

**CENTRAL ELECTRICITY REGULATORY COMMISSION**  
**NEW DELHI**

**Petition No. 62/MP/2014**

**Coram:**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of hearing: 04.02.2016**

**Date of Order: 25.05.2016**

**In the matter of:**

Revision of the mechanism for calculating the escalation rate for domestic coal published by the Central Electricity Regulatory Commission for the purposes of tariff payment in a PPA under Case-1 bidding process.

**And**

**In the matter of**

Indianbulls Power Limited

M 62 & 63, First Floor

Connaught Place

New Delhi-110001

**Petitioner**

**Petition No. 50/MP/2015**

**In the matter of:**

Revision of the mechanism for computing the escalation rates for domestic coal (payment) published by the Central Electricity Regulatory Commission under Clause 5.6 (vi) of the Competitive Bidding Guidelines dated 19.1.2015.

**And**

**In the matter of**

MB Power (Madhya Pradesh) Limited

239, Okhla Industrial Estate-III

New Delhi-110020

**....Petitioner**

**Parties Present:**

Shri Sanjay Sen, Senior Advocate, IBPL

Shri Anurag Sharma, Advocate, IBPL

Shri Tushar Jain, IBPL

Ms. Puja Priyadarshini, Advocate, MB Power Ltd.

## ORDER

Petition No. 62/MP/2014 has been filed by Indiabulls Power Limited seeking revision of the methodology for computing the escalation rate for cost of domestic coal (linkage coal) in a manner that the said index considers the actual increase/decrease in the price of domestic coal notified by the Ministry of Coal/Coal India Limited for the coal supplied to power plants supplying power under Case-1 bidding process.

2. The petitioner has submitted that at the time of quoting the tariff for the bid under the competitive bidding under Section 63 of the Act, the generator is required to quote the breakup of the tariff into various components namely capacity charge, energy charge and transportation. The generator is further free to quote each component of tariff under escalable or non-escalable heads. The escalable component quoted by a generator is subjected to application of escalation index published by this Commission for factoring in any increase/decrease under the corresponding head. The petitioner is aggrieved that the escalation rate provided for domestic coal cost does not match with the variation in the coal cost notified by the Coal India Limited/Ministry of Coal. The petitioner has submitted that while this Commission uses the Wholesale Price Index (WPI) of non-coking coal for arriving at the escalation rate for domestic coal, the said escalation rate is not in consonance with the actual variation in the cost of domestic coal supplied by Coal India Limited to power generator and is thus not in accordance with the intent of Clause 5.6 (vi) of the Competitive Bidding Guidelines. Accordingly, the petitioner has prayed for the following:

(a) Revise the methodology of computing the escalation index for cost of domestic (linkage) coal in a manner that the said index considers the actual increase/decrease in the price of domestic coal notified by the Ministry of Coal/Coal India Limited for the coal supplied to power plants supplying power under Case-1 bidding process;

(b) Publish the escalation index for domestic (linkage) coal adopting the mechanism prayed in Prayer (a) above instantaneously as and when any change in pricing is notified by Ministry of Coal/CIL for supply of domestic coal to power generators;

(c) Adapt the mechanism provided in Prayer (a) to calculate the escalation index for domestic (linkage) coal from April 2014 onwards;

(d) Direct that all the escalation indices notified by the Central Electricity Regulatory Commission from time to time be fully applied in one go from the effective date specified in such notification.

