

Before the Central Electricity Regulatory Commission

3rd and 4th Floor, Chandralok Building,
36, Janpath, New Delhi-110 001

In the matter of:

Comments and suggestions on CERC Draft Order on 'A mechanism to determine Compensation on account of installation of Emission Control System by the generating companies in compliance with the Revised Emission Standards issued by Ministry of Environment, Forest & Climate Change (MoEFCC), Government of India, vide Environment (Protection) Amendment Rules, 2015 on 7th December, 2015 in respect of the Thermal Power Generating stations whose tariff is determined through competitive bidding under Section 63 of the Electricity Act, 2003'

Submissions of Prayas (Energy Group), Pune

Central Electricity Regulatory Commission (CERC or the Commission) issued a suo-motu draft order on 'Mechanism to determine Compensation on account of installation of Emission Control System by the generating companies in compliance with the Revised Emission Standards issued by Ministry of Environment, Forest & Climate Change (MoEFCC), Government of India, vide Environment (Protection) Amendment Rules, 2015 on 7th December, 2015 in respect of the Thermal Power Generating stations whose tariff is determined through competitive bidding under Section 63 of the Electricity Act, 2003' on the 12th April 2021, and invited public comments on the same.

Taking such suo-motu action is essential toward providing regulatory certainty to Section 63 projects on account of change in law due to the revised emission standards, and streamlining their compliance to the same. Prayas (Energy Group) has some comments and suggestions to ensure clarity of process, accountability, and effective implementation of the proposed mechanism. These are listed below:

1. Availability linked recovery of supplementary charge

As per provisions in paragraph 70 of the draft order, the applicable supplementary capacity charges on account of ECS is payable corresponding to the availability achieved by ECS alone, irrespective of availability declared by the generating station. This is a positive measure, and ensures that ECS related costs that are passed on are incurred due to actual operation, as opposed to only installation, of ECS.

To ensure clarity in implementation, the process to report and validate the availability of ECS should be made clear. For instance, ECS related supplementary capacity and energy charge should be paid to the generating station only if the said station can produce a certificate issued by the appropriate Pollution Control Board, certifying that the environmental norms were complied with during the period under consideration.

If, instead, the availability of the ECS as declared by the generator is considered, then the same must be submitted as a monthly written report to the procurer and the appropriate PCB. In the interest of ensuring accountability and transparency, the Commission should also direct generators to publish these reports every month on the generator's website.

Further, given that this is a good measure that upholds the spirit of the revised emission norms, it is suggested that the same be applicable to all thermal generation projects. Toward this end, the CERC Tariff Regulations that address Section 62 projects should be amended to include such a provision.

2. Calculation of AUXe

According to the draft order, AUXe, or the additional auxiliary energy consumption due to ECS, is considered as reported by the CEA and admitted by the CERC. AUXe impacts generation tariffs, as it affects the contracted capacity and the availability factor of the station. To account for this, paragraph 72 of the draft order proposes changes in the computation of the availability factor to account for the impact of AUXe.

However, the impact of ECS must be based on its availability and utilisation and not just its installation. Adjustments on account of AUXe should only be considered for the time-period that the ECS is available. Thus, the computation of AUXe dependent parameters, such as the availability factor and contracted capacity, must account for the actual availability of the ECS, instead of being a fixed value based on CEA reporting. One way of achieving this objective is to use $(AUXe * AVL_{ECS})$ instead of AUXe, where AVL_{ECS} is the availability of the ECS as declared by the generator.

3. Penalties on account of non-compliance to Environment (Protection) Amendment Rules, 2021

As per the Environment (Protection) Amendment Rules, 2021, notified on 31st March 2021, thermal generating stations that are not in compliance after the notified timelines are required to pay penalties, ranging from Rs. 0.05/unit to Rs. 0.20/unit, based on category and delay in compliance. The amendment Rules do not explicitly mention the treatment of such penalties beyond its levy.

It should be ensured that penalties imposed on generators for non-compliance to the revised emission norms shall not be passed through to consumers of the utility. Regulations that address consumer tariffs, such as the CERC tariff regulations and the notified version of this draft order, should explicitly highlight that costs on account of non-compliance, as per the Environment (Protection) Amendment Rules, 2021, will be disallowed and are to be borne by the generator.

