

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 215/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Ramesh Babu V, Member**

Date of Order: 12th June, 2024

In the matter of

Petition seeking approval for determination of the input price of coal of Talabira Mines for the period 2019-24.

And

In the matter of

NLC India Limited,
135/73, EVR Periyar High Road
Kilpauk, Chennai -600010

.....**Petitioner**

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600002.
2. Andhra Pradesh Power Procurement Coordination Centre,
VidyuthSoudha,48-12-4/1, Elluru Road, Gunadala,
Vijaywada, Andhra Pradesh - 520008.
3. A.P. Central Power Distribution Company Limited,
Corporate office, beside Polytechnic College
ITI Road, Vijayawada - 520 008
4. A.P.Southern Power Distribution Company Limited,
D.NO:19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupathi (AP)-517501.
5. A.P. Eastern Power Distribution Company Limited,
P&T Colony, Seetammadhara, Vishakapatnam (AP)-503013.
6. TSPCC, Vidyut Soudha, Khairtabad,
Hyderabad-500082, Telangana, India.
7. Northern Power Distribution Company of Telangana Limited,
H.No. 1 -1-504, Opp. NIT petrol Pump, Chaityanayapuri colony,
Hanmkonda, Warangal (Telangana) - 506 004.
8. Southern Power Distribution Company of Telangana Limited,
2nd Floor, H.No.6-1-50, Mint Compound,
Hyderabad-500063.



9. Power Company of Karnataka Limited,
KPTCL Complex, Kaveri Bhavan,
Bangalore – 560009.
10. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle
Bangalore - 560 001.
11. Mangalore Electricity Supply Company Limited,
Corporate Office, MESCOM Bhavana,
Bejai, Kavour Cross Road,
Mangalore 575 004.
12. Chamundeshwari Electricity Supply Co. Limited,
Corporate Office No CA 29, Vijayanagar 2nd Stage,
Hinakal, Mysore -570017
13. Gulbarga Electricity Supply Company Limited,
Station Main road, Gulbarga, Gulbarga -585 102
Karnataka.
14. Hubli Electricity Supply Company Limited,
Corporate office, P.B. Road,
Navanagar, Hubli - 580 025.
15. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004.
16. Puducherry Electricity Department,
137, NSC Bose Salai,
Puducherry – 605 001.

.... Respondents

Parties Present:

Shri Rakesh Pandey, Advocate, NLCIL
Shri D Tulasi Kumar, Advocate, NLCIL
Smt. Ratna Choudhury, Advocate, NLCIL
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The Petitioner, NLC India Limited, has filed the present petition seeking the determination of the Input price of coal of Talabira Mines for the period from 1.4.2021 to 31.3.2024, in respect of NLC Tamil Nadu Power Limited (in short 'NTPL') (1000 MW) (in short "the generating station") as per Regulation 9 of the Central Electricity Regulatory Commission (Terms and Conditions of tariff) Regulations 2019 (in short "the 2019 Tariff Regulations") amended vide Central Electricity Regulatory Commission (Terms and



Conditions of tariff) (Second Amendment) Regulations, 2021 (in short “the 2021 Second Amendment Regulations”).

Background

2. The Petitioner is a generating company owned and controlled by the Central Government. The Petitioner has been allocated an integrated coal mine for specified end-use generating stations, whose tariff is determined by the Commission under Section 62 of the Electricity Act, 2003. Talabira has declared COD in 2022 and the production capacity of 20 MTPA is expected to be achieved in the year 2025-26 as per the approved Mining Plan.

3. NTPL will remain the sole end-user plant till the commencement of operation of the Talabira Thermal Power Plant. Therefore, the transfer price of coal has to be determined for sourcing coal by NTPL from the Talabira Mines. Further, the estimated annual requirement of NTPL is 26 LT of coal. The actual quantity lifted from Talabira Mine during 2022 was 14.17 LT. NTPL, vide its letter dated 11.5.2022, has indicated their coal requirement for the years 2023 and 2024 and based on the coal requirement of NTPL, the Transfer Price of Coal for the above-mentioned years has been computed. The mining plan of the block was approved by the Ministry of Coal, GOI, vide letter No. 34012(4)-2011-CPAM in January 2012, and the salient features of the Talabira coal mines are as under:

	Characteristics
Annual Target Quantity	20 MTPA
Peak rated capacity	23 MTPA
Location	Jharsuguda, Orissa
Mineable reserves	553.98 MT
Mining area land–Acquired/ Leased	1176 Hectare
Average stripping ratio	1:1.09
Type of mining	Open cast
Mode of Operation	Under Mine Development and Operator
End use plants	1. NLC Talabira thermal power plant (NTTTPP)- 3 X 800MW-Phase I; 2. NLC Talabira thermal power plant (NTTTPP)- 1 X 800MW-Phase II; and 3. NTPL, Tuticorin 2X 500 MW.



	Characteristics
Capacity of Generating station End use plants	NTTTP -3200 MW NTPL – 1000 MW
Capacity of Mine- allocated to NTPL, Tuticorin	2.6 MTPA

4. The mine was envisaged to be operated under Mine Developer cum Operator (MDO) mode, and the Letter of award for appointment of the MDO was issued to M/s Talabira (ODISHA) Mining private limited, Ahmedabad on 6.2.2018.

Submissions of the Petitioner

5. In the above background, the Petitioner has mainly submitted the following:

a. In terms of Clause 1(a) of Regulation 2 and Clause (4) of Regulation 9 of 2019 Tariff Regulations, the present petition is filed for the determination of the input price of coal supplied from the Talabira mine to NTPL for the period from 1.4.2021 (COD of Mine) to 31.3.2024 as per the 2019 Tariff Regulations along with 2021 Second Amendment Regulations. Clause 1(a) of Regulation 2 of 2019 Tariff Regulations, as amended, provides as under:

“(1a) These regulations shall apply in all cases where a generating company has the arrangement for supply of coal or lignite from the integrated mine(s) allocated to it, for one or more of its specified end use generating stations, whose tariff is required to be determined by the Commission under Section 62 of the Act read with Section 79 thereof.”

b. The Petitioner is filing this petition for approval of the input price of Talabira mines for direct supplies of 2.6 MTPA to the generating station based on its requirement. As per clause 8.1 of the allotment agreement dated 31.3.2016, the coal excavated from the Talabira II & III coal block is allotted to the Petitioner for its end-use thermal generating stations, namely the generating station and NLC Talabira thermal power Plant (NTTTP) Sambalpur district, Odisha State Phase I (2400 MW) and Phase II (800 MW).

c. The generating station is in operation and the requirement of coal is being sourced from MCL/ECL/ Import depending upon its requirement. Talabira Thermal Phase-I (2400 MW) is under tendering process and Phase-II (800MW) is in the development stage. The operation of Talabira Thermal will take a few more years, and considering the same, the Ministry of Coal (MOC) has permitted the Petitioner, vide its letter dated 2.11.2021, to sell up to 75% of Production of Coal from the Mines.



- d. Ministry of Power, Government of India vide letter No. 6/1/2010-St. Th (Vol. I) dated 19.11.2020 allotted the Talabira coal block to the Petitioner, as a coal mining block with a capacity of 20 MTPA. Thereafter, Environmental Clearance (EC) for the project was sanctioned by the Ministry of Environment, Forest and Climate change vide letter dated 11.10.2018. The Stage-I Forest clearance for this project was sanctioned on 3.7.2018, and Stage-II Forest clearance was sanctioned on 28.3.2019.
- e. The Investment Approval of the Talabira Coal Mine Project was accorded by the Petitioner's Board at its 470th meeting held on 20.7.2017 at a project cost of Rs. 2401.07 crore. The Odisha State Pollution Control Board, vide OMs dated 8.2.2019 and 27.3.2020, has issued the 'Consent to Establish' and 'Consent to Operate', respectively, for 20 MTPA Talabira mines.
- f. The Government of India had allocated Talabira II & III OCP Coal Block in Sambalpur District, Odisha, to the Petitioner as per 'Nominated Authority constituted under section 6 of the Coal Mines (Special Provision) Act, 2015, and the sourcing of coal from Talabira Mine to NTPL was communicated to all the beneficiaries vide letter dated 7.5.2019. In the year 2021-22, 1.417 MT of coal was lifted from Talabira Mines, and the requirement for NTPL from Talabira Mines would be only 2.6 MTPA for the period 2022-24.

Hearing dated 22.12.2022

6. During the hearing, the learned counsel for the Petitioner pointed out that the present Petition has been filed for the determination of the input price of coal for Talabira mines for the period 1.4.2021 to 31.3.2024 and made brief submissions in the matter. The learned counsel appearing for the Respondent, TANGEDCO, accepted the notice and sought four weeks' time to file its reply. Accordingly, the Commission 'admitted' the Petition and directed the parties to complete the pleadings in the matter.

7. Thereafter, vide technical validation letter dated 3.1.2023, the Petitioner was directed to furnish certain additional information in the matter and for the parties to complete their pleadings. Reply has been filed by the Respondent TANGEDCO vide affidavit dated 25.1.2023, and rejoinder has been filed by the Petitioner vide affidavit dated 14.3.2023. The Petitioner has also filed the additional information on 30.3.2023. Further, the



Petitioner has filed its written submissions on 31.5.2023 in respect of the queries raised by the Respondent TANDEGCO during the hearing on 16.5.2023 and the Respondent has furnished its response to the same on 5.7.2023.

Reply of the Respondent, TANGEDCO

8. The Respondent TANGEDCO, in its reply, has mainly submitted as under:
- i) The Petitioner has not taken the consent of the Respondent, who is the major beneficiary while going in for procurement of coal for NTPL Station from Talabira mine.
 - ii) The Petitioner should have ensured that there are savings in coal transportation cost and a reduction in energy charge of electricity generated on account of diversion of coal, as per the methodology for flexibility in utilization of domestic coal for reducing the cost of power generation issued by CEA dated 8.6.2016. Further, it can be seen that with the coal procured from various sources by the Petitioner, there is neither a reduction of transportation cost nor ECR.
 - iii) The submission that since Talabira Thermal Plant will take a few years to come into operation, the coal being sold to NTPL at a higher cost than the designated coal for the generating station, is against the interest of the beneficiaries and end-users of NTPL. Hence, the Petitioner may be directed to furnish the details on what circumstances and approval the Petitioner is sourcing coal for NTPL from Talabira Mines.
 - iv) The Petitioner has not furnished any details regarding the compliance to Supreme Court order and other statutory requirements in “WP (Civil) No.114/2014 in the matter of 'Common Cause Vs. Union of India & others” as the project proponent complies with the said judgment of the Hon'ble Supreme Court. Hence, the Petitioner may be directed to furnish the same, as the environmental clearance shall not be operational till such time.
 - v) In terms of Regulation 36(I) of the 2021 Second Amendment Regulations, the O&M expenses for the tariff period ending on 31.3.2024, in respect of the mines commissioned after 31.3.2019, shall be allowed, based on the projected O&M expenses for each year of the tariff period, subject to prudence check of the Commission. Hence, the claim of O&M expenses at a provisional value for 2021-22 with a 5% escalation may be dismissed. The O&M expenses for the



year 2021-22 shall be fixed as on COD, on par with the existing similar mines, and the escalation rate for the subsequent years shall be restricted to 3.5% as applicable for the mines commissioned before 31.3.2019.

