

Model PPAs for LNG and Coal Fired Power Projects under Circular 57/2020

1. Background

1.1. On 31 December 2020, the Ministry of Industry and Trade (**MOIT**) issued Circular 57/2020 regulating the method to calculate the tariff, and the power purchase agreement. Circular 57/2020 replaces Circular 56/2014¹ from 22 February 2021.

1.2. In this post, we will provide our comparison of Circular 57/2020 with Circular 56/2014.

¹ Circular 56 of the Ministry of Industry and Trade dated 19 December 2014 on methods to determine electricity price and review of power purchase agreement, as amended (**Circular 56/2014**).

2. Comparison of Circular 57/2020 with Circular 56/2014

No.	Topic	Circular 56/2014	Circular 57/2020	Comments
1.	1.1. Amending the definition of base year	1.2. Base year is the year the total investment cost is approved for the first time. ²	1.3. Base year is the year the total investment cost or the revised total investment cost used to calculate the generating tariff is approved. ³	1.4. The base year is determined to be closer to the latest approved total investment cost. The amendment should allow the parties to have more accurate input of the investment costs for calculation of tariff.
2.	2.1. New definition of revised total investment cost	N/A	2.2. Article 2.23 provides circumstances where the total investment cost can be revised: (i) effect of natural disaster, environment accident, war, fire, or other force majeure, (ii) there is a factor improving the performance of the project, (iii) there is changes to construction master plan directly affecting the project, (iv) the actual construction price index is higher than such index used to prevent inflation in the approved total investment cost, or (v) the investment principle	2.3. The tariff can be calculated more accurately by using the revised total investment cost, which is more updated and closer to the status of the project.

² Article 2.10 of Circular 56/2014.

³ Article 2.17 of Circular 57/2020.

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			approval are adjusted.	
3.	3.1. Clarification of factors in the total investment cost	N/A	3.2. The total investment cost includes all costs under the investing responsibilities of the IPP to the connection point and includes (i) the power plant, (ii) the infrastructure and wharf for the power plant, the storage and port for importing LNG, and (iii) other relevant costs and costs allocated to the project. ⁴	3.3. Several items which can be used to calculate the total investment cost is clarified. 3.4. The following restriction under Circular 56/2014 is removed: ⁵ the total investment cost must not include cost for investing and upgrading equipment to maintain the operation of the power plant after 20 years of commercial operation. However, it should be careful to determine that such upgrading cost can be included in the total investment cost since in such case, the tariff may need to be renegotiated. ⁶
4.	4.1. New factor in the	N/A	4.2. Article 3.2 provides that the	4.4. The specific connection price is new

⁴ Article 5.2(a) of Circular 57/2020.

⁵ Article 5.2(a) of Circular 56/2014.

⁶ Article 11.3 of Circular 57/2020.

No.	Topic	Circular 56/2014	Circular 57/2020	Comments
	tariff: specific connection price ⁷		<p>generating tariff is the aggregate of the PPA price (the Unit Price) and the specific connection price.</p> <p>4.3. Article 2.5 provides the definition of specific connection cost, which is used to calculate the specific connection price under Article 8.</p>	<p>component introduced by Circular 57/2020. The specific connection price is for the IPP to recover the specific connection cost of the IPP to build the transmission line and substation from the distribution yard of the power plant to the connection point as (i) agreed with EVN, or (ii) assigned by the competent authority.⁸</p>
5.	5.1. Cost for testing run after COD	5.2. EVN will pay the fuel price. ⁹	5.3. The parties will negotiate to determine who will pay such cost.	
6.	6.1. Equity threshold for tariff calculation is lowered	6.2. The equity amounts to 20% to 30% of the total investment cost. ¹⁰	6.3. The equity amounts to at least 15% of the total investment cost. ¹¹	6.4. The change is better for the IPP since it can use more leverage.
7.	7.1. Borrowing interest rate cap is removed	7.2. Article 5.2(g) puts a cap on borrowing interest rate used for the	7.3. Circular 57/2020 removes such cap.	7.4. The change is better for the IPP. The tariff can be calculated more accurately to

⁷ Chi phí đầu nối đặc thù

⁸ Article 2.5 of Circular 57/2020.

⁹ Article 4.3(b) of Circular 56/2014.

¹⁰ Article 5.2(e) of Circular 56/2014.

¹¹ Article 5.2(e) of Circular 57/2020.

