एनटीपीसी लिमिटेड
(भारत सरकार का उद्यम)
NTPC Limited
(A Govt. of India Enterprise)

Ref No. 01.CD.737-D
Date: 15.07.2020

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

Subject: Comments of NTPC on Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020

Sir,

Hon'ble Commission vide its notification dated 01.06.2020 has published the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020 inviting views/ comments/ suggestions/ objections from various stakeholders on the proposed draft amendment to the Tariff Regulations 2019.

In this regard, please find enclosed comments/ suggestions of NTPC on the Draft CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2020.

Thanking you,

Yours sincerely,

Executive Director (Commercial)

Preliminary Submissions:

1. It is submitted that presently, the coal plants are primarily dependent on Coal India Ltd (CIL) for supply of coal. There is non-transparent pricing, uncertainty in fuel supply and sluggish response to quality related issues. With the objective of reducing electricity tariff and to reduce dependency of power sector on one company, the coal mines were allocated to generating companies including NTPC. Presently, the generating companies have very little experience in operating the mines. Hon'ble Commission is requested that, through these Regulations, the generating companies should be encouraged to engage more and more in mining of coal so that monopoly in coal sector can be reduced. Therefore, while forming Regulations regarding coal input price determination, Hon'ble CERC is requested to give opportunity to generating company to get experience in this sector without putting too much risk on them & inspire other companies to enter in coal mining while protecting interest of consumers so that the objective of development of coal mining sector can be achieved.

2. It is submitted that capital investment of generating companies in mines where MDO is appointed is very low. As envisaged in report of Working Group on 'Determination of input price of coal', return to generating company and therefore the opportunity of incremental profitability by entering into integrated mining is very limited. But at the same time, the risks like geological surprises, seasonal impact, socio-political factors etc are very high. It is humbly submitted that addition of regulatory risk in the list of business risks, when the integrated mining is at nascent stage, shall discourage investment in mining sector and objective of the exercise shall remain underachieved.

Regulation-wise Submissions:

A. **Proposed Amendment:** *3.8 Clause (21) of Regulation 3 of the Principal Regulations shall be substituted as under:-*

"(21) 'Existing Project' *means the generating station or unit thereof and the transmission system or element thereof which has been declared under commercial operation on a date prior to 1.4.2019;"*

Comments of NTPC

1. It is submitted that after implementation of the proposed amendment, certain category of projects can be categorized in the definition of "existing Projects" as well as "New Project".

2. For example, three units of BRBCL Nabinagar (NTPC Railways JV), having 4X250 MW units, were declared under commercial operation before 01.04.2019 and one unit is expected to be declared under commercial operation in 2019-24 control period. After implementation of proposed regulation, BRBCL can be classified "existing project" as well as "new project" as per Tariff Regulations, 2019.

3. It is further submitted that as mentioned in point no 2.3.1.7 of Explanatory Memorandum, the intention of amending clause 21 of Regulation 3 is to amend definition of 'Project' to incorporate provisions related to integrated mine. It is submitted that definition of the 'Project' is as per clause 50 of Regulation 3 and the same has missed the attention of Hon'ble Commission and intended amendment has not been incorporated.

4. Therefore, the Hon'ble Commission may be pleased to retain the existing definition of 'Existing Project' and the intended amendment may be incorporated in clause 50 of principal regulation 3.

B. **Proposed Amendment:** *3.10 A new proviso shall be added after first proviso of Clause (40) of Regulation 3 of Principal Regulations as under:-*
"Provided further that in respect of the integrated mines, funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval."

Comments of NTPC:

1. It is submitted that the projects where Investment Approval has already been accorded by the Board of Directors, the Investment Approval may be adopted in the already approved formats. For the subsequent projects, provisions as per regulatory provisions could be inserted in the Investment Approval.

C. **Proposed Amendment:** *3.11 A new clause, namely Clause (41a) shall be inserted after Clause (41) of Regulation 3 of the Principal Regulations as under:*

"(41a) ***'Loading Point'*** *in respect of an integrated mine means the location of railway siding or silo for storage of coal or the coal handling plant, whichever is nearest to the mine;"*

Comments of NTPC:

1. It is submitted that the physical location of railway siding or loading silo may differ from mine to mine and would depend on topology of site, availability of land & location of Indian Railways network.

2. It is also submitted that FSAs of Coal India Ltd, define 'Colliery Loading Point' as under:
   - i) Silo, or
   - ii) Mid Point for Wharf Wall Loading at the colliery, or
   - iii) Truck Loading Point, or
   - iv) Ropeways Loading Point, or
   - v) Transfer Point to the customer's belt conveyer etc, as the case may be.

3. MDO contracts also define the transfer point as the point at which MDO loads the coal from the load out silo into wagons arranged by the owner at the Railway Siding.

4. It is further submitted that as mentioned in point no 2.3.1.10 of Explanatory Memorandum, the purpose of defining the 'Loading Point' is to distinguish the scope of transportation of miner and the generating station. The scope of transportation of miner ends at the loading silo/ wharf wall where the coal is loaded into Wagons.

5. It is therefore submitted that the qualification of being nearest to mine for being classified as loading point may be removed from the definition as the same may create confusion and disputes. Further, the word '**silo for storage of coal**' may be replaced by '**silo for loading of coal**'.

6. In view of the above, it is respectfully submitted that the Hon'ble Commission may be pleased to suitably modify the definition of loading point. The proposed definition is as follows:

*'**Loading Point'** in respect of an integrated mine means the location of railway siding or silo for loading of coal ~~storage of coal or the coal handling plant, whichever is nearest to the mine~~;*

D. **Proposed Amendment:** 5.1 A new Clause, namely Clause (3) shall be added after Clause (2) of Regulation 5 of the Principal Regulations as under:-

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

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 in case the integrated mine is ready for commercial operation but is prevented from the declaration of date of commercial operation for reasons not attributable to the generating company, its suppliers or contractors, the Commission may approve another date of commercial operation, considering the reasons that prevented the declaration of the date of commercial operation."

