

PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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MoP notifies the Electricity (Rights of Consumers) Rules, 2020

- Ministry of Power (**MoP**) has notified the Electricity (Rights of Consumers) Rules, 2020 (**ROC Rules**) on December 31, 2020.
- The ROC Rules introduce the concept of a Prosumer, which is defined as a person who consumes electricity from the grid and can also inject electricity into the grid for distribution licensee, using the same point of supply.
- Some noteworthy aspects of the ROC Rules are as under:
 - **Rights and Obligations**
 - It is the duty of every distribution licensee to supply electricity on request made by an owner or occupier of any premises in line with the provisions of Electricity Act.
 - It is the right of consumer to have minimum standards of service for supply of electricity from the distribution licensee in accordance with the provisions made in these ROC Rules.
 - **Connection/Disconnection/Reconnection/Modification of existing electricity connection**
 - The ROC Rules prescribe a time bound and transparent mechanism to protect the consumers.
 - DISCOMs will publish procedure, forms and process along with fee details and details of contact person on their website .
 - The ROC Rules further specify that the DISCOMs will digitalise the process of connection by way of website and mobile app for online processing along with provision for offline processing.
 - The ROC Rules also envisage penal provisions in the event there is a failure to supply electricity within the period as stipulated by the State Electricity Regulatory Commission (**SERC**).
 - **Metering/ Billing and Payment**
 - As per the ROC Rules, no connection shall be given without a Smart pre-payment meter or pre-payment meter. Any exception to the use of meter must be approved by SERCs.
 - The ROC Rules envisage that the Consumers shall get data access for checking their consumption on real time basis.
 - Consumer shall have option of third party testing and the list of approved third party agencies for meter testing shall be made public by DISCOM.
 - Further, the ROC Rules also lay down the stipulations for treatment of burnt/stolen/defective meters.

- **Reliability of Supply/ Standard of Performance**
 - DISCOMs shall supply power 24 x 7 to all consumers, however, the SERC may specify lower hours of supply for some categories of consumers.
 - SERCs shall specify reliability standards to be maintained by DISCOMs.
 - DISCOMs to deploy automatic tools for monitoring and restoring outages, to extent permissible.
 - SERCs shall specify Standard of Performance (**SoP**) as per Section 57 (1) of Electricity Act 2003.
 - SERC to specify compensation amount to be paid to consumers for violation of SOP. The ROC Rules also envisage a Compensation mechanism in this regard. Payments of compensation shall be adjusted against current or future bills of consumers within stipulated time determined by SERC.
- **Consumer as Prosumers**
 - Prosumers shall have all the rights as general consumers and also the right to establish RE unit including rooftop Solar PV solutions either by themselves or by service provider. Such RE capacity established shall not exceed the limit specified by SERC.
 - SERC to lay down regulations on grid interactive rooftop solar PV system within 6 months of notification of these rules.
 - DISCOMs shall facilitate for setting up of RE capacity at Prosumers premises. As per ROC Rules an online mechanism has been formulated for receiving applications, interconnection and metering and update on regular basis.
- **Grievance Redressal Mechanism**
 - DISCOMs shall establish a Consumer Grievance Redressal Forum (**CGRF**) under Section 42 (5) of Electricity Act, 2003 in each sub-division, division, circle, zone, company level. The Performance of CGRF to be monitored by SERC.
 - Timelines for grievance Redressal shall not exceed 45 days from date of receipt of grievance. The consumer aggrieved by the decision of sub-divisional or divisional or circle forum will have the option to approach the company level forum before making an appeal to the Ombudsman.
 - DISCOMs shall send quarterly report to the Ombudsman and to SERC from time to time in respect of SOP, other performance parameters and consumer grievances related information showing the extent to which the time schedule has been followed.
- **Other Notable Provisions**
 - The ROC Rules stipulate the formation of a 24x7 toll-free call centre from date specified by SERC to undertake activities related to electricity supply.
 - While other modes of communication will continue, DISCOMs shall appoint a common Customer Relation Manager to get a unified view of all services requested, attended and pending at backend for better monitoring and analytics.
 - DISCOMs shall provide access to different options for various services through their website, mobile app and its designated office area-wise. DISCOMs shall provide all services to senior citizen at their door step.
 - Details of scheduled power outages shall be intimated to the consumers. In case of unplanned outage, immediate intimation shall be given through SMS/other electronic media along with estimated time for restoration and shall also be made available in the call centre.
 - Manual of procedure for providing common services and handling consumer grievances shall be made available for reference of consumers at every office and on the DISCOM 's website in downloadable form.
 - DISCOMs shall arrange for due publicity through media, TV, newspaper, website and by display to bring awareness of consumer rights, SOP, Compensation mechanism, grievance Redressal, measures for energy efficiency and other schemes of DISCOM.

KERC issues a Discussion Paper on Fixation of Norms and Determination of Tariff for the control period of FY22 to FY24 for procurement of Power from MSW based Power Generating Plants

- Karnataka Electricity Regulatory Commission (**KERC**) has issued a Discussion Paper for Fixation of Norms and determination of Tariff for FY 22-24 Control Period for procurement of power from Municipal Solid Waste (**MSW**) based Power Generating Plants.
- KERC has issued the Discussion Paper in terms of the National Tariff Policy, 2016 and the Swachh Bharat Mission, with the understanding that electricity generation from waste is a way of resource recovery from MSW and should be considered as a bi-product of waste management, even if it is not the most efficient way of generation.
- In its earlier order, KERC had determined the tariff of INR 7.08 per unit, for purchase of power by the distribution licensees i.e. ESCOMs from the MSW based power plants, for a period of twenty years, from the date of their commercial operations. However, no new Waste to Energy projects came up. Therefore, to promote the growth of such projects, KERC has reconsidered and proposed new norms for tariff from MSW plants. KERC has also considered the provisions laid down by the Central Electricity Regulatory Commission in the CERC (Terms and Conditions for Tariff Determination from RE Sources) Regulations, 2020.
- After considering all the aspects in detail, and looking at all the existing parameters, KERC has proposed a levelized generic tariff of INR 5.62 per unit for a period of 25 years from the date of achieving commercial operation during effective period as per the computation, without considering the subsidy amount. KERC will however consider determining project specific tariff as well for select projects by considering the proposed norms as the ceiling limit.

