vedanta
transforming elements

Ref No.:VL/Comments/CERC Tariff Reg,2019-1st Amend

Date: 15.05.2020

To,
The Secretary
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi -110 001.

Subject: Submission of opinion/comments for Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff)(First Amendment) Regulations, 2020.

Sir,

This is with reference to the above subject wherein Hon'ble Central Electricity regulatory Commission by way of public notice no L-1 /236/2018/CERC dated 01.04.2020 has published the proposed draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff)(First Amendment) Regulations, 2020 under sub-section (3) of Section 178 of the Act read with Electricity (Procedure for Previous Publication) Rules, 2005 whereby inviting comments/suggestions/objections from the stakeholders and interested persons on the provisions of above draft Regulation.

Thus, Vedanta Limited as a Generating Company submits suggestions on proposed , **Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff)(First Amendment) Regulations, 2020**

This is submitted for your kind consideration.

Thanking You.

Yours faithfully,

For: Vedanta Limited

VEDANTA LIMITED BBSR

Authorised Signatory

Vedanta Limited
Aluminium & Power
Vill- Bhurkhamunda, P.O- Kalimandir, Dist- Jharsuguda (Odisha)-768202
Tel +91-664-566 6000, F +91 664 566 6427, www.vedantalimited.com

Registed Office :
Vedanta Limited 1st Floor, 'C' wing, Unit 103, Corparate Avenue, Atul Projects, Chakala, Andheri, (East), Mumbai 400093, Maharashtra, India
CIN : L13209MH1965PLC291394

Comments/ Submissions on behalf of Vedanta Ltd. on the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020.

I. RE: Amendment to Regulation 3 of the Principal Regulations

1. This Hon'ble Commission vide the aforementioned amendment has proposed to include a new clause, namely Clause [6a] under Regulation 3 of the principal Regulations, which is as follows:

> "(6a) „Auxiliary energy consumption for emission control system ' or 'AUXe' in relation to a period in case of coal or lignite based thermal generating station means the quantum of energy consumed by auxiliary equipment of the emission control system of the coal or lignite based thermal generating station;"

Comments/ Suggestions: With respect to the above amendment, it is humbly requested that this Hon'ble Commission may kindly consider the following additions:

> "(5a) „Auxiliary energy consumption for emission control system ' or 'AUXe' in relation to a period in case of coal or lignite based thermal generating station means the quantum of energy consumed by auxiliary equipment of the emission control system *and any other associated equipment required to operate* the coal or lignite based thermal generating station *and the emission control system thereof;*"

Rationale: The aforesaid is required so that the definition of Auxiliary consumption should have enough flexibility so that if any other associated equipment is installed, alongwith the emission control system, then the

generator should be allowed the resultant auxiliary consumption. This would reduce ambiguity, and prevent unnecessary regulatory/ tariff issues.

2. Further, this Hon'ble Commission under Principle Regulation 3 has proposed for insert a namely, **Clause (20a)**, after Clause (20), which is as follows:

> "**(20a) "emission control system"** means a set of equipment or devices required to be implemented in the coal or lignite based thermal generating station to meet the revised emission standards,"

Comments/ Suggestions: With respect to the above amendment, we humbly request this Hon'ble Commission to kindly consider the following additions, which are as follows:

> "**(20a) "emission control system"** means a set of equipment or devices required to be implemented in the coal or lignite based thermal generating station *or unit thereof* to meet the revised emission standards;"

II. RE: Amendment of Regulation 21 of the Principal Regulations

3. It is stated that vide the amendment to the aforesaid Regulation 21, this Hon'ble Commission has proposed that a new clause, namely, **Clause (6)** shall be added after Clause (5) of Regulation 21 of the Principal Regulations, which is as follows:

> "(6) For the purpose of Clauses (4) and (5) of this Regulation, IDC on actual loan and normative loan infused shall be considered."

Comments/ Suggestions: With respect to the above amendment, we humbly request this Hon'ble Commission to kindly consider the following additions, which are as follows:

> "(6) For the purpose of Clauses (4) and (5) of this Regulation, IDC and *IEDC on* actual loan and normative loan infused shall be considered."