Comments of NTPC:

1. It is submitted that Coal India adopts following methodology for declaration of Commercial operation of mine:
   "The project/mines are brought to revenue;
   when commercial readiness of a project/mine to yield production on a sustainable basis is established either on the basis of conditions specifically stated in the project report or on the basis of the following criteria:
   (a) From beginning of the financial year immediately after the year in which the project achieves physical output of 25% of rated capacity as per approved project report, or
   (b) 2 years of touching of coal, or
   (c) From the beginning of the financial year in which the value of production is more than total expenses.
   Whichever event occurs first;"

2. NTPC is also following similar methodology for declaration of commercial operation of mines and the same is extracted as follows:

   "Mines under development are brought to revenue on occurrence of earliest of the following milestones except otherwise when commercial readiness is specifically stated in the project report:
   a) From the beginning of the financial year immediately after the year in which the project achieves physical output of 25% of rated capacity as per approved project report; or
   b) From the beginning of the financial year in which the value of production is more than total expenses; or
   c)2 years of touching of coal.

The above is subject to commercial readiness to yield production on a sustainable basis (i.e. when the Company determines that the mining property will provide sufficient and sustainable return relative to its perceived risks and therefore it is considered probable that future economic benefits will flow to the Company)."

3. The draft proposes for approval of Hon'ble Commission, which may take time and create uncertainty in COD declaration and would have financial implications either for the mine owner or for the beneficiaries.

4. It is further submitted that condition b) of the COD, should be modified as follows: "*From the beginning of the financial year in which the value of production is more than total expenses; or"* as delaying CoD to succeeding year will lead to unrealistic pricing of coal at Coal India notified price during the year in which estimated value of production is more than expenditure resulting into undesirable increase/ decrease in capital cost.

5. In view of the above, the regulatory provisions regarding date of commercial operation may be aligned with industry practice and Regulation 5(3) of proposed draft amendment may be modified suitably.

E. **Proposed Amendment:** *7. Insertion of New Regulation 7A in the Principal Regulations.*

7.1 A new Regulation, namely Regulation 7A shall be inserted after Regulation 7 of the Principal Regulations as under:-

"7A. Supply of Coal or Lignite prior to the Date of Commercial Operation of Integrated Mine: The input price for supply of coal or lignite from the integrated mines prior to the date of commercial operation shall be:-

(a) in case of coal, the estimated price available in the investment approval, or the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector, whichever is lower; and

(b) in case of lignite, the estimated price available in the investment approval or the last available pooled lignite price as determined by the Commission for transfer price of lignite, whichever is lower:

Provided that any revenue earned from supply of coal or lignite prior to the Date of Commercial Operation of the integrated mines shall be applied in adjusting the capital cost of the said integrated mines."

Comments of NTPC:

1. It is submitted that w.r.t. proposed clause 7A(a), it may be clarified that input price shall be charged including additional charges, statutory charges and taxes etc.

2. It is further submitted that while supplying the coal prior to CoD, generating company shall be incurring some expenditure for excavation of coal before Commercial Operation Date also. Therefore, the revenue earned prior to CoD may be applied in adjusting the capital cost of the mine after accounting for all the expenditure like MDO charges, Incidental Expenses (Employee salaries, repair & maintenance expenses, overhead expenses etc.), statutory charges etc. This is similar to the treatment of power supplied before CoD of generating station.

F. **Proposed Amendment:** *8.1 The full stop (.) at the end of Clause (4) shall be read as colon (:) and a new proviso shall be inserted after the first proviso under Clause (4) of Regulation 9 of the Principal Regulations as under:-*

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

Comments of NTPC:

It is submitted that after declaration of commercial operation, it takes about 75-90 days for finalization of books of account. Therefore, period of 6 months may be provided for filing the petition in line with the timeline provided for generating stations.

G. **Proposed Amendment:** *11.1. A new clause, namely Clause (1a) shall be inserted after Clause (1) of Regulation 13 of the Principal Regulations as under:-*

"(1a) The input price of coal and lignite from the integrated mines of the generating station for the period 2019-24 shall be trued up for:

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

b) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, on account of Force Majeure and Change in Law, as admitted by the Commission."

Comments of NTPC:

1. It is submitted that Regulation 13(4) provides for methodology for recovery/ refund of difference of tariff of generating stations determined after truing up and already recovered. The Hon'ble Commission may be pleased to clarify that same methodology shall be applicable for recovery/ refund of difference of input charges of coal supplied from integrated mine computed after truing and already recovered.

H. **Level of production (CUF) for recovery of Annual Extraction Cost:** Proposed insertion of new Regulations 3(4a), 36A, 36L & 36M implies that the generating company shall be able to recover full fixed cost of mining operation i.e. Annual Extraction Cost only in case the actual production of coal is equal to the production level as per mine plan i.e. Capacity Utilization

Factor (CUF) of mine is 100%. In this regard, NTPC would like to submit as follows:

1. While providing the regulatory framework for pricing, there is a necessity to provide incentives for better performance and simultaneously disincentives for poor performance. It should not be the case that while profits are capped to ROE, the disincentives/ penalties are unlimited and there is no opportunity to make up the loss incurred in a year in the subsequent years of operations. In case of Pakri mine, where the capital investment would be in the range of Rs 4500 crs, the annual ROE would be about Rs 210 Cr (@15.5% RoE) against an estimated revenue of about Rs 2700 cr. So even 7-8% under recovery of cost can put the Company in loss with no chance of making up the losses. Any small deviation from the plan can wipe out the entire profits of the year. Such mechanism would discourage companies other than CIL to enter this area. It is therefore submitted that regulatory provisions should be such that new mining entities survive and stay healthy.

2. It is submitted that clause 5.11 (f) of Tariff Policy issued by GOI provides as follows:

   f) Operating Norms
   Suitable performance norms of operations ***together with incentives and disincentives*** *would need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.11(h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals".* ***This is essential to encourage better operating performance****.*

   Therefore, Tariff Policy also stipulates that the norms of operation should be set in such a way that there should be penalties for poor performance and at the same time incentive should also be there for efficient operation. In the proposed Regulations, there is no incentive

mechanism while any shortfall in performance would lead to huge losses.