3. Petition No. 50/MP/2015 has been filed by MB Power (Madhya Pradesh) Limited seeking revision of escalation index for payment purposes. The petitioner has submitted that the Commission notified in July 2009 the "Revised methodology for Determining the Escalation Factors and other parameters to be notified by CERC as per the Amendment to the Competitive Bidding Guidelines dated 27.3.2009". As per the said methodology, the Commission considers the WPI for non-coking coal for the past six months published by the Government of India to compute the Escalation Rate. The petitioner has submitted that the WPI of non-coking coal is not reflective of actual variation in the price of grades of coal that are earmarked for thermal

generating stations and therefore, there is a need for review of the existing methodology for computation of Escalation Rate in order to make it reflective of actual fluctuations on account of variation in coal prices. The petitioner has submitted that the escalation index issued by the Commission based on WPI is negative which leads the generators supplying power under Case 1 PPAs to recover less tariff from the distribution companies whereas the said generators are paying a higher price to CIL for procurement of domestic coal. The petitioner has further submitted that the Commission also notifies the escalation index for inland transportation charges. As per the methodology adopted by the Commission, rail freight charges as notified by the Indian Railways are considered. The petitioner has submitted that as in case of freight charges of the railways, the rates notified by the CIL should be adopted for computing the escalation index. The petitioner has made the following prayers in the petition:

- (a) Revise the methodology adopted by the Commission to compute the escalation index for domestic coal (for payment);
- (b) Consider computing the escalation index for domestic coal (for payment) on the basis of base price of coal notified for a particular subsidiary of CIL supplying coal to a generating station;
- (c) Implement the revised methodology in case of the petitioner with effect from 24<sup>th</sup> September, 2012 i.e. Bid Deadline from date the escalation index is applicable in the case of the petitioner.

4. The Commission in Record of Proceeding for the hearing 9.4.2016 took note of the fact that the Ministry of Commerce and Industry has set up a committee to revise the Wholesale Price Index (WPI) and create a separate index for coal used in

the power sector. Pending publication of a separate index by the Ministry of Commerce and Industry, the Commission adjourned hearing of the petitions. The petitions were further listed for hearing on 4.2.2016 as the new series of WPI were expected to be released by Ministry of Commerce and Industry in the month of June 2016. The Commission expressed its view that release of new series of WPI would be an important input for determining the escalable index and therefore, the Commission considered it appropriate to dispose of these petitions. The Commission directed the petitioners to file their points through the written submissions.

5. Indiabulls Power Limited in its written note dated 19.2.2016 has submitted as under:

(a) At the time of the filing of the petition, the escalation rate for domestic coal was notified at (-28.22%) whereas there was an actual increase in the price of coal.

(b) The escalation rate provided for domestic coal cost does not match with the actual variation in the coal cost notified by the Coal India Limited. The Commission uses WPI for arriving at the escalation rate for domestic coal and the said escalation rate is not in consonance with the actual variation in the cost of domestic coal suggested by Coal India Limited.

(c) 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. Post such notification, the prices of coal belonging to these grades have increased during the period January, 2012 to July, 2013. However, the WPI for non-coking coal during the corresponding period has

been reduced, thereby causing the petitioner/generators losing a huge amount of money despite the provision for escalation costs in the PPAs.

(d) As per Clause 4.11 (i) of the competitive bidding guidelines, the fuel escalation shall be subject to any administered price mechanism of Government or independent regulatory price in case of fuel produced within the country. The prices of coal are administered by CIL and thereafter in terms of Clause 4.11 (i) of the Competitive Bidding Guidelines, Fuel Escalation Index notified by this Commission has to be linked with administered price of coal required for powerplant and supplied by CIL. Any escalation index for domestic coal has to only factor in the price at which the coal is being distributed by CIL and its subsidiaries, and there is no scope whatsoever for having any other intent being considered for the same.

(e) The escalation rates published by the Commission has to fully cover any increase or decrease in price of coal so that the generators are kept insulated of any price variations from CIL. In the current methodology, the developers/generators are exposed to risks and hardships which were not envisaged by the generators at the time of bid.

(f) The escalation index is published for domestic coal for the purpose of payment on half yearly basis. The said rate is compiled on the basis of WPI for non-coking coal for the preceding six months which means that any increase in price of coal and consequent increase in WPI is captured only after a gap of 8 to 10 months. The petitioner has suggested that the Commission needs to evolve a mechanism that under the PPAs executed through bidding process, the increase/decrease of the escalation rate is

captured instantly so as to prevent financial hardships to the petitioner/generators.