- vi) The Commission, in its order dated 25.3.2022 in Petition No. 452/MP/2019 (filed by the Petitioner for truing up of NLCL mines), directed that all statutory levies which have been paid by the Petitioner shall be reimbursed by the Respondents, after reconciliation and submission of documentary proof of the payments made. Hence, it may be directed that the statutory levies shall be collected from the Petitioner while truing up the tariff after furnishing all the documentary proof in this regard.
- vii) Further, the capital cost claimed by the Petitioner includes the environment and ecological cost of Rs. 11.68 crore, Revenue expenses capitalized for Rs. 112.12 crore and other than HEMM of Rs.1.96 crore. But, as per Regulation 36D of the 2021 Second Amendment Regulations, the capital expenses incurred up to the COD shall be admitted after a prudence check. In Annexure XV enclosed to the Petition, the Petitioner has furnished the details of the capex for the period ending 2024-25. The details of the expenses proposed in the split up are not available, i.e., details for which environmental and ecological cost is claimed, details of revenue expenses capitalized, and details of 'Other than HEMM'.
- viii) The Petitioner has also not furnished the details of the Regulation/ Sub-regulation under which the claims have been made. Further, the expenses approved in the mining plan are also not available. Hence, the Petitioner may be directed to furnish the details of the Regulation/Sub-regulation and the expenses approved under the mining plan.
- ix) Details of the gross asset value additions have not been spelt out in the Petition. Hence, the Petitioner may be directed to furnish the details, failing which the claim shall be dismissed. Also, the Petitioner has not furnished the calculation details for arriving at the rate of depreciation for each item as claimed in the Petition. In this regard, as per Appendix I A in the 2021 Second Amendment Regulations for integrated mines, the Commission has only given the life in years for various assets. Hence, the methodology of arriving at the rate of depreciation for each asset needs to be checked, and the Petitioner should be directed to furnish the same. Further, the Petitioner has not



furnished any documentary evidence for the asset value claimed for each item.

- x) There is no provision in the Regulations for acceptance of a Suo motu agreement with MDO, including the diesel cost to be paid separately, as well as for quarterly escalation of mining charges. Further, there cannot be a unilateral decision for acceptance of a 5% escalation for the years 2022-23 and 2023-24 under the Regulatory regime. Hence, the Petitioner should bring on record the following details:
- i) *Details of tender called for MDO – whether the diesel charges were considered extra.*
 - ii) *Details of all participants in the tender.*
 - iii) *Reasons considered for including escalation charges on quarterly basis.*
 - iv) *Whether provision has been made for reduction on quarterly basis based on reduction in variation of price index and stripping ratio reduction.*
- xi) The Petitioner has requested to admit the Mine closure expenses, whereas, in paragraph 13.0 of the Petition, the Mine closure expenses for the three years from 2021-22 to 2023-24 are shown as 'nil'.

Hearing dated 7.3.2023

9. At the outset, the learned counsel for the Petitioner prayed for time to file the additional information in the matter. The learned counsel for the Respondent TANGEDCO also sought permission to file its reply to the additional information of the Petitioner. The matter was adjourned with directions to the parties to complete their pleadings.

Rejoinder to the Reply filed by the Respondents

10. The Petitioner, in its rejoinder, has mainly submitted as under:
- i) The cost of coal will be based on the input price approved by the Commission. NTPL started using Talabira coal from the month of October, 2021 only. The variable cost mainly depends on the INR/kCal of Coal. The blending ratio during a month is decided based on the availability of stock of each coal and the loading factor of the generating station.
 - ii) The allotment of Talabira II & III OCP Coal Block to NLCIL with NTPL being one of the end user Plants; NTPL started moving coal from September 2021 onwards. Consequently, MCL & ECL had stopped the coal supply to



NTPL, and also, in the 624th sub-group meeting held on 14.9.2021 to review the infrastructure constraints, it was directed that the entire coal supply from its own coal Block shall be taken by the power plant. Hence, NTPL has to meet the requirement of coal from Talabira Mines/NLCIL being an end user plant of Talabira Mines. Subsequently, NTPL moved coal from Talabira Mines via Road cum Rail cum Sea Mode by a logistic contract firm engaged through a competitive bidding process.

- iii) As regards the environmental clearance, there are no instances of illegal mining noticed by the State Government, and hence, no compensation is applicable. However, in the future, any such instances shall be duly intimated to the stakeholders concerned.
- iv) As regards the O&M expenses, it may be noted that as per the regulation for integrated coal mines, O&M expenses shall be allowed based on the projections for each year of the tariff period, and the same shall be subject to prudence check, and true-up. The O&M expenses for the year 2021-22 have been escalated at 5% for 2022-23 and 2023-24, after taking into account the normal wage increase on account of DA & increments for the employees at the Talabira site. As per Regulation, the O&M expenses shall be escalated at 3.5% per annum over the actual expenditure admitted by the Commission during the previous period, specifically for lignite mines commissioned prior to 1.4.2019. Talabira mine being a new coal mine commissioned after 31.3.2019, the provisions of Regulation 36 I(1)(a) of the 2021 Second Amendment Regulations will apply. In other words, the O&M expenses shall be allowed on a projected basis, subject to prudence check.
- v) As regards statutory expenses, the Petitioner is supplying coal to NTPL from Talabira mines as per the coal allotment agreement. NLCIL has been raising invoices for the coal supplied along with royalty and other taxes as applicable. NLCIL is remitting the above taxes on a monthly basis to the respective Governments. The base price of coal, along with taxes and transportation costs, will form part of the landed cost of coal being supplied to the end user generating station, namely NTPL. NTPL, in turn, would bill the energy charges to the beneficiaries as per the Regulations for the scheduled energy, which comprise the landed cost of primary fuel & landed cost of secondary fuel. The prayer of the Respondent TANGEDCO to



collect statutory expenses at the time of truing-up of tariff, after submission of documentary proof, is not in line with existing tariff regulations.

- vi) The statutory charges comprising of Royalty (14% of base price), DMF (30% of Royalty), NMET (2% of Royalty), GST, CESS, etc., form a significant portion of the total landed cost of coal and claiming the same at the time of truing-up shall put the higher financial burden to beneficiaries. It may also attract carrying costs as payment would be made at a later date. Hence, the reimbursement of the same on a monthly basis shall be allowed. However, any change in the statutory expenses on account of the revision of the input price after the truing-up exercise shall be reimbursed by the beneficiaries based on the submission of documentary evidence by the Petitioner.
- vii) As regards the capital cost and the additional capital expenditure claimed, the Petitioner has accorded approval for a project cost of Rs. 2401.07 crores in its Board meeting held on 20.7.2017. In the investment approval, a provision for Rs. 11.68 crores have been made towards Environment and ecological costs for carrying out the following activities:
- *Capital Investment for pollution control measures and land reclamation*
 - *SAL VAL Plantation*
- viii) Also, an estimated amount of Rs. 1.96 crores have been made under the head Fixed Infrastructure materials towards auxiliary HEMM like Service crane, hydraulic backhoe, Fire Tender, and lab equipment for coal testing as per Mine Plan. The mine development and coal extraction are under the scope of MDO; the capital expenditures on HEMM have not been incurred by the Petitioner. Moreover, the details of revenue expenditure capitalized have been provided in the tariff Form-K in the present petition.
- ix) As regards the additional capital expenditure, the item-wise details have been furnished in Form-9A from COD to 31.3.2024 in the present Petition and the additional capital expenditure incurred has been part of the original scope of work.
- x) As regards depreciation, the Petitioner has furnished the calculation sheet for arriving at the average depreciation rate of 4.804% in the computation sheet in Form 11 of the tariff forms, which has been submitted with the petition.
- xi) The Petitioner has also entered into an MDO agreement with M/s Talabira



(Odisha) Mining Private Limited to Finance, Develop, Operate, Manage and Maintain the mines for a cost of Rs. 252.03 per ton (applicable for the year 2021-22) of coal, excluding taxes, but subject to escalation on every quarter, based on the variation in the Price index and stripping ratio variation, as per the formula provided in the MDO agreement. The stripping ratio variation and the Price index variation, as stipulated in the MDO agreement, are annexed.

- xii) The Petitioner is responsible for making available the diesel up to the Permissible Diesel Quantity for the entire mining operation, including the excavation of OB and transportation, excavation/ extraction of coal by Surface Miner, and hauling & Delivery of coal to the designated coal stockyards/coal depot/ Delivery points, pumping, drilling, ancillary & support activities, reclamation, Mine closure etc., until completion of closure of Mine. Also, as per the MDO contract, the Petitioner has to make available the quantity of diesel up to the permissible level of 1.5201 litres per tonne of coal for the entire mining operations, including excavation of OB, Coal, and transportation, as under:

a. The Mining Charge payable to MDO is excluding the diesel to be made available by the Petitioner. However, Diesel will be procured by the Petitioner at its own cost and it is considered extra.

b. Diesel was excluded from the scope of MDO in order to avoid GST @ 18% applicable for works contract with the objective of cost reduction, in the absence of which Diesel procurement cost by the MDO would also have been form part of Mining charge and GST would have been applicable on total mining charge (including Diesel).

- xiii) The contract for MDO has been awarded to an L1 bidder after following a transparent, competitive bidding process and shall be considered as part of the O&M expenses under Regulation 361(i) of the 2021 Second Amendment Regulations. The details of all the participants in the tender are as below:

1. M/s. Ambey Mining Pvt. Ltd., Kolkata
2. M/s. BGR Mining & Infra Limited, Hyderabad
3. M/s. ESSEL Mining & Industries Ltd., Kolkata
4. M/s. MIPL GCL Infracontract Pvt. Ltd., Ahmedabad and
5. M/s. Talabira (Odisha) Mining Private Limited, Ahmedabad

- xiv) The reason for the inclusion of escalation charges on quarterly basis is that the base mining charge shall be revised every quarter to reflect the variation in price index occurring between the reference index date of the quarter preceding the bid date and the reference index rate for the quarter preceding the date of revision, an average rate of 5% has been considered



provisionally for the escalation of mining charge along with a prayer that the Commission may allow to bill the input price of coal, based on the quarterly escalated price of MDO to avoid the accumulation of dues.