MoP issues directions to CERC to amend CERC (Sharing of Inter-State Transmission Charges & Losses) Regulations, 2020

- MoP on January 15, 2021 issued directions to Central Electricity Regulatory Commission (**CERC**) under Section 107 of the Electricity Act, 2003 (**Directions**). CERC has been directed by MOP to amend the CERC (Sharing of Inter-State Transmission Charges & Losses) Regulations, 2020 (Sharing Regulations 2020). Notably, the Sharing Regulations 2020 came into effect from November 01, 2020.
- The MoP has considered the existing practice which is undertaken under the Tariff Based Competitive Bidding (**TBCB**) route under Section 63 of the Electricity Act, 2003 (**Electricity Act**), as well as the practices in place for implementation of transmission projects under Section 62 while issuing the Directions.
- The Central Transmission Utility (**CTU**) with the approval of MOP gets the Inter-State Transmission System (**ISTS**) developed by transmission licensees either through Regulated Tariff Mechanism under Section 62 where tariff is determined by CERC or through TBCB route in which tariff is adopted by CERC under Section 63.
- In its Directions, MoP has observed that certain specific issues have not been addressed in the Sharing Regulations 2020, notified by CERC, which are as under:
 - Non-existence of a direct contractual relationship between a defaulting entity on whose account a transmission system is delayed in achieving commercial operationalization (**COD**) and the entity which is aggrieved on account of the said delay.
 - The penalties as envisaged in the Sharing Regulations 2020 are uncapped and risk the submission of inflated bids, which is detrimental to public interest.
 - Defaulting licensee is already required to bear liquidated damages as per the Transmission Service Agreement (**TSA**). The TSA however does not envisage any other form of penal amounts. It is MoP's view that additional payments being imposed by way of a regulation are contrary to the spirit of Section 63 of the Electricity Act.
 - There exists no provision in the TSA which requires a generating company to pay the transmission charges to the transmission licensee in case of delay in commercial operationalization COD of the generating station. MOP has viewed the contrary position undertaken in the Sharing Regulations 2020 as being improper.
 - The paying entity has been changed from the CTU (on behalf of the Designated ISTS Customers) to the defaulting entity.
 - Non-consideration of force majeure events which may delay the COD of a generating station or a transmission asset.
 - The MoP Order dated August 05, 2020 whereby extension until June 30, 2023 has been granted to solar and wind projects, exempting them from payment of transmission charges. MOP has also pointed out that even solar and wind power projects can be delayed on account of force majeure, therefore, the Sharing Regulations 2020 need to factor in such circumstances.
 - In cases where a generator or distribution company will be connecting to an existing network without any requirement of upgradation of network, only the cost of connecting to the network is to be met by the entity connecting to the system. In such a case if the generator does not begin to inject power into the system, on the scheduled date or the distribution company does not begin drawing power on the scheduled date, it is not causing any loss to the system. However, the said delays should attract reasonable penalties so that grid discipline is maintained. For such circumstances, MOP has made the following observations:
 - Where addition of a generating unit or the increase in consumption by a distribution company entails strengthening of a transmission system at any particular point then more often than not the strengthening of the transmission system at an particular point then strengthening will provide for a larger capacity addition to be used by many generators or consumers down the line. The entire burden of strengthening which will serve many entities cannot be levied on one producer/procurer of power.
 - Penalties for failure of the generator or procurer or transmission licensee to adhere to committed timelines need to be equitable. Therefore, if a transmission entity completes the construction of the line but the upstream/downstream system is not ready and the defaulting entities pay full transmission charges, then a similar penalty will be levied on the transmission entity and if it fails to adhere to the time line it will need to pay the cost of power not despatched. The MOP has stated that this construct is impractical as it puts unacceptable burden of risk on the constituents. The system must provide for penalties for delays but seeking to compensate any party for losses will not be feasible.
 - Where the determination has been made of the existence of the force majeure in accordance with provisions of the governing contract for setting up a project, it should not be re-opened again in a litigation before CERC.
- Based on above observations, MOP has directed CERC to amend the Sharing Regulations 2020 and provide for following:
 - On COD of element of ISTS, its transmission charges be included for determination of transmission charges of Designated ISTS Customers (**DICs**) in accordance with Regulations 5 to 8 of the Sharing Regulations 2020, independent of the readiness of associated generation or upstream or downstream transmission elements.
 - No additional penalties through the Sharing Regulations 2020 are to be levied for delay in COD of an element of ISTS network. Delay automatically causes losses to the transmission licensees in the form of delay in realization of revenues, increased finance etc. Moreover, in case of TBCB projects, the penalties for default are already provided in the form of liquidated damages which are linked to the project tariff in the TSA. So, there are sufficient disincentives to the transmission licensees for delay in COD. The penalties recovered from ISTS licensees for delay in COD shall be shared with the DICs.

- Penalties for delay in COD of generating stations, or for delay in completing transmission system, or operationalizing the LTA shall invite penalties to be paid to CTU. The penalties shall be equitable, and shall not extend to compensating either the generator or the transmission licensee.
- Where RE generation capacity which is eligible for waiver of ISTS charges, is granted an extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.
- Events of force majeure may be defined and provisions be included, enabling the CTU to extend the COD of a generating station and the LTA start date.