3. It is submitted that when annual production is capped at production as per mine plan and recovery of fixed cost also is at 100% CUF, generating company can only lose its fixed cost and there is no chance of incentive or making up losses in subsequent years. Such type of provision at this time, when integrated mining of coal is at nascent stage, will diminish chances of further investment in this sector and beneficiaries will be devoid of cheap, reliable and transparently priced power.

4. It is relevant to mention that Hon'ble Commission had constituted a Working Group under the Chairmanship of Mr. Sutirtha Bhattacharya, Chairman, WBERC and former CMD of Coal India Limited to examine various aspects and suggest suitable approach for developing regulatory framework for determination of input price or transfer price from integrated coal mines. The Working Group submitted its report to the Hon'ble Commission. In regard to the normative CUF, the Working Group recommended as follows:

   "3.3.4 In case of generating company, recovery of annual fixed cost is admissible at 85% availability. On similar principle, the mine developer needs to be protected against less utilization or production due to un-controllable factors. ***Normative utilization of coal or lignite mine may also be specified as 85%****, which may be reviewed by the Commission based on data of integrated mine operation."*

   Thus the expert group constituted to suggest the mechanism has recommended that the recovery of fixed cost should be allowed at capacity utilization factor (CUF) of 85%.

5. It is further submitted that, the generating company may be incentivized by allowing recovery of Annual Extraction Cost and additional charges proportionate to actual CUF to get maximum benefit out of the scheme of integrated mining and to enable generating company to make good

the under recovery of fixed charges due to lower CUF in subsequent years. Production more that CUF shall be beneficial for beneficiaries also as they will get additional power at very low price.

6. It is submitted that based on the guidelines issued by Ministry of Coal from time to time, Hon'ble Commission has been fixing the transfer price of Lignite from the year 2001. All these years, the Capacity Utilization Factor for full AFC recovery considered by Hon'ble Commission has been 85%. It is submitted that the philosophy adopted for last 18 years may not be altered.

7. The following points may also be considered:
   i. Para 5.3.4 of report of working group, Coal India considers 85% CUF of new project while deciding feasibility of new project.
   ii. Western Coal Fields ltd in its notice published on website on 02.03.2019 for inviting applications for supply of coal from its mines on cost plus basis has indicated 85% CUF for deciding the rate of coal to be supplied.
   iii. As per the annual report of Coal India for 2018-19, actual CUF of Coal India mines was 78% for the year 2018-19.

8. The Tariff Policy envisages setting of operational norms based on past performance and such norms should be achievable. Clause 5.11 (f) of tariff policy provides as follows:

f) Operating Norms

………………This is essential to encourage better operating performance. ***The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may*** *also take into consideration the latest technological advancements, fuel, vintage of equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.*

It is therefore submitted that Tariff Policy stipulates that the tariff norms should be relatable to past performance.

9. It is submitted that when normative CUF of coal as well lignite mines till 31.03.2019 was 85% and actual CUF of largest miner i.e. Coal India for 2018-19 was well below 100%, setting the CUF to 100% without any major technological development or major breakthrough in the sector, is not in line with the tariff principles envisaged in Tariff Policy.

10. It is therefore submitted that normative CUF for recovery of fixed cost may be prescribed as 85% and proportionate fixed cost may be allowed for actual CUF more that normative CUF.

Additional Submissions:

11. **Production loss due to Force Majeure:** It is submitted that the mining is subject to various geological risks, political risks, environmental risks, labor un-rest, socio- economic risks, risks due to extreme weather conditions and wide range of operational uncertainties. All these factors are beyond the control of generating company and the generating company should not be penalized for the reasons over which it has no control. Provision may be kept in the Regulations that in case of lower production due to these reasons, the generating company may approach Hon'ble Commission for recovery of its fixed cost and based on prudence check, the generating company may be allowed to consider loss of production due to reasons beyond its control as deemed production for the purpose of recovery of fixed charges.

12. **Low offtake of coal due to low scheduling of linked Generating Station:** It is submitted that with the huge capacity addition in electricity sector, slow growth of demand and increasing penetration of renewables in Indian power sector, PLF of coal generators is decreasing year on year. PLF of coal & lignite based central sector plants has come down from 85.5% in 2009-10 to 65.36% in 2019-20 and considering

the ambitious RE capacity addition program of Govt. of India, the PLF of coal & lignite based power plant shall further come down. Therefore, with this decreasing trend of PLF of coal and lignite based power plants, there may be the instances when integrated mine may not be able to achieve normative CUF because of low offtake of coal due to low PLF of end use power plant. In such a case, the generating company would be penalized without its fault. It is therefore submitted that generating company may be allowed to approach Hon'ble CERC for recovery of full fixed charges of integrated mine if it was unable to achieve normative CUF because of low offtake of coal by end use power plant due to low schedule of power.

I. **Proposed Amendment:** Proposed Regulation 36C(2) & 36C(3) provides as follows:

(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, additional charges shall be worked out based on the annual charges of such agencies, provided that the charges have been discovered through a transparent competitive bidding process.

Comments of NTPC:

1. As per the proposed Regulation, no additional charges shall be admissible if crushing, transportation, handling or washing are within the scope of Mine Developer and Operator. In this regard, it is respectfully submitted that in case of Pakri mine, the fixed assets for carrying out activities like crushing, handling, transportation, loading etc are provided by NTPC and operation and maintenance of the same are carried out by Mine Developer and Operator.

2. It is submitted that if the proposed amendment is implemented as it is, the entire investment of NTPC in these activities will remain un-serviced and NTPC will be deprived of legitimate cost. Hon'ble Commission is therefore requested to ensure servicing of capital expenditure incurred to carry out above mentioned activities.