Rationale: It is submitted that there are instances when the delay in commissioning of the project (i.e. achieving COD) is not attributable to the generating company, and as such it leads to Incidental Expenditure during the construction period. Hence, this Hon'ble Commission ought to allow any expenditure which is incurred on account of delay, which is beyond control of the generator, and accordingly, the Hon'ble Commission may consider allowing both IDC and IEDC beyond the Scheduled Date of Commercial Operation (SCOD), after prudence check. Inclusion of IEDC in case of delay which is beyond the control of the party is material, as is also evidenced by the judgment of the Hon'ble Appellate Tribunal passed in Appeal No. 257 of 2013, titled as *Power Grid Corporation of India Limited vs. CERC & Ors*, wherein it was held as follows:

> **"15. Summary of our findings**
>
> (i) The delay of 8 months in conducting Short Circuit Test due to non-availability of test bed was beyond the control of Power Grid or its supplier. The Central Commission has also given clear finding that this delay was beyond the control of Power Grid and its supplier as they had to depend on other Organization outside India as the Short Circuit Testing facilities were not available in the country. Accordingly, IDC and IEDC for delay of 8 months in getting the Short Circuit

Test due to nonavailability of test bed should be allowed to Power Grid.

....."

As such, a similar treatment for allowing IDC and IEDC ought to be given for the generators as well, when the delay in commissioning of the project is beyond its control.

III. RE: Amendment of Regulation 23 of the Principal Regulations

4. It is stated that vide the amendment to the aforesaid Regulation 23, this Hon'ble Commission has proposed that a new Proviso, namely, **Proviso (iii)** shall be added after Proviso (ii) to Regulation 23 of the Principal Regulations as under:

> "(iii) where the emission control system is installed, the norms of initial spares specified in this regulation for coal or lignite based thermal generating station as the case may be, shall apply."

Comments/ Suggestions: It is submitted that this Hon'ble Commission, for the purpose of installation of emission control system, has kept the same norms of initial spares, as specific in these Regulations for coal or lignite based thermal generating station i.e. 4%.

However, it is humbly requested that this Hon'ble Commission may re-consider the above percentage, and the norms for initial spares for installation control ought to be increased to 6%.

Rationale: As we are aware, the installation of emission control system is a new technology in the country, and as such, initial operation of such new system requires adequate stock of spares. It is stated that the power generators are always under an immense pressure to ensure that their availability does not go below 85%, as the same is provided under most of the Power Purchase

Agreements (PPAs) signed with the State Utilities/ Traders. If such availability reduces beyond 85%, then the generators are held liable for damages, as per the conditions stipulated under the PPA.

As such, the increased norms (i.e. by 6%) would help the generators to take care of mandatory and insurance spares requirement at the time of commissioning of the project and to arrange for its financing[HS1].

IV. RE: Amendment of Regulation 30 of the Principal Regulations

5. It is stated that vide the amendment to the aforesaid Regulation 30, this Hon'ble Commission has proposed that a new clause, namely, **Clause (3)** shall be added after Clause (2) of Regulation 30 of the Principal Regulations, which is as follows:

> "(3) The return on equity in respect of additional capitalization due to emission control system shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or in the absence of actual loan portfolio of the generating station, the weighted average rate of interest of the generating company as a whole shall be considered;"

Comments/ Suggestions: With respect to the above amendment, it is humbly requested that this Hon'ble Commission may consider the following amendment:

> "(3) The return on equity in respect of additional capitalization due to emission control system shall be computed at the rate as specified under Clause (2) hereinabove."

