

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: Petition under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 read with Regulation 54 and 55 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 ("MPERC Tariff Regulations, 2015") for Extension of Cut-Off date by 2 years for 1 x 600 MW Coal Based Power Project at Dist. Seoni, Madhya Pradesh from 31.03.2019 to 31.03.2021.

Petition No. 19 of 2019

ORDER

(Date of Hearing: 28th May' 2019)

(Date of Order: 30th May' 2019)

**M/s. Jhabua Power Ltd.,
Unit No. 307, 3rd Floor, ABW Tower,
M.G. Road, Gurugram – 122002 (HR)**

- **Petitioner**

Vs.

1. **M.P. Power Management Company Ltd.,**
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008
2. **M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.**
Shakti Bhawan, Rampur, Jabalpur – 482008.
3. **M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.**
Nishtha Parisar, Govindpura, Bhopal – 462023
4. **M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.**
GPH Compound, Pologround, Indore.

- **Respondents**

Shri Janmejaya Mahapatra, CEO and Ms. Roopam Bansal, Manager appeared on behalf of petitioner.

M/s Jhabua Power Ltd. has filed the subject petition under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 read with Regulation 54 and 55 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 ("MPERC Tariff Regulations, 2015") for extension of Cut-Off date by 2 years for 1 x 600 MW Coal Based Power Project at Barela-Gorakhpur, Dist. Seoni, Madhya Pradesh from 31.03.2019 to 31.03.2021.

2. The Petitioner is a generating Company and operating a 600MW (1X600 MW) coal based Thermal Power Project in District Seoni, Madhya Pradesh. The aforesaid generating unit was declared under Commercial operation on 03.05.2016 and the cut-off date of this unit is 31.03.2019. Vide order dated 30th November' 2018, the Commission has determined the final tariff of the aforesaid generating unit from CoD till end of the control period i.e. 31st March' 2019.

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3. The petitioner has broadly submitted the following in the subject petition:

3.1 “ *The Petitioner submits that the Cut-off date of the Generating station as defined in the MPERC Tariff Regulations, 2015 is as under:*

“Cut-off Date’ means 31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31st March of the year closing after three years of the year of commercial operation:

Provided that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalization could not be made within the cut-off date for reasons beyond the control of the project developer;”

Therefore, in accordance with the MPERC Tariff Regulations, 2015, the Cut-off date of the generating station is 31.03.2019.

3.2 *The Petitioner further submits that expenditure of approximately Rs. 204.88 Crore pertaining to certain balance works under original scope of work are envisaged to get spilled over beyond cut-off date on account of various reasons beyond the reasonable control of the petitioner and despite regular monitoring & follow-up by the petitioner, Majority of above works like Railway siding works, Main and Offsite civil works, Roads and Drainage works etc. are in progress and likely to be completed by FY 2020-21. The major reasons for the delay is on account of the following:*

3.2.1 *Keeping in view the non-availability of funds post commercial operation of the unit (due to retention of money by the Respondent from the monthly raised invoices by the petitioner on various accounts such as Liquidated Damages & On-Off bar issue, poor scheduling by the Respondent, want of any other PPA, low price at the power exchange), the Petitioner had applied for syndication of bridge loan from different financial institutions to complete the balance project work. The loan, was however not syndicated at all affecting the progress of works. This has led to delay in work which was otherwise envisaged to be completed by March 2018.*

That, the RBI Circular dated 12th February 2018 for stressed assets forced the lenders to classify the project of the petitioner as a Non-Performing Asset (NPA). The same is also identified as one of the 34 stressed thermal coal-based power plants in the 40th report of the Standing Committee on Energy (2017-18), Ministry of Power. Subsequently, the lenders invoked the pledge and took control of 60% of the promoter’s equity.