No.	Topic	Circular 56/2014	Circular 57/2020	Comments
		determination of fixed average price of the power plant.		reflect borrowing cost of the IPP.
8.	8.1. Determination of the average heat rate	8.2. The average heat rate is agreed by the parties based on the specifications of the manufacturer or warranty specifications of the EPC contractor or the testing result of the authorized testing unit. ¹²	8.3. The average heat rate is agreed by the parties but not higher than the basic design/technical design equivalent to the total investment cost used to calculate the tariff or the specifications of the manufacturer. ¹³	8.4. The average heat rate is capped by the designing/manufacturing specifications.
9.	9.1. Addition of coefficient used to adjust the heat rate to the actual operating conditions (Heat Rate Adjustment	N/A	9.2. The Base Average Heat Rate will be adjusted by Heat Rate Adjustment Coefficient. The Heat Rate Adjustment Coefficient is the coefficient to adjust the heat rate to the actual operating conditions following the temperature of cooling water and environment	9.3. Coefficient k_{HR} needs to be negotiated by the parties. 9.4. It is not clear which unit will be used to calculate the coefficient k_{HR} and will it increase or decrease the Variable Price in

¹² Article 7.1 of Circular 56/2014.

¹³ Article 7.1 of Circular 57/2020.

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	Coefficient k_{HR})		temperature. Such coefficient is agreed by IPP and EVN.	the Unit Price.
10.	10.1. The coefficient used to reflect the heat rate loss is changed to reflect the heat rate loss will increase during the term of the PPA.	10.2. The coefficient is calculated as follows: ¹⁴ [1 + Heat rate loss percentage]	10.3. The coefficient is calculated as follows: [1 + (numerical order of the current contract year – 1) * Heat rate loss percentage]	10.4. Compared with the old coefficient, the new coefficient will increase through the years. As such, the components of Variable Price in the Unit Price will increase during the term of the PPA.
11.	11.1. Fuel price calculation	11.2. Circular 56/2014 provides different ways to calculate different types of fuel (coal, gas). ¹⁵	11.3. Circular 57/2020 provides that the fuel price will be calculated based on the weighted average price of the fuel purchase contracts. ¹⁶	11.4. The fuel price component in the tariff can be calculated more accurately.
12.	12.1. Cost for dredging channel into port will be included in the	N/A	12.2. The Unit Price can include the cost for dredging channel into port as a part of other fluctuation price component. ¹⁷	

¹⁴ Article 14.3 of Circular 56/2014.

¹⁵ Article 7.1 of Circular 56/2014.

¹⁶ Article 7.1 of Circular 57/2020.

¹⁷ Article 7.3 of Circular 57/2020.

No.	Topic	Circular 56/2014	Circular 57/2020	Comments
	tariff			
13.	13.1. Primary fuel transport price calculation	13.2. Primary fuel transport price is calculated under the price in the transport contract. ¹⁸ It is not clear how primary fuel transport price is calculated if there are several transport contracts.	13.3. Circular 57/2020 provides that the primary fuel transport price will be calculated based on the weighted average price of the primary fuel transport contracts. ¹⁹ 13.4. In addition, for LNG, primary fuel transport price will be calculated based on the weighted average price of the primary fuel transport contracts and contracts for storage, regasification, and distribution of LNG. ²⁰	
14.	14.1. Conversion of average fixed Unit Price ²¹ to fixed Unit	14.2. The conversion of the average fixed Unit Price to fixed Unit Price	14.3. The conversion of the average fixed Unit Price to fixed Unit Price for each year	14.4. The change gives the IPP more flexibility in repaying its loans with the removal of the limitation that the fixed

¹⁸ Article 8 of Circular 56/2014.

¹⁹ Article 7.4 of Circular 57/2020.

²⁰ Article 7.4 of Circular 57/2020.

²¹ Giá cố định bình quân (nhiều năm).

No.	Topic	Circular 56/2014	Circular 57/2020	Comments
	Price for each year ²²	for each year is subject to following limitation: ²³ (i) financial discount rate for each year is 10%; and (ii) the fixed Unit Price for a specific year is not higher than 1.2 times of the average fixed Unit Price.	is subject to following limitation: ²⁴ (i) financial discount rate for each year follows the IRR of the power plant.	Unit Price for a specific year is not higher than 1.2 times of the average fixed Unit Price.
15.	15.1. The component of price for employment costs in the Unit Price can be adjusted using inflation rate	15.2. The component of price for employment costs in the Unit Price will be adjusted using the fluctuations of the regional minimum wage. ²⁵	15.3. The component of price for employment costs in the Unit Price will be adjusted using the fluctuations of the regional minimum wage, or the inflation rate. ²⁶	15.4. The change gives the IPP more flexibility in adjusting Unit Price relating to employment cost using inflation rate.

