CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 63/MP/2017

Coram:
Shri A.K.Singhal, Member
Shri A S Bakshi, Member
Dr. M. K.Iyer, Member

Date of Order: 22nd of March, 2018

In the matter of:

Petition for seeking indulgence and intervention of the Commission to protect the rights and interest of the all generators who have entered into competitively bid Case-1 Power Purchase Agreement due to delay in publication of a separate Wholesale Price Index (Non-Coking Coal) Series.

And
In the matter of

Association of Power Producers
501-502, 5th Floor, Mohar Dev Building,
13-Tolstory Marg, New Delhi-110 001 **… Petitioner**

Parties present:

Shri Hemant Sahai, Advocate, APP
Ms. Mazag Andrabi, Advocate, APP
Ms. Khyati, APP
Sri Rahul Sharma, MB Power
Shri Aditya, Vedanta

ORDER

The Petitioner, Association of Power Producers, has filed the present petition seeking the indulgence and intervention of the Commission to protect the rights and interests of all power generators entering into case-1 Power Purchase Agreements from being saddled with huge under-recoveries of energy charge on account of coal costs due to delay in publication of a separate Wholesale Price Index (Non-Coking Coal) series (hereinafter referred to as WPI) for power sector based on power grade coal prices.

2. The Petitioner has submitted that the following facts have led to the filing of this petition:

(a) Number of IPPs, who are members of the Petitioner, had participated in bidding processes carried out by the distribution licensees for supply of power and executed Case-1 PPAs with the distribution licensees. At the time of quoting tariff, a generator is required to quote the break-up of the tariff into various components, namely capacity charge, energy charge and inland transportation and is free to quote each such component of tariff under escalable or non-escalable heads with escalable components being subject to application of escalation indices published by the Commission for factoring in any increase/decrease under the corresponding head.

(b) The Commission is notifying the escalation indices under clause 5.6 (v) of the Bidding Guidelines and adopting the WPI published by the Government of India, Ministry of Commerce and Industry for the purpose of deciding the escalation indices. Subsequent to the notification of the 'Revised Methodology for Determining the Escalation Factors and other Parameters" to be notified by the Commission as per the amendment to the Bidding Guidelines dated 27.3.2009 (Methodology Guidelines), the Commission computes the escalation rate in accordance with the Methodology Guidelines, considering the WPI for non-coking coal for the past six months published by the Government of India, Ministry of Commerce and Industry.

(c) Escalation rate provided for domestic coal computed on the basis of WPI for non-coking coal does not capture and truthfully reflect the actual variation in coal cost notified by the Coal India Limited (CIL) resulting in under-recovery of energy charges by the affected power generator. For example, 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 G7 to G13, the Commission computes general escalation rates for domestic coal applicable for all power plants under case-1 bidding. Therefore, the actual payments made by the generators for these grades of coal do not match with the WPI of non-coking coal which covers all grades of coal. Thus, an escalation given on the basis of such an index defeats the object of clause 5.6 (v) of the Bidding Guidelines. Escalation index published for domestic coal is for the purpose of payment on half yearly basis and 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 9 to 15 months. Therefore, the actual reimbursement to the generator happens only after a time lag of 16 to 22 months.

(d) The Commission vide order dated 25.5.2016 in Petition No. 62/MP/2014 and 50/MP/2015 had observed that the Ministry of Commerce had already set up a committee to revise the WPI and had created a separate index for the coal used in the power sector which was expected to be released shortly and would address the concern of the generators. Subsequently, the Commission vide order dated 20.10.2016 in Review Petitions No. 34/RP/2016 and 26/RP/2016 had acknowledged that the present methodology of computing escalation based on WPI (Non-coking coal) series was inadequate and did not capture the actual variation in cost of domestic coal supplied by CIL. The Commission in the said order also observed that the new series of WPI for power sector to be published by the Ministry of Commerce would address the concerns of the generators.

