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PROJECTS, ENERGY & INFRASTRUCTURE

Monthly update | April 2020

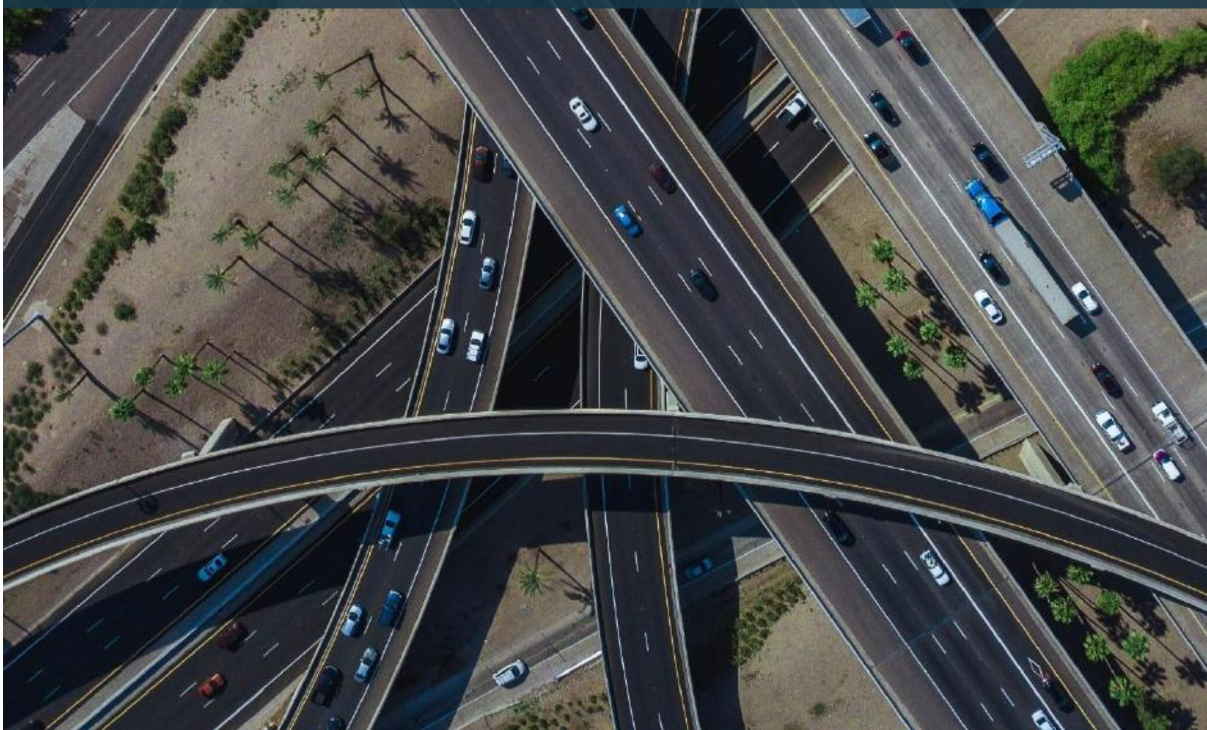
Reduction of Late Payment Surcharge by Regulatory Commissions

- **Central Electricity Regulatory Commission**
- **Delhi Electricity Regulatory Commission**
- **Madhya Pradesh Electricity Regulatory Commission**

Considering the directions issued by the Government of India vide its letter dated March 28, 2020 on account of the unprecedented situation arising due to the ongoing lockdown, various Regulatory Commissions have reduced late payment surcharge.

Central Electricity Regulatory Commission (CERC)

- CERC by its order dated April 03, 2020 has issued directions to reduce the Late Payment Surcharge (**LPSC**) charged by the generating companies (**Gencos**) and transmission licensees from 1.50% to 1% per month.
- In case, any payment by the distribution companies is delayed beyond 45 days from the date of the presentation of the bills falling between March 24, 2020 and June 30, 2020 (**Lockdown Period**), the concerned distribution companies (**DISCOMs**) shall make the payment with LPSC at the reduced rate of 12% per annum that translates into 1% per month.
- Apart from the payment with LPSC at the reduced rate of 12% per annum, the Central Commission has clarified the following:
  - The reduced rate of LPSC cannot be availed if the period of 45 days falls before March 24, 2020 or after June 30, 2020. In such cases, DISCOMs shall be liable to pay the LPSC @ 1.50% per month.
  - The beneficiaries of the Gencos and long-term customers of the Inter-State transmission systems will continue to avail rebates if the payments are made within the timeline specified in the said regulations.
  - For Tariff determined under Section 63 of the Electricity Act, 2003 (**Act**) by the Commission, the relief on LPSC for payment which become delayed beyond 45 days during the Lockdown Period may be claimed in terms of the force majeure provisions of the respective Power Purchase Agreements (**PPAs**).
  - In cases of Inter-State transmission licensees whose tariff has been adopted under Section 63 of the Act by the Commission, LPSC be governed in accordance with the provisions of Transmission Service Agreements (**TSAs**) read with CERC (Sharing of Transmission Charges and Losses) Regulations, 2010.



