

# MB POWER (MADHYA PRADESH) LIMITED

Corporate Office: 239, Okhla Industrial Estate, Phase-III, New Delhi- 110020  
Tel: +91 11 47624100 Fax: +91 11 47624229

31<sup>st</sup> December, 2016

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

**Sub:** *Additional Comments on Draft CERC (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2015.*

**Reference:** *Our earlier letter dated 15.11.2016 furnishing our comments on Draft CERC (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2015.*

Dear Madam,

We write in continuation to our earlier letter on the captioned subject dated 15.11.2016 (copy enclosed) vide which we had submitted our comments on the Draft CERC (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2015 ("*Principal Regulations*")

As already submitted vide our aforesaid letter dated 15.11.2016, we reiterate and express our further concerns with respect to the following draft amendment of Regulation 8 of the Principal Regulations:

*"Provided that where the dedicated transmission lines have already been constructed/are under construction by CTU under coordinated transmission planning:*

- (a) The transmission charges for such dedicated transmission lines shall be payable by the concerned generating company to the transmission licensee (including deemed transmission licensee) from the date of COD of the dedicated line till operationalisation of LTA of the generating station of the generating company:*
- (b) After operationalisation of the LTA, the dedicated transmission line shall be included in the POC pool and payment of transmission charges for the said dedicated transmission line shall be governed as per the CERC (Sharing of inter-state transmission charges and losses) Regulations, 2010 as amended from time to time"*

**Our Concerns:**

- (1) It appears that this draft amendment would also cover the cases where the dedicated transmission lines have already been constructed by CTU and LTA for the concerned Generator has also been operationalized by CTU **before this amendment coming into effect**. For such cases, this draft amendment would make transmission charges (corresponding to the period between date of COD of the dedicated transmission line till operationalization of LTA by CTU), incidental on the concerned Generator essentially on the **retrospective basis** (i.e. for the period already elapsed before this amendment coming into effect).

*Ajain*  
*SA*  
*2/1/17*

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It is a well settled principle of law that that any amendment in the regulations is to be made effective only on prospective basis from the date of promulgation of such amendment. Any financial liabilities on retrospective basis on any affected party(ies) arising out of such amendment for the period already elapsed before such amendment coming into effect are completely unjust and legally untenable, thereby rendering such amendment vulnerable to unwarranted litigations.

Hence, it would be prudent and in the best interest of the sector that such amendments are NOT made applicable retrospectively for the cases where the dedicated transmission lines have already been constructed/ achieved COD before date of notification of these amendments by the Hon'ble Commission.

- (2) Imposing the transmission charges for the period between COD of dedicated transmission line and operationalization of LTA by CTU on the concerned Generator is apparently devoid of any rationale for the reasons explained hereunder.

Operationalization of LTA is made contingent by CTU upon COD of the associated downstream transmission system (beyond pooling point) for evacuation of power to beneficiary under PPA. Any delays in COD of such associated downstream transmission system by CTU/PGCIL correspondingly delays operationalization of LTA by CTU. Since a Generator has absolutely no control over operationalization of such LTA, hence penalising a Generator by imposing transmission charges of the dedicated transmission line on him for the period resulting out of delay in of operationalization of the entire granted LTA by CTU is completely unwarranted, since for such period, the dedicated transmission line is not serving its intended purpose.

The following illustration would amply clarify the above submission:

Generation (Applicant)	Project	:	2X660 MW located in Western Region (WR)
Application for Connectivity & LTA		:	March 2010 (Applicant concurrently applies for Connectivity & LTA under Principal Regulations)
Grant of Connectivity & LTA		:	<u>Connectivity</u> : CTU undertakes construction of dedicated transmission (tx.) line from Project to Pooling Point. <u>LTA</u> : LTA granted by CTU from Sep' 2014 onwards for supply of 500 MW to Southern Region (SR). For this LTA, downstream transmission system strengthening (from Pooling Point onwards) is implemented by CTU/PGCIL.
PPA by Applicant		:	Having secured the LTA from Sep' 2014 onwards, the Generator executes a Long Term PPA of 500 MW with a SR Discom for supply of power from Dec' 2014 onwards.
COD of dedicated tx. line (till Pooling Point) by CTU		:	June 2014
COD of Generation Project		:	Aug' 2014



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Operationalization of LTA (from Pooling Point to SR Discom under PPA)	: March 2015 (as against the LTA grant date of Sep' 2014)
	Commissioning of the associated downstream transmission system (from Pooling Point onwards) by CTU/PGCIL gets delayed resulting in corresponding delay in LTA operationalization by CTU.
Non supply of power under PPA.	: 7 Months [from Aug' 2014 (i.e. COD of Generator) till March 2015 (i.e. Operationalization of LTA by CTU)]

As seen from above, the Generator had ensured readiness for supply of power under PPA from the contracted date of Dec' 2014 onwards. However, due to delay in operationalization of LTA by CTU on account of delay in commissioning of the associated downstream transmission system, the Generator was unable to meet his power supply obligations under PPA for a period of 7 Months (i.e. from COD of Generation Project in Aug' 2014 till operationalization of LTA by CTU in March 2015). It is noteworthy to mention that this delay in operationalization of LTA is entirely attributable on the CTU over which the Generator has absolutely no control.

Further, although the dedicated transmission line achieved COD in June 2014, however it was not serving its intended use till the associated downstream transmission system was made ready by CTU for operationalization of the entire granted LTA. As such, the subject amendment in the Principal Regulations, proposing levy of transmission charges from COD of the dedicated transmission line (June 2014) till operationalization of LTA by CTU (March 2015) i.e. for a period of 9 months is completely unwarranted and would severally impair the financial viability of the Generator for absolutely no fault on its part.

Under this backdrop, before issuing the final amendments to the Principal Regulations, a holistic assessment of such cases getting affected by this draft amendment may be made by the Hon'ble Commission to ensure that no unwarranted financial liabilities are made incidental to any Generator for absolutely no fault on his part.

Accordingly, it is proposed that the draft amendment is duly modified to acknowledge such cases where:

- (i) The Generator has concurrently applied for the Connectivity and LTA, and
- (ii) Both the Generator and the dedicated transmission line have achieved COD but there is delay in operationalization of already granted LTA by CTU, as a result of which, despite having a firm PPA, the Generator is not able to meet its power supply obligations under PPA for absolutely no fault on its part.

Therefore, in such cases, where the dedicated transmission line achieved COD, however, associated downstream transmission system (from Pooling Point onwards) is not ready for operationalization of the entire granted LTA by CTU, the transmission charges of the dedicated transmission line is not to be levied on the Generator.

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We sincerely hope that the Hon'ble Commission would acknowledge a genuine merit in our submissions and would consider our comments favourably while issuing the final amendments to the Principal Regulations.

Thanking You,

Yours Faithfully,



Abhishek Gupta

D.G.M (Business Development)

Enclosure: Our letter dated 15.11.2016 furnishing our comments on Draft CERC (Grant of Connectivity, Long-Term Access and Medium-term Open Access in inter-State Transmission and related matters) (Sixth Amendment).