- xv) As per the order of precedence in the tendering process, the contract agreement is the final document to be relied on after the finalization of the tender. The contract agreement evolved from Tender specification and Tender conditions.
- xvi) As regards the variation of price index and stripping ratio reduction, as per clause 35.1.1 of CMA with MDO, the Base Mining charge shall be revised every quarter to reflect the variation in the 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. Also, as per clause 35.6 of CMA with MDO, the stripping ratio variation charge shall be revised every quarter to take care of variations in the stripping ratio during the actual mining operations. It may be noted that the formulae provided under clauses 35.6 (Stripping Ratio Variation Charge) and 36.5 (Price Variation) of CMA are to account for variation in stripping ratio and price index. As the term “variation” means both increase and reduction, the formulae are constructed in such a way to accommodate any variation either increase or reduction in stripping ratio and price indices.
- xvii) As regards the mine closure expenses, the same forms part of the Mining charge and is under the scope of MDO and hence not claimed separately.

Hearing dated 16.5.2023

11. During the hearing of the Petition on 16.5.2023, the learned counsel for the Petitioner and the Respondent, TANGEDCO, made detailed oral submissions in the matter. The learned counsel for the Petitioner clarified that the Government of India had allocated Talabira II & III OCP Coal Block in Sambalpur District, Odisha, to the Petitioner by the 'Nominated Authority constituted under section 6 of the Coal Mines (Special Provision) Act, 2015. He also submitted that the sourcing of coal from Talabira Mine to NTPL was communicated to all the beneficiaries (including TANGEDCO) vide a letter dated 7.5.2019, but no response was received. The learned counsel further submitted



that 1.417 MT coal was lifted from Talabira Mines during the years 2021-22, and the requirement for NTPL from Talabira Mines would be only 2.6 MTPA for the period 2022-24. However, at the request of the learned counsel for the parties, the Commission permitted the Petitioner and the Respondent to file their written submissions (not exceeding three pages). Subject to this, the order in the petition was reserved.

Additional Submissions of the Petitioner

12. The Petitioner was directed, vide letter dated 3.1.2023, to furnish the reason as to why only 1.7 MT of coal was being lifted by it, out of a total of 2.6 MT of coal allocated, the clarification on the status of balance coal production and as to how the same was being disposed of. In response, the Petitioner, vide affidavit dated 31.5.2023, has mainly reiterated the submissions made in the Petition. In addition, the Petitioner has submitted the following:

- i) As per clause 8.1 of the PPA signed between TANGEDCO and NTPL on 16.12.2006, the sourcing of coal for the station was from Mahanadi Coal Fields (MCL) of the Talcher coal fields of Orissa, blending with the imported coal.
- ii) The GoI has allocated Talabira II & III OCP Coal Block in Sambalpur District, Odisha State, to NLCIL as per 'Nominated Authority constituted under section 6 of Coal Mines (Special Provision) Act 2015, Ministry of Coal with NTPL as one of the End User Plants (EUP)' and not under 'Flexibility in the utilization of coal extracted from the coal mines allotted under the Coal Mines (Special Provision) Act, 2015 for optimum utilization of coal mine for the same end users in the public interest and to achieve cost efficiencies'. According to the above allotment of coal Mine, NTPL is bound to utilize the coal from Talabira Mines.
- iii) Moreover, the sourcing of coal from Talabira Mine to NTPL was communicated to all the beneficiaries vide letter dated 7.5.2019. MCL terminated the supply of coal to NTPL vide letter dated 7.4.2022, and subsequently, in the 624th Sub Group meeting held on 14.9.2021 to review Infrastructure Constraints, it was directed as "the entire coal supply from own coal Block shall be taken by the power plant."



- iv) Also, as per OM dated 9.3.2022, MOC and GOI approved coal swapping between NLCIL, NTPL, and NTPC under the Coal Mines (Special Provision) Act 2015 – considering the public interest and to achieve cost efficiency in Energy Charge Rate. Further, the methodology of arrangement for flexibility in the utilization of coal, including the transfer of coal from one PSU to another PSU, was enabled by the Ministry of Coal on 22.9.2017.
- v) An agreement was signed with MCL, NLCIL, NTPL, and NTPC to transfer 2.4 MMT of coal from NTPC, Kaniha Thermal Plant FSA, to NTPL for a period of 2 years. An agreement was signed with NTPC, NLCIL, and NTPL to transfer an equivalent quantum of coal from Talabira II and III. Accordingly, the movement of Coal from MCL started on 11.4.2022 by a logistic contract firm engaged after the finalization of the Open Tender Enquiry (OTE).
- vi) Regarding the landed cost of coal from Talabira vis-a-vis coal from MCL, the cost of coal to be billed to the beneficiaries from Talabira mines would be based on the input price approved by the Commission as per the provisions of the 2019 Tariff Regulations. Whereas, the cost of coal supplied from the coal companies like MCL, CCL, ECL etc. would be on the basis of the price notified by Coal India Limited from time to time. In contrast, the coal produced from the integrated mines linked to the thermal power plants is priced as per the Regulations of the Appropriate Commission, irrespective of the grade of the coal.
- vii) As per Regulation 43 of the 2019 Tariff Regulations, only in the event of the energy charge rate based on the weighted average price of fuel, upon the use of an alternative source of fuel supply exceeds 30% of the base energy charge rate as approved by the Commission for that year or exceeds 20% of energy charge rate for the previous month, prior consultation is necessary. In the present case, the ECR is well within the limit prescribed in the Regulations.
- viii) Further, the Petitioner has requested the Commission to consider a 15% relaxation in ATQ from the approved mine capacity, in addition to the deviation approved by the CCO for the years 2019-20, 2020-21, and 2021-22 for the recovery of the fixed charges of Mines.

Additional reply of the Respondent TANGEDCO

13. The Respondent TANGEDCO vide additional reply on 5.7.2023 has submitted as under:



- i) As per the methodology dated 8.6.2016 issued by CEA for flexibility in the utilization of domestic coal for reducing the cost of power generation, the consent of the original beneficiaries of the concerned generating stations will have to be taken before making such an agreement and the central generating company would ensure that there is savings in the coal transportation cost and reduction in energy charge of the electricity generated on account of diversion of coal. There has been an increase in the variable cost due to the sourcing of coal from Talabira mines after the COD of Talabira mines and the utilization of coal at NTPL.
- ii) The Petitioner has not explained the circumstances under which the coal sourcing was shifted to Talabira mines when the same is not economically viable for the beneficiaries. The Petitioner has merely stated that Government of India allocated Talabira II & III OCP Coal Block in Sambalpur District, Odisha State to NLCIL as per 'Nominated Authority constituted under section 6 of Coal mines (Special Provision) Act 2015, Ministry of Coal with NTPL as one of the End User Plants (EUP)' and not under 'Flexibility in utilization of coal extracted from the coal mines allotted under the Coal Mines (Special Provision) Act, 2015 for optimum utilization of coal mine for the same end users in the public interest and to achieve cost efficiencies'.

Hearing dated 18.3.2024

14. Since the order in the present Petition could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the Petition was re-heard on 18.3.2024, and the Commission, based on the consent of the parties, reserved its order in the Petition.

Hearing dated 29.5.2024

15. Petition was relisted on 29.05.2024, subsequent to the change in Coram. During the hearing, the learned counsels for the Petitioner and the Respondent TANGEDCO submitted that since the pleadings and arguments have been completed, the Commission may reserve its order in the petition. Accordingly, based on mutual consent of the parties, the order in the petition was re-reserved.



Condonation of the delay

16. Before proceeding to examine the claims of the Petitioner, we notice that the Petitioner has prayed for a condonation of delay of 251 days in filing the present petition. The Petitioner has submitted that it has filed an application under Rule 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for condonation of delay in filing the present petition, stating that the delay of 251 days was unintentional, owing to the various clarifications/ information taken from the office of Petitioner situated in Chennai, the generating station at Tuticorin and the coal mine located at Talabira Orissa, which has delayed the process of drafting the petition, as the figures/ calculations were to be reconciled with the audited figures. The Petitioner has further stated that certain employees of the Petitioner's office and the site were affected due to Covid-19, due to which there was a delay in obtaining data. Accordingly, the Petitioner has submitted that the delay in filing the Petition may be condoned. Per contra, the Respondent, TANGEDCO, has raised objections stating that the delay due to Covid-19 is not condonable, as the power sector was exempted from all restrictions. It has also been submitted that the Petition filing process is online, and the Covid-19 restrictions, even if in place, cannot hamper the filing of the petition. In this regard, the Respondent TANGEDCO has referred to the judgment dated 29.5.2020 of the Hon'ble High Court of Delhi in OMP (I) (COMM) No. BB of 2020 in the case of -v- Vedanta Limited and ors, as extracted below:

"62- The question as to whether COVID-19 would justify non-performance or breach of a contract has to be examined on the performance cannot be justified or excused merely on the invocation of COVID-19 as a Force Majeure condition. The Court would have to assess the facts/circumstances of each case. Every breach or non- conduct of the parties prior to the outbreak, the deadlines that were imposed in the contract, the steps that were to be taken, the various compliances that were required to be made and only then assess as to whether, genuinely, a party was prevented or is able to justify its non- performance due to the epidemic/pandemic."

17. In response to the above, the Petitioner has clarified that the Commission, for the first time, has promulgated the regulations for the determination of the input price of



coal/lignite from the integrated mines through the 2021 Second Amendment Regulations, which consists of certain new annexures and understanding the same and compiling the data from various agencies, required additional time for the preparation of the Petition. The Petitioner has reiterated that the Covid-19 pandemic was at its peak during that time, and therefore, due to the above circumstances, the present Petition could be filed only on 23.7.2022, with a delay of 251 days. The Petitioner has referred to Regulation 116 of the Conduct of Business Regulations, 1999, and submitted that the delay in filing the present Petition was unintentional and valid reasons have been furnished in the present Petition.

18. We have considered the matter. It is noted that Proviso to clause (4) of Regulation 9 of the 2021 Second Amendment Regulations provides as under:

“Provided that a generating company with integrated mine(s) shall file a petition for determination of input price of coal or lignite from the integrated mine(s) not later than 60 days from the date of commercial operation of the integrated mine(s) or from the date of notification of these regulations, whichever is later and may also seek determination or revision of tariff of the concerned generating station(s) in accordance with these regulations”.

19. In terms of the above proviso, a generating company with integrated mines is required to file a petition for determination of the input price of coal or lignite from integrated mines within 60 days from the COD of the integrated mines or from the date of notification of the said regulations, whichever is later. The 2021 Second Amendment Regulations were notified in the official gazette on 13.9.2021. In terms of this, the Petitioner was required to file the Petition for determination of the input price of coal for the period 2021-24 on or before 12.11.2021. However, it is noticed that the present Petition has been filed by the Petitioner on 23.7.2022. Section 69 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 provides as under:

‘Subject to the provisions of the Act, the time prescribed by these regulations or by orders of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reasons by order of the Commission.’