DELHI ELECTRICITY REGULATORY COMMISSION

- The Delhi Electricity Regulatory Commission by way of its Suo Moto Order dated April 07, 2020 has issued the following directions to the concerned utilities:
  - Reduction of LPSC from 1.50% (under Reg. 137 of DERC Tariff Regulations, 2017) to 1% per month.
  - The beneficiaries of Delhi Gencos and Delhi Transco Ltd. shall avail rebate under Reg. 138 of DERC Tariff Regulations, 2017.
  - DISCOMs to restrict the LPSC charged by retail consumers during the Lockdown Period.
  - Extension of due date by two weeks without any LPSC.
  - A moratorium for three billing cycles on payment of fixed charges is provided to the consumers covered under Public Utilities, Industrial and Non-Domestic Tariff categories.
  - DISCOMSs to defer annual review of sanctioned load for Q4 FY20 & Q1 FY21.
  - A rebate scheme is approved for all consumers for the actual/provisional bills raised during the period the Lockdown Period.
  - Banking charges to be borne by DISCOMs during the Lockdown Period.

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

- Taking cognizance of the Order passed by CERC in 6/SM/2020, MPERC has passed an Order on April 05, 2020 wherein it has held that:
  - MPPMCL or DISCOMs shall make the payment with LPSC at the rate reduced by 0.50% per month for any delayed payment beyond 45 days from the date of the presentation of the bills or due date mentioned in PPA falling between the Lockdown Period.

Our viewpoint: The directions passed by the Regulatory Commissions are aimed at mitigating the difficulties being faced by the consumers and DISCOMs of various states on account of the nation-wide lockdown to stop the Covid-19 outbreak. Presently, the consumers are unable to pay the DISCOMs, who are then unable to pay to their generators or transmission licensees in a time bound manner.

Apart from reduction of LPSC, the Commissions by way of other reliefs such as billing cycle moratorium, extension of due date, rebates etc. have tried to maintain the participation of DISCOMs & Generating stations amid Covid-19 outbreak.

STATUTORY UPDATES

- **Power & electricity**
  - Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020
  - CERC issues draft Payment of Fees (Second Amendment) Regulations, 2020
- **Renewable energy**
  - IREDA replaces SECI as Implementing Agency for CPSU Scheme Phase II
  - MNRE issued revised guidelines to include Municipal Solid Waste in its Waste-to-Energy Program
- **Projects**
  - EIA Notification 2006 amended to ramp up availability/production of bulk drugs
- **Defence & aerospace**
  - Lok Sabha passes Aircraft (Amendment) Bill to give statutory status to DGCA

Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020

- The Central Electricity Regulatory Commission (**CERC**) on April 01, 2020, issued the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020 (**Draft Regulations**) to further amend the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (**Principal Regulations**). These Regulations shall come into force from June 01, 2020, except amendment to Regulation 21, which shall come into force with effect from April 01, 2019.
- CERC has proposed that the generating companies have to install appropriate equipment in terms of the revised emission standards notified vide the Environment (Protection) Amendment Rules, 2015 (**2015 Rules**) dated December 07, 2015 issued by The Ministry of Environment, Forest & Climate Change (**MoEFCC**), which were applicable to coal or lignite based thermal power plants (**TPPs**) in the country. Due to the change in the Environment Amendment Rules, the generating companies will incur additional capital expenditure, additional recurring expenses in the form of reagent, consumables, additional O&M expenses. Compliance to these standards will also have impact on the operating norms, specifically the auxiliary energy consumption of the generating station.
- The Principal Regulations incorporate provisions for determination of supplementary tariff for emission control system for servicing additional cost on account of meeting the revised emission standards issued by the MoEFCC. They also provide for in-principle approval, admissibility of additional capital expenditure and tariff structure in respect of installing emission control system and have provisions related to tariff structure and additional capitalization in respect of emission control system. However, as regards financial and operational parameters and recovery mechanism, it was stipulated that provisions will be specified separately.
- Therefore, the Commission decided to issue draft provisions for specifying additional operational norms on account of revised emission standards. The proposed amendments are for introducing a separate tariff stream for revised emission standards which requires determination of separate capital cost, fixation of date of operation of emission control systems, financial parameters and operational parameters. Formulae for computation of supplementary capacity charges, supplementary energy charges and its recovery mechanism have also been proposed. In order to incorporate these modifications, addition of new provisions apart from amendment in existing provisions to determine the supplementary tariff, has been proposed.
- The Commission has invited comments/objections from stakeholders on the Draft Regulations. The comments or suggestions or objections, if any, may be sent to the Secretary, Central Electricity Regulatory Commission, on or before April 30, 2020.

CERC issues Draft Payment of Fees (Second Amendment) Regulations, 2020

- CERC by way of a public notice dated March 23, 2020 has issued Draft CERC (Payment of Fees) (Second Amendment) Regulations, 2020 to amend the CERC (Payment of Fees) Regulations, 2012 (**Principal Regulations**).
- Vide this amendment, CERC has amended Regulation 7 of the Principal Regulations relating to the annual license fee for various categories of trading license granted by CERC under CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 as well as CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009.

