neeti niyaman
Regulatory & Policy Practice

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Legal Updates

CERC determines Principles & Methodology for Compilation of Coal Price Index applicable for Power Sector

Central Electricity Regulatory Commission ("**Commission**") vide order dated 18.10.2019 in Suo Motu Petition No. 10/SM/2019 has decided the following principles for determining the methodology for compilation of the coal price index:

- Price Index: Based on the purpose and practicability, the Commission has considered Laspeyres Index for compilation of the coal price index which uses base period quantities.
- Base Year: The year 2017-18 has been considered as the base year, which shall be applicable prospectively in view of notified escalation rate for domestic coal applicable till September, 2019.
- Grades of Coal: Keeping in view the grades of non-coking coal used by all power producers through competitive bidding, G7 to G14 grades of non-coking coal have been considered.
- Price of non-coking coal: The Commission has adopted the pit head run of mine price of non-coking coal as notified by Coal India Ltd ("**CIL**") applicable for power sector.
- Base Year Price: Base year price will be the geometric mean of monthly prices of non-coking coal of the base year which is computed on pro-rata basis based on the day of the price increase.
- Base Year Weights: Weights will be based on the value of non-coking coal dispatched to power sector which shall be computed based on monthly price and quantity of non-coking coal.

The Commission has excluded computation of the index based on price including taxes as it would distort the index and inflation figures as well as surface transportation charges and sizing charges for compilation of the coal price index.

The Commission has provided a two-stage formula, wherein during first stage the grade-wise indices (i.e. elementary price index) are calculated using "Jevons Index formula". Thereafter, in the second stage, these elementary price indices are aggregated using weighted arithmetic mean to obtain coal price indices using Laspeyre's index formula.

MNRE issues Notification regarding Extension of Time for Compliance with Order dated 05.09.2017 regarding Self-Certification

Ministry of New and Renewable Energy ("**MNRE**") has issued a notification on 22.10.2019 regarding Solar Photovoltaics, Systems, Devices and Components Goods (Requirements for Compulsory Registration) Order, 2017 issued on 05.09.2017, with the date of coming into force with effect from 05.09.2018, which was advanced to 16.04.2018 on the condition of self-certification by manufacturers for certain products. The time for compliance to the Order regarding self-certification for inverters (items 4-5 of Schedule) stands extended from 30.9.2019 to 31.12.2019 subject to the condition that such manufacturers have valid IEC corresponding to IS specified in the said Order, and test reports from international test labs, for smooth implementation of the Order.

MNRE issues amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects

MNRE has issued amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects on 22.10.2019.

The salient features of the amendment are as follows:

- Para 2.1.1 (c) (i) has been amended, which states that in case of aggregation of power purchased from different solar power generators, the intermediary procurer may sell the solar power to end procurer(s) at the weighted average of tariffs discovered and finalised for different bids over a period of (1st January to 30th June) or (1st July to 31st December) of any year. Bundling (weighted averaging) would be done only for bids issued by the same intermediary procurer and the intermediary procurer would be the competent authority to certify the weighted average tariff during the period.

- Formula has been provided for calculation of the weighted average, wherein the weightage to be assigned to each successful bid for calculation of the weighted average, is based on the total accepted capacity in the respective tariff.

- In case a project does not get commissioned or permanently stops generating after commissioning, then the capacity of such project shall be deducted, and new weighted average tariff will be calculated and made applicable.

- In case of staggered commissioning, the relevant tranche will be bundled with bids received in the respective period and other tranches will be bundled with the immediately next block if the scheduled commissioning date ("**SCD**") of the next tranche is less than 6 months after the first tranche and so on.

- Trading margin to be payable by the end procurer to the intermediary procurer has now been specified at Rs. 0.07/kWh. Also, the rates under the power sale agreement would now be in accordance with the amended Para 2.1.1 (c).

- Documents/Lease Agreement are to be submitted to establish possession/right to use 100% of the required land in the name of the solar power generator for a period not less than the complete term of the power purchase agreement ("**PPA**"), on or before the SCD. Wherever leasing of private land is involved, the lease should allow transfer of land lease rights to the lenders or procurer, in case of default of the solar power generator.

- For the purpose of payment security fund ("**PSF**"), the intermediary may collect Rs 5 Lacs/MW from the generator(s) and all such charges must be stipulated clearly in the request for selection and shall go to the PSF set up for such intermediary procurer.

- Force majeure clause has been amended to include an extensive definition of the same.

- End procurer is required to give revolving letter of credit and state government guarantee. In case the end procurer is unable to provide the state government guarantee, an additional risk premium of Rs. 0.10/kWh will be payable by end procurer, to be credited to PSF.

- Solar power generator shall be eligible for a minimum generation compensation, from the procurer at 100% of (average generation per hour during the month) × (number of backdown hours during the month) × PPA Tariff]. Further, back down can be ordered only with formal / written instruction along-with justification (which needs to be made public).