4. Disallowance of cost pass through on account of prolonged shut down period

Paragraph 75 of the draft order proposes that, *"...if the period of shut down exceeds beyond annual shutdown period factored in the normative availability under PPA, either on account of delay in timely completion of activities for interconnecting emission control system or lack of coordination, the consequential cost for the same cannot not be passed on to the consumers".* {Emphasis added}

This is a positive step, that encourages timely installation and considers consumer interests. As suggested in para 1 of this submission, such a measure should be applicable to all thermal generating stations that fall under the purview of the change in law on account of the revised emission norms, including Section 62 generating stations. Hence, the CERC Tariff Regulations must be amended to include this provision, to ensure a level playing field for all thermal power stations.

5. Role of regulators

Measures to prevent regulatory delays

Adherence to the environmental norms have been subject to significant delays, on account of several factors, including delayed regulatory action. As per the amendment of Regulation 101 of the CERC (Conduct of Business) (Amendment) Regulations, 2013, the time limit for the disposing of petitions is six months.

However, addressing cases pertaining to ECS often take longer, and such pendency adds to other operational delays.

Timely installation and utilisation are crucial toward effective implementation of the revised emission norms, and any delays affecting this should be addressed. Toward this end, the Commission should include a provision ensuring a shorter time limit, not exceeding six months, to address ECS related petitions, so as to provide accountability and expeditious action.

In addition, the Commission should direct the CEA to come up with an implementation schedule for both Section 62 and Section 63 generating stations in a time bound manner, within say three months. The schedule should account for concerns of the procurer and ensure grid stability, while ensuring that all plants have installed the necessary ECS before their deadline. The Commission should hold the generators accountable for adherence to this schedule. To ensure continued action and transparency, the generators should be required to submit quarterly reports on progress towards adherence, and these reports should be available on the generator's website.

Regulatory Prudence

As per paragraph 12 of the draft document, *"the Commission's role would be to adjudicate upon disputes, if any, regarding claim of compensation or to approve the supplementary agreement, as the case may be"*.

To ensure that the Commission addresses the concerns of all stakeholders, the role of the Commission should also include the prudence check of submissions by the generator, and the safeguard of consumer interests.

6. Clarity in terminology used and alternate methods to meet the revised environmental norms

The proposed mechanism for compensation only accounts for installation or upgrade of specific technology options (such as ESP, FGD, SCR, etc.) to enable adherence to the norms prescribed by the Environment (Protection) Amendment Rules, 2015 and any revisions since. While the draft order predominantly addresses ECS in general, it is titled "Draft CERC SM Order on FGD Compensation_Sec 63". Given the significant difference in parameters such as cost and timelines between various ECS technologies, the interchangeable use of the terms 'ECS' and 'FGD' should be avoided to ensure regulatory clarity and prevent any associated delays that may arise.

Further, the Commission, vide order in Petition No. 446/MP/2019 dated 23rd April 2019, issued direction to its staff as follows:

"41. Therefore we direct staff of the Commission to float a staff paper at the earliest on the issue of compensation mechanism and tariff implications on account of the 2015 Notification in case of those thermal power plants where the PPA does not have explicit provision for compensation mechanism during the operation period and the PPA requires the Commission to devise such mechanism, inviting comments from all the stakeholders." [Emphasis added]

As is seen, the Commission addresses the issue of compensation and tariff implication on account of adherence to the revised environmental norms, which could include adherence to the norms via avenues other than ECS installation. For instance, it may be possible that, for some units, procuring better quality coal may be sufficient to meet the norms, and may be the least cost way to do so. While this may not result in additional capital expenditure, it may increase the variable cost of those units.

The Commission should allow for such avenues, and the compensation mechanisms proposed in the staff paper should also apply to increase in costs on account of these alternate methods to meet the revised environmental norms. The order should be worded generically to allow for such alternate methods to adhere to the norms too.

7. We request the Commission to accept this submission on record and to allow us to make additional submission in this matter, if any. We further request the Commission to allow us to make an oral submission during a public hearing, if one is scheduled.

Maria Chirayil and Ashok Sreenivas
Prayas (Energy Group), Pune

Place: Pune

Date: 30th April 2021