IREDA replaces SECI as Implementing Agency for CPSU Scheme Phase II

- The Ministry of New and Renewable Energy (**MNRE**) by an official memorandum dated April 13, 2020 has amended the Scheme Guidelines for the Central Public Sector Undertaking Scheme Phase-II (CPSU Scheme Phase-II) issued by MNRE on March 05, 2019 with a budget of USD 1.2 billion with the Solar Energy Corporation of India (**SECI**) which was established for promotion of solar energy in India, to act as the implementing agency.
- Recently, MNRE has appointed the Indian Renewable Energy Development Agency (**IREDA**) which is a Public Financial Institution engaged in promoting, developing and extending financial assistance for Renewable Energy and Energy Efficiency/Conservation Projects, to act as the implementing agency for implementation of CPSU Scheme Phase-II, aimed at setting up 12,000-MW grid-connected solar PV power projects by the government producers with Viability Gap Funding (**VGF**) support for self-use or use by government entities either directly or through Distribution Companies (**DISCOMs**).

- The salient features of this amendment are as follows:
  - **Reduction of usage charge from INR 3.50/KwH to INR 2.80/KwH:** The power generated by government producers under this Scheme can be procured for self-use or use by government entities either directly or through DISCOMs at INR 2.80/kWh, exclusive of charges, namely, wheeling and transmission charges, point of connection charges and losses, and cross-subsidy charges, etc. Earlier, the rate was fixed at INR 3.5/kWh. (**Ref**: Clause 3.2.3 of the amended CPSU Scheme Phase II)
  - **Appointment of IREDA to handle CPSU Scheme Phase II:** IREDA is appointed as an implementing agency and will be entrusted with the task of handling all the bidding for the allocation of solar power projects under the CPSU Scheme Phase II. IREDA will be given a fee of 1% of the VGF disbursed for conducting bidding, handling funds, and monitoring the projects. Earlier, the SECI was an implementing agency for this program and was being paid the aforesaid fee of 1%. As per the amended clause, the VGF will be released in two tranches:
    - 50% on award of the contract to the EPC contractor
    - Balance 50% on successful completion of the project

    Further, as per the existing clauses, the maximum permissible VGF is INR 0.70 Cr/MW. However, the actual VGF will be decided through bidding using VGF amount as bid parameter to select project proponent. The VGF provided can be used by the government producers as their equity in solar projects being set-up. In case, a government producer sets up a solar PV project in a solar park, both Central Financial Assistance as per solar park scheme and VGF under the CSPU Scheme Phase II will be applicable. (**Ref**: Clause 3.2.& 3.5 of the amended CPSU Scheme Phase II)
  - **Extension of commission timelines of solar power projects from 18 to 24 months:** The solar power projects up to 500 MW should be commissioned within 24 months from the date of the Letter of Award while for projects more than 500 MW capacity, the remainder capacity must be commissioned in the next 6 months. As per the earlier guidelines, the solar power projects should be commissioned within 18 months from the date of the issuance of the LoA. (**Ref**: Clause 3.6.1. of the amended CPSU Scheme Phase II).
  - **Responsibility of IREDA to deal with time extension/dispute resolution on force majeure events:** IREDA will also be responsible for dealing with all issues regarding time-extension and dispute resolution on force majeure events. Earlier, the said issues were dealt by SECI. (**Ref**: Clause 3.6.3 of the amended CPSU Scheme Phase II).
- **Addition of a new clause to the CPSU Scheme Phase II:** IREDA will be permitted to award solar power project capacities under the CPSU Scheme Phase II of up to 50 MW to any willing government entity at the lowest rate discovered in the bidding process within four months of such bidding.

MNRE issued revised guidelines to include Municipal Solid Waste in its Waste-to-Energy Program

- The MNRE has recently issued guidelines for implementation of its Waste to Energy scheme. The revised Waste to Energy Guidelines supersedes the existing guidelines of Waste to Energy Program dated July 30, 2018 (**Waste to Energy Guidelines, 2018**). As per the revised Waste to Energy Guidelines 2018 the Central Financial Assistance (**CFA**) of INR 478 crores is provided for the Program out of which INR 400 crore is linked towards 200 MW for the Municipal Solid Waste (**MSW**) based Waste-to-Energy plants. The Waste to Energy Guidelines, 2018 have been primarily revised to include MSW based projects in the program guidelines.
- Following are the new additions and salient features of the revised Waste to Energy Guidelines:
  - The Guidelines provide CFA to the projects based on generation of power from the MSW from the projects based on Incineration/Gasification/Pyrolysis or a combination thereof or any new technology and on Bio methanation of MSW. However, it clarifies that projects based on bio methanation of municipal solid waste can be allowed only on segregated or biodegradable waste.
  - The Guidelines specify that mixing of any waste of renewable nature or biomass may be to the extent of 25% of the total waste used or as per the regulations issued by the State Electricity Regulatory Commissions (**SERCs**) or Central Electricity Regulatory Commission (**CERC**).
  - The other type of wastes identified for CFA eligibility include mixing of other anaerobic digestion compatible organic wastes (excluding distillery effluents) of renewable nature for the bio-methanation based projects, mixing of other waste of renewable nature is permitted for combustion-based project. However, the Guidelines strictly prohibit the mixing of fossil fuels for any CFA.
  - Financial assistance is also provided to promote Biomass Gasifiers feeding power into the grid or to meet the captive and thermal needs of rice mills and other industries and villages.
  - There will be no maximum limit on capacity for projects eligible under the program, however agro based industrial residue plant upto 250 kW capacity shall not be eligible under this program. Projects where new plants/machinery is being installed will only be entitled for installation benefits under the program.

