

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 26/RP/2016  
in  
Petition No. 50/MP/2015**

**Coram:  
Shri Gireesh B. Pradhan, Chairperson  
Shri A.K.Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of Order: 20<sup>th</sup> of October, 2016**

**In the matter of**

Review petition under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of the order dated 25.5.2016 issued by the Commission in Petition No. 50/MP/2016 in the matter of revision of the mechanism for computing the escalation rate for domestic coal (payment) published by the CERC under Clause 5.6 (vi) of the Competitive Bidding Guideline dated 19.1.2005.

**And  
In the matter of**

RattanIndia Power Limited  
(Formerly known as Indiabulls Power Limited)  
World Mark Tower B,  
5<sup>th</sup> Floor, Aerocity,  
Indira Gandhi International Airport  
New Delhi- 110037

**....Review Petitioner**

**Review Petition No. 34/RP/2016  
in  
Petition No. 62/MP/2014**

**In the matter of**

Review Petition on behalf of the petitioner (Rattan India Power Limited under Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) (Amendment) Regulations, 2013 for review of the order dated 25.5.2016 passed by CERC in Petition No. 62/MP/2014

**And  
In the matter of**

MB Power (Madhya Pradesh) Limited  
239, Okhla Industrial Estate-III,  
New Delhi – 110020

**.....Review Petitioner**

## **Parties present**

1. Sh. Sanjay Sen, Sr. Advocate, MB Power
2. Sh. Avijeet Lala, Advocate, MB Power
3. Ms. Puja Priyadarshni, MB Power
4. Sh. SakyaSingha, Advocate, MB Power
5. Ms. Pooja Katara, Advocate, RPL
6. Sh. Harshul Singh, Advocate, RPL
7. Sh. Tushar Jain, Advocate, RPL

## **ORDER**

The Commission in common order dated 25.5.2016 in Petition No. 62/MP/2014 filed by Indiabulls Power Limited (Since renamed as Rattan India Power Limited) and Petition No. 50/MP/2015 filed by MB Power (Madhya Pradesh) Limited had observed the following:

“9. The grievances of the petitioners are that the power generators are normally allocated with grades ‘E’ and ‘F’ of coal by CIL and its subsidiaries, which grades have been rechristened as G-8, G-9, G-10, G-11 and G-12 in terms of a notification dated 21.10.2011 issued by the Ministry of Coal. The actual payment made by the generators for these grades of coal does not match with the WPI of non-cooking coal which covers all grades of coal. In this perspective, the petitioners have approached the Commission to revise the methodology of escalation indices so as to ensure that the indices reflect the actual cost of coal used in the power sector.

10. Ministry of Commerce and Industry has set up a Committee to revise the WPI and create a separate index for the coal used in the power sector. In our view, it would be pre-mature to undertake any exercise for revision of indices without taking into consideration the WPI being developed by Ministry of Commerce and Industry for the power sector. The new series of WPI applicable to the grades of coal used in the power sector would be released by the Ministry of Commerce and Industry shortly. It is expected that the new series of WPI for power sector would address the concerns of the petitioners and other generators.”

2. Aggrieved by the above directions, Rattan India Power Ltd. has filed Review Petition No. 34/RP/2016 and MB Power (Madhya Pradesh) Limited has filed Review Petition No. 26/RP/2016 seeking review of the above directions and restoration of the petitions for consideration on merit.

3. Rattan India Power Ltd. (hereinafter 'RPL') has submitted that para 5.6(vi) of the Competitive Bidding guidelines issued by the Central Govt. under Section 63 of the Electricity Act, 2003 requires the Central Commission to notify and update every six months the various escalation rates which include escalation rates for domestic coal and inland transportation.

4. RPL has submitted that the Commission uses the Wholesale Price Index (WPI) of non-cooking coal for arriving at the escalation rate for domestic coal. The escalation rate provided for the domestic coal cost does not match with the actual coal cost notified by the Coal India Limited / Ministry of Coal. Accordingly, RPL had filed Petition No. 62/MP/2014 for revision of the escalation rates for domestic coal published by the Commission for the purpose of payment in the PPA under Case-I bidding. RPL has further submitted that the Commission in ROP dated 9.4.2015 observed that the Ministry of Commerce and Industry had set up a Committee to revise the WPI and create a separate index for the coal used in the power sector which would help in addressing the problem being faced by RPL. Since, the process of revising the WPI index would take time, the Commission adjourned the matter *sine die* with liberty to the petitioner for listing the petitions for hearing after decision with regard to revision of WPI index/creation of a separate index for the coal used in the power sector. RPL has submitted that while the decision of the Ministry of Commerce and Industry was still awaited, the Commission listed the petition for hearing on 4.2.2016. After hearing the petitioner, the Commission reserved the order in the petition. Subsequently, the Commission directed the petitioner to file written submission which was complied with. However, without advertent to the submission of the RPL on merit, the Commission vide the impugned order dated 25.5.2016 disposed of the petition with the observations that the new series of WPI for power

sector were being developed by Ministry of Commerce and Industry which would address the concern of the petitioner and other generators. RPL has submitted that the order dated 25.5.2016 has resulted in error apparent on the face of the record on the following grounds: -