²² Giá cố định từng năm.

²³ Article 12 of Circular 56/2014.

²⁴ Article 13 of Circular 57/2020.

²⁵ Article 13.2(b) of Circular 56/2014.

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16.	16.1. Regarding the foreign loan of the project, foreign exchange difference is recognized for different types of currency	16.2. The parties can propose the MOIT to consider paying the foreign exchange difference relating to VND/USD. ²⁷	16.3. The parties can propose the MOIT to consider paying the foreign exchange difference relating to different types of currency. ²⁸	
17.	17.1. Application of Model PPA	17.2. The IPP and EVN are responsible to negotiate and sign the contract under the Model PPA. ²⁹	<p>17.3. On the basis of the Model PPA, the IPP and EVN negotiates, agrees, supplements a number of provisions in accordance with the actual conditions of the power plant (if any).³⁰</p> <p>17.4. Dossiers to request for the negotiation of the PPA include the proposed amendments and supplements to the Model PPA in accordance with the</p>	<p>17.5. The scope of “amendment” the parties can make to the Model PPA is expanded so the parties can have more flexibility to negotiate the specific PPA.</p> <p>17.6. This amendment is crucial for sponsors of IPPs who wish to raise international financing for their projects. This is because the Model PPA is unlikely to be bankable in international market.</p>

²⁶ Article 14.1(b) of Circular 57/2020.

²⁷ Item III.2.5 of Schedule 5 Circular 56/2014.

²⁸ Article 14.2 of Circular 57/2020.

²⁹ Article 19.2 of Circular 56/2014.

³⁰ Article 16.1 of Circular 57/2020.

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			actual conditions of the power plant (if any). ³¹	
18.	18.1. Removal of time limit for the negotiation of the PPA	18.2. Time limit for the negotiation of the PPA is 6 months from the date EVN received the valid dossiers to request for the negotiation of the PPA. ³²	18.3. No time limit for the negotiation of the PPA. ³³	18.4. This change has doubtful advantage. While the parties can have more times to negotiate the PPA, the absence of a time limit can delay the negotiation.
19.	19.1. Reviewing process of PPA	19.2. After the PPA is negotiated by the parties, the Electricity Regulatory Authority is responsible to check the PPA to ensure that the PPA satisfies the following conditions, among others: ³⁴	19.3. These requirements are removed in Circular 57/2020.	19.4. It can be understood that, theoretically, under Circular 57/2020, a specific PPA does not have to strictly follow the Model PPA and not all the amendments to a specific PPA must be explained.

³¹ Article 18.1(b) of Circular 57/2020.

³² Article 20.4 of Circular 56/2014.

³³ Article 17.3 and 17.4 of Circular 57/2020.

³⁴ Article 23.5 of Circular 56/2014.

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		(i) the contents of the PPA are in accordance with the Model PPA; and (ii) the amendments or supplements to the Model PPA are explained in full.		
20.	20.1. Signing date of PPA	20.2. The PPA must be signed before the construction commencement date, or the date the power plant implemented the test to generate the electricity to the national electricity system. ³⁵	20.3. The PPA must be signed before the construction commencement date. ³⁶	
21.	21.1. Building transmission line and	N/A	21.2. Circular 57/2020 provides a regime in which the competent State authority can	21.5. This new regime will enable the IPP to invest the transmission line and substation

³⁵ Article 20.1 of Circular 56/2014.

³⁶ Article 17.1 of Circular 57/2020.

