MB POWER (MADHYA PRADESH) LIMITED

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MBPMPL/ANP-I/CERC/20-21/122 **11th May 2020**

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

Sub: ***Comments/ Concerns of MB Power (Madhya Pradesh) Limited on the draft CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020.***

Dear Sir,

We write in reference to the Public Notice(s) dated 01.04.2020 and 30.04.2020 issued by this Hon'ble Commission vide which draft CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020 (***"Draft Regulations"***) were issued and comments/ suggestions/ objections of various stakeholders were invited on these Draft Regulations.

We, MB Power (Madhya Pradesh) Limited, are a Generating Company having an operational 1200 MW (2X600 MW) coal based Thermal Power Project in district Anuppur of Madhya Pradesh. We are hereby furnishing our detailed comments/ concerns/ suggestions on these Draft Regulations (enclosed herewith as ***Annexure-1***) for the kind consideration of the Hon'ble Commission. In view of the ongoing nationwide lockdown imposed due to outbreak of Covid-19, it is humbly prayed that this Hon'ble Commission may kindly relax the requirement of filing the hard copies of these comments and our comments being sent through E-mail be kindly be taken on records.

We hope this Hon'ble Commission would acknowledge a genuine merit in our comments/ concerns/ suggestions and would consider the same favourably while finalising these Regulations.

Thanking You

Yours Faithfully,

Abhishek Gupta
General Manager (Regulatory & Commercial)
MB Power (Madhya Pradesh) Limited

Annexure-1: MB Power (Madhya Pradesh) Limited's comments/ concerns/ suggestions on the draft CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020

1) Para 4.1 of the draft Regulations, 2020 with respect to Clause (1) of Regulation 9 of the Principal Regulations

Our Comments: The Hon'ble Commission has allowed determination of Supplementary Tariff only after installation of Emission Control System and no enabling provision has been kept for grant of provisional and/or adhoc and/or projected Supplementary Tariff for the period between "Date of Operation" (ODe) of the Emission Control System till the date of determination of Supplementary Tariff thereof by the Hon'ble Commission.

It may kindly be appreciated that tariff determination process is an exhaustive process, which generally spans for 6-12 months after filing the Tariff / Change in Law Petition by a generating company. Hence, in absence of any provisional and/or adhoc and/or projected Supplementary Tariff, the generating company would not be able to secure any return on investment made on such Emission Control System for this intervening period of 6-12 months. However, the debt servicing obligations of the generation company to its lenders would start immediately after "Date of Operation" (ODe) of the Emission Control System. In absence of any provisional and/or adhoc and/or projected Supplementary Tariff, it would be extremely difficult for a generating company to discharge its debt-servicing obligations during this intervening period, which would severely affect its cash flows.

Further, in the current challenging scenario, with a view to secure debt-servicing by the generating company, the lenders are increasingly insisting for a mechanism in terms of provisional and/or adhoc and/or projected Supplementary Tariff as a pre-requisite for lending, in absence of which, it would be extremely difficult for a generating company to achieve timely financial closure. Such a delay in achieving financial closure, would eventually lead to breach of permissible timelines prescribed by MoEF, GoI for installation of Emission Control System, for absolutely no fault of generating companies.

Hence it is earnestly requested that the generating company may be allowed to file an application 90 days before anticipated /scheduled Date of Operation (ODe) of the Emission Control System for determination of provisional and/or adhoc and/or projected Supplementary Tariff, based on which such provisional and/or adhoc and/or projected

Supplementary Tariff may be determined expeditiously by this Hon'ble Commission before the actual Date of Operation (ODe) of the Emission Control System and the tariff so determined may be subsequently trued-up at the time of determination of final Supplementary Tariff. This will be a win-win proposition for the all stake holders viz. the lending institutions, generating companies, Discoms etc as:

