

Comments on Draft CERC (Terms and Conditions of Tariff)(Second Amendment) Regulations, 2020

By CA Manish Garg, Regulatory Consultant

Proposed Regulatory framework of Integrated mine

- Backward Integration of Coal mine with generating station is expected to huge potential benefit to offer the consumer.
- **Proposed Regulatory framework would be the first of its kind, evolved through transparent consultation process and expected to set a precedence.**
- Tariff determination by the Commission is transparent and more acceptable. Possibility of dispute in input price will be less.

Amendment to Regulation 36 (Regulations for Input Price of Coal or Lignite)

Jurisdiction

Whether the Commission can determine the input price of coal or lignite under Section 79(1) of the Electricity Act ?

- Tariff is not defined under the Act
- In general terms, tariff means price or rate of electricity not limited to one component such as capacity charges;
- The capacity charges is determined by considering input cost of plant and machinery, land and other infrastructure cost (one time cost) – impacting cost of electricity supplied to the consumer;
- On similar lines, the input price of coal or lignite may also be determined by the Commission (recurring cost) – impact cost of electricity supplied to the consumer

36M. Recovery of Input Charges

Proposed Amendment :

Provided that where energy charge rate based on input price of coal from integrated mine exceeds by 20% of energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal in a month, prior consent of the beneficiary(ies) shall be required;

Observation :

- Draft Regulations allow margin of upto 20% of ECR based on notified price of Coal India Limited.
- The commercial logic of Integrated Mines is that it shall provide coal at a price cheaper than market price and also ensure availability.
- The mine is allotted to generating company against the replacement of coal linkage at free of cost so that benefit is pass on to the consumer
- **Suggestion: ECR determined based on Coal India Price should be ceiling limit and all efforts should be made to minimize cost so that savings accrue on account of Integrated operations beneficial to generating company as well as their beneficiaries both.**

36M. Recovery of Input Charges

Provided also that energy charge rate based on input price of coal does not lead to higher energy charge rate throughout the tenure of power purchase agreement than that which would have been obtained as per terms and conditions of the existing power purchase agreement. (As per Ministry of Power dated 16th April 2016)

This provision has different options :-

- 1) It is understood that the allotment is against linkage coal – So comparison of ECR is with reference price of linkage coal;
- 2) Further linkage coal is not provided fully, so FSA provides for alternate coal supply through open market – So comparison of ECR is with reference to price of linkage coal to part quantity and remaining price is based on open market ?

In both options, whether the comparison as above would be on year on year basis or levellised basis with some escalation – needs to be clarify. What would be price of linkage coal and proportion for future needs to be specify for smooth implementation.

36l. Operation and Maintenance Expenses

The Operation and Maintenance expenses of integrated mine for the tariff period ending on 31st March 2024 shall be 2%, escalated at the rate of 3.5% per annum, of the average capital expenditure up to the end of each year of the tariff period as admitted by the Commission towards mining, crushing, transportation, handling and washing subject to true up

Observation

It is suggested that escalation may be linked to some index (based on some mix of WPI and CPI) and not kept static throughout the Control Period. This would capture the movement over the control period and would be fair and equitable for both generating company and for beneficiaries.

36C. Additional charges

(b) Quantity shall be the quantity of coal or lignite in tonne crushed or transported or handled or washed, as the case may be, during the year duly certified by the Auditor.

(5) The crushing charges, transportation charges, handling charges, and washing charges shall be worked out in terms of Rupees per tonne.

It is submitted that components of 'Annual Crushing Cost, Annual Transportation Cost, Annual Handling Cost and Annual Washing Cost ' are primarily fixed in nature .The quantity considered is ' actual' quantity.

Suggestions :

- 1) It needs to be evaluated that , if for any reason , actual quantity is substantially less, Cost per Tonne shall be very high .
- 2) The methodology for measuring quantity of each activity is not clear because the quantity handled and loss in transit between two activity is to be accounted. This issues needs to be addressed to avoid difficulty to implement later on (for eg. Storage GCV loss)

Reg.36G. Capital Structure, Return on Equity and Interest on Loan

(3) The return on equity shall be computed in rupee terms on the equity base arrived under Clause (1) of this Regulation at the base rate of 14%.

- The working group in its report specified that “As per the guideline of MOC, criteria for approval of coal mining project is considered at minimum 12% FIRR at 85% capacity utilization. “
- As such, practice of CIL cannot be benchmarked for deciding the level of Return of Investment in case of integrated project. Further, pricing of CIL is not transparent.
- In case of thermal project, return is 15.5% whereas renewable generation project, it is 14%
- **In integrated mine, risk of pricing customer certainty is partly absorbed in generating station – the Commission should determined the return separately independent from CIL but less that return of generating station i.e. 14%/15.5%.**

Amendment to Regulation 59 (Late Payment Surcharge)

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Insertion of New Clause

“(2) The charges payable by a beneficiary or long term customer shall be first adjusted towards late payment surcharge on the outstanding charges and thereafter, towards monthly charges levied by the generating company or the transmission licensee, as the case may be, starting from the longest overdue bill.”

Principal Regulations

In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary or long term customers as the case may be, beyond a period of 45 days from the date of presentation of bills, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be.

Legal validity of this Clause – Observations

1 Question of Law: Whether the Central Commission has power to regulate allocation of payment by business houses?

Section 178 of EA03 governs Powers of Central Commission to make Regulations .Section 178(2) provides list of contents that can form part of Regulations. Section 61 provides detailed guidelines of terms and guidelines for determination of tariff.

A conjoint reading of Section 178 and Section 61 clearly brings out *inter-alia* dealing with tariff - that allocation of payment or payment settlement is not a matter or tariff and cannot form part of Regulations. In case of default of payment, remedies available under the contract is to be applicable.

Thus proposed Regulation 59(2) is beyond the regulatory mandate of tariff determination under the Act and needs to be reviewed. The allocation of payment is to be remain contractual matter. Bankers are considering it as “payment risk”.

Clarity on disputed bill – Observations

2. Whether the payment is to be made on disputed bill which is covered under outstanding dues mentioned in proposed amendment ?

As per addition being made , LPS is computed on ‘ outstating dues , and not on ‘undisputed outstanding ‘ dues. Thus , in event there is any dispute , still Discoms will have to pay LPS , till the dispute is resolved . This is neither fair nor equitable for discoms.

Suggestion : Words , ‘undisputed’ may be added to bring Discoms on parity with generators/transmission utilities.

LPS is calculated after principal payment

3. Whether LPS is calculated on outstanding dues or after the payment is made ?

3. Clause (1) of Principal Regulations and Addition in amendment follow different approaches to computation of LPS.
- As per Principal Regulations, LPS is to be computed, once payment is made. Even in competitive bidding, the LPS is calculated after payment is made taking into account delay period involves multiplied by LPS rate.
 - However, as per proposed Amendment, LPS is to be computed on outstanding dues which is not consistent with the method. Thus there would be inherent inconsistency.

Suggestion : Clause requires modification by considering above

Thankyou

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