- (a) The Commission has not given any reason for overriding its own order of 9.4.2015.
- (b) There is no change of circumstances from 9.4.2015 to 4.2.2016 or 25.5.2016 so as to warrant a final decision on the petitions and that too on a technical ground and not on merits.
- (c) No finding has been returned on the submission made by the petitioner on merit.
- (d) The Commission has not returned any final decision on the submission of the petitioner that the escalation index published by the Commission by using the Wholesale Price Index for non-coking coal is not in consonance with the actual variation in cost of domestic coal supplied by M/s Coal India Ltd for power generation and therefore, is not in accordance with the intent of clause 5.6 (vi) of the Bidding Guidelines.
- (e) The Commission has not appreciated that the decision on the escalation index was warranted in view of the huge financial ramification due to the mechanism adopted by the Commission, irrespective of the revision of WPI by the Committee set up by the Ministry of Commerce and Industry.
- (f) The Commission has not appreciated that even if the Ministry of Commerce and Industry publishes the WPI for the power sector, that would be applicable

prospectively and Commission cannot abdicate its responsibilities to decide the issues in the present petition which has arisen in view of the mechanism adopted by the Commission for providing the escalation rates of domestic coal based on the WPI of non-coking coal.

5. MB Power (Madhya Pradesh) Limited (MBPL) in its Review Petition has made similar submissions as in the review petition of RPL. MBPL has further submitted that in its additional affidavit dated 20.11.2015 filed in Petition No. 50/MP/2015, MBPL had proposed a more appropriate and fair methodology where the successful bidder is allowed revision in the quoted Energy Charges in the same ratio or proportion as the actual change in the cost of fuel having due regard to the grade of coal used by the concerned generators. MBPL has further submitted that in the Record of Proceeding for the hearing dated 4.2.2016, the Commission observed that the Ministry of Commerce and Industry had not released new series of WPI and was expected to release the same in the month of June, 2016 which would be an important input for determining the escalation index. MBPL was directed to file its written submission. In the written submission, MBPL has submitted that due to the adoption of WPI for computing the escalation rate for domestic coal for payment purpose, the successful bidder and generators have not been getting fair escalation in energy charges corresponding to the coal price in the generation grade coal prices. MBPL has submitted that it had suggested one time correction factor at the time of migrating to the new methodology in order to correct the base value of Escalation Index which had got distorted due to its linking with the WPI in the past. MBPL has further submitted that the Commission disposed of its petition with the observation that the Ministry of Commerce and Industry had set up a Committee to revise the WPI and create a separate index for the coal used in the power sector and

the new series of WPI would address the concern of the petitioner and other generators. Subsequent to the said order, MBPL filed an RTI application before Ministry of Commerce and Industry seeking information whether any Committee has been set up by the Ministry of Commerce and Industry to create a separate Wholesale Price Index for coal / grades of coal used in power generation, and if so, the timelines prescribed by the Ministry of Commerce and Industry to notify / issue the WPI applicable to coal / grades of coal used in power generation. However, Ministry of Commerce and Industry vide letter dated 29.6.2016 has clarified that it has not constituted any new Committee for generating of Wholesale Price Index for coal or grades of coal used for power generation. MBPL has submitted that since the Commission has disposed of the petition on the misconception of the fact that Ministry of Commerce and Industry has constituted a Committee for revision of WPI Index, there are sufficient reasons for review of the impugned order. MBPL has further submitted that the Commission has failed to consider the relevant submissions made in the petition on merit which constitute an error apparent on the face of record and the impugned needs to be reviewed.

6. We have considered the submissions of RPL and MBPL. The Review Petitioners have sought review of the impugned order mainly on two grounds. Firstly, the Commission in the impugned order has not recorded any finding on the submissions of the Review Petitioners that the escalation indices published by the Commission are not in accordance with the actual variation in cost of domestic coal supplied by Coal India Limited and accordingly, the indices are not in accordance with the intent of Clause 5.6(vi) of the Bidding Guidelines. Secondly, Ministry of Commerce and Industry has not constituted a Committee for generating WPI for

grades of coal used for power generation and therefore, the petition is based on misconception of facts.

