SKV Law Offices

Update

Electricity (Late Payment Surcharge) Rules, 2021

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On 22.02.2021, the Ministry of Power ("**MoP**") notified the Electricity (Late Payment Surcharge) Rules, 2021 ("**Rules**") under Section 176 of the Electricity Act, 2003 ("**The Act**"). It has been made applicable to all Power Purchase Agreements ("**PPA**") / Power Supply Agreements ("**PSA**") / Transmission Service Agreements ("**TSA**") in which:

(a) Tariff is determined by the Appropriate Commission under Section 62 of the Act; and

(b) Tariff is determined by competitive bidding under Section 63 of the Act, insofar as the above Agreements come into effect after the coming into force of the Rules, i.e., post 22.01.2021.

Under the Rules, Late Payment Surcharge ("**LPS**") implies charges payable by a Power Distribution Company ("**DISCOM**") to a Generating Company or Electricity Trader for power procured from the latter two, or by a user of a transmission system to a Transmission Licensee on account of delay in payment of monthly charges beyond the due date.

The Rules tend to cap the interest rate payable on such LPS at the Marginal Cost of Funds Based Lending Rate ("**MCLR**") of the State Bank of India ("**SBI**") for one year, as on the beginning of the financial year in which the period lies, plus five percent. As the position stand today, this comes to 12%, i.e., an MCLR of 7% + 5%. However, the Rules come with two caveats.

One, every month of default carries an additional 0.5% interest, with a limitation that the LPS ought not to be higher than 3% of the MCLR. *Two*, the base rate of the LPS, i.e., MCLR + 5%, ought not to be higher than the rate specified in the PPA / PSA / TSA.

In this backdrop, the Rules provide that any payment by a DISCOM or a user of a transmission service ought to be adjusted first towards the LPS and thereafter the monthly charges, starting from the longest overdue bill. To curb delayed payments, the Rules further provide that pendency of payment, including LPS, beyond a period of seven months would debar a DISCOM from procuring power from a power exchange or for grant of short-term open access, till such time as the payment is cleared.

Please find link for Electricity (Late Payment Surcharge) Rules 2021 here.

Please find link for PRAAPTI here.

SKV Comments...

The Rules aim at achieving a two-fold purpose – improving the liquidity of DISCOMS by reducing the chargeable interest rate on delayed payments, while ensuring that timely payment is treated as the need of the hour. The latter is peremptory given that as of 31 January 2021, the overdue amount from DISCOMS pan-India is Rs. 127,187 Crores while the outstanding amount is Rs. 10,989 Crores (courtesy MoP's payment ratification and analysis portal 'PRAAPTI'). This despite several states like Karnataka, Bihar and Punjab having reduced their LPS to 0.6-0.75% in the wake of the Covid-19 pandemic. The Rules aim at balancing the scales by catering to both sides of the table. However, it would be interesting to see how the Rules react when the MCLR of SBI increases leading to an increase in the base rate of LPS, thereby surpassing the rate provided in the PPA / PSA / TSA.