

PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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RERC notifies the RERC (Consumer Grievance Redressal Forum, Electricity Ombudsman and Consumer Advocacy) Regulations, 2021

- Rajasthan Electricity Regulatory Commission (**RERC**) on March 26, 2021 notified the Rajasthan Electricity Regulatory Commission (Consumer Grievance Redressal Forum, Electricity Ombudsman and Consumer Advocacy) Regulations, 2021 (CGRF Regulations, 2021) in exercise of powers conferred on it by Section 42 and Section 181 of the Electricity Act, 2003.
- Some noteworthy aspects of the CGRF Regulations are as under:
 - **Internal Grievance Redressal Cell (IGR Cell)**
 - Each Distribution Licensee is required to have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner by way of issuance of a speaking order, i.e. within a maximum period of 30 days of filing of the grievance.
 - A consumer with a grievance may intimate the IGR Cell of such Grievance in the form and manner and within the time frame as stipulated by the Distribution Licensee in its procedures for redressal of grievances.
 - Each IGR Cell shall be required to submit a quarterly report on disposal of Complaints/Grievances to the Corporate Level Consumer Grievance Redressal Forum (**CGRF**), which will have oversight on IGR Cell and shall monitor and review the working of IGR Cell regularly.
 - **Consumer Grievance Redressal Forum (CGRF)**
 - A Zonal Level Forum shall be set up within three months of coming into force of the Regulations at each zonal headquarter having jurisdiction on the licensee area of entire zone including the franchisee area.
 - Each Zonal Level Forum is required to consist of 3 (three) members: (i) Chairperson, (ii) Finance Member and (iii) Independent Member wherein the Chairperson and the Finance Member are required to be the employee of the Licensee; the Independent Member is to be nominated by the RERC.
 - The staff of the Zonal level CGRF have been entrusted with the responsibility of receiving Grievances and Complaints; receive any other documents which may be required to be filed with the Forum; maintain record of proceedings; circulate matters to members of the Forum for directions and proper orders; do all other acts and deeds in compliance with Orders issued by the CGRF and perform all other all acts and things required for the functioning and the proceedings of the Forum.

– **Procedure for grievance redressal**

- A Complainant may approach the appropriate Forum (Corporate/Zonal level CGRF) if the Licensee/IGR Cell fails to register a Complaint; or if the Licensee fails to resolve a Complaint through their Internal Grievance Redressal Mechanism in accordance with the Standards of Performance specified by the RERC; or if the Consumer/Complainant is not satisfied with the Redressal of the Complaint (including dismissal) even after taking up the issue at the level of division head/circle head or appropriate IGR Cell.
- The Consumer may directly approach the Forum with a Complaint/Grievance at the office of the Forum, which the Forum may forward to the Licensee for the necessary action and procedure of redressing the Complaint/Grievance at its level may be initiated.
- On receipt of the grievance, the Member Secretary or any other person, as may be authorized by the Forum, shall make an endorsement on the grievance subscribing his dated initial and shall send an acknowledgement to the complainant immediately.
- A copy of the grievance shall be forwarded within 3 days of receipt, to the designated circle wise authorised officer of the licensee for redressal or file its reply in writing. Thereafter, the Distribution Licensee may be directed to furnish its issue-wise comments on the grievance, within seven days of intimation from the Forum.
- On receipt of the comments from the Distribution Licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum is responsible for passing appropriate for disposal of the grievance, within a period of 30 days and in any case not exceeding 45 days of filing of the grievance.