Ministry of Ports, Shipping and Waterways, Government of India notified the Draft Dredging Guidelines for Major Ports

- The Ministry of Ports, Shipping and Waterways (**MoPSW**) has notified the Draft Dredging Guidelines for Major Ports (**Guidelines**) on January 01, 2021. The Guidelines now notified, shall supersede the Dredging Policy, Dredging Guidelines and Standard Operating Procedure issued previously by the Ministry of Shipping.
- These Guidelines are applicable to all major ports for planning and execution of dredging projects. The MoPSW has taken into account the practices undertaken at various international ports such as Rotterdam, Antwerp and Singapore while framing the Guidelines.
- These Guidelines aim to ensure implementation of dredging projects for cost effectiveness and delivery of projects as per schedule at major ports. The Guidelines further aim to minimize downtime, economic and environmental loss, avoid conflicts and achieve greater sustainability in dredging operations, the Guidelines press on achieving the same through meticulous planning and proper monitoring of dredging activity implementation. Though the said Guidelines are not exhaustive, however, they are to be referred for the betterment of the dredging projects.
- The Guidelines have been framed after considering the need to revise the existing framework in order to streamline the dredging operation with international standards, i.e. by adapting to latest technological system on survey, and investigation recommended for capital dredging projects.
- Further, the concepts of Assured depth contract, EPC mode contract, annuity model/Hybrid model, etc. have been considered as viable dredging options, in the Guidelines.
- The Guidelines also consider the Public Private Partnership (**PPP**) model as a potential option with limited investment from major ports, for dredging projects in India.
- As per the Guidelines, all major ports shall provide tentative dredging plan once in every 5 years to Indian Ports Association (**IPA**), New Delhi.

Draft Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for Petroleum Refineries and Gas Processing Plants) Regulations, 2021

- Petroleum and Natural Gas Regulatory Board (**PNGRB**) has issued Draft 'Technical Standards and Specifications including Safety Standards for Petroleum Refineries and Gas Processing Plants' (**Draft Regulation**) for comments from interested stakeholders vide public notice dated January 5, 2021. The Draft Regulation is applicable to all entities engaged in Operation of Petroleum Refineries and/or Gas processing plant to ensure Safe and reliable operations through complete lifecycle of the project.
- The proposed Draft Regulation is intended to ensure uniform application of design principles in layout and to guide in selection and application of materials and components, equipment and systems and uniform operation and maintenance of the Refineries and Gas Processing Plants. The Draft Regulation primarily focus on safety aspects of the employees, public and facilities associated with Refineries and Gas Processing Plants. Moreover, it also cover engineering considerations in design, installation, operation, maintenance, inspection including fire protection and safety systems.
- Any entity intending to set up Refineries and Gas Processing Plants shall make available its detailed plan including design consideration conforming to these regulations to Petroleum and Explosive Safety Organization for their approval prior to seeking registration with the PNGRB.s
- If an entity has laid, built, constructed, under construction or expanded the Refineries and Gas Processing Plants based on some other standard or is not meeting the requirements specified in these regulations, the entity shall carry out a detailed analysis through one or combination of multiple PHA techniques such as: HAZOP, HAZID, Qualitative Risk Analysis, LOPA and QRA of its infrastructure.
- The entity shall thereafter take approval from its Board for non-conformities and mitigation measures. The PNGRB approval along with the compliance report, gap analysis, mitigation measures and implementation schedule shall be submitted to the PNGRB within six months from the date of notification of the Draft regulations. In case of any deviation or shortfall, including any of the defaults as mentioned in the Draft Regulations, the entity shall be given reasonable time limit for rectification of such deviation, shortfall, default.
- In case of non-compliance, the entity shall be liable for any penal action under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 or termination of operation or termination of authorization.

KERC issues a Consultation Paper on the Proposed Norms for Determining Generic Tariff for Electricity Generated from Mini-Hydel, Bagasse based co-generation and Biomass based Power Plants to be commissioned during the Control Period April 01, 2021 to March 31, 2024

- KERC has issued a Consultation Paper in exercise of powers conferred to it under Section 62(1) (a) read with Section 64 and 86 (1) (e) of the Electricity Act, 2003 and Regulation 9 of the KERC (Power Procurement from Renewable sources by Distribution Licensee and Renewable Energy Certificate Framework) Regulations, 2011.
- KERC has proposed the norms for determination of tariff for the Mini-Hydel, Bagasse based cogeneration plants and Biomass based power plants in the Consultation Paper.
- The common financial parameters as envisaged in the Consultation Paper are as under:
 - **Debt Equity Ratio:** KERC has proposed to continue the existing Ratio of 70:30
 - **Return of Equity:** KERC has proposed adoption of ROE of 14%
 - **Interest on Loan:** KERC has proposed 10% as the interest rate on term loans with a 15 year tenure
 - **Depreciation:** KERC has proposed to provide 4.67% of the capital cost as the depreciation per annum on straight line method for the 15 years, to ensure debt servicing
 - **Interest on working capital:** The proposed interest on working capital is 10.50%; further, the proposal states that the existing norms will be continued for computing working capital
 - **Income Tax:** KERC has proposed to allow income tax, surcharge and cess as a passthrough without factoring the same in tariff, with the stipulation that the amount of income tax, surcharge and cess that has to be claimed shall be worked out on the amount of ROE approved by KERC
- In furtherance of the above, the following table summarizes the project specific financial parameters as proposed in the Consultation Paper:

Parameters	Mini-Hydel	Co-Generation	Biomass
Capital cost (crore/MW)	INR 6.20	INR 4.75	INR 5.76 for water cooled & INR 5.86 for air cooled
O&M as percentage of Capital cost for base year	2.50%	3.0%	5% for water cooled & 4% for air cooled
O&M annual escalation	5.72%	5.72%	5.72%
Plant Load Factor	30	60%	75%
Auxiliary Power Consumption	1%	8.50%	10%
Specific Fuel Consumption (Kg/kWh)	Not applicable	1.60	1.21 for water cooled and 1.18 for air cooled
Fuel Cost (INR/MT)	Not applicable	1220	INR 2500/MT
Fuel Cost Escalation	Not applicable	5.00%	5.72%