3. It is therefore submitted that the charges paid to Mine Developer and Operator for carrying out activities like crushing, handling, transportation, loading etc or any other agency engaged for carrying out these activities may be allowed to generating company in addition to the charges towards servicing of fixed costs. The proposed modification in regulation 36C(2) & 36C(3) is as follows:

(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*~~ *the same shall be allowed separately.*
(3) Where crushing, transportation, handling or washing are undertaken by the generating company by engaging an agency other than Mine Developer and Operator~~*, additional charges shall be worked out based on the annual charges of such agencies,*~~ *the same shall be allowed separately, provided that the charges have been discovered through a transparent competitive bidding process.*

J. **Proposed Amendment: 36E. *Additional Capital Expenditure: …….***
(1) The expenditure, in respect of the integrated mines, 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 in the respective year as Additional Capital Expenditure corresponding to the Annual Target Quantity of the year as specified in the Mining Plan or actual extraction in that year, whichever is higher, 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 any replacement of the assets, the additional capitalization shall be worked out after adjusting the gross fixed assets and cumulative depreciation of the assets replaced on account of de-capitalization.

(2) The expenditure, in respect of the integrated mines, 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 or actual extraction in the respective years, whichever is higher, 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 any replacement of the assets, the additional capitalization shall be worked out after adjusting the gross fixed assets,

cumulative depreciation and cumulative repayment of loan of the assets replaced on account of de-capitalization.

(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, unless the original cost of such assets have been de-capitalised from the gross fixed assets.

Comments of NTPC:

1. It is submitted that sometimes state governments, through district level rehabilitation committees enhance the compensation for project affected persons (PAP) as per the requirement/ demand of PAPs. Therefore, the enhanced compensation decided by district level rehabilitation committees may also be allowed as additional capitalization.

2. It is further submitted that any expenditure on safety and security of mines as directed by government agencies may also be allowed as additional capitalization. The additional capitalization towards safety and security is admissible for generating station and integrated mines being part of generating stations for all practical purposes, the similar additional capitalization may be allowed in integrated mines also. It is further submitted that the safety and security infrastructure is normally deployed in consultation with Security/ Government agencies and level of technological changes & future threats cannot be envisaged in advance when life of mine is to the tune of 50 years. Therefore, the Hon'ble Commission may be pleased to insert suitable clause under Regulation 36E to allow capital expenditure on safety and security as additional capitalization.

3. It is submitted that sometimes the replacement of assets is required to be carried out because of the reasons beyond control of the owner like replacement due to technology obsolescence, due to force majeure or due to change in law. Tariff Regulations, 2019 has the provisions for admissibility of additional actualization under this head for generation stations. However, inclusion of similar provision for integrated mine has missed the attention of Hon'ble Commission. It is further submitted that Regulation 36E(3)c provides that expenditure on replacement due to obsolescence of assets on account of completion of the useful life or due to obsolescence of technology shall not be considered as additional capitalization, unless the original cost of such assets have been de-capitalized from the gross fixed assets. But the Hon'ble Commission has not included relevant clause for allowing additional capitalization under this head if original cost of assets have been decapitalized from the gross fixed assets. It is therefore submitted that the Hon'ble Commission may be pleased to include appropriate provisions to allow such additional capitalization on account of replacement due to ageing, obsolescence of technology, change in law, force majeure etc in the final regulations to be notified as admissible in case of generating stations.

K. **Proposed Amendment:** Proposed Regulation 36G(3) provides as follows:

(3) The 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%.

Comments of NTPC

1. It is submitted that presently, the coal plants are primarily dependent on Coal India Ltd (CIL) for supply of coal. There is non-transparent pricing, uncertainty in fuel supply and sluggish response to quality related issues. With the objective of reducing electricity tariff and to reduce dependency of power sector on one company, the coal mines were allocated to generating companies including NTPC. Presently, the generating companies have very little experience in operating the mines. Hon'ble Commission is requested that, through these Regulations, the generating

companies should be encouraged to engage more and more in mining of coal so that monopoly in coal sector can be reduced. Therefore, while forming Regulations regarding coal input price determination, Hon'ble CERC is requested to give opportunity to generating company to get experience in this sector without putting too much risk on them & inspire other companies to enter in coal mining while protecting interest of consumers so that the objective of development of coal mining sector can be achieved.

2. As per the report of Working Group on 'Determination of input price of coal', return to generating company and therefore the opportunity of incremental profitability by entering into integrated mining is very limited. But at the same time, the risks like geological surprises, seasonal impact, socio-political factors etc are very high. It is humbly submitted that such low returns when the integrated mining is at nascent stage, shall discourage investment in mining sector especially in view of the huge risks involved and objective of the exercise shall remain underachieved.

3. It is submitted that the return on equity has to be commensurate with the risks. Mining sector face significant developmental & operational risks like huge area of land acquisition, environment clearances, Rehabilitation and Resettlement of huge number of Project affected Persons, geological surprises, direct exposure to extreme weather conditions like rain etc.

4. It is submitted that in cases of MDO operated mines, there is lessor investment in the plant & machinery and the level of RoE available with the company is not sufficient to absorb high risks inherent in the mining sector. It will adversely affect further investment in the sector.

5. It is also submitted that the working group in its report on '*Regulatory Framework for Input Price of Coal or Lignite from Integrated Mine'* has observed as under:

   5.3.1…….. ***<u>The captive mine is also a part of the project of generating station and aimed to serve the electricity produced from that generating</u>***

station. The coal extracted from the integrated mine is not allowed to sale for commercial purpose. ***The generating company allocate fund to captive mine in the same manner as followed for generating assets.*** The approach for consideration of equity for the rate of return as followed in case of generating station may also be adopted for the captive mine.

……

5.3.***5 Since the funding mix for mine is proposed to be similar to that of Power generation, the rate of return admissible for power generation may be adopted for integrated mining project also.*** …….

6. As pointed out by the working group in its report, the integrated mines are part of generating stations for all practical purposes and operating in hostile environment. Therefore, rate of RoE at least the same admissible to generating station may be allowed for integrated mine also.

7. Further, RoE of 15.5% was allowed to NLC mines till 31.03.2019 and Coal India is also considering IRR of 12% for its projects. Western Coal Fields ltd in its notice published on website on 02.03.2019 for inviting applications for supply of coal from cost plus projects has also indicated 12% IRR for deciding the rate of coal to be supplied. It is therefore submitted that similar rate of return, as being considered by Coal India for its projects, may be allowed for integrated mines also. Allowance of 15.5% RoE for NTPC integrated mines will be equivalent to approximately 11.55% of IRR which will still be lesser then that considered by Coal India.