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	substation before the connection point		<p>assign the IPP to establish a project to build the transmission line and substation to load the electricity to the connection point.³⁷</p> <p>21.3. Such transmission line and substation can be used for such IPP's power plant and other nearby power plants, which are included in the national/provincial electricity development master plan.³⁸</p> <p>21.4. The following requirements are imposed on such transmission line and substation:³⁹</p> <p>(i) such transmission line and substation must comply with the national/provincial electricity development master plan (if any);</p>	<p>serving the transmitting of electricity to the connection point and recover the cost through the electricity tariff.</p> <p>21.6. It is not clear if the IPP can negotiate with EVN so that the IPP will only build the transmission line and substation then transfer to EVN for EVN to manage, operate, and maintain. While the investors of an IPP may develop a transmission line, owning and operating a transmission line could be challenging and give rise to unwanted responsibilities or liabilities for the investors.</p> <p>21.7. While Circular 57/2020 is not clear, we think that the IPP can refuse to accept the construction and maintenance of the transmission line because the IPP may have or may not have the capacity to build and</p>

³⁷ Article 25.2 of Circular 57/2020.

³⁸ Article 25.3 of Circular 57/2020.

³⁹ Article 25.2, 25.3, 25.4, and 25.5 of Circular 57/2020.

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			<p>(ii) such transmission line and substation must ensure the operation, be able to load the whole electricity capacity and output of the nearby power plants to the connection point; and</p> <p>(iii) the IPP will be responsible to manage, operate, maintain such transmission line and substation in accordance with the law; and</p> <p>(iv) the IPP can agree with the investors of the nearby power plants on the allocation of the specific connection cost to recover its costs to build, manage, operate, maintain such transmission line and substation.</p>	<p>maintain a transmission line. The transmission lines and sub-station must meet specific conditions so it should be unreasonable to force an IPP to build and operate if such IPP does not have the capacity to do so.</p>
22.	22.1. Selecting fuel supplier and fuel	N/A	22.2. The IPP must select the fuel supplier and fuel transporter through bidding	22.5. This is a major obstacle for the IPP newly introduced by Circular 57/2020.

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	transporter through bidding		<p>following the legal requirements on bidding.⁴⁰</p> <p>22.3. The IPP must ensure the fairness, competitiveness, and transparency of the selection of select the fuel supplier and fuel transporter.⁴¹</p> <p>22.4. Exception for the selection through bidding:</p> <p>22.4.1. the IPP has signed medium-term or long-term fuel supply contract with a fuel supplier;</p> <p>22.4.2. natural gas supply contract in which the price is in accordance with the regulations of the competent authority; or</p> <p>22.4.3. other special reasons. In such case, the contractual unit price must be in accordance with the unit price issued by</p>	<p>Complying with tendering regulations is not an easy task.</p> <p>22.6. It is not clear regarding where the bidding exception can be applied.</p> <p>Regarding 22.4.1, it is not clear regarding when a medium/long-term fuel supply contract must be signed for the IPP to be able to apply the exception: the fuel supply contract must be signed before the signing date of the PPA or before any specific date?</p> <p>Regarding 22.4.3, it is not clear regarding which kind of reason can be accepted and who has the authority to decide that a reason is valid.</p>

⁴⁰ Article 25.7 of Circular 57/2020.

⁴¹ Article 25.7 of Circular 57/2020.

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			<p>the competent authority (if any). If not, the transport unit price must not higher than the unit price provided by other transporters of the same transport method, and the fuel unit price (delivered at the storage of the IPP) must not higher than the unit price of the same fuel in the storage of the IPP.</p>	
23.	<p>23.1. Specific responsibilities of LNG supplier and transporter</p>	N/A	<p>23.2. The LNG supplier and transporter conducts the provision of gas in accordance with the relevant legal requirements, in which:⁴²</p> <p>23.2.1. if the storage or distribution of gas has natural monopoly, the fee for storage, regasification, and distribution must be approved by the competent authority;</p> <p>23.2.2. if the delivery is at the port of discharge, the importing gas price is the gas price at the delivery point of the port</p>	<p>23.3. These are new responsibilities of LNG supplier and transporter imposed by Circular 57/2020. It is not clear (i) if these responsibilities will also be imposed on a foreign LNG supplier or transporter, or (ii) if the IPP imports the LNG directly, if the IPP must bear these responsibilities. Section 23.2.3 suggests that these responsibilities are only applicable to Vietnamese supplier and transporter.</p>

⁴² Article 26.1(ii) of Circular 57/2020.

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			<p>of discharge; and</p> <p>23.2.3. if the delivery is at the gas distribution station or LNG storage port in Vietnam, the gas price includes the gas/LNG importing purchase price, and reasonable and valid expenses relating to the importing activities (if any) such as import duty, finance and insurance cost, norm profit, and other costs relating to the importing activities of the fuel supplier.</p>	

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