- **This would enable the generating companies to secure the return on investment made by them towards Emission Control System, right from the first day of its operation, thereby facilitating them to honor their debt-servicing obligations to their lending institutions in a timely basis.**
- **Further, this will also prevent accumulation of substantial arrears Discoms/ Beneficiaries in terms of Supplementary Tariff and Carrying Cost thereof during such intervening period of 6-12 months, which may otherwise impair the cash-flows of Discoms/ Beneficiaries on account of an accumulated liability accrued for for such intervening period of 6-12 months.**

2) Para 12.2 of the draft Regulations, 2020 with respect to Regulation 30 of the Principal Regulations

Our Comments: Whilst the Principal Regulations allow computation of Return on Equity ("RoE") @ base rate of 15.5% (post tax), however the in these draft Regulations, the RoE on the additional capitalization towards installation of Emission Control System is restricted only to the weighted average rate of interest on actual loan portfolio of the generation project / generating company. Such a restriction on RoE on the additional capitalization towards installation of Emission Control System is in stark contradiction with the provisions of the Principal Regulations (i.e. CERC Terms & Conditions of Tariff Regulations, 2019). The first proviso under Clause (2) of Regulation 30 of the Principal Regulations is reproduced as under:

> *"Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope* ***excluding additional capitalization due to Change in Law****, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system"*
>
> [Emphasis Supplied]

The above provision clearly **excludes additional capitalization due to Change in Law** for **computation of RoE at weighted average rate of interest on actual loan portfolio**. It is to be appreciated that installation of Emission Control System in the various thermal generation projects is being carried out across the country strictly in compliance to the specific directions of the various statutory agencies and government instrumentalities like Ministry of Environment, Forest and Climate Change (MoEF & CC)-Government of India (GoI), Ministry of Power (MoP)-GoI, Central Pollution Control Board (CPCB)-GoI etc. and, **as such, it clearly constitutes an event of "Change in Law"**. **Accordingly, installation of Emission Control System being a Change in Law event is a clear exclusion to computation of associated RoE at the weighted average rate of interest on actual loan portfolio in terms of the above quoted proviso of the Principal Regulations**. **As such, RoE on additional capitalization towards installation of Emission Control System (Change in Law) is essentially required to done at the prevailing base rate of 15.5% (post tax) and same is not to be restricted to only weighted average rate of interest on actual loan portfolio.**

It may further be appreciated that such Emission Control System is an integral part/component of any thermal generation project, which is required for mitigating environmental hazards and the same is being installed in compliance to the directions of MoEF & CC, GoI. As such, Emission Control System is akin to any other equipment like Sewage Treatment Plant (STP), Effluent Treatment Plant (ETP) etc. which are also installed for the same purpose of mitigating environmental hazards. Ironically, the proposed Clause (3) of the Principal Regulations is clearly creating discrimination in the treatment of different components of a thermal generation project.

As evident from our above submissions, there is no rational in restricting the RoE on additional capitalization towards installation of Emission Control System and this kind of a discriminatory approach would adversely impact financial viability of generation projects which are already

under a tremendous financial duress. **As such, it is strongly requested that RoE on additional capitalization towards installation of Emission Control System shall be computed @ prevailing base rate of 15.5% (post tax) and not linked to weighted average rate of interest on the actual loan portfolio of the generation project / generating company.**

3) Para 14.1 of the draft Regulations, 2020 with respect to Regulation 33 of the Principal Regulations

Our Comments: While the Hon'ble Commission has allowed computation of the depreciation of the Emission Control System from its Date of Operation" (ODe) for the balance useful life or extended life of the generation project, however, for the sake of clarity, depreciation rates of the Emission Control System (balance useful life in years wise) may also be specified in Appendix 1 (Depreciation Schedule) of the Principal Regulations.

4) Para 15.1 of the draft Regulations, 2020 with respect to Regulation 34 of the Principal Regulations

Our Comments: For computation of Interest on Working Capital, the Hon'ble Commission has considered cost of only limestone or reagent only and not other essential consumables like chemicals etc. Further these costs have been capped for 20 days stock only and the Hon'ble Commission has not considered advance payments made by the generating company towards the cost of these consumables like limestone, reagent, chemicals etc.