8. It is therefore submitted that the Hon'ble Commission may be pleased to keep base rate of return on equity equal to at least 15.5%.

L. **Proposed Amendment:** Proposed Regulation 36H(3) provides as follows:

(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 specified by the Ministry of Corporate Affairs for specialized mining equipment.

Comments of NTPC

1. It is submitted that Hon'ble Commission has proposed depreciation recovery based on straight line method over the useful life of the assets. In case of mines, major expenditure is towards land which is either free hold leading to zero depreciation or it is lease hold land having amortization period of 30 to 39 years resulting into depreciation rate of 2.5% to 3%.

2. It is submitted that for acquisition of land, development of mines and for installing infrastructure for handling, transportation & crushing of coal, significant amount of debt has been infused in these mines and most of the loans have repayment schedule of approximately 12 years. In case of normative cost based projects, the repayment of loans from depreciation recovery is an accepted practice. However, based on the straight line method of depreciation, depreciation recovered as part of input price of coal shall not be sufficient to meet loan repayment obligation corresponding to the loans deployed in integrated mines and it will create cash flow deficit for the generating company.

3. In case of generating stations, Hon'ble CERC allows the annual depreciation in such a way that the generating company is able to repay its loan in 12 years from depreciation recovery. It is therefore submitted that similar practice of depreciation recovery may be implemented in case of integrated mines also and generating company may be allowed to recover depreciation at the rate of (70/12 = 5.83%) for first 12 years from date of capitalization of assets and balance depreciation may be spread over balance life of the assets. It is further submitted that wherever life of any particular asset is less than useful life of the project, the useful life of such particular asset may be considered as per the provisions of the Companies Act, 2013 and subsequent amendment thereto. Similar provision is already provided in respect of Generating Stations under the Tariff Regulation-2019.

4. It is further submitted that as per approved mine plan of Pakri Barwadih coal block, some assets like mine office & related infrastructure, water supply arrangement, furniture, canteen, training center etc are to be handed over to state government for public use after closure of mines. It is therefore submitted that the generating company will not be able to realize salvage value of these assets. Hon'ble Commission may be pleased to consider salvage value of these assets, which are to be handed over to government after closure of mine, as zero.

M. **Proposed Amendment:** ***36I. Operation and Maintenance Expenses:*** *(1) The Operation and Maintenance expenses of integrated mine for the tariff period ending on 31st March 2024 shall be 2%, escalated at the rate of 3.5% per annum, of the average capital expenditure up to the end of each year of the tariff period as admitted by the Commission towards mining, crushing, transportation, handling and washing subject to true up:*

Provided that where mining, 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, any capital expenditure incurred by Mine Developer and Operator or such agency shall not be included for working out the Operation and Maintenance Expenses.

(2) Where the mine development and operation are 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;

(3) Where the generating company has engaged agency(ies) other than Mine Developer and Operator, annual charges of such agency(ies) shall also be considered as part of Operation and Maintenance Expenses, subject to prudence check by the Commission, provided that such annual charges have been discovered through a transparent competitive bidding process.

Comments of NTPC:

1. It is submitted that as indicated in clause 2.22.1 of Explanatory Memorandum, the Hon'ble Commission intends to consider the

operation & maintenance expenses based on actual expenses. Keeping in view the actual O&M expenses of Pakri mine for 2019-20, O&M expenses of 2% of capital cost proposed by the Hon'ble Commission in draft regulations will not be sufficient to cover the O&M expenses. This difference in actual O&M expenses and normative O&M expenses will lead to wide gap in input charges recovered and input charges computed after truing up and will result in interest liability for the beneficiaries.

2. In case of Pakri mine, O&M expenses for year 2019-20 are approximately Rs 101 Cr while capital expenditure (including CWIP) upto Mar 2020 is approximately Rs 3200 Cr. Further, majority of O&M expenses are in the form of employee expenses and employee wages call for approximately 7% escalation per year.

3. In order to limit the interest liability of the beneficiaries, it is proposed that the generating company may be allowed to recover the O&M expenses based on available audited actuals for previous year with escalation linked to WPI or any other index. This shall be subject to truing up and it will limit interest liability of generating company as well as the beneficiaries.

4. It is submitted that if the Hon'ble Commission decides to continue with the methodology of allowance of O&M expenses as percentage of capital cost, O&M expenses equivalent to 3.5% of capital cost may be allowed, similar to the same allowed for hydro generating stations. Further, major component of O&M expenses largely consists of employee cost, hence 7% escalation per annum may be allowed by the Hon'ble Commission.

5. It is further submitted that there are certain operational expenditures that depend on the notification/ Regulations/ advisory of government agencies and these are beyond control of the Company eg. Third Party Sampling Expenses, Security Expenses etc. Therefore, it is submitted that the Hon'ble Commission may be pleased to allow such expenditure separately.

6. It is respectfully submitted that Hon'ble Commission has omitted to include O&M expenses of the mines where mining, crushing, handling, transportation & loading is carried out departmentally and no MDO or any other agency is engaged. Hon'ble Commission may be pleased to initially provide O&M expenses equivalent to 15% of capital cost with 7% escalation per annum for departmentally operated mines.

N. **Proposed Amendment:** ***36J. Interest on Working Capital:*** *(1) The working capital of the integrated mines 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 or annual charges of any agency other than Mine Developer and Operator, engaged by the generating company; and

(iii) Operation and maintenance expenses for one month, excluding mining charge of Mine Developer and Operator or annual charges of any agency other than Mine Developer and Operator, engaged by the generating company.

(2) The working capital of the integrated mine of lignite shall cover:-

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

(ii) Consumption of stores and spare including explosives, lubricants and fuel ***@ 20% of operation and maintenance expenses****, excluding mining charge of Mine Developer and Operator or annual charges of any 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 or annual charges of any agency other than Mine Developer or Operator, engaged by the generating company.