RECENT JUDGMENTS



In this Section

Big Jo's Estates Ltd v. Tata Power Delhi Distribution Ltd

Indian Energy Regulatory Services v. BSEB Rajdhani Power Ltd & State Load Dispatch Centre

Fortum Solar India Pvt Ltd v. Bangalore Electricity Supply Company Ltd

MSEDCL v. Maharashtra Energy Development Agency

D.J. Energy Pvt Ltd v. M.P. Paschim Kshetra Vidyut Vitran Co Ltd & Anr

Rana Power Ltd v. UPPCL & Ors

Big Jo's Estates Ltd v. Tata Power Delhi Distribution Ltd

DERC Order dated December 30, 2020 in Petition No. 38 of 2019

Background facts

- The present Petition had been filed by Big Jo's Estates Ltd (**Petitioner**), under Section 142 of the Electricity Act, 2003 against Tata Power Delhi Distribution Ltd (**TPDDL/Respondent**) for violation of the provision laid down under Section 47 (4) of the Electricity Act, 2003.
- The Petitioner has alleged that it is entitled to get interest on security deposited during 2002 (INR 16 lakh) in terms of Section 47 (4) of the Electricity Act, 2003 and the Orders/Regulations of Delhi Electricity Regulatory Commission (**DERC**).
- The Petitioner claims that no such interest is credited on the security deposited by complainant and the amount of security deposited is also not reflecting on the bills of the complainant.
- Here, the Respondent argued that the Petition is barred according to the limitation period (as being filed after a period of 17 years) and no such conclusive proof of document showcasing the amount of security deposited by the Petitioner is presented to the Respondent.
- Further, the Respondent also submitted that it did not inherit the entire amount of consumer security deposit from DPCL related to the consumers of the Respondent; and since the entire consumer security deposit is not available with the Respondent, the Respondent is liable to pay interest only on the proportion of consumer security deposit apportioned to the Respondent.
- The dispute pertains to the claim of getting interest on security deposit for the period from 2002, admittedly, the Petition before the Commission was filed on 25th May 2019. However, this issue of security deposit was raised by the Respondent for the first time in the year 2009, when it was informed to the complainant that there is no security deposit reflecting in its account and the electricity is liable to be disconnected.
- It is then that the complainant approached the Respondent and submitted the documents and paid an additional amount of security deposit amounting to INR 3,09,000. As regards the amount of INR 16 lakh already submitted by the Petitioner, no reply was given by the Respondent when enquired about the same.
- Petitioner has also filed a civil suit relating to the issue of alleged deposit of the amount of Security deposit with erstwhile DVB/DESU prior to privatization and the same is pending adjudication before the ADJ, Rohini Court Delhi. (Civil Suit bearing no. 62056/2016).

Issues at hand?

- Whether the Petition filed after a span of 17 years by Petitioner is barred for maintainability under Limitation Act, 1963 (**Limitation Act**)?
- Whether the Petitioner is entitled to receive interest on the security deposited (In 2002) with DVB before privatisation?
- Whether Petitioner is entitled to receive interest and in what proportion on the security deposited before privatisation from DVB or TPDDL?

Decision of the Commission

- DERC opined on the maintainability of the Petition on the ground of limitation, that the Electricity Act, 2003 is a Special Act and does not provide for any period of limitation for filing of the application before the DERC. Quoting Hon'ble Supreme Court's ruling, DERC held that the provisions of the Limitation Act are not applicable to the proceedings before the quasi-judicial bodies and tribunals. Moreover, the Petition was not barred by limitation as the Petitioner has approached the Distribution Licensee in this regard and also has filed a suit in the year 2016.
- DERC further observed that the Electricity Act, 2003 is an exhaustive code and the provisions of Civil Procedure Code do not strictly apply to the proceedings before DERC. DERC is well within its rights to decide on its own procedure which satisfies the principles of natural justice and transparency.
- It was held that the Respondent is liable for interest payment of the security deposit. However, it is also observed that the Petitioner has also filed a civil suit relating to the issue of alleged deposit of the amount of security deposit with erstwhile DVB/DESU prior to privatization and the same is pending adjudication before the ADJ, Rohini Court Delhi (Civil Suit bearing no. 62056/2016). Since the issue in question is already engaging attention of the Civil Court, therefore let the matter be decided by the Civil Court so as to precipitate the amount of security deposit on which interest is payable. Once it happens, the Respondent is supposed to adhere to the provisions of Regulation 20 of SOP Regulation, and in case the Respondent fails to do so, the Petitioner shall be at liberty to approach this Commission.



Our viewpoint

DERC has interpreted the provisions of the Electricity Act, 2003 and stated that the provisions of Limitation Act do not strictly apply to proceedings before quasi-judicial bodies/tribunals. However, DERC has also observed that in the instant case, there is no bar on account of limitation since the Petitioner had approached the Distribution Licensee prior in time, which means that the cause of action has continued. Based on the said observation, DERC was well within its right to let the pending matter with Civil Court (Delhi) be settled first in order to get clarification on the amount of security deposited on which interest is payable.