– **Electricity Ombudsman**

- RERC shall designate or appoint a person to be known as Ombudsman to carry out the functions entrusted to him under the Regulations.
- The Electricity Ombudsman shall hold office for a term of two years from the date he enters upon his office subject to further extension of one year. The Ombudsman shall not hold office after attaining the age of sixty-five years, wherein, the minimum and maximum age limit would be 59 years and 62 years on the date of advertisement.
- The Ombudsman has been entrusted with the responsibility to receive Representations, consider such representations and facilitate settlement by agreement; exercise general powers of superintendence and control over its office and be responsible for the conduct of business thereat; may issue such interim orders at any stage during the disposal of the representation as it may consider necessary.
- The representation to the Ombudsman is required to be duly made in writing, signed by the Complainant or his authorized representative, and receipt of the same shall be duly acknowledged by the Ombudsman by issuance of a unique case number and date to the representation.
- After registration of the representation, the Ombudsman, may within seven days, call for records relating to the representation from the concerned Forum. Accordingly, the Ombudsman, may hear the parties, direct the parties to submit written statements of submissions and decide the representation.
- The Ombudsman is required to pass a speaking order with detailed reasoning. While making the Order, the Ombudsman shall be guided by the evidence adduced by the parties, the principles of applicable laws and instructions of general nature, issued by RERC, from time to time, in the interest of justice.

– **Consumer Advocacy Cell**

- RERC may constitute a Consumer Advocacy Cell to provide the required legal advice, support and assistance to the Complainants for representing their cases. Further, the remuneration payable to the advocates may also be decided by the Commission.
- The Consumer Advocacy Cell may perform additional functions like half yearly review of grievances, representations and reports submitted by the Forum, analysis of reports submitted by the Licensee with regards to levels of performance standards specified under the Electricity Act, 2003; facilitate capacity building of consumer groups and ensure their effective representation for enhancing the efficacy of regulatory process.

RERC issues RERC (Metering)(Practice Directions) Order, 2021

- RERC has issued the Rajasthan Electricity Regulatory Commission (Metering)(Practice Directions) Order, 2021 (**Metering Directions**) in performance of its responsibility under Section 55 of the Electricity Act, 2003 (**Act**), whereunder, the RERC is required to implement the Regulations made by Central Electricity Authority under Section 55 of the Act.
- In order to effectively implement the provisions of Section 55 of the Act, and to avoid conflict with the Central Electricity Authority (Installation and operation of meters) Regulations, 2006 (**CEA Metering Regulations**), the RERC has also repealed the Rajasthan Electricity Regulatory Commission (Metering) Regulations, 2007.
- Some noteworthy aspects of the Metering Directions are as under:
 - **Location of interface meters for OA consumers**
 - For open access consumers, main & check meters are required to be installed at delivery point or relevant to termination point of service line at outgoing isolator of licensee's substation. The standby meter is to be installed at other end of line.
 - For open access consumers who do not have dedicated feeder from the Sub-station of the Transmission/Distribution Licensee, main, check and standby meters are required to be installed at the premises of such consumers.
 - For mini hydel stations, main and check meters are required to be provided at energy transfer points, preferably at the generating station outgoing feeders.
 - **Meter reading and recording**
 - Procedure for Meter reading, data collection, maintaining database and verification of correctness of data for interface meters shall be specified separately by the Commission on the recommendation of metering committee in this regard. Till then, existing practice shall continue.
 - **Meter failure or discrepancies**
 - In the event of main meter or more than one meter provided becoming defective the order of precedence for billing shall be (a) main (b) check (c) standby. If all the meters are defective or any other discrepancies arises matter will be referred to State Power Committee for necessary decision.
 - In case of failure or discrepancies in consumer meter the licensee shall take necessary steps as per RERC (Supply Code and Connected Matters) Regulations, 2021 as amended from time to time.
 - **Quality assurance of meters**
 - The Distribution Licensee is required to put in place a system of quality assurance for meter, starting from receipt, storage in-house testing (if any), installation, periodic testing lab and site testing procedure, removal/replacement and disposal of meters including sealing practices and submit plan/program to the RERC for approval.
- All the meter testing Laboratories of the Licensee should be accredited by NABL for calibration in Laboratory and calibration and testing at site and in case of any dispute of metering accuracy would be resolved by testing the meter at accredited licensee's laboratory or an independent NABL accredited laboratory having valid accreditation for the specific purpose and service.