20. The main reasons for the delay, as submitted by the Petitioner are (i) the employees getting affected by the Covid-19 pandemic and (ii) the compilation of data from various



agencies and places had taken additional time. The Hon'ble Supreme Court in N. Balakrishnan v M. Krishnamurthy (1998) 7 SCC 123 has observed as under:

"It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn don his plea and shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly..."

21. In the present case, it cannot be said that there was any gross negligence or deliberate inaction on the part of the Petitioner in filing this Petition. The understanding and compilation of the data required to be filed in terms of the regulations, coupled with the fact that the employees of the Petitioner were affected by the Covid-19 pandemic, appears to be a plausible and acceptable explanation put forward by the Petitioner. Even otherwise, the Hon'ble Supreme Court vide order dated 10.1.2022 in M.A. No. 21/2022 has directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purpose of limitation, as may be prescribed under general or special laws in respect of all judicial or quasi-judicial proceedings. Against this backdrop, we reject the submissions of the Respondent TANGEDCO and condone the said delay on the part of the Petitioner in filing the present Petition.

Analysis and Decision

Determination of Date of Commercial Operation (COD)

22. Regulation 5(3) of the 2019 Tariff Regulations provides the date of commercial operation in case of an integrated mine as under:

"5(3) The Date of Commercial Operation in case of an integrated mine, shall mean the earliest of the:

- a) First date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or*
- b) First date of the year succeeding the year in which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year; or*
- c) Date of two years from the Date of Commencement of Production; Provided that on earliest occurrence of any of the events under subclause (a) to (c) of clause (3) of this Regulation, the generating company shall declare the date of commercial operation of the integrated mine(s) under the relevant sub-*



clause with one-week prior intimation to the beneficiaries of the end use or associated generating station(s).”

23. The matter has been considered. It is noticed that coal was exposed from Talabira Mine on 4.3.2020 and the production of coal commenced from 26.4.2020 onwards. The Petitioner has submitted that as per Regulation 5(3)(b) of 2019 Tariff Regulations, the COD of mine was declared on 1.4.2021. The Petitioner has also submitted the Auditor’s certificate with respect to the applicable clause of the regulation issued by M/s AASA & Associates dated 3.12.2021, and the same has been also approved by management of the Petitioner. Accordingly, the COD of the Talabira mines has been considered as 1.4.2021.

Determination of Input price of coal for the period 2021-24

24. The Petitioner has claimed the capital cost, annual extraction cost, and the Run of mine cost as under:

Capital cost claimed

(Rs. in lakh)

	2021-22	2022-23	2023-24
Opening Capital cost (A)	90079.55	103020.53	125681.53
Add: Addition during the year/ period (B)	12940.98	22661.00	23387.75
Less: De-capitalization during the year / period (C)	-	-	-
Less: Reversal during the year / period (D)	-	-	-
Less: Undischarged liabilities (E)	-	-	-
Add: Discharges during the year / period (F)	-	-	-
Closing Capital Cost (G)=(A+B-C-D-E+F)	103020.53	125681.53	149069.28
Average Capital Cost (H)=(A+G/2)	96550.04	114351.03	137375.41

Annual extraction cost claimed

(Rs. in lakh)

	2021-22	2022-23	2023-24
Depreciation	2010.05	1785.48	1429.99
Interest on Loan	1965.59	2149.25	2339.92
Return on Equity	2129.24	2459.34	2775.69
Interest on Working Capital	52.54	55.13	57.50
O&M Expenses	1263.60	1326.78	1393.12
Total	7421.01	7775.98	7996.22

Run of Mine cost claimed

(Rs. in lakh)

	2021-22	2022-23	2023-24
Annual Extraction cost Rs Per Tonne	285.42	299.08	307.55
Base Mining Charges as on 1.4.2021 escalated @ 5% Rs/T	252.03	264.63	277.86
Diesel Cost @ 1.5201 Lts/Ton escalated @ 5%	152.01	159.61	167.59



	2021-22	2022-23	2023-24
Washing of Cost Coal	-	-	-
Fixed Cost Reserve ₹ Per Tonne	100.00	100.00	100.00
Run of Mine Cost Per Tonne	789.46	823.32	853.00

Capital Cost

25. Subclause (3) of Regulation 9 of the 2019 Tariff Regulations provides as follows:

“(9) ‘Capital Cost’ means the capital cost as determined in Regulation 19 of these regulations in respect of generating station or transmission system, as the case may be, and Regulation 36D of these regulations in respect of integrated mine(s).”

26. Regulation 36 (D) of the 2021 Second Amendment Regulations provides as under:

36D. Capital Cost: (1) The expenditure incurred, including IDC and IEDC, duly certified by the Auditor, for development of the integrated mine(s) up to the date of commercial operation, shall be considered for arriving at the capital cost.

(2) Capital expenditure incurred shall be admitted by the Commission after prudence check.

(3) Capital expenditure incurred on infrastructure for crushing, transportation, handling, washing and other mining activities required for mining operations shall be arrived at separately in accordance with these regulations:

Provided that where crushing, transportation, handling or washing are undertaken by the generating company, the expenditure incurred on infrastructures of these components shall be capitalized;

Provided further that where mine development and operation, with or without any component of crushing, transportation, handling or washing are undertaken by the generating company by engaging Mine Developer and Operator or an agency other than Mine Developer and Operator, the capital expenditure incurred by Mine Developer and Operator or such agency shall not be capitalised by the generating company and shall not be considered for the determination of input price.

(4) The capital expenditure shall be determined considering, but not limited to, the Mining Plan, detailed project report, mine closure plan, cost audit report and such other details as deemed fit by the Commission.

27. The capital cost claimed by the Petitioner, in revised forms vide affidavit dated

30.3.2023, corresponding to the 26LT capacity of the mine, is as under:

	<i>(Rs. in lakh)</i>		
	2021-22	2022-23	2023-24
Capital cost claimed	79454.19	0.00	0.00
Add: IDC	7846.81	0.00	0.00
Add: Notional IDC claimed	2778.55	0.00	0.00
ADD Liabilities	0.00	0.00	0.00
Total Capital cost claimed for tariff	90079.55	103020.54	125681.54
Less: Land value	0.00	0.00	0.00
Gross Asset value - Additions/ liability(A)	12940.98	22661.00	23387.75
Deletion of Asset - (B)	0.00	0.00	0.00
Cum. Depreciation of asset deleted (C)	0.00	0.00	0.00
Net Assets capital additions [A-(B-C)]	12940.98	22661.00	23387.75
Closing Capital Cost	103020.54	125681.54	149069.29



28. The COD of the integrated mine was declared on 1.4.2021. Accordingly, the Petitioner has claimed the opening capital cost of Rs 79454.19 lakh for the Talabira mines as on 1.4.2021. It is noticed that the Petitioner has not furnished the breakup details of the investment approval cost. The opening capital cost as on 1.4.2021, as claimed by the Petitioner, corresponds to the 26LT capacity of the mine. However, the investment approval cost corresponds to the 20 MTPA for the Talabira-II & III open-cast project. The Opening capital cost of Rs 79454.19 lakh, as claimed by the Petitioner is allowed for determining the input price of coal. However, the Petitioner, at the time of truing-up, shall furnish the complete details of the break-up cost of the investment approval along with a declaration that it has not included the capital expenditure incurred by MDO in the capital cost.

Investment Approval cost

29. As per the project report prepared by CMPDI (Central Mine Planning & Design Institute Limited) in 2008, the project cost was estimated at Rs. 447.22 crore (for both coal and overburden outsourcing variant) and was further updated to Rs. 2467.58 crore (October 2016 base), and the sub-committee of the Board directors had recommended the updated cost for placing before the Board for consideration. The Petitioner in the original petition vide affidavit dated 25.7.2022, has submitted that the date of the investment approval is 20.7.2017. The Board of Directors finally accorded the updated cost estimate of Rs 2401.07 Crore (May 2017 base) for Talabira-II & III open cast project-20MTPA (Peak-23MTPA).

30. The matter has been considered. The capital cost claimed by the Petitioner has been allowed under Regulations 36D of 2021 Second Amendment Regulations. The Petitioner *vide* Auditor's Certificate dated 3.12.2021 has claimed the capital cost incurred as on the COD as Rs. 87301.00 lakh. This includes an IDC of Rs. 7846.81 lakh and IEDC of Rs.11210.48 lakh also. Therefore, in order to scrutinise capital cost, we need to analyse base capital cost, IDC and IEDC separately.



<i>(Rs. in lakh)</i>	
Capital Cost claimed as per auditor certificate	87301.00
Less IDC claimed	7846.81
Less IEDC claimed	11210.48
Capital Cost excluding IDC & IEDC	68243.71

31. The Petitioner has also claimed a Notional IDC of Rs. 2778.55 lakh in base capital cost excluding IDC, Notional IDC, and IEDC is Rs. 68243.71 lakh.

Interest During Construction (IDC)

32. The Petitioner has claimed actual IDC and Notional IDC in respect of the coal mine covered in the present petition. It is observed that the Petitioner has invested its own funds initially for the development of this mine. The first loan drawl was in the month of April 2019. Notional IDC is allowed from the date of investment approval dated 20.7.2017. It is found that the Petitioner has claimed interest as IDC based on funds infused even before the date of investment approval. So, the interest accrued before the investment approval is not allowed as IDC. A notional IDC of Rs. 2090.76 lakh is allowed from the date of investment approval. Again, the Petitioner has claimed an actual IDC of Rs. 7846.81 lakh. We have observed some computational differences in the IDC claimed amount and rectified the same. However, the Petitioner is directed to provide complete details of IDC claimed at the time of truing-up. Accordingly, IDC allowed are as under:

<i>(Rs. in lakh)</i>			
IDC	claimed	Disallowed due to computational difference	Allowed
Actual IDC	7846.81	931.46	6915.35
Notional IDC	2778.55	687.79	2090.76

Incidental Expenditure During Constructions (IEDC)

33. The Petitioner has claimed an amount of Rs.11210.48 lakh as IEDC. As per form K, the Petitioner has included IDC of Rs. 7846.81 lakh as finance cost in IEDC Computation. The finance cost of Rs. 7846.81 has already been considered separately as IDC. Further, the Petitioner has included Rs.130.33 lakh on account of Depreciation charged on mines during construction and Rs. 1040.35 lakh on account of amortisation cost written-off during the construction period. Depreciation and amortisation do not



involve cash outflow; these are mere charges against profit. Therefore, the amount of Rs. 7846.81 lakh, Rs. 130.33 lakh and Rs. 1040.35 lakh are not allowed in capital cost. It is also observed that the Petitioner has included an amount of Rs. 7170.50 lakh in IEDC as 'Other Expenses' in Form-K to the Petition. The same has been considered; however, the Petitioner is directed to provide the details thereof at the time of truing up. Accordingly, the IEDC allowed is computed as under:

<i>(Rs. in lakh)</i>	
	Amount
IEDC Claimed	11210.48
Less Depreciation charged on mines	130.33
Less Amortization charged	1040.35
Less IDC	7846.81
IEDC Allowed	2192.99

Capital Cost as on COD

34. It is observed that the base capital cost includes Rs. 5980.03 lakh as capital in advance and Rs. 1296.00 lakh as investment in MNH Shakti. We disallow both from capital cost. Therefore, the base capital cost allowed as on COD is Rs. 60967.69 lakh (Rs. 68243.71-Rs. 5980.03-Rs. 1296.00). The Petitioner is given the liberty to claim after capitalising the same against the capital advance of Rs. 5980.02 lakh at the time of truing-up. Accordingly, the approved capital cost, including IDC & IEDC as on COD, is RS. 72166.80 lakh as computed below:

<i>(Rs. in lakh)</i>		
	Reference	Amount
Total Capital Cost claimed (Including IDC and IEDC)	A	90079.55
Less: Notional IDC claimed	B	2778.55
Less: Actual IDC claimed	C	7846.81
Less: IEDC Claimed	D	11210.48
Total Capital Cost claimed (Excluding IDC and IEDC)	E==(A-B-C-D)	68243.71
Add: Notional IDC allowed	F	2090.76
Add: Actual IDC allowed	G	6915.35
Add IEDC allowed	H	2192.99
Capital Cost including IDC & IEDC allowed	I=(E+F+G+H)	79442.82
Less: Capital Cost disallowed		
Capital Advance	J	5980.02
Investment in MNH Shakti	K	1296.00
Capital Cost allowed as on COD	L=(I-J-K)	72166.80



Additional Capital expenditure

35. Regulation 36(E) of the 2021 Second Amendment Regulations with respect to additional capital expenditure provides as under:

“36E. Additional Capital Expenditure: (1) The expenditure, in respect of the integrated mine(s), incurred or projected to be incurred after the date of commercial operation and upto the date of achieving the Peak Rated Capacity may be admitted by the Commission subject to prudence check, and shall be capitalized as Additional Capital Expenditure, corresponding to the Annual Target Quantity of the respective years as specified in the Mining Plan, on following counts:

- (a) expenditure incurred on activities as per the Mining Plan;*
- (b) expenditure for works deferred for execution and un-discharged liabilities recognized for works executed prior to date of commercial operation;*
- (c) expenditure for works required to be carried out for complying with directions or orders of any statutory authorities;*
- (d) liabilities arising out of compliance of order or decree of any court of law or award of arbitration;*
- (e) expenditure for procurement and development of land as per the Mining Plan;*
- (f) expenditure for procurement of additional heavy earth moving machineries for replacement, on completion of their useful life; and*
- (g) liabilities due to Change in Law or Force Majeure events;*

Provided that in case of replacement of any 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.

Provided further that the generating company shall prepare guidelines for procurement and replacement of heavy mining equipment such as Heavy Earth Moving Machineries and share the same with the beneficiaries and submit it to the Commission along with its petition.

(2) The expenditure, in respect of the integrated mine(s), incurred or projected to be incurred after the date of achieving the Peak Rated Capacity may be admitted by the Commission subject to prudence check, and shall be capitalized as Additional Capital Expenditure, corresponding to the Annual Target Quantity of the respective years as specified in the Mining Plan, on following counts:

- (a) expenditure incurred on activities, if any, as per Mining Plan;*
- (b) expenditure for works required to be carried out for complying with directions or order of any statutory authority;*
- (c) liabilities arising out of compliance of order or decree of any court of law or award of arbitration;*
- (d) expenditure for procurement and development of land as per the Mining Plan; and*
- (e) liabilities due to Change in Law or Force Majeure events;*

Provided that in case of replacement of any 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.

(3) The expenditure on following counts shall not be considered as additional capital expenditure for the purpose of these regulations:

- a) expenditure incurred but not capitalized as the assets have not been put in service (capital work in progress);*
- b) mine closure expenses;*
- c) expenditure on works not covered under Mining Plan, unless covered under sub-clause(g) of Clause (1) or sub-clause (e) of Clause (2) of this Regulation;*
- d) expenditure on replacement due to obsolescence of assets on account of completion of the useful life or due to obsolescence of technology, if the original cost of such assets have not been de-capitalised from the gross fixed assets.”*



36. The additional capital expenditure claimed by the Petitioner for the period 2021-24, is as under:

2021-22

<i>(Rs. in lakh)</i>			
S. No.	Head of Work / Equipment	2021-22	Regulation
1	Land, R&R and Community Development	10558.57	36 E(1)(e)
2	Mine Development	27.28	--
3	Residence Building	984.04	36 E (1a)
4	HEMM	6.45	36 E (1a)
5	Railway Siding Connectivity	1121.48	
6	Capital Outlay	2.51	36 E (1a)
7	Roads and Culvert	240.66	36 E (1a)
	Total	12940.98	

37. The Petitioner has claimed a total additional capital expenditure of Rs. 12940.98 lakh in 2021-22, and the same is examined below:

a) Land, R&R, and Community Development

38. The Petitioner has claimed an additional capital expenditure of Rs. 10558.57 lakh, under Regulation 36E(1)(e) of the 2021 Second Amendment Regulations for Land, R&R, and Community Development. In justification for the same, the Petitioner has submitted that the Land for 223 acres in Sambalpur was acquired at an average rate of Rs. 38.01 lakh/acre. The Petitioner has further claimed a total cost of Rs. 84.78 crores (i.e., 223 x 38.01) towards land and Rs 20.80 crores towards the Construction cost of the R&R colony, as per the mine plan. Considering the fact that same is as per mine plan, we allow the claim of Rs 10558.57 lakh under Regulation 36E(1)(e) of the 2021 Second Amendment Regulations. However, this is subject to the condition that the Petitioner, at the time of truing-up, shall furnish the complete mine plan, clearly depicting and justifying the expenditure claimed. Moreover, the proviso to Regulation 36(D) of the 2021 Second Amendment Regulations provides that where mine development and operation are undertaken by engaging the mine developer and operator, the capital expenditure incurred by the mine developer and operator or such agency shall not be capitalized. The Petitioner has appointed MDO in Talabira mines, and hence, the Petitioner, during truing-



up, shall furnish on an affidavit that the expenditure is not under the purview of the Mine developer.

b) Mine Development

39. The Petitioner has claimed an additional capital expenditure of Rs 27.28 lakh for Mine development and the Petitioner has not provided any regulation under which the said expenditure has been claimed. In justification for the same, the Petitioner has submitted that the said expenditure is towards the Preliminary works carried out prior to the exposure of coal.

40. The matter has been considered. It is noticed that the Petitioner has not submitted the details of the works carried out for Mine development. The Petitioner in Talabira Mines has appointed the MDO. Since the proviso to Regulation 36(D) of the 2021 Second Amendment Regulations provides that where mine development and operation are undertaken by engaging the mine developer and operator, the capital expenditure incurred by the mine developer and operator or such agency shall not be capitalized. Moreover, the said claim is towards the work which was carried out prior to the declaration of COD. In view of the above, the additional capital expenditure claimed by the Petitioner for the work of Mine development is not allowed.

c) Residence Building

41. The Petitioner has claimed an additional capital expenditure of Rs 984.04 lakh towards Residence building under Regulation 36E(1)(a) of the 2021 Second Amendment Regulations. In justification for the same, the Petitioner has submitted that the said expenditure is towards the capital expenditure for employee township quarters.

42. The matter has been considered. The Petitioner has claimed the said expenditure towards the township quarters for the employees. Further, the Petitioner has submitted that the claimed expenditure is as per the mining plan. The township quarter for its own employees is mostly covered under the capital cost of the generating station, and the Petitioner has not made out any differentiation that the expenditure now proposed has



not been included in the capital cost of the generating station. In view of the above, the said expenditure towards the residence building is not allowed. However, the Petitioner, at the time of truing up shall furnish the complete detail of expenditures to be incurred through the mine plan, reconciling all its claims as per the mine plan.

d) HEMM (Heavy Earth Moving Machinery)

43. The Petitioner has claimed additional capital expenditure of Rs 6.45 lakh towards Heavy Earth Moving Machinery, under Regulation 36E(1)(a) of the 2021 Second Amendment Regulations. In justification for the same, the Petitioner has submitted that these expenditures are towards auxiliary HEMM, such as service crane, hydraulic backhoe, and fire tender. Considering the fact that service cranes, hydraulic backhoes, and fire tender equipments are required during excavation and have been claimed as per the mine plan, we allow the expenditure of Rs 6.45 lakh towards HEMM. Since the Petitioner has appointed MDO in Talabira mines, the said expenditure is allowed, subject to the condition that the Petitioner, during truing-up, shall furnish an affidavit that the expenditure is not under the purview of the mine developer.

e) Railway siding connectivity

44. The Petitioner has claimed the additional capital expenditure of Rs 1121.48 lakh towards Railway siding connectivity. However, the Petitioner has not mentioned any clause under which the said expenditure has been claimed. In justification for the same, the Petitioner has submitted that the expenditure is for the Construction of Railway siding and linking line to the nearest rail line for evacuation of coal to Paradip port. The Petitioner has further submitted that a DPR 5.34 crores, for Package A (work via duct)-Rs. 1.78 crore. for Package B (remaining earthwork)-Rs. 1.05 crore, Jalabhandar Land-1.65 crores, Govt Land- Rs. 3.295 crore. Package A-Mobilization Advance- Rs. 13 crores.

45. The matter has been considered. It is noticed that from the details submitted by the Petitioner, the total projected expenditure works out to Rs 26.115 crore. It is not clear



from the submissions of the Petitioner the context towards which the expenditure of Rs 11.21 crore has been claimed. Moreover, the Petitioner has appointed an MDO in Talabira mines but has not confirmed that the same is not under the purview of the MDO. Hence, the claim of the Petitioner is not allowed at this stage. The Petitioner shall, at the time of truing-up of tariff, furnish on affidavit, the details of the total expenditure works for Rs 26.115 crore undertaken along with the undertaking that the expenditure is not under the purview of mine developer.

f) Capital Outlay

46. The Petitioner has claimed the additional capital expenditure of Rs 2.51 lakh towards Capital outlay under Regulation 36E(1)(a) of the 2021 Second Amendment Regulations. In justification for the same, the Petitioner has submitted that the expenditure is for the Construction of temporary hutments, diversion of Village roads and embankment around the Bhuden River, and minor works such as the development of village roads as per the Mine Plan.