Indian Energy Regulatory Services v. BSEB Rajdhani Power Ltd & State Load Dispatch Centre

DERC Order in Petition No. 56/2019

Background facts

- This Petition was filed on behalf of Indian Energy Regulatory Services, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd (**Respondent No. 1**) State Load Dispatch Centre (**Respondent No. 2**).
- The Open Access Consumers namely, Asian Hotels (North) Ltd (**Hyatt Regency**) and Devki Devi Foundation, have been procuring energy through green energy sources as per the guidelines of DERC open Access orders.
- As per DERC RPO Regulations and DERC Open Access Orders, if any Open Access consumer is procuring power through green/renewable energy sources, consumer shall be allowed an exemption of Cross Subsidy Surcharge to the extent of RPO percentage.
- During the power procurement made from green energy sources by these open access consumers, Respondent No. 1 has neither refunded nor settled the Cross Subsidy Surcharge to the consumer for the above-mentioned period due to which huge financial loss has been caused to them.
- Respondent No. 1 is violating the DERC (Renewable Purchase Obligations and Renewable Energy Certificates Framework Implementation) Regulations, 2012 and DERC Open Access Orders dated December 24, 2013 and June 01, 2017. This non-compliance by Respondent No. 1 has cost the open

access consumers (Hyatt Regency) and due to which procurement of Green Energy Power by the consumers has become an uphill and non-feasible task.

- In this regard, Complaint against Respondent No. 1 was filed before Nodal Agency (**SLDS**) Respondent No. 2 but no appropriate communication/direction was received till date regarding refund/settlement of CSS amounts towards green energy power procurement to open access consumers (mentioned above).
- Therefore, this present petition is preferred before Delhi Electricity Regulatory Commission by Indian Energy Regulatory Services.

Issues at hand

- Whether the present petition filed by Indian Energy Regulatory Services under section 142 of EA, 2003 is maintainable or not?
- Whether a party can implead itself as petitioner in a petition filed on its behalf by 3rd person claiming to be its representative?

Decision of the Commission

- DERC observed that the Petitioner has only been appointed as a consultant of the Hyatt Regency and no fees, affidavit or impleadment application is filed in a format prescribed by DERC. Hence, IERS cannot be treated as having authorization to file a Petition before the DERC.
- Since IERS is espousing the cause of 3 named consumers, the present Petition could also not be construed as a petition in a representative capacity on the lines of one permissible under Order 1 Rule 8 of the CPC. Hence IERS cannot be allowed to maintain a petition in its own name and prosecute the same as if it were an aggrieved party.
- DERC has held that it becomes crystal clear that a person cannot implead himself in a petition filed on his behalf. Secondly, IERS can represent party but the petition should be in the name of parties and not in the name of IERS. IERS has to act as representative for the purpose of filing, pleading and preferring arguments. Therefore, the present petition is liable to be dismissed with a liberty to Hyatt Regency and Devki Devi Foundation (Open Access Consumers) to file a fresh instant petition and raise the matter in their own name, whether on their own or through IERS to represent them.



Our viewpoint

DERC in this Order has analyzed the meaning of an interested party. It has held that the Petitioner ought to suffer actual financial loss or injury in order to prefer a petition before DERC. The reason being that once the matter is disposed of, the actual compliance of the order is binding on the actual parties in whose name the petition was filed not the entities who represented the parties. Therefore, a petition under representative capacity cannot be maintainable.

Fortum Solar India Pvt Ltd v. Bangalore Electricity Supply Company Ltd

O.P. No. 48 to 52 of 2019

Background facts

- Fortum Solar India Pvt Ltd (**Petitioners**) filed instant Petitions before the KERC seeking declaration of introduction of Safeguard Duty Notification No. 01/2018-Customs (SG), New Delhi, dated July 30, 2018 (**SGD Notification**) as Change in Law event and determination of consequential relief pertaining to reimbursement of additional cost incurred due to the said event.
- Petitioners entered into separate Power Purchase Agreements (**PPAs**) with the AP Discoms for setting up of five Solar PV ground mounted projects with each of 50 MW capacity (**Project**). After the execution of PPA, Ministry of Finance by way of its SGD Notification introduced safeguard duty on the import of Solar Cells. The introduction and imposition of safeguard duty on imported solar modules resulted in an additional expenditure by the solar power developer for which the Petitioners sought a reimbursement from AP Discoms.
- AP Discoms contended that validity of levy of Safeguard Duty is challenged in a writ petition pending before the Hon'ble High Court of Orissa in WP No. 12817 of 2018 and interim orders passed in the said proceedings is challenged in SLP No. 24009 of 2018 pending before the Supreme Court (**SC**). As levy itself is challenged and same is the subject matter of the proceedings pending before the SC, the question of considering and granting the relief arising out of SGD Notification in the instant petition is unsustainable. Additionally, Petitioners prayed for the grant of carrying cost from the date of the impact until the reimbursement thereof by the respondent.

Issues at hand

- Whether KERC has the jurisdiction to proceed with the present petitions while the SLP No.24009-24010/2018 is pending before the SC?
- Whether the imposition of SGD Notification on import of Solar Modules amounts to 'Change in Law' as per Article 15 of PPA?
- Whether AP Discoms are liable to reimburse the Petitioners for the actual additional expenditure incurred by them along with carrying cost from the date of incurring expenses to the date of actual payment?