(e) The Ministry of Commerce, GOI has not yet published the separate WPI series for power sector based on power grade coal prices. If the price increase which occurred in the preceding six months is not captured immediately in the rate determination of the Commission, then it is lost forever and the burden would have to be borne by the generator. Following the inaccurate escalation rates based on the existing WPI (Non-coking coal) series has resulted in loss of about 5% per annum of escalation which is due from October, 2016 onwards and is about to result in loss of another 23% per annum of escalation due from April, 2017 onwards.

(f) The price of power grade coal has increased by 14-16% in the month of May 2016. However, since the prices of high grade coal have also been reduced simultaneously, the current WPI based on grades do not reflect actual increase in power grade coal prices during this period.

(g) The escalation rate determined by the Commission based on current WPI series would be given annual escalation rate of only 2.52 per cent against annual escalation rate of 23.15% based on the average G7-G12 coal prices.

(h) Coal price increase (-15%) of May, 2016, if not revised by Commission for the purpose of tariff payment in a Case -1 PPA, would lead to loss of revenue to the tune of Rs. 2,792 crore to the generators.

3. Against the above background, the Petitioner has made the following prayers:

"(a) Hold and declare that the escalation rates based on WPI (Non-Coking Coal) series is inadequate and does not capture the actual variation in cost of domestic coal supplied by CIL;

(b) Hold and declare that in accordance with orders dated 25.5.2016 and 20.10.2016 passed by this Commission, the members of the Petitioner and the power generators of the country in general are entitled to the escalation rates computed on the basis of new WPI (Non-coking Coal) series for power sector based on power grade coal prices with base year 2011-12 to be published by Ministry of Commerce and Industry;

(c) In the alternative to prayer (b) above, revise the methodology of computing the escalation index for cost of domestic 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."

4. The Petitioner, vide its affidavit dated 22.5.2017, has submitted as under:

(a) The Ministry of Commerce and Industry has issued the new WPI series on 12.5.2017, revising the base price year from 2014-05 to 2011-12 and trifurcating the WPI for Non-Coking coal into three categories (Category I: G1-G6, Category 2: G7-G14 and Category 3: G15-G17), to take into account the wide variation in the prices of different grades benchmarked on the basis of Gross Calorific Value (GCV). Category 2 of the Non-Coking Coal grades (G-7 to G-14) is relevant to the members of the Petitioner Association. Despite trifurcating the WPI for non-coking coal into three categories based on grades of coal, including grades based on GCV used by the power generation sector, new WPI series has failed to capture the actual price variations in coal used by the generators. Therefore, by using the new series, there still exists some discrepancy in the index which would have serious financial ramifications for the generators due to the following reasons:

(i) Run of Mine (ROM) price of non-coking coal of each grade forming part of Category 2(G7-G14) notified by CIL has increased by 13.4% to 18% in May, 2016. However, under New WPI series, WPI for Category 2 has increased by 8.38% in May-June, 2016 as against the actual average increase of 15.29% as on 30.5.2016. However, WPI for non-coking coal under all possible scenarios cannot be less than 14-15%.

(ii) As per the existing methodology adopted by the Commission, the half yearly escalation rate of domestic coal effective from April, 2017 works out at 6.89%. However, considering the actual coal prices, as notified by CIL, the escalation factor works out to 12.08% on the basis of arithmetic average.

(b) The present methodology of the Commission takes the arithmetic average while computing the escalation rate. It would be more scientific and reflective of the change in prices, if the weighted average is considered for use in the revised methodology. Since, Ministry of Commerce and Industry has published the revised WPI index for non-coking coal from April, 2012, the escalation rate for payment of energy charges should be revised by the

Commission w.e.f financial year 2013-14. The Commission should compare the WPI index with Base Series 2004-05 on the basis of which escalation index for domestic coal was released by the Commission on or after April, 2013 vis-à-vis the new WPI index (series 2011-12) for Category 2. The comparison shows a wide gap between the escalation/de-escalation accorded by the Commission and the prevailing price of relevant grade of coal used by the generators.

(c) Based on the above, the Petitioner has made the following interim prayers:

(i) Notify the escalation rate for payment of energy charges, using actual prices notified by Coal India Limited, in respect of the relevant grades of coal used by the generators, such escalation rate to be applied with effect from April, 2017;

(ii) Alternatively, notify the escalation rate for payment of energy charges, based on the new WPI series published for the coal grade G7-G14 by DIPP on 12 May 2017, pending the determination of the new methodology under prayer 1 above, such escalation rate to be applied with effect from April 2017.