7. Both RPL and MBPL have submitted that the escalation indices published by the Commission is not in accordance with the actual variation in cost of domestic coal supplied by Coal India Limited and therefore, the escalation indices are required to be revised to link the same with the revision of coal price by Coal India Limited. It has been submitted that the Commission has been adopting the WPI published by the Ministry of Commerce and Industry for the purpose of escalation indices which is not representative and the Commission in terms of the mandate under Clause 5.6(vi) of the Bidding Guidelines is required to independently decide the escalation indices. MBPL has also suggested that a methodology under which the successful bidder is proposed to be allowed revision in the quoted Energy Charges in the same ratio or proportion as the actual change in the cost of fuel having due regard to the grade of coal used by the generators. Both RPL and MBPL have submitted that the Commission should have recorded findings on their submissions and non-recording of the findings are errors on the face of the record. It may be noted that the Commission has been notifying the escalation indices since 2006 after due deliberation and stakeholders' consultation. WPI published by Ministry of Commerce and Industry is being adopted for the purpose of deciding the escalation indices. These escalation indices are being notified by the Commission in discharge of the mandate given under clause 5.6 (vi) of the Bidding Guidelines. From the year 2006 to 2014, none of the parties have raised the objection that the WPI adopted is not representative. One of the possible reasons is that the escalation indices were covering the cost of coal purchased by the power producers. In many cases, the WPI

based escalation indices may be more than the actual loss suffered by the generators. Accordingly, the generation developers were comfortable with the escalation indices based on the WPI notified by the Commission. Only when the prices of coal notified by Coal India Limited in respect of the coal grades used by the generators were not covered by the WPI, the generators have started finding faults with the methodology adopted by the Commission and want it to be changed. While dealing with the main petitions, the Commission took note of the fact that there is variation between the WPI of non-coking coal and the actual prices at which specified grades of coal used in the power sector are being supplied by Coal India Limited and made consultation with the Office of Economic Advisor, Department of Industrial Policy & Promotion under Ministry of Commerce & Industry which is the designated agency with necessary expertise to compile and release Wholesale Price Index. Based on the feedback from the Office of the Economic Advisor, the Commission decided to wait for the publication of separate index by OEA in DIPP which would be an important input for deciding the escalation indices of coal for payment purposes and accordingly disposed of the petitions. In our view, the Commission has followed the standard procedure of consultation with OEA under DIPP to address the grievances of the petitioners. Therefore, there is no error apparent on the order sought to be reviewed. The Review Petitioners have submitted that the Commission should have recorded the reasons on the submissions made by the petitioners while disposing of the Petition Nos.62/MP/2014 and 50/MP/2014. In our view, the Commission has taken note of the concerns of the petitioners and has been taking steps in consultation with the nodal agency to address the grievances of the petitioners. Considering the nature of the proceedings which involves regulatory



role of the Commission for development of market, it is not necessary to answer all the points raised by the petitioners.

8. The other ground of review is that the Ministry of Commerce & Industry has not constituted a Committee generating WPI for coal or grades of coal used for power generation which was conveyed by the said Ministry in reply to an RTI made by MBPL and therefore, the petition is based on misconception of facts. Therefore, the order issued on the basis of misconception of fact is an error apparent and needs to be reviewed. First of all, the Commission fails to understand the need for verifying the statement made in the impugned order through an RTI application. Secondly, Ministry of Commerce & Industry has clarified in response to the RTI that it has not constituted any new committee for generating WPI for coal or grades of coal. The reply to the RTI by Ministry of Commerce and Industry does not state that revision of WPI for coal for power generation is not at all under consideration of the said Ministry. In fact, this Commission has taken up through departmental channel with the OEA, DIPP that ex-colliery price of specific categories of non-coking coal should be considered for compilation of WPI. In response, OEA has informed that the Technical Advisory Committee on series of price and cost of living had ratified the new series of WPI including non-coking coal. The new series of WPI (base year 2011-12) would be released in due course by Ministry of Commerce & Industry after its approval by the competent authorities. Based on the new series of WPI, the Commission will take a view on the revision of methodology for computing the escalation indices for domestic coal for payment. At the stage of stakeholders' consultations, the Review Petitioners as well as other generation developers would

get the opportunity to present their case for making the escalation indices more robust and representative.

9. In view of our discussion as above, we do not find any error in the impugned order warranting its recall and restoration of the original petitions.

10. The Commission also direct the Staff of the Commission to carry out an exercise for revision of methodology for computation of escalation indices for the non-coking coal used in power generation which will take into consideration the various elements which result in escalation of price of coal, the existing mechanism to compensate such escalation, the difference between the actual escalation in respect of the grades of coal used by the power generators and the actual indices allowed by the Commission, and whether the power generators should be given relief with effect from 2014 and if so, in what manner. If the new series of WPI has been released by then, the Staff will also take the same into consideration. The Staff will submit a report on the above within a period of two months to the Commission.

11. The Review Petitions are disposed of in terms of the above.

**Sd/-**  
**(Dr. M. K. Iyer)**  
**Member**

**sd/-**  
**(A.S. Bakshi)**  
**Member**

**sd/-**  
**(A.K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B.Pradhan)**  
**Chairperson**