Decision of the Commission

- With regard to the first issue, KERC observed that the SC has not issued any specific or general direction to KERC, not to proceed to hear the claims for reimbursement of SGD made by the Petitioners in the event of Change in Law due to SGD Notification. Therefore, KERC has no legitimate ground to stay the proceedings of the instant petitions.
- Further, KERC observed that any event can be termed as a 'Change in Law' event only if it satisfies the provisions as stipulated under the PPA. The imposition of SGD on imported solar modules after the submission of bid has resulted in the change in cost of inputs which is not included in the quoted tariff and hence the same is to be considered as 'Change in Law'.
- On the excessive SGD payments to be paid beyond the minimum contracted capacity, KERC observed that the decision of Petitioners of importing additional solar module for optimizing the performance of the solar PV plant by achieving higher CUF of 30% as against minimum threshold of CUF of 18% as mentioned in bidding document was independently taken by the Petitioner without notice to AP Discoms as it was required under provisions of Request for Proposal document. Such additional financial burden cannot be allowed to pass on to the AP Discoms. Therefore, the Petitioner is entitled for reimbursement of safeguard duty from AP Discoms, only to the extent of minimum contracted energy as envisaged in the provisions of the PPA.
- To adjudicate on the issue of payment of carrying cost, KERC relied on the Judgment of the Appellate Tribunal for Electricity in case of *Adani Power Ltd v. Central Electricity Regulatory Commission & Ors*,¹ whereby it was held that since Gujrat Bid-01 PPA has no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. KERC observed that in the present case, neither does the PPA entered into between the parties contains a single provision that permits restoration of the solar power generator to the same financial position as prior to the event of change in law, nor does it contemplate the payment of carrying cost or interest of any kind to the aggrieved party on account of change in law. Therefore, the Petitioners are not entitled to claim any relief pertaining to carrying cost as no claim could be made by the Petitioners dehors the provisions of the PPA.



Our viewpoint

The judgment provided clarification to various developers seeking change in law reliefs on account of introduction of law while the validity of the law is still pending adjudication before the superior court. In this case, KERC reiterated the principles settled by the Hon'ble Supreme Court that mere filing of a petition, appeal or suit would by itself not operate as stay until specific prayer in this regard is made and orders thereon are passed. Therefore, the developers cannot be prevented from seeking change in law reliefs until the superior court has not issued any specific or general direction to the Commissions, not to proceed to hear the claims for reimbursement towards such law.

MSEDCL v. Maharashtra Energy Development Agency

MERC Order dated January 01, 2021 in Case No. 21 of 2020

Background facts

- Maharashtra State Electricity Distribution Co Ltd (**MSEDCL**) filed a petition before Maharashtra Electricity Regulatory Commission (**MERC**) seeking, *inter alia*, fixation of tariff for procurement of power from renewable sources post expiry of Energy Purchase Agreement (**EPA**) and seeking increase in Ceiling Tariff for procurement of solar and wind power through competitive bidding process.
- To overcome the shortfall in Renewable Purchase Obligation (**RPO**) target, MSEDCL floated tenders for procurement of additional renewable power. MSEDCL also floated the tender for procurement of 500 MW Wind energy and 50 MW bagasse-based co-generation power whose EPAs with MSEDCL have expired.

¹ Judgment dated April 13, 2018 in Appeal No. 210 of 2018

- However, due to the low Ceiling price, MSEDCL failed to receive response to the tenders. In view of receiving active participation from these expired projects in future tenders, MSEDCL submitted that it has to increase the Ceiling Tariff, as the procurement of non-solar power is essential for MSEDCL to fulfil the RPO targets.

Issues at hand

- Whether Ceiling Rate for competitive bidding renewable projects can be increased?
- How will the Ceiling Rate of bagasse-based projects be determined whose EPAs have expired?
- How will the wind projects whose EPAs have expired be treated?

Decision of the Commission

- MERC held that Ceiling Rate of renewable power projects shall be determined by the DISCOM as per its own due diligence and the competitiveness of such rate shall be dealt with by MERC at the time of adoption of tariff.
- With regard to the second and third issue, MERC observed that MSEDCL may conduct separate competitive bidding process for the wind projects with expired EPAs and for new projects. However, for bagasse-based co-generation projects with expired EPAs, MoU is to be executed and approved by the MERC on the conditions that the rate of procurement of power should be the sum total of Variable Cost to be fixed by the Commission on year-to-year basis and the Fixed Cost to be negotiated and fixed by the parties to the MoU, subject to the maximum cost fixed by MERC. Such differential treatment in case of Wind Projects and bagasse-based co-generation projects is because unlike wind generators which do not incur any expenses on fuel, bagasse-based cogeneration projects have to incur fuel expenses which increases the variable cost of the Project.



Our viewpoint

While Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from grid Connected Wind Power Projects notified on December 8, 2017 by Govt of India under Section 63 of the EA, 2003 do not envisage putting ceiling tariff while inviting bids, MERC vide the instant order has given liberty to MSEDCL to draw a cue to cap the Ceiling Rate to the tariff discovered for the new wind projects in the State of Maharashtra. The intention behind such fixation of ceiling tariff is because all the Distribution Licensees have an obligation of procuring power in most economic manner and accordingly, DISCOMSs are given liberty to take all possible measures in meeting this objective.

D.J. Energy Pvt Ltd v. M.P. Paschim Kshetra Vidyut Vitran Co Ltd & Anr

MPERC Order dated December 18, 2020 in Petition No. 14 of 2020

Background facts

- DJ Energy Pvt Ltd, an independent power producer having Wind Turbine Generators (**Petitioner**), filed a petition under Section 86(1)(f) read with Section 45 of the Electricity Act, 2003 and Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010 (**MPERC RE Regulations**) read with Regulation 8.1.2 of MPERC (Recovery of Expenses and Other Charges for providing electric line or plant used for the purpose of giving supply) Regulations, 2006 before Madhya Pradesh Electricity Regulatory Commission (**MPERC**) for directions to M.P. Paschim Kshetra Vidyut Vitaran Co Ltd and M.P. Power Management Co Ltd, (**MP Discoms**) to bill the power drawn by the Petitioner only under HV-7 category tariff and not under HV 3.1 category.
- MP Discoms contended that as per MPERC RE Regulations, under the HV 7 tariff category, any generator can draw power for the purpose of synchronization for maximum 2 hours only. In case energy is drawn over and above 2 hours, generator falls under the residuary billing mechanism which is required to be billed as per the rate prescribed for HT Temporary tariff under Schedule HV 3.1 (HT Industrial).
- However, Petitioner's case is that the Wind Power Projects may be forced to draw power beyond 2 hours, due to inadequate wind speed, in order to remain synchronized with the grid. Therefore, since the wind generators cannot control their fuel source, the billing for all power drawn during synchronization ought to occur as per the rate prescribed in HV-7 tariff category for power availed for synchronization. Moreover, it is nowhere stated that drawl beyond 2 hours would be treated as drawl for shut-down/emergencies and billed at the rate applicable to temporary connection under HT industrial category.