RERC notifies the RERC (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021

- **RERC** on April 08, 2021, has notified the Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021 (**GIDREGS Regulations**), in exercise of powers conferred under Section 181 read with Sections 61,66, 86(1)(e) of the Electricity Act, 2003 and all other provisions enabling it in this behalf.
- The GIDREGS Regulations would remain in force along with the Rajasthan Electricity Regulatory Commission (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015 (**Net Metering Regulations, 2015**). The Rooftop and Small Solar Grid Interactive Systems commissioned under Net Metering Agreements up to June 30, 2021 would be governed as per the Net Metering Regulations, 2015.
- Significant aspects of the GIDREGS Regulations are as under:
 - **Scope and Applicability**
 - The eligible consumer may install the renewable energy generating system under the Net Billing arrangement or Net Metering arrangement which shall be within the permissible technical limits as defined under the Regulations, shall be located in the consumer premises and shall

interconnect at the same interconnection point of consumer premises and operate solely in parallel with the Distribution Licensee's network.

- The GIDREGS Regulations do not preclude the right of State Nodal Agency or Distribution Licensee of the State to undertake Renewable Energy generating system of one mega-watt and above capacity through alternative mechanisms.
- **Connectivity of renewable energy generating system**
 - The cumulative capacity of renewable energy generating system to be allowed at a particular distribution transformer would not exceed 50% of the capacity of such distribution transformer or such limit as may be stipulated by the RERC from time to time.
 - Distribution Licensee is under an obligation to update information about distribution transformer level capacity available for connecting renewable energy generating system under Net Billing Arrangement or Net Metering arrangement on yearly basis and the same is required to be provided on its website.
- **Eligible consumer and individual project capacity**
 - Eligible Consumers of electricity in the area of supply of the Distribution Licensee having or proposing to install a Renewable Energy generating system may opt for grid connectivity under the Net Billing arrangement or Net Metering arrangement in accordance with the GIDREGS Regulations.
 - An Eligible Consumer may install or enhance the capacity of, or upgrade the Renewable Energy generating systems at different locations within the same premises after following due procedure and intimating the concerned Distribution Licensee.
 - The Distribution Licensee is required to display on its website and on the notice board in all its offices, the detailed procedure for grant of new arrangement, address and telephone numbers of the offices where application forms can be submitted, address of website for online submission of application form and all applicable charges to be deposited by the applicant.
 - Within twenty days from issuance of acknowledgment of application, the concerned officer of the respective sub-Divisional office of the Distribution Licensee is required to check the technical feasibility of the Renewable Energy generating system. Further, in case of any deficiencies found in the application during technical feasibility study, on account of Renewable Energy generating system capacity and available transformer loading as specified under the Regulations, the same shall be intimated by the Distribution Licensee to the applicant through email/SMS/post within twenty working days from the issuance of acknowledgement of the application.
 - The Distribution Licensee and Eligible Consumer are required to enter into a Connection Agreement for Net Billing arrangement or Net Metering arrangement, after approval of connectivity of Renewable Energy generating system with the distribution network, but before the start of actual generation from the System.
- **Standards and safety for interconnection with the grid**
 - Renewable energy generating system and allied equipment is required to conform to the standards and requirements specified in the Central Electricity Authority (Technical Standards for connectivity of the Distributed Generating Resources) Regulations, 2013; Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006; Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010; and RERC (Electricity Supply Code and Connected Matters) Regulations, 2021.
 - The consumer, who installs Renewable Energy generating system, is responsible for the safe operation, maintenance, and rectification of defect of its system up to the Interconnection Point beyond which, the responsibility of safe operation, maintenance, and rectification of any defect in the system including metering arrangement rests with the Distribution Licensee.
 - The Distribution Licensee is entitled to disconnect the renewable energy generating system from its system at any time in case of emergencies or maintenance requirement on the Distribution Licensee's electric system; hazardous condition existing on the Distribution Licensee's system due to operation of Renewable Energy generating system or protective equipment as determined by the Distribution Licensee; or adverse electrical effects, such as power quality problems, on the electrical equipment of the other consumers of the distribution licensee caused by the Renewable Energy generation as determined by the Distribution Licensee.
- **Metering arrangement**
 - All meters installed at the renewable energy generating system are required to be in compliance with the CEA (Installation and Operation of Meters) Regulations, 2006 and subsequent amendments thereof.
 - The Eligible Consumer is required to install, at his own cost, a RE Generation Meter conforming to the applicable CEA Regulations at the Interconnection Point of Renewable Energy generating system, to measure the energy generated from such system.
 - The Distribution Licensee is responsible for the testing, installation, and maintenance of the metering equipment, and its adherence to the applicable standards and specifications. Further, the meter readings taken by the Distribution Licensee shall form the basis of billing and commercial settlement.