6. MB Power (Madhya Pradesh) Limited in its written submission dated 17.2.2016 has submitted as under:-

(a) Competitive Bidding Guidelines which is a statutory document issued under Section 63 of the Act vests in the Commission with the exclusive responsibility to work out and prescribe suitable indices for energy charges. This statutory authority bestowed upon the Commission cannot be delegated in favour of any other agency.

(b) Competitive Bidding Guidelines provides that the indices for escalation of capacity charge shall only be Wholesale Price Index (WPI), Consumer Price Index (CPI) or a combination of both WPI and CPI. But with respect to energy charges, the Competitive Bidding Guidelines does not mandate any specific or particular escalation indices and instead provides that the escalation indices for energy charge would be as notified by the Commission.

(c) The escalation based on WPI/CPI would be different from the escalation based on price of coal used in power utilities. Therefore, the Competitive Bidding Guidelines authorizes the Commission to suitably address such escalation in price for generation grade coal by working out and notifying appropriate index/mechanism.

(d) An appropriate and fair methodology for allowing escalation of domestic coal for payment purpose would be where the successful bidder/generator

is allowed revision in the quoted energy charges in the same ratio or proportion as the change in the cost of coal having regard to the grade of coal used by the concerned generator. The methodology would balance the interest of all the stakeholders.

(e) Due to adoption of a non-reflective escalation methodology upto now, the quoted tariff as well as the base value of the escalation index have been irreversibly distorted. The Commission may consider allowing a one time correction factor at the time of migrating to the new methodology in order to correct the base value of escalation index. Such one time correction factor would be applicable from appointed date fixed by the Commission and would not result in retrospective recovery of past shortfall in energy charges that have already been incurred by the generating companies. It would in no way affect and/or prejudice the interests of the distribution companies.

7. We have considered the submission of the petitioners. The main concern of the petitioners is that the escalation index notified by the Commission based on the WPI is not reflective of the actual cost of coal purchased by the generators including the petitioner for generating electricity. The petitioners have prayed that a suitable methodology should be developed to work out the escalation index which takes into account the actual price of coal of specific grades used by the generators.

8. Para 5(vi) of the Competitive Bidding Guidelines notified by the Government of India (ministry of Power under Section 63 of the Act vide Resolution No.23/11/2004-R&R (Vol.II) dated 19.1.2005 required the Commission to notify

various rates every six months for bid evaluation and payment. Ministry of Power vide Resolution dated 23.7.2009 issued an amendment to the Competitive Bidding Guidelines under which the Commission was required to notify the rates for Case 1 bidding (where the location, technology or fuel was not specified by the procurers). In compliance with the said requirement, the Commission after extensive stakeholders' consultations notified in July 2009 the "Revised methodology for Determining the Escalation Factors and other parameters to be notified by CERC as per the Amendment to the Competitive Bidding Guidelines dated 27.3.2009". The Commission has been notifying the escalation indices and discount factors every six months. One of the indices to be notified by the Commission is the escalation rate for domestic coal separately for bid evaluation and payment. In these petitions, the petitioners are concerned with the escalation rates for domestic coal component for payment purposes. For this, the Methodology provides for Single Index based on WPI for non-Coking coal for two reasons: (a) the WPI for non-Coking coal is published by Government of India; and (b) the index is available on a weekly basis with the shortest possible time lag. It is pertinent to mention that WPI for non-coking coal irrespective of the grades of coal notified by the CIL. WPI for non-coking coal is a general index covering all grades of non-coking coal irrespective of the grades of coal used by power plants. Since the power plants are allocated different grades of coal by CIL and its subsidiaries varying from G2 to G13, the Commission computes a general escalation rates for domestic coal applicable for all power plants under Case 1 bidding.

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-coking 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.

11. In the light of the above discussion, the Petition Nos.62/MP/2014 and Petition No.50/MP/2015 are disposed of.

**sd/-  
(M.K. Iyer)  
Member**

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

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