(3) The rate and payment of interest on working capital shall be as per Clause (3) and Clause (4) of Regulation 34 of these regulations.

Comments of NTPC:

1. It is submitted that to take care of any short interruption in excavation of coal, it is required to keep stock of coal inside the mine to ensure uninterrupted supply of coal to the generating station. Hon'ble commission has proposed to consider cost of coal stock corresponding to 7 days as part of working capital. It is submitted that 7 days stock shall not be sufficient to take care of interruptions in mining operations. Therefore, in line with the provisions of coal stock in case of generating stations, cost of 10 days of stock for mines in the vicinity of generating stations and 20 days of stock for mines far from generating stations may be provided as part of working capital.

2. It is submitted that keeping in view the remote location of mines, the lead time of consumables and spares shall be high. Therefore, 20% of O&M expenses towards consumption of stores and spares as part of working capital may be provided to coal mines also as provided to generating stations and lignite mines.

O. Proposed Amendment: *36M. Recovery of Input Charges: The input charges of coal or lignite shall be recovered as under:*

Input Charges = [Input Price x Quantity of coal or lignite supplied] + Statutory charges, as applicable.

Provided that where energy charge rate based on input price of coal from integrated mine exceeds by 20% of energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal in a month, prior consent of the beneficiary(ies) shall be required;

Provided further that where such consent of beneficiaries are not available, input price of coal from such integrated mine shall be so fixed that energy charge rate based on input price of coal from integrated mine does not exceed by more than 20% the energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal;

Provided also that energy charge rate based on input price of coal does not lead to higher energy charge rate throughout the tenure of power purchase

agreement than that which would have been obtained as per terms and conditions of the existing power purchase agreement.

NTPC Comments

1. It is submitted that input price of coal of NTPC mines shall be determined by the Hon'ble Commission after prudence check and after considering comments of all the stakeholders. Beneficiaries also shall participate in this process of input price determination.

2. It is further submitted that cost of mining of coal depends upon various factors and major factor amongst them is stripping ratio. Coal India operates a lot of mines having combined stripping ratio of around 2 Cum/ Ton and its notified price is pooled price commensurate with striping ratio of 2 cum/Ton. Whereas, striping ratio of some mines allotted to NTPC is in the range of 7 – 8 Cum/Ton. Therefore, input price of higher striping ratio NTPC mines shall be considerably higher than Coal India notified price.

3. In view of the above, the Hon'ble Commission may be pleased to waive off requirement of prior consent from beneficiaries in case energy charge rate based on input price of coal from integrated mine exceeds by 20% of energy charge rate based on notified price of Coal India Limited for the commensurate grade.

P. **Proposed Amendment: 36N. *Adjustment on account of Shortfall of Overburden Removal (OB Adjustment):*** *(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 to adjust 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] x [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) - (Actual quantity of overburden removed during the year/ Annual Stripping Ratio as per Mine 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.

NTPC Comments:

1. It is respectfully submitted that based on the geological studies carried out, reserve of coal and overburden in mines have been estimated in advance. Therefore, the total overburden to be removed during lifetime of the mine is fixed. If, lower quantity of overburden is removed in one year, higher overburden shall be required to be removed in subsequent years.

2. It is submitted that the mining infrastructure has been installed keeping in view the quantity of overburden to be removed. Any shortfall in overburden removal will have very low tangible savings in the form of saving in diesel and some extra man days of mining personnel. However, this saving shall be wiped out in the subsequent years when higher amount of overburden is to be removed.

3. It is further submitted that in case of mines where MDO has been appointed, savings due to less overburden removal shall be reflected in MDO cost and accordingly the MDO agreement provides for adjustment of mining fee in case stripping ratio/ overburden removal is less than that provided in the Mining Plan. The formula provided in the MDO contract for payment to MDO takes care of the adjustments due to change in the stripping ratio/ overburden removal vis-à-vis that envisaged in the mining plan. In case of lower requirement of overburden removal, less amount would be paid to MDO and benefit of the same would be passed onto the beneficiaries automatically.

4. As indicated vide para 2.26.1 of Explanatory Memorandum, the Hon'ble Commission, by providing adjustment of lower over burden removal, intends to pass on savings due to low overburden handling to the beneficiaries and intends to avoid the condition when lower stripping ratio areas are mined first and higher stripping ratio areas are mined later on leading to higher cost and higher input price during subsequent period, burdening the beneficiaries. In this regard, it is worth mentioning that MDO contract provides for adjustment of mining fee in case of stripping ratio being lesser than the normative value and does not provide for any payment of extra fee in case stripping ratio is higher than the normative value. Therefore, in case of lower stripping ratio, the benefits shall be automatically passed on to the beneficiaries.

5. Further, in case of departmentally operated mines, lower/ higher stripping ratio in one year will result in higher/ lower stripping ratio in subsequent years as the overburden to be removed to extract the total coal is fixed. Thus the over recovery/ under recovery in any year would be adjusted in the subsequent years.

6. It is therefore submitted that even though NTPC's exposure in this area is only a couple of years, it is felt that presently there may not be any requirement to keep provision/ formula for adjustment on account of stripping ratio variations. However, Hon'ble Commission may review it when more experience is gained in this regard.

7. It is submitted that in case of MDO operated mines, O&M expenses of NTPC are fixed expenses in nature and does not depend on overburden handled. Therefore, if Hon'ble Commission decides to keep overburden adjustment in the final regulations, adjustment may be provided in MDO fee only and no adjustment in NTPC O&M expenses may be provided and overburden adjustment applied based on terms and conditions of MDO contract may not be considered while determining mining fee of MDO.

8. It is submitted that MDO contracts for many mines have been awarded before notification of instant draft regulation wherein formula for adjustment of overburden removal has been provided. It is respectfully submitted that if Hon'ble Commission decides to keep overburden adjustment in the final regulations, the formula for adjustment may be kept the same as provided in existing MDO contracts.