Rationale: It is submitted that this Hon'ble Commission proposed the aforementioned with a view that it would be reasonable to allow equity infused by the generating company for installing emission control system at the cost of borrowing from financial institution. However, it is humbly submitted that the said approach may be re-looked on account of the following:

i. Section 61 (d) of the Electricity Act, 2003 provides that the Commission, while specifying the terms and conditions for the determination of tariff, shall be guided by the principle of 'safeguarding of consumers interest and at the same time, recovery of cost of electricity in a reasonable manner';

ii. The above principle is also recognized under para 5.11 (a) of the Revised Tariff Policy, which is as follows:

> "5.11
>
> .....
>
> **a) Return on Investment**
>
> Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.
>
> ...."

iii. The infused capital and operational expenditure on installation of emission control system is part of cost of electricity supplied to consumer. Therefore, recovery of cost of electricity should be done in a reasonable manner However, the cost of equity at cost of Debt level as

proposed by this Hon'ble Commission is not aligned with the provisions of the Electricity Act, 2003, and the policies under the said Act (i.e. the Revised Tariff Policy, 2006);

Further, it is stated that in view of the power market scenario for past 8 years, financial institution is very reluctant to disburse loan to power sector in such condition generators has to be apprised with some market premium of 5 to 6% beyond the interest cost of debt to enable generators to recover their cost of capital in reasonable manner. As such, market premium is the reward for generators to be in power business in a sustainable manner to supply quality power to consumers.

V. *RE: Amendment of Regulation 34 of the Principal Regulations*

6. It is stated that vide the amendment to the aforesaid Regulation 34, this Hon'ble Commission has proposed that a new clause, namely, **Clause(aa)** shall be inserted after Clause (a), as under:

> "(aa) For emission control system of coal or lignite based thermal generating stations:
>
> (i) Cost of limestone or reagent towards stock for 20 days corresponding to the normative annual plant availability factor;
>
> (ii) Receivables equivalent to 45 days of supplementary capacity charge and supplementary energy charge for sale of electricity calculated on the normative annual plant availability factor;
>
> (iii) Operation and maintenance expenses in respect of emission control system for one month;

(iv) Maintenance spares @ 20% of operation and maintenance expenses in respect of emission control system."

Comments/ Suggestions: It is humbly requested that this Hon'ble Commission may add another sub-clause, after sub-clause (i) to Clause (aa) under Regulation 34, which is as follows:

"(ii) Advance payment for 40 days towards cost of reagent or limestone for generation corresponding to the normative annual plant availability factor;"

Rationale: It is submitted that on account of the notification dated 07.12.2015 issued by MoEF&CC, the power generators are under obligation to adopt FGD technology, thereby installing FGD equipment based on its suitability for the site. It is stated that various technologies have **different** O&M expenses which are required to maintain a high level of consumable inventory. As such, since the high level inventory impacts the working capital requirements of a power generator, it is proposed to allow at least 40 days advance payment towards cost of reagent to maintain sufficient inventory of reagent.

It is further stated that this Hon'ble Commission, in view of the non-availability of adequate data towards O& M expense, has specified the O&M expenses as percentage of admitted capital cost. Therefore, at this nascent stage of high end equipments like FGD installation to ensure adequate requirement of working capital, it is humbly requested that this Hon'ble Commission may allow O& M expenses of at least 2 months.

VI. RE: Amendment of Regulation 35 of the Principal Regulations

7. It is stated that vide the amendment to the aforesaid Regulation 34, this Hon'ble Commission has proposed that **Sub-Clause (7) of Clause (1)** of Regulation 35 of the Principal Regulations along with its proviso shall be substituted as under:

"(7) The operation and maintenance expenses on account of emission control system in coal or lignite based thermal generating station shall be 2% of the admitted capital expenditure (excluding IDC & IEDC) as on the date of its operation, which shall be escalated annually at the rate of 3.5% during the tariff period ending on 31st March 2024:

Provided that income generated from sale of gypsum or other byproducts shall be reduced from the operation & maintenance expenses."

Comments/ Suggestions: With respect to the above amendment, it is humbly requested that this Hon'ble Commission may consider the following amendment:

"(7) The operation and maintenance expenses on account of emission control system in coal or lignite based thermal generating station shall be 2% of the admitted capital expenditure (excluding IDC & IEDC) as on the date of its operation, which shall be escalated annually at the rate of 3.5% during the tariff period ending on 31st March 2024:

Provided that income generated from sale of gypsum or other byproducts produced **only on account of and after implementation of emission control system** shall be reduced from the operation & maintenance expenses."