It may kindly be appreciated that advance payments towards cost of limestone or reagent are similar to advance payments towards cost of coal and lignite, and as such, advance payments towards cost of these consumables like limestone, reagent, chemicals etc. constitute an integral part of working capital for the purpose of computation of interest of working capital.

In view of our above submissions, following is requested:

A) Proposed Sub-Clause (i) of Clause (aa) of Regulation 34 of the Principal Regulations may be modified as:

   (i) Cost of consumables like limestone, reagent, chemicals etc. towards stock for 20 days corresponding to the normative annual plant availability factor

B) Another Sub-Clause (v) of Clause (aa) of Regulation 34 of the Principal Regulations may be included as under:

   (v) Advance payment for 30 days towards cost of consumables like limestone, reagent, chemicals etc. corresponding to the normative annual plant availability factor.

5) Para 21.1 of the draft Regulations, 2020 with respect to proviso under the formula under Clause (2) of Regulation 42 of the Principal Regulations AND Para 22.1 containing proviso under the formula under Clause (2) of the Regulation 42A of the draft Regulations, 2020 with respect to Regulation 42 of the Principal Regulations.

Our Comments: It has been proposed that for the shutdown period of a thermal generation project due to installation of Emission Control System, the generating company shall be entitled to recover O&M Expenses and Interest on Loan only and the other tariff components of the generation project viz. RoE, Depreciation and Interest on Working Capital shall not be allowed to the generating company for such shutdown period.

This approach is currently being followed under the Principal Regulations for recovery by the generating company for the shutdown period due to Renovation and Modernization of such generation projects. As such, draft Regulations, 2020 treats installation of Emission Control System at par with Renovation and Modernization of a generation project.

It may kindly be appreciated that **installation of Emission Control System in the various thermal generation projects is being carried out across the country strictly in compliance to the specific directions of the various statutory agencies and government instrumentalities like Ministry of Environment, Forest and Climate Change (MoEF &**

CC)-Government of India (GoI), Ministry of Power (MoP)-GoI, Central Pollution Control Board (CPCB)-GoI etc. and, as such, it clearly constitutes an event of "Change in Law", thereby inviting applicability of "principle of restitution" to restore the generating companies to the same economic position as if this Change in Law event had not occurred, as upheld by various courts of law viz. Hon'ble Supreme Court of India, Hon'ble APTEL, Hon'ble Central Commission etc. in their various judgments from time to time.

However, Renovation and Modernization of any generation project is solely an act arising out of willful consideration of a generating company with tangible advantages in terms of improvement of operational parameters and extension of useful life of such generation project etc. Further, such Renovation and Modernization is not being done in compliance to any statute, rule, law, or direction of any statutory agency and/or government instrumentality, and the same, in no way, can be equated with installation of Emission Control System for the purpose of recovery/ compensation in accordance with principles of "Change in Law"

Therefore, with a view to honor the spirit of "Change in Law", maintain the sanctity of "principle of restitution" and avoid unwarranted litigations in the future, it is earnestly requested that for the shutdown period of the generation project due to installation of Emission Control System, the generation company shall be entitled to all the tariff components of the project viz. RoE, Interest on Loan, Depreciation, Interest on Working Capital and O&M Expenses and NOT just limited to O&M Expenses and Interest on Loan only to restore the generating companies to the same economic position as if this Change in Law event had not occurred.