9. It is submitted that as brought out in para 5 above, O&M expenditure in case of departmentally operated mines will slightly increase/ decrease with higher/ lower stripping ratio. Therefore, if Hon'ble Commission decides to keep overburden adjustment in the final regulations, in case of departmentally operated mines, the overburden adjustment for lower as well as higher stripping ratio may be provided.

10. It is submitted that as per the Cost Accounting Standards on Overburden Removal Cost (CAS-23) issued by Cost Accounting Standards Board, the striping ratio shall be reviewed periodically, at least every five years, to take into account changes in geological factors such as actual behavior of the soil and the ore body. The same practice of review of stripping ratio is followed in Coal India also. It is therefore submitted that, if Hon'ble Commission decides to keep overburden adjustment in the final regulations, to align the regulatory provisions with the provisions issued by Cost Accounting standards board and the practice being followed in coal mining sector, the adjustment of excess removal of overburden or short removal of overburden may be allowed to be adjusted for subsequent five years.

Q. **Proposed Amendment:** ***36O. Adjustment on account of shortfall in GCV (GCV Adjustment):*** *(1) In case the weighted average GCV of Coal extracted in a year is higher than the declared GCV of coal, no GCV adjustment shall be done.*

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

(a) Where the integrated mine is allocated through auction under Coal Mines (Special Provisions) Act, 2015:

GCV Adjustment = (Quoted Price of coal) X [(Declared GCV of coal – Weighted Average GCV of coal extracted in the year)/(Declared GCV of coal)]

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 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 is allocated through allotment order under Coal Mines (Special Provisions) Act, 2015:

GCV Adjustment = [(Annual Extraction Cost/ATQ) + (mining charge)] X [(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.

NTPC Comments:

1. It is submitted that weighted average GCV indicated in the mine plan represents weighted average GCV of entire mine. The coal reserves in mines are heterogeneous in nature and there is vide variation in quality of coal in the different mining areas. However, based on the areas to be mined in next financial year, grade of coal is declared by the coal controller. Therefore, it would be prudent to use grade of coal declared by coal controller while determining variation during mining. Because of heterogeneous nature of coal and impossibility of taking representative sample, quality of coal is represented in terms of grade and it is assumed that GCV of coal may vary in this band. Therefore, it will be prudent to consider lower GCV value of declared grade band as reference while computing deterioration in quality of coal and use higher GCV value of grade band as reference while computing improvement in quality of coal.

2. It is further submitted that based on geological studies carried out during preparation of mine plan, quantity of coal reserve and quality of coal reserve have been estimated in advance. The entire mining infrastructure has been deployed to extract and handle minable quantity of coal. Cost of mining and charges of MDO depend entirely on the quantity of coal handled and not on the quality of coal handled.

3. It is respectfully submitted that quality and quantity of coal available in coal block is fixed and if poor quality of coal is mined in one year, better quality of coal shall be mined in subsequent years.

4. It is submitted that in case of MDO operated mines, MDO agreement provides for adjustment of mining fee in case of deterioration of quality in coal is beyond the specified limits. Any amount deducted from MDO on account of deterioration in coal quality shall be passed on to the beneficiaries. In view of above, any further provisions for adjustment in GCV variation would not be justified.

5. It is therefore submitted that the Hon’ble Commission may not provide adjustment for GCV in the final Regulations to be notified.

6. It is submitted that even if the Hon’ble Commission decides to keep adjustment on account of GCV in final regulations, the adjustment may be based on declared grade because of the reasons brought out in para 1 above and quality adjustments applied based on terms and conditions of MDO contract may not be considered while determining mining fee of MDO.

7. Keeping in view the large variation in quality or coal reserves in mine having different strips/ seams, exact matching of mine grade with declared grade is difficult. It is therefore submitted that for minor variations in the coal quality (+/- one grade from the declared grade of mine), there may not be any adjustment of coal price. If the weighted average GCV of coal is outside +/- one grade from declared grade, the adjustment commensurate with variation of GCV beyond +/- one grade from declared grade may be provided. It is further submitted that adjustment on account of variation in grade may be provided for better grade also so that the generating company has the opportunity to make up the losses in subsequent years.

R. **Mine Closure Expenses (Regulation 36K):**

1. It is submitted that mine closure involves planning effectively for the after-mining landscape – all activities required before, during, and after the operating life of a mine that are needed to produce an acceptable landscape economically. The Mine Closure has two components viz.
   i. Progressive or Concurrent Mine Closure and
   ii. Final Mine Closure.

   Progressive Mine Closure includes various land use activities to be done continuously and sequentially during the entire period of the mining operations, whereas Final Mine Closure activities would start towards the end of mine life, and shall continue even after the reserves

are exhausted and mining is discontinued till the mining area is restored to an acceptable level.

2. It is submitted that in case of MDO operated mines of NTPC, progressive mine closure is in the scope of MDO and final mine closure activities are to be carried out by NTPC. Further, even though progressive closure is in the scope of MDO, the total estimated amount towards mine closure activities i.e. progressive as well as final is required to be deposited into Escrow Account by NTPC.

3. It is further submitted that amount deposited by the generating company in escrow account is towards two components of mine closure, namely progressive closure and final closure. Progressive mine closure being in the scope of MDO, expenses towards progressive mine closure have been built up in MDO mining fee. However, activities corresponding to the final mine closure are in the scope of the generating company and final mine closure expenses are to be borne by the generating company.

4. Works of progressive mine closure shall be carried out by the MDO during operational life of the mine, the expenditure & details towards progressive mine closure will be submitted to Coal Controller/ any other authority. Such authority, after verification of completion of works as per mine plan, shall allow re-imbursement of progressive mine closure expenses from escrow account, up to specified percentage of the amount deposited in escrow account, after every five years. As per the Office Memorandum dtd 29th May 2020, issued by Ministry of Coal, Government of India, only 50% of amount deposited can be withdrawn during operational life of mine after every five years.