- The Guidelines provide that in order to avail the financial support, the Waste to Energy project developer is required to obtain a term loan from any bank/financial institution. Thereafter, one time back ended CFA for the project shall be provided for offsetting the loan amount. This loan can be taken from any Indian bank (commercial and co-operatives)/financial institution or international bank/financial institution. However, the loan amount should be equal or greater than eligible CFA under these Guidelines.

▪ As far as the expansion of existing projects is concerned, only the enhanced capacity added to the existing capacity will be considered for the grant of CFA.

EIA Notification 2006 amended to ramp up availability/production of bulk drugs

▪ In these unprecedented times of Covid-19, the pharmaceutical sector and the government need to necessarily be ahead of the curve. In an attempt to ramp up availability or production of various drugs, the MoEFCC has made an amendment to the EIA Notification, 2006. As a result of the amendment, all projects or activities in respect of bulk drugs and intermediates, manufactured for addressing various ailments, have been re-categorized from the existing Category of 'A' to 'B2' category.

▪ The re-categorization of such proposals has been done to facilitate decentralization of appraisal to state level in order to fast track the process as projects falling under Category B2 are exempted from requirement of collection of base line data, EIA Studies and public consultation. Significantly, this amendment is applicable to all proposals received up to September 30, 2020.

▪ Moreover, to ensure expeditious disposal of the proposals within given time-line, MoEFCC has proactively advised states to use information technology e.g. video conference, considering the fact that in view of the prevailing situation on ground, appraisal of proposals may not be possible through physical meetings. The success of this initiative can be measured by the fact that within a period of about two weeks, more than 100 proposals have been received under this category, which are at different levels of decision making by the concerned regulatory authorities in the states.

Lok Sabha passes Aircraft (Amendment) Bill to give statutory status to DGCA

▪ The Aircraft (Amendment) Bill, 2020, (**Bill**) which seeks to convert Directorate General of Civil Aviation (**DGCA**), Bureau of Civil Aviation Security (**BCAS**) and the Aircraft Accidents Investigation Bureau (**AAIB**), into statutory bodies was passed by Lok Sabha on March 17, 2020.

▪ The audit conducted by the International Civil Aviation Organization in 2012 and 2015 indicated a need to amend the Aircraft Act, 1934 to give proper recognition to the regulators, enhance the maximum quantum of fines and empower the departmental officers to impose financial penalties for violations of the legal provisions.

▪ Key provisions of the Bill are as follows:

- The Bill converts three existing bodies under the Ministry of Civil Aviation into statutory bodies under the Act. Each of these bodies will be headed by a Director General who will be appointed by the centre. These three authorities are as follows:
  - The Directorate General of Civil Aviation (**DGCA**) which will carry out safety oversight and regulatory functions
  - The Bureau of Civil Aviation Security (**BCAS**) which will carry out regulatory oversight functions related to civil aviation security
  - The Aircraft Accidents Investigation Bureau (**AAIB**) which will carry out investigations related to aircraft accidents
- Aircraft belonging to the naval, military, or air forces of the Union are exempt. The Bill further expands this exemption to include aircraft belonging to any other armed forces of the Union.

▪ Under the Act, the central government may make rules on several matters such as registration of aircraft, regulating air transport services, and prohibition of flight over any specified area. The Bill adds the regulation of air navigation services to this list. Additionally, the Bill allows the centre to empower the Director General of BCAS or any authorized officer to issue directions and make rules on certain matters.