Issues at hand

- What billing methodology should be followed for power drawn for synchronization of the generator with the grid upto a period of 2 hours and after 2 hours in each instance/occasion?
- What billing methodology should be followed for power availed by the generator from the grid for the purpose other than synchronization.
- Whether supplementary demand raised by the M.P. Paschim Kshetra Vidyut Vitaran Co Ltd for the past period is justified?

Decision of the Commission

- MPERC held that the MPERC RE Regulations provide that the power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. Accordingly, MPERC has fixed the maximum time period i.e. 2 hours for billing the generator for synchronization purpose alongwith the applicable unit rate. Hence, the MP Discoms are required to bill the generators for power drawl for synchronization purposes accordingly. Moreover, the drawl of power by the generators during shutdown period of its plant or during such other emergencies, would be billed at the rate applicable to temporary connection under HT Industrial Category.
- On conjoint reading of the provisions under MPERC RE Regulations and HV-7 Schedule, the continuous drawl of power in every instance for over and above 2 hours shall be considered for the purposes other than synchronization. Therefore, for every instance of power drawl for synchronization, upto 2 hours, tariff as per HV-7 schedule is applicable but thereafter for the period of continuous power drawl over and above 2 hours, temporary tariff at the rate of HV-3.1 (H.T. Industrial Category) would be applicable.
- Regarding the billing for previous years, MPERC has observed that the MP Discom had wrongly billed at the rate applicable under HV-7 schedule for the power continuously drawn over and above 2 hours in contravention with the provisions under MPERC RE Regulations.
- This is a serious lapse committed by the MP Discom wherein after issuing the incorrect bills, it has issued supplementary bills for difference of HV-3.1 (Temporary Supply) and HV-7 billing with regard to the usage by the generator. MPERC in the Retail Supply Tariff Orders has categorically directed the MP Discoms that they can't change in the tariff or the tariff structure.
- Under Section 56 (2) of the Electricity Act, 2003, the sum due from any consumer is not recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied by the licensee. The High Court of Madhya Pradesh in the matter of *Kapoor Saw Manufacturing Co v. MPSEB & Ors*², has held that the provisions of Section 56 of the Electricity Act 2003 will not be applicable when error in the matter of calculating tariff is being corrected when the error came to the notice.
- In the present case, the disputed amount in the subject matter was first due on January 16, 2020 when billing for additional charges was raised by the MP Discom. Hence, the contention of Petitioner that the recovery of bills from April 2017 to January 2018 is time barred has no merit.



Our viewpoint

MPERC, while making its observations in the instant order, has read the provisions of MPERC RE Regulations and Tariff Order, as is. The Commission has relied upon the settled principle that if the statute prescribes to do a particular thing in a particular manner, the same shall not be done in any other manner than prescribed under the law.

² 2006 SCC online MP 612

Rana Power Ltd v. UPPCL & Ors

UPERC Order dated December 07, in Petition No. 1534/2019

Background facts

- This Petition was filed by Rana Power Ltd (**Petitioner**) under Section 142 of the Electricity Act, 2003 on the grounds of non-compliance by Uttar Pradesh Power Corporation Limited (**UPPCL**) of the UP Electricity Regulatory Commission's (**UPERC**) order dated June 13, 2018 issued in Petition No. 1266/2017 wherein it was held that UPPCL cannot force the Petitioner to reduce tariff and sanctity of PPA has to be maintained unless both parties agree on alternative rates and execute a supplementary agreement to that effect. The main contention of the Petitioner was that the invoices for the electricity injected by it have been partially paid by UPPCL and not as per the tariff in the PPA @ INR 6.09/unit from October 2017 to May 2018.
- UPPCL (**Respondent**) challenged the maintainability of the petition under Section 142 alleging that it did not violate any directives issued by the commission and therefore no penal proceedings can be initiated against it. It was further argued that there was no direction issued by the UPERC regarding payment of any amount and the differential payment was reach towards a mutual revision of tariffs with the Petitioner. Despite its stressed financial conditions due to Covid-19, UPPCL has ensured timely payments as per the terms of the PPA. The Section 142 proceedings are only for deliberate and wilful violations of the directions of the Commission and not for raking up tariff disputes for which no directions were issued by UPERC.

Issue at hand

- Whether the Petition filed under Section 142 of the Electricity Act, 2003 maintainable before the Commission?

Decision of the Commission

- The UPERC examined its order dated June 12, 2018 and concluded that the directions of the Commission were very clear that the sanctity of the PPA must be maintained and UPPCL was under the obligation to make payment as per the rates defined in the PPA unless it was mutually agreed otherwise. In view of the unsuccessful negotiation of tariffs by UPPCL, it was to release the balance payments and also make future payments as per the PPA. Thus, this dispute was resolved by UPERC while disposing of the Petition no. 1266/2017. It was held that the order of UPERC does not behove UPPCL to raise the issue of maintainability in this proceeding, which seems like an attempt to avoid payment burden of arrears.
- Considering the arguments presented by the parties and the materials place on record, UPERC directed UPPCL to adhere to the sanctity of the PPA for the period from October 2017 to April 2018 and payments against the arrears for this period are to be made on priority. Further, UPPCL was directed to not release any payments to any other generators for bills subsequent to period October 2017 to April 2018 without clearing this amount.