6) Para 25.1 of the draft Regulations, 2020 with respect to Clause (E) of Regulation 49 of the Principal Regulations

Our Comments: Auxiliary Energy Consumption ("AUXe") on account of Emission Control System of thermal generation projects is proposed to be just 1% for Wet Limestone based FGD system. However, as per the discussions held with various technical experts and as also evident from the technical bids submitted by various OEMs for installation of Wet Limestone based

FGD system, the Auxiliary Energy Consumption due to installation/ operation of Wet Limestone based FGD system has a negative/ inverse correlation with the PLF of the generation project. **As such, this AUXe shall vary in the range of 1.35% to 2% corresponding to the respective PLF range of 100% to 60%** and the same is detailed out as under:

Various technical bids submitted by different OEMs for installation of Wet Limestone based FGD system unanimously indicate variation of AUXe with respect to flow of Flue Gas (i.e. Boiler Load) , which shall be fed to the FGD system for removal of SOx.

Accordingly, for a typical 1200 MW coal based thermal generation project, Flue Gas flow has been derived with respect to the PLF as per design calculations of the Bolier OEM and a graph has been plotted for PLF (%), Generation (MW) and AUXe (%) as under, which clearly demonstrates an inverse correlation between AUXe and PLF.

PLF (%)	**Generation (MW)**	Using Trendline Equation of Load Vs Gas Flow Graph	Using Trendline Equation of Gas Flow Vs AUXe Graph	(AUXe) x 100 / (1000 x MW)
		Flue Gas Flow (kNm3/h)	**AUXe (kwh/h)**	**AUXe (%)**
100%	1200.00	1995	16226	1.35
80%	960.00	1668	15642	1.63
75%	900.00	1580	15427	1.71
72%	864.00	1526	15282	1.77
65%	780.00	1397	14898	1.91
60%	720.00	1302	14580	2.03

As clearly evident from above, due to installation/ operation of Wet Limestone based FGD system, the Auxiliary Energy Consumption (AUXe) of a thermal generation project **shall vary in the range of 1.35% to 2% corresponding to the respective PLF range of 100% to 60%, which is way higher than the proposed AUXe of 1%. As such, limiting AUXe to mere 1% would lead to substantial under recovery of Supplementary Tariff by the generating company. Accordingly, it is sincerely requested to allow AUXe of at-least 2% for Wet Limestone based FGD.**

7) Para 25.2 of the draft Regulations, 2020 with respect to Regulation 49 of the Principal Regulations

Our Comments: For Wet Limestone based FGD system, a formula has been specified for working out the specific limestone consumption, in which, one of the variables is "Sulphur content in percentage" (S). **It is understood that this Sulphur content (S) is for the "coal as received". This may be amply clarified in the regulations to avoid any confusions/ litigations in the future.**

Further, in the definition of "GCV as Received" under Clause 31 of Regulation 3 of the Principal Regulations, **the options for place of collection of sample and testing requirements have been specified. Similar clarity may be given for measurement of Sulphur content in percentage (S).**

8) Degradation of Gross Station Heat Rate due to installation of DeNOx System: Clause (C) of Regulation 49 of the Principal Regulations

Our Comments: While evaluating the impact of installation/ operation of Emission Control System on the normative norms of operation of a thermal generation project, the Hon'ble Commission has failed to address an important aspect related to degradation of Gross Station Heat Rate (GSHR) of a generation project due to installation of DeNOx System, which is an essential component of Emission Control System. Accordingly, no normative increase in GHSR of a generation project on account of installation of DeNOx system has been allowed in the draft Regulations, 2020.

However, as per the discussions held with various technical experts and as also evident from the technical bids submitted by various OEMs for installation of DeNOsx System, due to installation of DeNOx System, the combustion pattern of Boiler will change which will invariably result in increase in combustibles in the fly ash as well as bottom ash. **Such an increase in unburnt combustibles shall consequently reduce the Boiler Efficiency thereby increasing the existing GSHR of the thermal generation projects by more than 1%.**

As such, not allowing any normative increase in GSHR due to installation of DeNOx System shall lead to substantial under recovery of Supplementary Tariff by the generating company. Accordingly, it is sincerely requested that 1% increase in the existing normative GSHR of the thermal generation projects (under Clause (C) of Regulation 49 of the Principal Regulations), on account of installation of DeNOx System be approved by this Hon'ble Commission while finalizing these Regulations.