5. The Petitioner has further made the following prayers:

(a) Determine the escalation rate for domestic coal under para 5.6 (vi) of the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees by revising the methodology for computation of escalation indices for the non-coking coal used in power generation, so as to determine the escalation rate for domestic coal, using actual prices notified by Coal India Limited and paid by generators, in respect of the relevant grades of coal used by the generators.

(b) Provide relief to the generators with effect from 2013-14, on the basis of the revised methodology determined under prayer (1) above.

6. Learned Counsel for the Petitioner in written submission dated 1.2.2018 has submitted that the recent price in increase of 13-14% in coal grades G11-G13

notified by Coal India Limited in January 2018 permits the generators to get partial compensation in phased manner and that too after lapse of 9-22 months. The last price increase notified by CIL in May, 2016 is still under recovered by 7-8%. Learned Counsel has further submitted that the revised escalation rate for domestic coal notified by the Commission for the period October 2012 till October 2016 are based on old WPI which considers all 17 Grades of Coal as coal used by power generator is G7-G14. The Petitioner has proposed that the revised escalation factors for domestic coal should be notified for the entire period starting from October 2012 till October 2016 based on New WPI trifurcated series published by Department of Industrial Promotion and Policy (DIPP) in May 2017 to ensure that there is reasonable level of relief for the generator from April 2017 onwards. Learned Counsel has submitted that the Commission may issue provisional escalation factor in April 2018 to give relief to the generators considering the price increase in coal grades G7-G14 as notified by CIL on 8.1.2018. Since, there are two different price lists of CIL for Regulated and Non-Regulated sectors, the new series still does not reflect actual coal price movement for coal supplied to power sector. Learned counsel has submitted that the Petitioner has already requested to DIPP to further spilt the WPI for non-coking coal, G7-G14 grades in sub-categories. However, it will take several months before bifurcating price for Regulated and Non-Regulated Sector.

7. We have considered the submissions of the Petitioner. The main concern of the Petitioner 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. The Petitioner has prayed for revision of the methodology for computation of escalation

index, which takes into account the actual price of coal of specific grades, used by the power generators.

8. Based on the Commission`s recommendation to consider the grades of non-coking coal used by power producers specially Case-1 bidders, the Ministry of Commerce and Industry, GOI vide its letter dated 12.5.2017 has released the new series of WPI (Base year 2011-12) which trifurcated the WPI for non-coking coal into three categories i.e. (Category I : G1-G6, Category 2: G7-G14 and Category 3 : G15-G17). Based on the new series of WPI for non-coking coal in respect of grades mainly used by power sector (Category 2: G7-G14), the Commission notified the escalation rate for domestic coal applicable from April, 2017.

9. There was an anomaly in WPI for non-coking coal (old series, base: 2004-05) for the period from January, 2012 to February, 2013 which resulted distortion in the escalation rates notified by CERC. The Ministry of Commerce and Industry, after correcting the anomaly, vide its letter dated 5.12.2017, communicated to CERC the corrected WPI for non-coking coal. Based on the corrected WPI, the Commission notified revised escalation rates, through amendments dated 8.12.2017, applicable for the period from October, 2012 to September, 2014.

10. In order to address the concern of the power generators to align the increase in prices of non-coking coal used in power generation to the escalable indices notified by the Commission, the Ministry of Commerce and Industry was requested to develop index for non-coking coal exclusively used by the power sector or an index for the non-coking coal assigning appropriate weight based on the actual use

value of non-coking coal dispatched to power sector and other than power sector. DIPP has expressed their difficulties to notify separate index for power sector. The matter has again been taken up with DIPP and depending on their response, the Commission will take a view in the matter in due course.

11. The Petition No. 63/MP/2017 is disposed of in terms of the above.

Sd/-	Sd/-	sd/-
(Dr. M.K.Iyer)	**(A. S. Bakshi)**	**(A. K. Singhal)**
Member	**Member**	**Member**