

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: Petition filed under Section 86(1)(a) of Electricity Act, 2003 read with Regulation 4.1 (I) and Regulation 20.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 seeking extension of Cut-off date of 2x600 MW coal-based Anuppur thermal power project in Distict Anuppur, M.P.

Petition No. 18 of 2019

ORDER

(Date of Hearing: 23rd April' 2019)

(Date of Order: 27th April' 2019)

M.B. Power (Madhya Pradesh) Ltd., Anuppur

- **Petitioner**

Vs.

1. **M.P. Power Management Company Ltd.,**
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008

2. **The Managing Director**
M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.
Shakti Bhawan, Rampur, Jabalpur – 482008.

3. **The Managing Director**
M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.
Nishtha Parisar, Govindpura, Bhopal – 462023

4. **The Managing Director**
M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore.

- **Respondents**

Shri Akshat Jain, Advocate, Shri Rameshwar Dubey (VP) and Shri Abhishek Gupta (GM), appeared on behalf of petitioner.

M/s M.B. Power (Madhya Pradesh) Ltd. has filed the subject petition under Section 86(1)(a) of the Electricity Act, 2003 read with Regulation 4.1 (I) and Regulation 20.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 seeking extension of Cut-off date of (2x600 MW) 1200 MW coal-based Anuppur thermal power project in Distict Anuppur, Madhya Pradesh.

2. The Petitioner has developed and operating a 1200 MW (2X600 MW) coal based Anuppur Thermal Power Project in District Anuppur, Madhya Pradesh. The Project comprises of two generating units having an installed capacity of 600 MW each. The Unit No. 1 of the Project achieved COD on 20.05.2015 and Unit No. 2 of the Project achieved COD on 07.04.2016.
3. In the subject petition, the petitioner has mentioned the details of Power Purchase Agreements entered into by it with the MPPMCL and Govt. of Madhya Pradesh. In para 14 of the petition, the petitioner has also mentioned the details of various orders passed by the Commission for determination of provisional tariff, final tariff and true-up of tariff in respect of both generating units of the petitioner's

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power project.

4. The petitioner has submitted that the following provisions of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 are relevant to the subject petition:

“4. Definitions and Interpretations:

4.1 *In these Regulations, unless the context otherwise requires-*

...

- (l) **‘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;

...

- (zh) **‘New Project’** means the project achieving COD or anticipated to be achieving COD on or after 1.4.2016;

...

20.2 *The capital expenditure incurred or 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.*

...

54. Power to Relax.

The Commission, for reasons to be recorded in writing, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person.

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55. Power to Remove Difficulty:

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provision not inconsistent with the provisions of the Act or provisions of other Regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these Regulations.”

5. The petitioner submitted that the Regulation 4.1(I) of MPERC Tariff Regulations, 2015 provides that the cut-off date of a Project may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalization could not be completed within the cut-off date for reasons beyond the control of the project developer.
6. The petitioner further submitted that as per the Regulation 4.1(I) of Tariff Regulations, 2015, the current cut-off date for the petitioner’s Project works out to 31.03.2019. The petitioner stated that though the Project completion works have been diligently undertaken by the petitioner but the petitioner apprehends that the following works of the petitioner’s Project will spill over beyond the aforesaid cut-off date of 31.03.2019 for reasons beyond the control of the petitioner:
 - a. Deferred works related to construction of ash dyke/ash pond/ash handling system:
 - b. Deferred works related to Railway Siding Works – New Entry Line:
 - c. Unfinished works by M/s Lanco Infratech Limited:
 - d. Certain other works on account of compliance to Statutory Requirements:The details of cost to be incurred along with reasons for delay in execution of all above works are mentioned in the petition.
7. With the above submission, the petitioner prayed the following:
 - a) *Extend the cut-off date of the Petitioner’s Project from 31.03.2019 to 31.03.2021 i.e. by 2 years;*
 - b) *In the alternative, grant liberty to the Petitioner to approach this Hon’ble Commission at the appropriate stage for capitalization of Additional Capital Expenditure as stated in the Petition due to reasons beyond the control of the Petitioner;*
 - c) *Permit recovery of expenses understated/not considered/missed in the present Petition at a later stage if required;*
8. The case was fixed for motion hearing on 23rd April, 2019 wherein Ld. Counsel of the petitioner while stating the relevant provisions of MPERC (Terms & Conditions for determination of Generation

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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 (I) 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. The Commission expressed during the hearing that the works which are mentioned in the subject petition shall be completed and capitalized during FY 2019-20 or FY 2020-21 as per contention of the petitioner. Thus, 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, this is not the appropriate stage to decide the prayer made at Sr. No. (a) and (c) in para 41 of the subject petition. In response to aforesaid, Ld. Counsel of petitioner pressed on its prayer (b) of the subject petition which states that *“In the alternative, grant liberty to the Petitioner to approach this Hon’ble Commission at the appropriate stage for capitalization of Additional Capital Expenditure as stated in the Petition due to reasons beyond the control of the Petitioner”*.

9. 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.*

10. In view of above provisions under MPERC 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(I) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to

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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