47. The matter has been considered. It is noted that temporary hutments and diversion of roads and embankments are part of the procedures, which are generally undertaken at the project site. The Petitioner has claimed the said expenditure as per the mine plan and hence, the same is allowed. However, the Petitioner, at the time of truing-up, shall furnish the complete mine plan reconciling the claims thereunder along with an affidavit confirming that the expenditure is not under the purview of the Mine Developer and Operator.

g) Roads and Culverts

48. The Petitioner has claimed the additional capital expenditure of Rs 240.66 lakh towards Roads and culverts under Regulation 36E(1)(a) of the 2021 Second Amendment Regulations. In justification for the same, the Petitioner has submitted that the expenditure is towards laying off the approach road for the R&R colony. The matter has been considered. Since the said expenditure is as per the mine plan, the same is allowed,



subject to the condition that the Petitioner shall, at the time of truing-up of tariff, furnish the complete mine plan reconciling the claim thereunder and also certify that the same is not under the purview of mine developer.

49. The additional capital expenditure claimed by the Petitioner for the period 2022-24 is as under:

S. No.	Head of Work / Equipment	(Rs. in lakh)		
		2022-23	2023-24	Regulation
1	Preliminary Expenses	-	-	-
2	Land, R&R and Community Development	18778.00	18778.00	36 E (1e)
3	Serv. Building	-	-	-
4	Residence Building	378.00	378.00	36 E (1a)
5	HEMM	-	-	-
6	Other than HEMM	-	-	-
7	Furniture	59.50	58.75	36 E (1a)
8	Railway Siding (Temp)	-	-	-
9	Railway Siding Connectivity	2611.50	3808.00	36 E (1a)
10	Vehicle	-	-	-
11	Capital Outlay	-	-	-
12	Roads and Culvert	97.00	97.00	36 E (1a)
13	Water Supply	122.00	122.00	36 E (1a)
14	Environment and ecological cost	146.00	146.00	36 E (1a)
15	Contingency (1% of the project cost)	469.00	0.00	36 E (1a)
	Total	22661.00	23387.75	

50. The Petitioner, during the years 2022-23 and 2023-24, has claimed the additional capital expenditure of Rs. 22661.00 lakh and Rs. 23387.75 lakh respectively, as mentioned above. Except for the claim of on-land R&R and Community development, which the Petitioner has claimed under Regulation 36E(1)(e) of the 2021 Second Amendment Regulations, the Petitioner has claimed all the additional capital expenditure during the years 2022-23 and 2023-24 under Regulation 36E(1)(a) of the 2021 Second Amendment Regulations. The Petitioner, in justification of all the claims, has made a generalized statement that these are the expenditures incurred as per the mine plan. However, it is not clear from the submissions made by the Petitioner, as to whether the same is covered under the mine plan. The proviso to Regulation 36(D) of the 2021 Second Amendment Regulations provides that where mine development and operation are undertaken by engaging the mine developer and operator, the capital expenditure incurred by the mine developer and operator or such agency shall not be capitalized. The



Petitioner has appointed an MDO in Talabira mines. However, there is no specific work defined under the scope of MDO as per the mine plan. As the same is required to be examined at the time of truing-up, based on the actual expenditure incurred, the claim of the Petitioner during the years 2022-23 and 2023-24 is not allowed at this stage. However, the Petitioner at the time of truing-up, shall furnish the following:

- (a) Complete detail and bifurcation of expenditures to be incurred through mine plan, reconciling all its claims as per mine plan.
- (b) Submit the affidavit that the expenditure is not under the purview of mine developer.

51. Accordingly, the total additional capital expenditure allowed in respect of Talabira mines for the purpose of inclusion in the calculation of the input price of coal for the period 2021-24 is as under:

<i>(Rs. in lakh)</i>	
Year	Talabira Mine
2021-22	10808.19
2022-23	0.00
2023-24	0.00
Total	10808.19

52. The Petitioner is also directed to prepare the guidelines for the Procurement and replacement of heavy mining equipment such as Heavy Earth Moving Machineries, share the same with the beneficiaries, and submit the same along with the truing-up petition to be filed as per the proviso to Regulation 36(E) of the 2021 Second Amendment Regulations.

Capital cost allowed for the period 2019-24

53. The COD of the Talabira mine is 1.4.2021. Accordingly, the opening capital cost as on 1.4.2021 considered for the same is Rs 72166.80 lakh, as under:

<i>(Rs. in lakh)</i>			
	2021-22	2022-23	2023-24
Opening Capital cost (A)	72166.80	82974.99	82974.99
Add: Addition during the year/ period (B)	10808.19	-	-
Less: De-capitalization during the year / period (C)	-	-	-
Less: Reversal during the year / period (D)	-	-	-
Less: Undischarged liabilities (E)	-	-	-
Add: Discharges during the year / period (F)	-	-	-



	2021-22	2022-23	2023-24
Closing Capital Cost (G)=(A+B-C-D-E+F)	82974.99	82974.99	82974.99
Average Capital Cost (H)=(A+G/2)	77570.89	82974.99	82974.99

Debt Equity Ratio

54. Regulation 18 of the 2019 Tariff Regulations provides as under:

“18. Debt-Equity Ratio: (1) For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

- i. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- ii. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:*
- iii. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt: equity ratio.*

Explanation-*The premium, if any, raised by the generating company or the transmission licensee, as the case may be, while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station or the transmission system.*

(2) The generating company or the transmission licensee, as the case may be, shall submit the resolution of the Board of the company or approval of the competent authority in other cases regarding infusion of funds from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station or the transmission system including communication system, as the case may be.

(3) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, debt: equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

Provided that in case of a generating station or a transmission system including communication, system which has completed its useful life as on or after 1.4.2019, if the equity actually deployed as on 1.4.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff computation;

Provided further that in case of projects owned by Damodar Valley Corporation, the debt: equity ratio shall be governed as per sub-clause (ii) of clause (2) of Regulation 72 of these regulations.

(4) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall approve the debt: equity ratio in accordance with clause (1) of this Regulation.

(5) Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause (1) of this Regulation.”

55. Regulation 36G (1) of the 2021 Second Amendment Regulations provides as under:



“(1) For integrated mine(s), debt-equity ratio as on the date of commercial operation and as on the date of achieving Peak Rated Capacity shall be considered in the manner as specified under Clause (1) of Regulation 18 of these regulations:

Provided that for integrated mine(s) in respect of lignite with the date of commercial operation prior to 1.4.2019, debt-equity ratio allowed by the Commission for the period ending 31.3.2019 shall form the basis for computation of input price.”

56. In terms of Regulation 18 of the 2019 Tariff Regulations, the debt-equity ratio of 70:30 has been applied to the year-wise admitted additional capital expenditure for arriving at the additions to loan and equity during each year of the period 2019-24. Accordingly, the details of the debt and equity in respect of the generating station are as under:

<i>(Rs. in lakh)</i>						
	Capital Cost as on COD	%	Net additional capital expenditure for the period 2019-24	%	Capital Cost as on 31.3.2024	%
Debt	50516.76	70%	7565.73	70%	58082.49	70%
Equity	21650.04	30%	3242.46	30%	24892.50	30%
Total	72166.80	100%	10808.19	100%	82974.99	100%

Return on Equity

57. Regulation 30 of the 2019 Tariff Regulations provides as under:

30. Return on Equity: (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 18 of these regulations.

(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run-of-river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run-of-river generating station with pondage:

Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system

Provided further that:

i. In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;

ii. In case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;

iii. In case of a thermal generating station, with effect from 1.4.2020:

a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;



b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

Provided that the detailed guidelines in this regard shall be issued by National Load Dispatch Centre by 30.6.2019.”

58. Regulation 31 of the 2019 Tariff Regulations provide as under:

“31. Tax on Return on Equity. (1) The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission, as the case may be) shall be excluded for the calculation of effective tax rate.

(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where “t” is the effective tax rate in accordance with clause (1) of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess.

Illustration-

(i) In case of a generating company or a transmission licensee paying Minimum Alternate Tax (MAT) @ 21.55% including surcharge and cess:

Rate of return on equity = $15.50 / (1 - 0.2155) = 19.758\%$

(ii) In case of a generating company or a transmission licensee paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation or transmission business for FY 2019-20 is Rs 1,000 crore;

(b) Estimated Advance Tax for the year on above is Rs 240 crore;

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore / Rs 1000 Crore = 24%;

(d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$.

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed-up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-24 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee, as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long-term customers, as the case may be, on year to year basis.”

59. Regulation 36G of the 2021 Second Amendment Regulations provides as under:

“(3) Return on equity shall be computed in rupee terms on the equity base arrived under Clause (1) of this Regulation at the base rate of 14%.



(4) The base rate of return on equity as per Clause (3) of this Regulation shall be grossed up with the effective tax rate computed in the manner specified under Regulation 31 of these regulations.”

60. The Petitioner has submitted that the MAT rate is applicable to it. Accordingly, the MAT rate applicable in the year 2019-20 has been considered for the purpose of ROE, which shall be trued up with the actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff Regulations. ROE has been worked out and allowed as under:

		(Rs. in lakh)		
		2021-22	2022-23	2023-24
A	Opening Equity	21650.04	24892.50	24892.50
B	Additions	3242.46	0.00	0.00
C	Closing Equity (A+B)	24892.50	24892.50	24892.50
D	Average Equity (A+C)/2	23271.27	24892.48	24892.48
E	Return on Equity (Base Rate) (%)	14.000%	14.000%	14.000%
F	MAT Rate for respective year (%)	17.472%	17.472%	17.472%
G	Rate of Return on Equity (%)	16.964%	16.964%	16.964%
H	Return on Equity (D*G)	3947.74	4222.76	4222.76
I	Return on Equity (apportioned to NTPL)	1710.69	1372.40	914.93

Interest on Loan

61. Regulation 32 of the 2019 Tariff Regulations provides as under:

“32. Interest on loan capital: (1) The loans arrived at in the manner indicated in Regulation 18 of these regulations shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan.

(3) The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered up to the date of de-capitalisation of such asset.

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered;

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The changes to the terms and conditions of the loans shall be reflected from the date of



such re-financing.”

62. Regulation 36G of the 2021 Second Amendment Regulations provides as under:

“(5) Interest on loan, including normative loan, if any, determined under Clause (1) of this Regulation, shall be arrived at by considering the weighted average rate of interest calculated on the basis of actual loan portfolio, in accordance with Clauses (2) to (7) of Regulation 32 of these regulations.”