- Upon being in default, the solar power generator shall be liable to pay to the procurer, damages, in terms of Clause 14.3 and Clause 5.2.1(a). For other cases, damages, equivalent to 6 months, or balance PPA period whichever is less, of charges for its contracted capacity shall be paid to the procurer who shall reserve the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal remedy.

- The distribution licensee or intermediary procurer must approach the appropriate commission for adoption of tariff in terms of Section 63 of Electricity Act. In case the appropriate commission does not decide upon the same within 60 days of such submission, the tariff shall be deemed to have been adopted by the appropriate commission.

- Any delay by appropriate commission in adoption of tariff beyond 60 days, will entail a corresponding extension in financial closure.

- Delay in commissioning beyond the scheduled commissioning period will involve the following penalties:

    i. For delay in commissioning up to 6 months from the SCD, encashment of performance bank guarantee on a per-day basis and proportionate to the capacity not commissioned;

    ii. For delay in commissioning beyond 6 months from SCD, the generator event of default will be considered to have occurred and the contracted capacity will stand reduced to the project capacity commissioned up to SCD + 6 months. The PPA for the balance capacity not commissioned will be terminated.

MNRE issues Clarification in respect of Domestically Manufactured Solar PV Cell

MNRE has issued a Clarification dated 21.10.2019 in reference to the schemes/ programmes being implemented by the MNRE, wherein it is mandatory to use domestically manufactured solar PV cells and domestically manufactured solar PV modules, and also in reference to the Manufacturing-Linked-PPA initiative by Solar Energy Corporation of India Ltd (“**SECI**”). In this regard, MNRE has clarified as under:

- Solar PV cells shall be considered domestically manufactured only if the same has been manufactured in India, using undiffused silicon wafer (generally called 'Black Wafer'). Further, all steps / processes required for manufacturing solar PV cells from the undiffused silicon wafer have to be carried out in India.

- If diffused silicon wafer is imported and the same is used as raw material for the manufacture of solar PV cells in India, such solar PV cells shall not qualify as domestically manufactured.

- Solar PV cells manufacturing facility required to be set-up under SECI's Manufacturing-Linked-PPA initiative should manufacture solar PV cells from undiffused wafers.

TRAI issues the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Amendment) Regulations, 2019

Telecom Regulatory Authority of India ("**TRAI**") has issued the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Amendment) Regulations, 2019 ("**Interconnection Amendment Regulations**"), which have come into force w.e.f. 30.10.2019. Amendments have been introduced to Regulation 15 and Schedule III of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017.

The salient features of the Interconnection Amendment Regulations are as follows:

- Annual audit caused by distribution platform operator ("**DPO**") shall include audit to validate compliance with Schedule III to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the subscription audit;
- There shall be a gap of at least six months between annual audits caused by DPOs of two consecutive calendar years. Such gap shall not exceed more than eighteen months.
- Failure to cause audit by a DPO by the due date, will attract financial disincentive, wherein DPO will be liable to pay an amount of Rs. 1,000/- per day for the delay of first thirty days. Thereafter, disincentive will be levied at Rs. 2,000/- per additional day, subject to a maximum limit of Rs. 2,00,000/- per instance of violation / delay;
- Amended addressable system requirements have been provided for conditional access system and subscriber management system, fingerprinting and set-top box.

TRAI extends time to receive Comments on Issues related to Interconnection Regulations, 2017

The Consultation Paper on Issues related to Interconnection Regulations, 2017 was issued by TRAI on 25.09.2019 inviting comments from stakeholders by 23.10.2019 and counter-comments by 06.11.2019. The stakeholders had requested for an extension of time from TRAI for sending their comments on the said Consultation Paper. Considering the request for extension, TRAI has extended the last date for submission of comments on the Consultation Paper up to 04.11.2019, and for counter-comments up to 13.11.2019.

NCLAT upholds maintainability of Compromise & Arrangement under Companies Act during IBC Liquidation but not by a Promoter ineligible under Section 29A IBC

The National Company Law Appellate Tribunal ("**NCLAT**") in ***Jindal Steel and Power Limited vs. Arun Kumar Jagatramka & Ors,*** has held that in a liquidation proceeding under Insolvency & Bankruptcy Code, 2016, ("**IBC**") a petition under Section 230 & 232 of the Companies Act, 2013, is maintainable. NCLAT further relied upon the judgment of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.* and held that a corporate debtor is to be saved from its own management. Hence, a promoter who is ineligible under Section 29A cannot make an application for 'Compromise and Arrangement' for taking back the immovable and movable property or actionable claims of the corporate debtor.

The National Company Law Tribunal, Kolkata, by order dated 15.05.2018, although ordered to proceed under Section 230 to 232 of the Companies Act, 2013 but failed to notice that such application was not maintainable at the instance of a promoter, who was ineligible under Section 29A, IBC, to be a 'Resolution Applicant'. Accordingly, NCLAT, while holding as above, remanded the matter to the liquidator/adjudicating authority.

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