Recent Judgements

- **Central Electricity Regulatory Commission Suo-moto order**
- **Suo-moto order by Delhi Electricity Regulatory Commission**
- **Maharashtra Electricity Regulatory Commission**

Central Electricity Regulatory Commission Suo-moto Order

CERC Suo-Moto Order dated April 06, 2020 in petition No. 7/SM/2020

Background facts

- Considering the declaration of lockdown by the Central Government and the office shutdown, few stakeholders approached the Commission because of the delay being caused in filing of the tariff petitions required to be filed during the months of April 2020 and May 2020. Therefore, they sought extension of time of two months to file the tariff petitions for the period of 2019-24 along with truing up petitions for 2014-19 period.
- It is to be noted that the Central Commission in the Petition No. 332/MP/2018 filed by PGCIL seeking extension of time of 180 days for filing of tariff petitions in case of existing assets wherein tariff orders had already been issued and 180 days from the date of the issue of order where tariff orders were yet to be issued, disposed off the petition by its order dated February 28, 2019. The Order sated that '*In case of the existing assets, where final orders for the 2014-19 period are yet to be issued, tariff petitions for truing up of the tariff of the 2014-19 tariff period and determination of tariff for the 2019-24 petition shall be filed by the Petitioner within three months from the date of issue of the final order for the period 2014-19 period. The fees for these petitions shall be paid on or before December 31, 2019 on the basis of provisional tariff already determined for 2014-19. Balance fee shall be paid along with the tariff petitions for the period 2019-24.*'

Issue at hand

- Seeking extension of time to file the tariff petitions for the period of 2019-24 along with truing up petitions for 2014-19 period for the existing generating stations and units

Findings of the Commission

- In view of the CERC order mentioned above, the generating companies and transmission licensees were required to file tariff petitions for the period 2019-24 along with the truing up petitions for the period 2014-19, within three months from the date of issue of the final order for the period 2014-19.
- Accordingly, in exercise of power under Regulations 76 of 2019 tariff regulations, the Central Commission held following:
  - Relaxed the provisions of Regulations 9 (2) of the 2019 tariff regulations and permitted the generating companies to file the tariff petitions for 2019-24 period along with truing up petitions for 2014-19 period by June 30, 2020, where tariff orders for 2014-19 have been issued. The applicable fees shall be governed by the provisions of Regulation 3(1) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.
  - Clarified that in case of the existing generating stations/units or existing transmission assets, as the case may be, where final orders for the 2014-19 period are yet to be issued, the filing of tariff petitions for truing up of tariff of the 2014-19 tariff period and determination of tariff for the 2019-24 period shall be governed by the directions in paragraph 8(b) of order dated October 28, 2019.
- It is also applicable for the Transmission Licensees.

Our viewpoint: In light of the present situation of the country, CERC had taken a lead in relaxing the time period of filing of the tariff petitions. Similar dispensation was warranted from other State Commissions as well.

SUO-MOTO ORDER BY DELHI ELECTRICITY REGULATORY COMMISSION

DERC SUO-MOTO ORDER DATED APRIL 07, 2020

Background facts

- The Ministry of Home Affairs imposed lock down in all parts of the country to contain Covid-19 pandemic in the country. However, operations related to electricity supply have been exempted under the lockdown to ensure uninterrupted power supply to customers.
- In furtherance, the Ministry of Power (**MOP**) issued directions to Central Electricity Regulatory Commission (**CERC**) under Section 107 of the Electricity Act, 2003, with regard to the reduction of LPSC to be charged by the generating companies and transmission Licensees on account of the unprecedented situation.
- CERC in compliance with the direction issued by MOP, passed a Suo moto Order dated April 03, 2020 whereby CERC has provided that if any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falling between the Lockdown period, the concerned distribution companies shall make the payment with LPSC at the reduced rate of 12% per annum that translates into 1% per month.
- Further, the Distribution Licensees (**DISCOMs**) of Delhi requested for regulatory guidance of the Commission to mitigate the force majeure conditions and has submitted the following:
  - Annual review of sanctioned load/contract demand shall be deferred till the situation normalizes.
  - Issuance of directions to the Generators in the NCT of Delhi for not levying LPSC for any non-payment or short payment of the Energy bills.
  - Submission of quarterly Audited Form 2.1 (a) as per Directive 6.10 (g) of Tariff Order dated 31/07/2019 be kept in abeyance and extension of time for filing Form 2.1(a) till the situation normalizes.
  - To consider the Processing Fee on all digital payments for the period starting from 23/03/2020 till situation normalizes as pass-through during Truing up of expenses for FY 2019-20.
  - Incentives to consumers for self-meter reading and early payment of electricity dues.
  - TPDDL will raise energy bill on provisional basis in respect of consumers not covered under smart meters and Automatic Meter Reading.

Issue at hand

- Whether the regulatory guidance of the Commission re. reduction of LPSC applicable under Reg. 137 of DERC Tariff Regulations, 2017 etc. during the lockdown period is essential for mitigation of impact of COVID-19 on electricity distribution licensees and consumers of Delhi or not?