5. In view of the above, 50% of amount submitted in escrow account (or any other percentage which generating company is entitled to draw during operating life of mine as per mine plan/ guidelines of Ministry of Coal) is towards progressive mine closure and balance is towards final mine closure expenses. As the progressive mine closure is in the scope of MDO, activities corresponding to 50% of amount submitted

in escrow account are in the scope of MDO and cost of the same is included in MDO fee. Therefore, treatment of 50% of amount (or any other percentage as per mine plan/ guidelines of Ministry of Coal) submitted in escrow account should be as per proposed Regulation 36(K)(2) i.e. difference between the borrowing cost of 50% (or any other percentage as per mine plan/ guidelines of Ministry of Coal) of amount deposited in escrow account and the interest received from Escrow account in a year corresponding to 50% (or any other percentage which company is entitled to draw during operation of mine) of amount submitted in escrow account may be allowed as mine closure expenses.

6. It is further submitted that activities corresponding to balance amount submitted in escrow account are corresponding to final mine closure and are in the scope of generating company. Therefore, treatment of balance amount deposited in escrow account should be as per proposed Regulation 36(K)(1) i.e. 50% of amount deposited in escrow account or any other percentage as per the mine plan/ Ministry of Coal guidelines should be allowed as part of input price of coal without adjusting interest earned as the generating company shall be receiving no interest from escrow account during operating life of mine.

7. It is submitted that as per proposed Regulation 36(K)(2)(b), the difference between the borrowing cost, arrived at by considering the weighted average rate of interest calculated on the basis of actual loan portfolio and the interest received from Escrow account in a year shall be allowed to be adjusted in the input price of the respective year. In this regard it is submitted that loan taken for mine closure expenses are in the nature of working capital loan. Therefore, in terms of Tariff Regulations, 2019, borrowing rate should be taken as Bank Rate, while allowing differential between borrowing cost and interest earned from escrow account.

S. **Adoption of MDO price along with all terms and conditions:** It is submitted that coal mines were allotted to NTPC as early as 2004 and NTPC is making progress in mining operations based on practices being followed in coal mining sector. Principally, mines can be developed and operated by an external agency called Mine Developer and Operator (MDO) or mines can be developed and operated departmentally. For most of the mines, NTPC decided to develop and operate through appointment of MDO. Based on the industry practice, terms and conditions of MDO contracts were decided and Notice Inviting Tenders (NIT) for the same were floated for competitive bidding. After competitive bidding, MDO for two mines namely Pakri Barwadih, and Dulanga have been appointed and MDO for Talaipalli is in process of award. These MDO contracts are long term contracts having delivery period of around 25 years and charges discovered in these contracts are based on prevailing market rates subject to terms & conditions, liquidated damages & incentive, delivery period, geological reserves in mines etc, as defined in MDO agreement.

It is submitted that most of the MDO contracts are in place or may be awarded before notification of these regulations at rates, terms and conditions based on prevailing practices being followed in mining sector. If these contracts are to be aligned with regulatory terms and conditions, it may not be possible to re-negotiate these contracts and fresh tendering may be required and it will result into delaying the mining operations, payment of short closure penalty to the MDO and discovery of new price which may be higher than the existing contracts. As the Hon'ble Commission is notifying terms and conditions for computation of input price of coal for the first time, in all the cases where MDO contracts have been awarded or NIT has been issued, rates of MDO may be adopted along with all the conditions such as LDs, incentives etc in respect of quality adjustment, overburden adjustments, adjustment for shortfall in lifting, force majeure, geological surprise etc and future contracts may be awarded in line with the regulatory provisions. It is submitted that as the payment of MDOs is released as per the terms and conditions of the contracts and it is subject to audit by various agencies, the mining charges Rs per Ton of existing MDO contracts may be taken by considering total amount paid to the MDO by the generating company.

T. Provisions related to subsidiary mining company and quasi equity instrument: It is submitted that NTPC has created a wholly owned subsidiary named NTPC Mining Ltd for mining operations and is in the process of transferring the mines to NTPC Mining Ltd. After transfer of mines to NTPC Mining Ltd, the coal shall be supplied by NTPC Mining Ltd to NTPC generating stations. It is therefore submitted that the regulations may also be made applicable to cases where mines are owned by the subsidiary companies of generating company and coal is supplied to the generating stations whose tariff is determined by the Hon'ble Commission in terms of sec 62 of EA 2003.

It is submitted that as a general practice, parent companies infuse a combination of equity and quasi equity instruments such as Compulsorily Convertible Debentures (CCD), Compulsory Convertible Preference Shares (CCPS) etc. as a part of promoter contribution to minimize effective tax rate. Lesser effective tax rate reduces pre-tax RoE and consequently input price shall reduce. Hon'ble Commission vide its various orders has been treating CCD as an equity instrument. Hon'ble Commission vide order dtd 21.12.2000 in Petitions no 4/2000, 31/2000, 32/2000, 34/2000, 85/2000, 86/2000 & 88/2000 has held as below:

*"2.4.5……..They may come out with the cost implications of such insurance with appropriate data to the Commission. One more possibility within the accepted norms is to issue compulsorily convertible debentures which may carry interest during construction period**. However, such securities with a commitment to be converted with the specific time frame need to be considered as equity in fixing the debt/equity mix."***

It is further submitted that Hon'ble CERC vide its various order while approving the change in the constitution of the consortium of existing lenders has considered CCD as an equity instrument. It is therefore submitted that if any equity is contributed by NTPC in its subsidiary mining company in the form of CCD, Hon'ble CERC may consider quasi equity instrument such as CCD as equity.

U. **Rebate (Regulation 58):**

1. It is submitted that Regulation 58(1) & 58(2) of principal Tariff Regulations, 2019 provide that for payment made within a period of 5 days from presentation of bills, rebate of 1.5% shall be allowed and for payment made after 5 days and within 30 days, rebate of 1% shall be allowed.
2. In this regard, it is submitted that in this scheme of rebate, the beneficiaries are getting only 0.5% rebate by advancing payment by 24 days (from 30th to 6th day) and getting 1% rebate by advancing payment by 15 days (from 45th day to 30th day). This gradation of payment seems to be inequitable. It is therefore submitted that, 0.5% rebate may be prescribed in case payment is made from 6th to 30th day.