 20% (twenty percent) of the Mining Charge per Ton of Undelivered Coal, at the time of Delivery of the Undelivered Coal (or part thereof) at the Delivery Point.

35.5 Lead Variation Charge

The "Base Mining Charge" is inclusive of variation in lead.

35.6 Stripping Ratio Variation Charge

The notified stripping ratio for the Talabira II & III Coal Project is envisaged as 1.09 m^3/Ton in the revised Mining Plan. MDO should quote the **Base Mining Charge** [BMC] on the basis of the notified stripping ratio of 1.09 **(SRn).** If there is any variation in the running stripping Ratio [SRr] during actual mining operation, the **Mining Charge (MC)** shall be calculated on quarterly basis as stipulated below:

Mining Charge (MC) = BMC X{0.68+[0.32X(SRr)/(SRn)]}.

Where

BMC=	Base Mining Charge quoted for Stripping Ratio of 1.09
MC=	Mining Charge after applying Variation for Stripping Ratio
SRr=	Running Stripping Ratio for the Quarter
SRn=	Notified Stripping Ratio (1.09)

"SRr" means Running Stripping Ratio for the quarter and is the ratio between OB excavated during that quarter (in Cubic metre) measured by Laser Measurement (as spelt in clause 27.7) and quantity of Coal (in Ton) produced and delivered to depot.

The **Mining Charge (MC)** shall be regulated for variation in stripping ratio, on quarterly basis along with reconciliation stipulated in Clause 32.4.

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Talabira (Odisha) Mining Private Limited

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Annexure-B

Fixed Cost Details of Barsingsar Mines for 2019-24 (Rs in Lakhs)					
Particulars	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Stores & Spares	0.58	0.44	0.26	0.37	0.57
Employee Remuneration	23.55	20.90	22.83	22.50	24.30
Power- Fixed	0.60	0.63	0.20	1.56	0.64
OB Outsourcing	40.21	37.58	20.21	25.87	29.33
Outside Services	10.63	12.82	9.20	13.31	13.54
Internal Services	17.71	17.42	19.30	18.37	17.79
Common Charges	1.42	2.24	2.45	2.62	2.17
CSR Expenses	-	-	-	-	-
General Charges	2.82	3.43	3.31	3.72	3.97
Interest - Expenses	5.73	5.25	2.46	1.60	1.65
Depreciation	3.12	2.74	1.75	2.76	2.66
Mine Closure	2.26	4.02	2.49	2.61	3.15
Fixed Cost	**108.64**	**107.45**	**84.46**	**95.29**	**99.75**
% of OB Removal Cost	37.01%	34.97%	23.93%	27.15%	29.40%