Findings of the Commission

- The Commission issued the following directions to the concerned utilities
  - **Reduction of LPSC from 1.50% (under Reg. 137 of DERC Tariff Regulations, 2017) to 1%:** LPSC payable by the DISCOMs to Delhi GENCOs viz. IPGCL & PPCL and Delhi Transco Ltd beyond 60 days from the date of the presentation of the bills falling between the Lockdown period 12% per annum that translates into 1% per month. Such LPSC shall not be pass through in ARR.
  - **Rebate under Regulation 138 of DERC Tariff Regulations, 2017:** The beneficiaries of Delhi GENCOs and Delhi Transco Ltd. shall avail rebate under Regulation 138 of DERC Tariff Regulations, 2017.
  - **Restriction on LPSC charged by retail consumers:** The DISCOMs shall restrict the LPSC charged to retail consumers to the rate, which is lower of actual cost of working capital loan or 12% per annum for the bills raised during the period starting from March 24, 2020 till June 30, 2020. The LPSC shall not be in any case be more than 12% p.a. and shall be charged for the number of days of delay in receiving payment from the consumer by the Distribution Licensee.
  - **Extension of due date by two weeks:** The due date for payment of electricity bills raised during the Lockdown period shall be extended by further two weeks over without any LPSC. The last date of the extended period will be June 30, 2020.
  - **Moratorium for three billing cycles:** A moratorium on the payment of Fixed Charges for next three billing cycles beginning from March 24, 2020 is provided to the consumers covered under Public utilities, Industrial and Non-Domestic Tariff Categories. The said charges will be fixed charges spread over the next three billing cycles after June 30, 2020 without any LPSC.
  - **Deferred annual review of sanctioned Load:** DISCOMs shall defer annual review of sanctioned load/contract demand and submit self-certified quarterly forms/statements as directed in the Commission's Tariff Order dated July 31, 2019 for Q4 FY20 & Q1 FY21.
  - **Rebate scheme for all the consumers:** The following rebate scheme is approved for all consumers for the actual/provisional bills raised during the period the Lockdown period:
    - **Payment in Day 1-7 of the Billing Date:** 1.0% of the Bill amount (excluding arrears if any) or INR 200 (whichever is lower)
    - **Payment in Day 8-14 of the Billing Date:** 0.5% of the Bill amount (excluding arrears if any) or INR 150 (whichever is lower)
    - No rebate if the consumer is making part payment
    - Additional rebate of INR 20 per bill shall be provided to the consumer if the consumer furnishes the meter reading(s) himself
  - **Banking charges to be borne by DISCOMs:** The DISCOMs shall bear all types of banking charges/processing fee/convenience fee for all modes of digital payments up to INR 10,000 which was earlier allowed till INR 5,000 against the bills raised during the Lockdown period. Such charges shall not be allowed as pass through in ARR.
  - **Bills to be raised on provisional basis:** For the consumers who are not covered under smart meters and automatic meter reading, electricity bills may be raised on provisional basis.
  - **Issuance of bills through electronic mode:** In addition to physical copy, the electricity bills shall be sent to consumers through electronic mode viz. E-mail, SMS and WhatsApp etc.

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (MERC)

ORDER DATED APRIL 23, 2020 IN CASE NO. 322 OF 2019

Background facts

- MERC has recently passed various tariff orders for the distribution licensees by way of which it has imposed various charges payable by Open Access Consumers for the control period from FY 2020-21 to FY 2024-25.
- MERC in its Orders has also addressed the issue of agricultural sales estimation and proper billing. It is pertinent to note that MERC had earlier constituted the Agricultural Study Working Group (**ASWG**) to look into the issues regarding agricultural billing and recommend how the said issues could be improved.
- MERC vide its Orders has also waived off Grid Support Charges (**GSC**) from rooftop solar consumers.

Issues at hand

- **Open Access** – The distribution licensees of the State of Maharashtra had raised concerns with respect to increase in Open Access consumption of power in the State of Maharashtra.
- **Artificial reduction of distribution losses by MSEDCL** – Whether unmetering of AG consumers has resulted in windfall gains for Maharashtra State Electricity Distribution Company Ltd (**MSEDCL**) since the subsidy received from

the state government largely incorporates the deficit in recovery of tariff due to unmetered connections.

- **Grid Support Charges (GSC) for rooftop solar consumers** – On the aspect of GSC, MSEDCL had proposed the levy of GSC from rooftop solar consumers. The GSC as proposed to be levied ranged from INR 3.60 per unit to INR 4.08 per unit for HT consumers, to INR 8.60 per unit for LT consumers.