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- 3.2.2 *That, the lenders stopped the process of debt restructuring in line with the above RBI circular and initiated the process of due-diligence for change of ownership.*
- 3.2.3 *That, the lenders decided to stop all capital expenditure required to complete the balance project works and to meet a number of undischarged liabilities. This step was taken under the assumption that the amount and course of capital expenditure would be decided by the new management post resolution of the asset, which was expected to be completed by August 2018, in line with the above RBI Circular.*
- 3.2.4 *That, the process of resolution of the asset got delayed due to various factors like:*
- *Longer than expected timeline for the process of due diligence in view of the apprehensions of the bidders regarding the various project fundamentals as well as sectorial outlook.*
 - *Failure of the identified bidder to achieve financial closure to proceed with the resolution.*
 - *Stay order by the Hon'ble Supreme court on the process of resolution of the stressed assets in the power sector under Insolvency and Bankruptcy Code (IBC).*
- 3.2.5 *That, the petitioner has been constantly discussing with the lenders (Committee of Creditors – CoC) to allow controlled capital expenditure, at least for the Railway works, from the operational revenue.*
- 3.2.6 *That, the importance of completion of railway work for increasing the reliability of coal supply, decrease in landed cost of fuel as well as resultant decrease in input cost was realized by the COC and they agreed, in principle, to allow the same in October 2018.*
- 3.2.7 *That, the petitioner has started work on the same on a war footing. However, due to the long interruption and delay, all the awarded contracts, for supply as well as execution, had to be re-negotiated and re-ordered.*
- 3.2.8 *That, the railway works are in full swing now and the same is expected to be completed by February 2020.*
- 3.2.9 *That, the petitioner has not been able to purchase and stock critical & costly insurance spares like Generator rotor, HP module, LPT last stage blades, Turbine Governing System Spares, Generator Stator Spares, DCS Spares etc. in view of the paucity of funds. The same are envisaged to be procured by FY 2020-21.*

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3.2.10 That, the other miscellaneous balance activities like construction of township, service building, roads & drains etc. shall also be completed during the above period i.e. by FY 2020-21.

3.3 In view of the above reasons, which were completely beyond the control and purview of the petitioner, the additional capital expenditure required to be made to complete the balance project works could not be incurred. However, it is categorically submitted that all the equipment required to generate power, reliably and safely are in service. The above additional capital expenditure would help the petitioner to run the plant more efficiently.

3.4 It is also submitted that additional capital cost due to spilling over of expenditure beyond the cut-off date is indirectly advantageous to the beneficiaries since power is being supplied at a comparatively lower rate as per the tariff determined by the Hon'ble Commission considering the actual expenditure incurred as on date. Therefore, no additional burden is imposed on the beneficiaries due to such additional capitalization beyond the Cut-off Date.

3.5 The Petitioner, therefore seeks an extension of cut-off date for a further period of two years i.e. till 31.03.2021 on account of the above reasons which were beyond its control and requests the Hon'ble Commission to grant extension of the same by exercising its powers of Power to Relax under Regulation 54 of the MPERC Tariff Regulations, 2015.

4. With the above submission, the petitioner has prayed the following:

- i. Extend the cutoff date of its generating station from 31.03.2019 to 31.03.2021 i.e. for two years by invoking Regulation 54 "Power to Relax" and Regulation 55 "Power to Remove Difficulty" of the MPERC Generation Tariff Regulations, 2015 in view of the facts and circumstances submitted above.*
- ii. Condone any inadvertent omissions/errors/rounding off differences/ shortcomings and permit the Petitioner to add/alter this filing and make further submissions as may be required by the Hon'ble Commission; and*
- iii. Pass such further and other Orders, as this Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case.*

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5. The case was fixed for motion hearing on 28th May' 2019 wherein the representative of the petitioner while stating the relevant provisions of MPERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2015 reiterated the contention in the petition. Having heard the petitioner and on perusal of contents in the subject petition, the Commission has noted that in terms of Regulation 4.1 (l) of aforesaid Regulations, the cut-off date of a project may be extended by the Commission after exercising prudence check based on the documentary evidence for establishing that capitalization could not be made within cut-off date for the reasons beyond the control of the petitioner. It was submitted by the petitioner during the course of hearing that the pending works which are mentioned in the subject petition shall be completed and capitalized during FY 2019-20 or FY 2020-21. Further, the additional capitalization of all such works shall be claimed by the petitioner in its true-up petitions for relevant year along with all requisite documents. Therefore, the Commission has observed that this is not the appropriate stage to decide the subject petition.

6. With regard to the issue at hand in the subject petition, Regulation 20.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, provides that:

20.2 The capital expenditure incurred or projected to be incurred in respect of the new project on the following counts within the original scope of work after the cut-off date may be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work; and*
- (iv) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.*

7. From the aforesaid provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(l) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by

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the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.

In view of the above observations and directives of the Commission, the subject petition stands disposed of.

Sd/-

(Mukul Dhariwal)

Member

Sd/-

(Dr. Dev Raj Birdi)

Chairman