63. Interest on the loan has been worked out and allowed as under:

		(Rs. in lakh)		
		2021-22	2022-23	2023-24
Gross opening loan	A	50516.76	58082.49	58082.49
Cumulative repayment of loan up to previous year	B	0.00	3529.64	7305.18
Net Loan Opening	C=(A-B)	50516.76	54552.82	50777.28
Addition due to additional capital expenditure	D	7565.73	0.00	0.00
Repayment of loan during the year	E	3529.64	3775.54	3775.54
Repayment adjustment on account of de-capitalization	F	0.00	0.00	0.00
Net repayment of the loan during the year	G=(E-F)	3529.64	3775.54	3775.54
Net Loan Closing	H=(C+D-G)	54552.85	50777.31	47001.77
Average Loan	I=Average (C, H)	52534.80	52665.08	48889.54
Weighted Average Rate of Interest of loan	J	6.95%	6.95%	6.95%
Interest on Loan	K=(IxJ)	3651.17	3660.22	3397.82
Interest on Loan (apportioned to NTPL)		1582.17	1189.57	736.19

Depreciation

64. Regulation 36H of the 2021 Second Amendment Regulations provides as under:

“36H. Depreciation: (1) Depreciation in respect of integrated mine(s) shall be computed from the date of commercial operation by applying Straight Line Method: Provided that depreciation methodology allowed in respect of integrated mine(s) of lignite which have been declared under commercial operation on or before 31.3.2019, shall continue to apply for determination of input price of lignite.

(2) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission:

Provided that,

- i) freehold land or assets purchased from grant shall not be considered as depreciable assets and their cost shall be excluded from the capital cost while computing depreciable value of the assets;
- ii) where the allotment of freehold land is conditional and is required to be returned, the cost of such land shall be part of value base for the purpose of depreciation, subject to prudence check by the Commission; and
- iii) lease hold land shall be amortized over the lease period or remaining life of the integrated mine(s), whichever is lower.

(3) The salvage value of an asset shall be considered as 5% of the capital cost of the asset:

Provided that the salvage value shall be:

- i) zero for IT equipment and software;
- ii) zero or as agreed by the generating company with the State Government for land; and
- iii) as notified by the Ministry of Corporate Affairs under the Companies Act, 2013 for specialized mining equipment.

(4) Depreciation in respect of integrated mine(s) shall be arrived at annually by applying depreciation rates or on the basis of expected useful life specified in Appendix 1A of these regulations:

Provided that specialized mining equipment shall be depreciated as per the useful life



and depreciation rate as notified by the Ministry of Corporate Affairs under the Companies Act, 2013.”

65. Accordingly, in terms of Regulation 36H of the 2021 Second Amendment Regulations, depreciation has been worked out and allowed as under:

	<i>(Rs. in lakh)</i>		
	2021-22	2022-23	2023-24
Average Capital Cost	77570.89	82974.99	82974.99
Value of freehold land	-	-	-
Remaining Aggregate Depreciable value at the beginning of the year	75697.76	77302.00	73526.46
Weighted Average Rate of Depreciation (WAROD)	4.550%	4.550%	4.550%
Depreciation (annualized)	3529.64	3775.54	3775.54
Cumulative Depreciation-Opening	0.00	3529.64	7305.18
Depreciation during the year	3529.64	3775.54	3775.54
Cumulative Depreciation-Closing	3529.64	7305.18	11080.72
Depreciation allowed to NTPL	1529.51	1227.05	818.03

Additional Charges

66. Regulation 36(C)(2) of the 2021 Second Amendment Regulations provides that where crushing, transportation, handling, or washing are within the scope of the Mine Developer and Operator engaged by the generating company, no additional charge shall be admitted. Further, Regulation 36(C)(3) of the 2021 Second Amendment Regulations provides that if crushing, transportation, handling, or washing is undertaken by the generating company by engaging an agency other than the Mine developer and operator, the annual charge of such agencies shall be considered as part of the Operation and Maintenance expenses, provided that the charges have been discovered through transparent, competitive bidding. The Petitioner, in the present case, has appointed a mine developer. Accordingly, the same has not been claimed by the Petitioner.

O&M expenses

67. As regards O&M Expenses, Regulation 36I of the 2021 Second Amendment Regulations provides as under:

“1(a) The Operation and Maintenance expenses of integrated mine(s) of coal, for the tariff period ending on 31st March 2024 in, shall be allowed based on the projected Operation & Maintenance Expenses for each year of the tariff period subject to prudence check by the Commission.



Provided further that the Operation & Maintenance expenses allowed under this clause shall be trued up based on actual expenses for the tariff period ending on 31st March, 2024.

(2) Where the development and operation of the integrated mine(s) is undertaken by the generating company by engaging Mine Developer and Operator, the mining charge of such Mine Developer and Operator shall not be included in Operation and Maintenance Expenses under clause (1) of this Regulation;

(3) Where an agency other than Mine Developer and Operator is engaged by the generating company, through a transparent competitive bidding process, for crushing or transportation or handling or washing or any combination thereof, the annual charges of such agency shall be considered as part of Operation and Maintenance Expenses, under clause (1) of this Regulation subject to prudence check by the Commission.”

68. In terms of the above regulation, the O&M expenses claimed by the Petitioner are as under:

<i>(Rs. in lakh)</i>		
2021-22	2022-23	2023-24
1263.60	1326.78	1393.12

69. Regulation 36I of the 2021 Second Amendment Regulations provides that the O&M expenses for the period 2019-24 shall be allowed based on the projected O&M expenses for each year of the tariff period, subject to prudence check, and the same will be trued up based on the actual expenses for the tariff period ending on 31.3.2024. The Petitioner has considered the O&M expenses of Rs 1263.60 lakh for the year 2021-22 and escalated the O&M of the year 2021-22 by 5% annually to claim for 2022-23 and 2023-24.

70. Considering the fact that the COD of the mines was declared on 1.4.2021 and, for the first time, the input price of coal for integrated mines is being determined, we allow the O&M expenses as claimed by the Petitioner for the determination of input price for the coal from Talabira mines for the period 2021-24. However, the O&M expenses allowed above shall be trued-up based on the actual expenses for the period 2021-24. The Petitioner, at the time of truing-up, shall furnish all the details corresponding to the O&M expenses, duly certified by the auditor, and shall ensure that the mining charges of such Mine Developer and Operator are not included in the O&M expenses. The Petitioner is also directed to furnish the actual O&M expenses along with an Auditor's Certificate corresponding to the full capacity of Talabira mines at the time of the truing-up of tariff.



Interest on working capital

71. Clause (3) and (4) of Regulation 34 of the 2019 Tariff Regulations provide as under:

“(3) Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1st April of the year during the tariff period 2019-24 in which the generating station or a unit thereof or the transmission system including communication system or element thereof, as the case may be, is declared under commercial operation, whichever is later:

Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

(4) Interest on working capital shall be payable on normative basis notwithstanding that the generating company or the transmission licensee has not taken loan for working capital from any outside agency.”

72. As per Regulation 36J of the 2021 Second Amendment Regulations, interest on working capital provides as under:

(1) The working capital of the integrated mine(s) of coal shall cover: -

(i) Input cost of coal stock for 7 days of production corresponding to the Annual Target Quantity for the relevant year;

(ii) Consumption of stores and spare including explosives, lubricants and fuel @ 15% of Operation and Maintenance expenses, excluding Mining Charge of Mine Developer and Operator and annual charges of the agency other than Mine Developer or Operator, engaged by the generating company; and

(iii) Operation and Maintenance expenses for one month, excluding Mining charge of Mine Developer and Operator and annual charge of the agency other than Mine Developer and Operator, engaged by the generating company.

(3) The rate and payment of interest on working capital shall be determined in accordance with Clauses (3) and (4) of Regulation 34 of these regulations.

73. The interest on working capital claimed by the Petitioner in terms of the above regulations, is as under:

	<i>(Rs in lakh)</i>		
	2021-22	2022-23	2023-24
Input Cost of Coal/Lignite Stock for 7 days of Production corresponding to ATQ for the relevant year	142.32	149.13	152.93
Consumption of stores and spare including explosives, lubricants and fuels (@ 15%/20%) of O&M expenses	252.72	265.36	278.62
One-month O & M expenses	105.30	110.57	116.09
Total Working Capital	500.34	525.05	547.65
Rate of Interest on Working Capital	10.50%	10.50%	10.50%
Interest on Working Capital	52.54	55.13	57.50

74. Interest on working capital has been worked out and allowed as under:



(Rs. in lakh)

	2021-22	2022-23	2023-24
Input Cost of Coal/Lignite Stock for 7 days of Production corresponding to ATQ for the relevant year	117.55	98.93	74.79
Consumption of stores and spare including explosives, lubricants and fuels (@ 15%/20%) of O&M expenses	189.54	199.02	208.97
One Month O & M Expenses	105.30	110.57	116.09
Total Working Capital	412.39	408.52	399.85
Rate of Interest on Working Capital	10.50%	10.50%	12.00%
Interest on Working Capital	43.30	42.89	47.98

Mine Closure Expenses

75. The Petitioner has not claimed any Mine closure expenses towards the Talabira mine. The Petitioner, in rejoinder to TANGEDCO, vide affidavit dated 14.3.2023 has clarified that the mine closure expenses form part of the Mining charge, and the same is under the scope of MDO; hence, they are not claimed separately. Since Regulation 36(K)(5) of the 2019 Tariff Regulations also provides that the Mine Closure expenses worked out shall not be applicable to the integrated mine allocated through auction under the Coal Mines (Special Provisions) Act, 2015, and the Petitioner has submitted that the same is under the scope of MDO, we are not inclined to allow the same.

Annual Extraction cost allowed for the period 2019-24

76. Based on the above, the annual extraction cost allowed for the coal mine is summarized as follows:

(Rs. in lakh)

	2021-22	2022-23	2023-24
Depreciation	1529.51	1227.05	818.03
Interest on Loan	1582.17	1189.57	736.19
Return on Equity	1710.69	1372.40	914.93
Interest on Working Capital	43.30	42.89	47.98
O&M Expenses	1263.60	1326.78	1393.12
Total	6129.27	5158.70	3910.26

Annual Target Quantity

77. In terms of the 2021 Second Amendment Regulations, the input price of coal has to be determined based on the Annual Target Quantity (ATQ) of the integrated mines,



where ATQ as per Regulation 3 (4)(a) of the 2021 Second Amendment Regulations has been defined as under:

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

Provided that in case the integrated mine(s) of coal or lignite is ready for supply of coal or lignite as per the Mining Plan but is prevented due to reasons not attributable to the generating company, the Commission may relax the Annual Target Quantity up to a maximum of 15% of the quantity of coal or lignite to be extracted during a year as specified in the Mining Plan.