Findings of the Commission

- On the issue of additional surcharge to be levied on Open Access Consumers, MERC observed that unless fixed costs due to stranded capacity are recovered from the open access consumers, the other consumers would be burdened unjustly.
- On the issue of distribution losses, the MERC agreed with the observations of the working group that as a result of additional losses in previous period, possibly the Government would have increased the per unit subsidy and the tariffs for other consumer categories would have been maintained at the present levels.
- On the aspect of Grid Support Charges (**GSC**), the MERC has observed that it wants to promote solar generation to the extent possible. The current rooftop solar capacity of 460 MW under MSEDCL area is much lower than the target and the commercial impact on MSEDCL is commensurately not significant.
- Considering the above, MERC opined that there is a case for recovery of fixed costs towards the stranded capacity arising from power purchase obligation through additional surcharge from open access consumers (including group captive consumers). Therefore, in its Orders MERC approved the levy of INR 14,500 as the processing fee from 1 MW to 5 MW, INR 44,000 for more than 5 MW up to 20 MW and INR 75,000 for more than 20 MW and up to 50 MW.
- On the aspect of levy of wheeling charges, an order has been passed on March 26, 2020 by MERC whereby meter reading and physical bill distribution work has been suspended till the time the current crisis gets subsided. MERC has directed the utilities to raise bills on average usage basis in the wake of Covid-19.
- MERC has issued appropriate directions to MSEDCL to improve its efficiency and maintain the performance standards as prescribed under the Regulations. In specific, it has been directed that metering of agricultural customers should be done through a data profiling of the customers and shifting in the load should be notified and updated on regular basis.
- Further, MERC has decided to accept overall approach and feeder input based methodology as basis for estimation of AG Sales and assessment of distribution loss in principle with adjustment in the range of estimation as +/- 8% instead of +/- 4% and for the purpose of true-up of sales, energy balance and assessment of distribution loss level for FY 2018-19 and for stipulating distribution loss reduction trajectory for future period. MERC has stated that it will look into the issue of constituting a separate company for supplying power to AG consumers through separate proceedings.
- Regarding the waiver provided wrt to the levy of GSC, MERC has held that there will be no imposition of GSC on rooftop solar until the total capacity of rooftop solar in the State of Maharashtra reaches 2000 MW. Currently under the MSEDCL area the rooftop solar capacity is of 460 MW. MERC has also held that in order to compensate MSEDCL for the loss in revenue caused by rooftop solar consumers, banking charges will be charged from the consumers. The Banking Charges have been set at 7.5% for HT and 12% for LT consumers. Further, exemption from banking charges will be provided to all consumers having net installed capacity up to 10 KW. Exemption will also be provided to those opting for net billing arrangement, and rooftop solar plants not opting for either net metering or net billing.

Our viewpoint: MERC's order finally compensates the distribution licensees due to the increase in open access consumers in the State. While this will benefit the consumers of the distribution licensees which will reflect in the distribution tariff, there is a chance that open access procurement of power in the State will begin to slow down. Prospective open access consumers might be discouraged.

The findings on the aspect of distribution losses leads us to believe that the problem of metering in the State of Maharashtra will finally get addressed and greater accountability will be placed on MSEDCL in this regard. Based on its findings and action points, the MERC has directed MSEDCL to submit a detailed roadmap for undertaking activities in line with its decision. MSEDCL has been directed to submit the roadmap and the action plan within 2 months from the date of issuance of the Order. The proactive approach taken by MERC shows that perhaps the issues faced by the AG consumers in the State of Maharashtra will finally get resolved.

The decision of MERC w.r.t GSC shows that the atmosphere for setting up of rooftop solar plants in the State of Maharashtra is conducive at this time There were consumers who had put their plans on hold on account of the proposal to levy GSC. With the decision of MERC, these consumers will now be able to proceed ahead.

Recent Developments

- Ministry of Shipping to exempt penalties for ensuring smooth operations at ports
- Sonnagar – Dankuni freight corridor section likely to get aid from World Bank
- NHAI resumes toll collection on national highways
- Clarification to previous letters issued by MoP dated March 27, 2020 and March 28, 2020
- Thermal power sector set to feel Covid-19 tremors
- Coal India Ltd set to extend usance LC to its consumers
- UMTC's bid qualifies to prepare DPR of Vizag Metro Project
- NHAI awards INR 867 crore project to Adani Enterprises
- CIL elevates trigger level in existing Fuel Supply Agreements

Ministry of Shipping to exempt penalties for ensuring smooth operations at ports

- The Government of India imposed a lockdown to contain Covid-19 pandemic in the country. However, the Ministry of Home Affairs allowed operations at the seaports as an exception, for cargo movement and inter-state movement to ensure continuous supply of goods.
- The Ministry of Shipping vide an advisory to all Major Trusts invoked Force Majeure clause on the activities at the port and its operations. All the major ports are to consider exemption of penalties that may be levied on port related activities arising on account of lock down measures. India has 13 major ports, which are notified by the Central Government in the official gazette.
- Each major port is required to ensure that no penalties, demurrage, charges, fee, rentals are imposed on any user of the port for delay in berthing, loading or unloading operations, or evacuation or arrival of cargo caused by the reason attributable to lockdown measures.
- Further, the advisory also states that the period for completion of any project under PPP or any other mode can be extended by the ports, while allowing waiver of penal charges for existing and operational PPP projects.

Sonnagar-Dankuni freight corridor section likely to get aid from World Bank

- The Eastern Dedicated Freight Corridor (**EDFC**) between Sonnagar in Bihar to Dankuni in West Bengal is expected to get World Bank backing, even in a situation where the project might be implemented under the public-private partnership.
- The Dedicated Freight Corridor Corporation (**DFCCIL**) will be inviting private participation for the Sonnagar-Dankuni stretch by issuing tenders.
- If the planned PPP section covering 282.22 Km from Dankuni to Gomoh as Phase-I and 256.58 Km from Gomoh to Sonnagar as Phase-II – does not get enough traction from private players, DFCCIL is in talks with state-run Coal India Ltd to execute the project.