It is humbly requested that this Hon'ble Commission may consider to add another proviso, after the first proviso, as under:

"Provided that the loss incurred from disposal of by-products shall be recovered on actual basis from beneficiary."

Rationale: It is submitted that the generators incur additional cost/ loss on account of disposal of the byproducts. As such, the same shall also be made recoverable from the beneficiary. This is because if any new requirement, on account of change in law, such as the requirement to install FGD, any excess expenditure incurred ought to be recovered by the generator. This is in line with Section 61(d) of the Electricity Act, 2003 which guarantees that all reasonable costs associated with generation of electricity ought to be allowed.

VII. RE: Amendment of Regulation 49 of the Principal Regulations

8. It is stated that vide the amendment to the aforesaid Regulation 34, this Hon'ble Commission has proposed that a new sub-clause, namely, sub-clause (bb) shall be inserted after sub-clause (b) of Clause (E) of Regulation 49 of the Principal Regulations as under:

> "(bb) Auxiliary Energy Consumption (AUXe) on account of emission control system of thermal generating stations:
> ....."

Comments/ Suggestions: With respect to the above amendment, it is humbly requested that this Hon'ble Commission may kindly consider the following amendment:

> "(bb) Auxiliary Energy Consumption (AUXe) on account of emission control system of thermal generating stations <u>shall be on actual auxiliary consumption.</u>"

Rationale: It is stated that the FGD technology has been recently introduced in the power industry, subsequent to the MoEF&CC notification dated 07.12.2015. As such, the FGD plants in the entire country are still under the implementation stage. As such, no technical data is available for assessment of Normative AUX energy consumption for emission control system.

Therefore, it is a humbly requested that this Hon'ble Commission may consider the AUX energy consumption as per actual or case to case basis for different technologies.

Further, once the FGD plants are established in the county, this Hon'ble Commission can thereafter after re-look into the said aspect, and accordingly modify the consumption parameters. In this context, reference may be made to the judgment of the Hon'ble Appellate Tribunal in Appeal Nos. 86 & 87 of 2007, titled as *Maharashtra State Power Generation Co. Ltd. v. Maharastra Electricity Regulatory Commission & Ors.*, wherein it was held that actual operating costs have to be allowed to generating stations. The relevant para of the aforesaid judgment is reproduced hereinbelow:

> "30. The Commission, during the course of the hearing, submitted that the Appellant had not provided details of design heat rate and heat rate degradation curve as per the original equipment manufacturer's recommendation. The Commission has explained that it had compared SHR of similarly sized and vintage units across the country on the basis of the report of the Central Electricity Authority (CEA). The Commission has further explained that a selective comparison of SHRs approved by various other electricity regulatory commissions cannot be made, with which we fully agree. We have observed that different commissions adopt different practices and considerations while determining the allowable SHR level. Hence, a comparison without considering all the factors leading to determination of allowable SHR for a particular station is neither meaningful nor advisable.
>
> 31. We are of the opinion that if the SHR allowed by the Commission is not achievable, then the same would not be in anybody's interest; entity would suffer by not recovering its

reasonable cost of supply of the electricity and the consumers would not get the right signal about the pricing of the product they would be using. It is as much essential for the consumers to know the right price of the product they are using, as much as it is for the entity to recover its cost of operations. Unless the consumer knows the true price of the product, he will not be able to take an informed decision about the quantum of his consumption, particularly the industrial and commercial consumers who recover such costs from their consumers. Determining right price is also essential to send signals to the prospective developers/investors in the sector enabling them to take decision about the investment potential in the sector.

32. Under the circumstance, we feel that the Commission either on its own or through the Appellant engage appropriate independent agency(ies), who can carry out a study in a time bound (preferably within three months) manner to reasonably assess the achievable SHR of the plants owned by the Appellant. Such agency may also be asked to suggest measures to improve the SHRs over a period of time."

(underline supplied)

9. In view of the above, it is most respectfully requested before this Hon'ble Commission to kindly consider the comments/ suggestions submitted by us.