78. The Petitioner has submitted that as per the allotment agreement dated 31.3.2016, the coal excavated from Mines is to be utilized for the generating station i.e., NLC Tamil Nadu Power Limited, Tuticorin, Tamil Nadu (NTPL) (2x500 MW) and NLC Talabira thermal power Plant, (NTTTP) Sambalpur district, Odisha state (3x800 MW) Phase-I and (1x800MW) Phase-II. The Petitioner has filed this petition for the input price of Talabira mines for direct supplies of 2.6 MTPA to NLC Tamil Nadu Power Limited, based on its requirement. The Investment approval of the Talabira Coal Mine project was accorded by the NLCIL Board at its 470th meeting held on 20.7.2017 at a project cost of Rs. 2401.07crore. ODISHA state Pollution control board vide OM dated 8.2.2019 and 27.3.2020 has issued Consent to Establish and Consent to Operate respectively, for NLCIL 20 MTPA Talabira mines. The Mining plan of the block was approved by the Ministry of Coal, GoI, vide letter No.34012 (4)-2011-CPAM in January 2012. The Salient features of the Talabira Coal mine are:

	Characteristics
Annual Target Quantity	20 MTPA
Peak rated capacity	23 MTPA
Location	Jharsuguda, Orissa
Mineable reserves	553.98 MT
Mining area land - Acquired/Leased	1176 Hectare
Average stripping ratio	1:1.09
Type of mining	Open cast
Mode of Operation	Under Mine Development and Operator (MDO)
End use plants	NLC Talabira thermal power plant (NTTTP)- 3 X 800MW-Phase I NLC Talabira thermal power plant (NTTTP)- 1 X 800MW-Phase II NTPL, Tuticorin 2X 500 MW
Capacity of Generating station End use plants	NTTTP -3200 MW NTPL – 1000 MW



	Characteristics
Capacity of Mine- allocated to NTPL, Tuticorin	2.6 MTPA

79. As regards the Talabira Mine coal price calculation for the NTPL portion of 26 LT, the Petitioner has furnished the following details for ATQ:

	<i>(in lakh tonnes)</i>		
	2021-22	2022-23	2023-24
Annual Target Quantity - As per Mine Plan in LT	60.00	80.00	120.00
Capacity of Mine- allocated to NTPL @ 26 LT Requirement	26.00	26.00	26.00
Capacity of Mine- allocated to Talabira TPP	34.00	54.00	94.00

80. Accordingly, the ATQ of Talabira mines is allowed, as claimed by the Petitioner, for the period 2021-24.

Run of Mine cost

81. Regulations 36B and 36C of the 2021 Second Amendment Regulations provide as under:

“36 B. Run of Mine (ROM) Cost: (1) Run of Mine Cost of coal in case of integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:

ROM Cost = (Quoted Price of coal) + (Fixed Reserve Price)

Where,

(i) Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal block or mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement:

Provided that additional premium, if any, quoted by the generating company during auction, shall not be considered in the Run of Mine Cost;

(ii) Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement: and

(iii) Capital cost under Regulation 36D and additional capital expenditure under Regulation 36E shall not be admissible for the purpose of ROM cost in respect of integrated mine(s) allocated through auction route.”

“36C. Additional Charges: (1) Where crushing or transportation or handling or washing are undertaken by the generating company without engaging Mine Developer and Operator or an agency other than Mine Developer and Operator, additional charges shall be worked out as under:

(i) Crushing Charges = Annual Crushing Cost/Quantity;

(ii) Transportation Charges= Annual Transportation Cost/Quantity:

Provided that separate transportation charges, as applicable, shall be considered from mine up to washery end or coal handling plant associated with the integrated mine(s) and beyond washery end

or coal handling plant associated with the integrated mine(s) and up to the loading point, as the case may be;

(iii) Handling charges = Annual Handling Cost/Quantity; and

(iv) Washing Charges = Annual Washing Cost/Quantity.

Where,

(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 the generating company shall submit the capital cost separately:

- (i) Depreciation;
 - (ii) Interest on Working Capital;
 - (iii) Interest on Loan;
 - (iv) Return on Equity;
 - (v) Operation and Maintenance Expenses, excluding mining charge;
 - (vi) Statutory charges, if applicable.
- (b) Quantity shall be the quantity of coal or lignite in tonne crushed or transported or handled or washed, as the case may be, during the year duly certified by the Auditor.
- (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.
- (3) Where crushing, transportation, handling or washing are undertaken by the generating company by engaging an agency other than Mine Developer and Operator, the annual charges of such agencies shall be considered as part of the Operation and Maintenance Expenses, provided that the charges have been discovered through a transparent competitive bidding process.
- (4) The crushing charges, transportation charges, handling charges, and washing charges shall be admitted by the Commission after prudence check, considering charges of Coal India Limited or similarly placed coal mines or any other reference charges.
- (5) The crushing charges, transportation charges, handling charges, and washing charges shall be worked out in terms of Rupees per tonne.”

36L. Determination of Input Price:

- 1) The input price of coal or lignite shall be determined as under:
Input Price = [ROM Cost + Additional charges]
- 2) The credit arising on account of adjustment due to shortfall in overburden removal, GCV Adjustment and Non-tariff Income, if any, shall be dealt separately in the manner specified in these regulations.
- 3) Statutory Charges, as applicable, shall be allowed.

		<i>(Rs. per tonne)</i>		
	Ref.	2021-22	2022-23	2023-24
Run of Mine Cost (ROM)				
Annual Extraction cost		235.74	198.41	150.39
Mining Charges		404.04	424.24	445.45
Fixed Reserve Price		100.00	100.00	100.00
Total	A	739.78	722.65	695.85
Additional Charges	B	-	-	-
Input Price (As per Regulation 36L of 2021 Second Amendment Regulations.)	(A+B)	739.78	722.65	695.85

Adjustment on account of Shortfall of Overburden Removal (OB Adjustment):

82. Regulation 36N of the 2021 Second Amendment Regulations provides as under:

- (1) The generating company shall remove overburden as specified in the Mining Plan.
- (2) In case of 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 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 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 shortfall of overburden removal (OB Adjustment) for that year shall be worked out as under:

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

Where,

i) Factor of adjustment for shortfall of overburden removal during the year shall be computed as under: $[(Actual\ quantity\ of\ coal\ or\ lignite\ extracted\ during\ the\ year \times Annual\ Stripping\ Ratio\ as\ per\ Mining\ Plan) - (Actual\ quantity\ of\ overburden\ removed\ during\ the\ year / Annual\ Stripping\ Ratio\ as\ per\ Mining\ Plan)] / (Annual\ Target\ Quantity);$

ii) Annual Stripping ratio is the ratio of 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 auction route under Coal Mines (Special Provisions) Act, 2015.

83. The Petitioner has submitted that the details of the Overburden adjustment will be provided at the time of truing-up. Accordingly, the same has not been considered in this petition. However, the Petitioner is directed to clarify whether the Overburden removal was under MDO scope or not and submit all details of the Overburden adjustment, with documentary evidence, at the time of truing-up.

Adjustment on account of shortfall in GCV (GCV Adjustment)

84. Regulation 36O of the Second Amendment Regulations provides as under:

In case the weighted average GCV of coal extracted from the integrated mine(s) in a year is higher than the declared GCV of coal for such mine(s), no GCV adjustment shall be allowed.

In case the weighted average GCV of coal extracted from the integrated mine(s) in a year is lower than the declared GCV of coal of such mine(s), the GCV adjustment in that year shall be worked out as under:

Where the integrated mine(s) are allocated through auction route under Coal Mines (Special Provisions) Act, 2015:

$GCV\ Adjustment = (Quoted\ Price\ of\ coal + Fixed\ Reserve\ Price) \times [(Declared\ GCV\ of\ coal - Weighted\ Average\ GCV\ of\ coal\ extracted\ in\ the\ year) / (Declared\ GCV\ of\ coal)]$

Where,

Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal Block or Mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement: Provided that additional premium, if any, quoted by the generating company in auction, shall not be considered; and

ii) Declared GCV of coal shall be the GCV of coal as specified or quoted in the auction.

(b) Where the integrated mine(s) are allocated through allotment route under Coal Mines (Special Provisions) Act, 2015:



$GCV\ Adjustment = [(Annual\ Extraction\ Cost/ATQ) + (Mining\ Charge)] \times [(Declared\ GCV\ of\ coal - Weighted\ Average\ GCV\ of\ coal\ extracted\ in\ the\ year)/(Declared\ GCV\ of\ coal)]$

Where,

- i) Annual Extraction Cost is the cost of extraction of coal as computed in accordance with Regulation 36F of these regulations;
- ii) Mining Charge is the charge per tonne of coal paid by the generating company to the Mine Developer and Operator engaged by the generating company for mining, wherever applicable; and
- iii) Declared GCV of coal shall be the average GCV as per the Mining Plan or as approved by the Coal Controller.

85. The Petitioner has submitted that the details of GCV adjustment will be provided at the time of truing up. Hence, the same has not been considered in this petition. However, the Petitioner is directed to submit all details of the GCV adjustment with documentary evidence at the time of truing-up.

Statutory charges, if applicable

86. Regulation 36A (2) of the 2021 Second Amendment Regulations provides that the statutory charges will be a part of the input price of coal. The different statutory charges payable by the Petitioner for its mines, as claimed, are as under:

	Basis of Computation	Rate
Royalty	% of Input Price (Basic Rate as per Coal India Notified Price)	14%
District Mineral Foundation (DMF)	% of Royalty	30%
National Mineral Exploration Trust (NMET)	% of Royalty	2%
GST Compensation Cess	Rs per tonne	400
GST on Royalty DMF & NMET	% of Total Taxable Value of Goods	18%
GST on Base price of Coal for Sales	% of Base price	5%

87. It is observed that the Petitioner has not furnished any documentary evidence in support of its claim for statutory charges. However, the statutory charges are allowed in the present Petition as per their applicability. The Petitioner shall furnish the relevant documentary evidence at the time of truing-up, in respect of the above claims.

Non-Tariff Income (NTI)

88. Regulation 36P of the 2021 Second Amendment Regulations provides that profit, if any, arising on account of sales made for the unutilised portion of the NTPL requirement (26 LT) will be shared with the beneficiaries of NTPL. The Petitioner has stated that the



details on this count, will be submitted at the time of filing the truing-up. The prayer of the Petitioner on this count is accepted.

Recovery of Input Price of Coal

89. As per regulation 36 M of the 2021 Second Amendment Regulations, the input charges of coal or lignite shall be recovered as under:

$$\text{Input Charges} = [\text{Input Price} \times \text{Quantity of coal or lignite supplied}] + \text{Statutory charges, as applicable};$$

90. Based on the above deliberations, the Run of Mine Cost in respect of Talabira Mines, as claimed for the period 2019-24, is as under:

	<i>(Rs./Tonne)</i>		
	2021-22	2022-23	2023-24
ROM cost claimed	789.46	823.32	853.00
Run of Mine cost allowed	739.78	722.65	695.85

91. The input price of coal approved as above is subject to truing-up in terms of Regulation 13 of the 2019 Tariff Regulations.

92. Petition No. 215/MP/2022 is disposed of in terms of the above.

Sd/-
(Ramesh Babu V)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