NHAI resumes toll collection on national highways

- The Covid-19 pandemic led to NHAI suspending toll collection on national highways during the lockdown period. However, on April 20, 2019 NHAI announced that the suspension would be discontinued.
- While the suspension of toll collection can be covered as a Force Majeure event resulting in no damages to be paid, the quick discontinuation of the said suspension is a sign of relief for the concessionaires, who are operating highways under the PPP model.
- NHAI has estimated a revenue loss of INR 1822 crore on account of the toll closure. Further, the toll closure has resulted in huge losses to the concessionaires resulting in difficulty to the concessionaires in paying salaries and O&M costs.

Clarification to previous letters issued by MoP dated March 27, 2020 and March 28, 2020

- In a clarification issued on April 6, 2020, the MoP has stated:
  - The obligation to pay for power within 45 days of the presentation of the bill or as provided in the Power Purchase Agreements (**PPA**) remains unchanged
  - Though for scheduling power, the Distribution Companies will need to either deposit or give Letter of Credit for 50% of the cost of power that is asked to be scheduled, the remaining 50% will have to be paid within the period given in the PPA, failing which the delayed payment surcharge will apply. This is applicable only on those payments that become overdue during the period between March 24, 2020 to June 30, 2020 and not on those payments which were already due before March 24, 2020
  - Obligation to pay for capacity charges as per the PPA shall continue, as does the obligation to pay for transmission charges

Thermal power sector set to feel Covid-19 tremors

- India's already stressed private thermal power generation sector that accounts for almost 37% of the nation's total 198 GW coal-based generation capacity could have dealt a rather detrimental blow by the recent outbreak of Covid-19 virus. While this sector already tops the chart on loan defaults, the situation can potentially go from bad to worse post the containment of Covid-19 unless the Government proactively restructures the nation's coal-energy value chain.
- The lockdown led to a dramatic decline in demand from the profitable commercial and industrial consumers *vis-à-vis* drop in a collection from the vast, non-profitable residential sector due to which DISCOMs deferred payments to generation utilities. Furthermore, adding to the woes of the Independent Power Producers (**IPPs**), the month of April witnessed nearly one-third of the DISCOMs invoking their respective force majeure options against IPPs. The trend is alarming considering it is not easy to take unilateral action against the central sector, therefore the IPPs are picked up as the soft target.

Coal India Ltd (CIL) set to extend Usance LC facility to its consumers

- To improve the working capital cycle of the generators, CIL has allowed the facility of Usance Letter of Credit to power sector consumers for payment of coal instead of cash advance for the Fuel Supply Agreements (**FSA**). Taking it one step further, CIL has also introduced the same mechanism for customers of Non-Power Sectors in the month of April 2020. In addition to boosting the liquidity in the markets, it would also provide a much-anticipated relief to the consumers of coal.
- In addition, keeping an eye on the future, CIL stated that while currently there are no power plants in the country in critical or super critical situation for want of coal, power companies importing coal are being encouraged to substitute their requirement of imported coal with domestic coal of CIL by regular monthly allotments.

UMTC's bid qualifies to prepare DPR of Vizag Metro Project

- The State Government has revised the length of the first phase of the Visakhapatnam Metro rail Project from 42.5 km to nearly 80 km.
- The Urban Mass Transit Company (**UMTC**), a Gurgaon based consultancy firm, has emerged as the lowest bidder by quoting a price of INR 5.33 crore. UMTC has to prepare a revised detailed project report for the 33.5 km long metro rail network in Visakhapatnam City.
- Additionally, the UMTC will also be given the responsibility to provide transaction advisory services for the bidding process management for the project, which will be taken up on a PPP model.

NHAI awards INR 867 crore project to Adani Enterprises

- Adani Enterprises has bagged a hybrid annuity road project from NHAI. The company is also undertaking four other hybrid annuity model road projects in the states of Chhattisgarh, Telangana, Andhra Pradesh and Madhya Pradesh.
- The project involves four-laning of Nanasa to Pidgaon section in Madhya Pradesh. The project has been awarded under Bharatmala Pariyojna which is a government funded roads and highways project.

CIL elevates trigger level in existing Fuel Supply Agreements (FSAs)

- CIL has increased the minimum assured commitment level of coal supply, i.e. 'trigger level' to 80% from the existing 75% of the Annual Contracted Quantity (**ACQ**) to its power sector consumers covered under the FSAs for FY 2020-21. Such an alteration is only applicable for those FSAs wherein the trigger level was set at 75%. Considering its strategic significance, all coal companies of CIL have also been advised for immediate implementation of the proposed increase.
- The aim is to encourage power plants to opt for increased domestic supply of coal and to steer them away from imports to the extent possible, especially during such uncertain times in global trade due to the recent outbreak of COVID-19. Assuming all eligible power utilities agree for increase to 80% trigger level, FSAs for the ongoing fiscal could see a potential spike of over 14 million tonnes. This move will likely motivate the coal companies to increase the level of delivery to the power plants as supplies less than the committed trigger level of 80% is bound to attract payment of penalty for the quantity supplied less.

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