Our viewpoint

In this decision, UPERC upheld the sanctity and essentials of a contract whereby each party must honour their obligations under the contract. Moreover, if any terms/conditions not mutually agreed by both parties or if one party is being coerced to adhere by such terms/conditions, then these shall not be considered enforceable and valid. This reasoning applied by the UPERC in the dispute of tariffs rightly upholds the supremacy of a PPA.

RECENT DEVELOPMENTS

In this Section

India records new lowest solar tariff at INR 1.99/kWh

Cabinet Committee approves Revised Cost Estimate of INR 6700 crore for North Eastern states

Union Cabinet approves MoU between India and USA for exchange of information in mutual interest areas in the electricity sector

AP HC directs APGECL not to enter into deals on 6,400 MW solar tender

Waiver of Inter-State Transmission Charges and losses on transmission of electricity generated from solar and wind sources of energy

Project spending rises in India in the December quarter

India records new lowest solar tariff at INR 1.99/kWh

- The auction of 500 MW of solar projects by the Gujarat Urja Vikas Nigam Limited (**GUVNL**) set a new record low solar tariff of INR 1.99/kWh. The record-breaking tariff was quoted under the bucket filling method by National Thermal Power Corp Ltd (**NTPC**) for 200MW, Torrent Power Ltd for 100MW, Al Jomaih Energy & Water Co Ltd for 80MW, and Aditya Renewables for 120 MW respectively. This tariff supersedes the previous lowest solar tariff of INR 2/kWh recorded in November at SECI's auction of 1070 MW grid-connected solar projects in Rajasthan which was quoted by Al Jomaih Energy & Water Co Ltd and Green Infra Wind Energy Ltd, a subsidiary of Sembcorp Green Infra Ltd, for 200 MW and 400 MW of solar projects, respectively.

Cabinet Committee approves Revised Cost Estimate of INR 6700 crore for North Eastern states

- The Cabinet Committee on Economic Affairs on December 16, 2020 has approved the Revised Cost Estimate (**RCE**) of the North Eastern Region Power System Improvement Project (**NERPSIP**) at an estimated cost of INR 6700 crore. The program is projected to be commissioned by December 2021 and is currently being implemented by Power Grid Corporation of India Ltd (**PGCIL**) in association with six beneficiary North Eastern states – Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. This step strengthens the Intra-State Transmission and Distribution infrastructure and contributes towards the total economic development of North Eastern region.

Union Cabinet approves MoU between India and USA for exchange of information in mutual interest areas in the electricity sector

- The Union Cabinet on December 16, 2020 has given its approval for a Memorandum of Understanding (**MoU**) between Central Electricity Regulatory Commission (**CERC**) and USA's Federal Energy Regulatory Commission (**FERC**) for exchange of information and experiences in areas of mutual interest in the electricity sector. The CERC's proposed MoU is aimed at helping in improving regulatory and policy framework for the development of efficient power market and grid reliability.
- The activities to be carried out in under the MoU include identifying energy related issues, organising visits by the Commissioners/staff to participate in activities, development of programs of mutual interests etc.

AP HC directs APGECL not to enter into deals on 6,400 MW solar tender

- The Andhra Pradesh High Court (HC) by way of an interim order dated January 07, 2021, passed in Writ Petition bearing W.P. No. 674 of 2021, has directed Andhra Pradesh Green Energy Corporation (APGECL) not to enter into any agreements on the tender called by it for 6,400 MW of solar power.
- The writ petition was filed Tata Power Renewable Energy Ltd. challenging the tender process and seeking directions from the HC to quash Request for Selection (RfS) and draft Power Purchase Agreements (PPAs) issued by APGECL as the RfS and PPA seek to oust the statutory jurisdiction of the Andhra Pradesh Electricity Regulatory Commission vested in it by the Electricity Act, 2003 which is against the provisions of the Electricity Act, 2003 and the Ministry of Power, and the Ministry of New and Renewable Energy Guidelines dated August 03, 2017.

Waiver of Inter-State Transmission Charges and losses on transmission of electricity generated from solar and wind sources of energy

- The Ministry of Power vide its order dated January 15, 2021, has announced that it will not deprive renewable power projects of a waiver on inter-state transmission system (ISTS) charges and losses if they are commissioned after June 20, 2023, due to delays caused by the transmission provider or the government agency or due to force majeure. These projects include solar and wind power projects and solar-wind hybrid projects (with or without storage).
- The extension of scheduled commissioning date should be issued by Solar Energy Corporation of India (SECI)/NTPC or other project implementing agencies on behalf of central government. The provisions related to ISTS charges and losses waiver to all obligated entities will also get a relook. If renewable power project is eligible for ISTS waiver and is granted an extension in commercial operation date, the commencement of long-term access period would also accordingly get an extension

Project spending rises in India in the December quarter

- According to Projects Today, project spending announced in the December quarter rose by 10.29% from the preceding three months.
- 2,085 new projects, entailing a total investment of INR 2.76 trillion, were announced in the fiscal third quarter in the nation.
- The rise in spending on productive assets such as roads, ports and factories supports the economic growth in the nation. However, the slow pace of growth in the December quarter indicates that state governments have not fully recovered from the economic disruption caused by the pandemic. Declining tax collections have limited state governments' ability to spend more.
- The private sector accounted for 711 new projects, entailing a total investment of INR 1.36 trillion, a 36.5% rise from the preceding three months. On the other hand, government-sponsored project expenditure plans fell in the third quarter, declining 7.21% from Q2. Private foreign investment in capital goods fell 34% as well.
- State governments which account for more than half of all government-funded capital expenditure in the country have had to resort to deep spending cuts this fiscal to redirect resources towards fighting the pandemic. The Centre has stepped up efforts to fill in some of this vacuum but faced with the prospect of fiscal deficit widening to 7.5-8% this year, its firepower is also limited.
- While the Centre has rolled out several stimuli, private investors, especially foreign firms are looking for more support in the form of policy reforms.

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