- **Net billing arrangement**
 - Net billing is the arrangement, where the renewable energy generating system is installed to serve a specific consumer, connected on the Distribution Licensee side of the consumer meter, selling entire power generated to the Distribution Licensee under the Connection Agreement with the Distribution Licensee, and the amount payable by the Distribution Licensee is reduced from the amount payable by the consumer for electricity supplied by the Distribution Licensee.
 - The Distribution Licensee shall raise bill on the Consumer in accordance with the following equation:
‘Energy Bill of consumer = Fixed Charges + other applicable charges and levies + (EDL x TRST) - (ERE * TPPA) – Billing Credit’
- **Parallel Operation Charges**
 - The RERC may stipulate from time to time the 'Parallel Operation Charges' to be levied on the energy generated under Net Metering systems, which shall cover balancing, banking and wheeling cost after adjusting RPO benefits, avoided distribution losses and any other benefits accruing to the Distribution Licensee, based on the Petition filed by Distribution Licensee, supported by adequate justification.
- Apart from Parallel Operation Charges, RERC may also determine additional Parallel Operation Charges in the form of Fixed Charges or Demand Charges and any other Charges for such systems installed behind the consumer’s meter, in the retail Tariff Order, if the Distribution Licensee proposes such additional Fixed Charges or Demand Charges and any other Charges for such systems, in its retail supply Tariff Petition, supported by adequate justification.

MoP issues Draft Electricity (Rights of Consumers) (Amendment) Rules, 2021

- The Ministry of power (**MoP**) had notified Electricity (Rights to Consumers) Rules, 2020 on December 31, 2020, under Section 176 of the Electricity Act, 2003 in order to empower the consumers of electricity. In this regard on April 09, 2021, MoP issued Draft Electricity (Rights of Consumers) (Amendment) Rules, 2021, allowing net metering for solar up to 500kW. This draft amendment is based on the suggestions made on the provision of net metering stated under Rule 11(4) of the Electricity (Rights to Consumers) Rules, 2020, which mandated net metering for loads up to 10 kW and gross metering for loads greater than 10 kW.
- The draft allows net metering to the prosumer for Grid Interactive Rooftop Solar PV system of loads up to 500 kW or up to the sanctioned load, whichever is lower and net-billing or net feed-in for other loads. Prosumers are person who consumes electricity from the grid and can also inject electricity into the grid for distribution licensee, using same point of supply. They are consumers with the general consumer status and rights, but with an additional right to set up RE generation unit, including rooftop solar systems. They are consumer as well as producer of power.
- According to the draft, where the net-billing or net feed-in is availed by Prosumers, the Commissions may introduce them to time-of-the-day (**ToD**) tariffs which would incentivize Prosumers to install energy storage for later usage or which can be fed into the grid during peak hours.
- The draft, further, allows for gross metering for Prosumers who would like to sell all the generated solar energy to the distribution licensee instead of availing the net metering/ net-billing or net feed-in facility.
- The draft, under Sub- rule (4) of rule 11 of Electricity (Rights to Consumers) Rules, 2020, also recommends the distribution licensee to install a solar energy meter to measure the gross solar energy generated from the Grid Interactive Rooftop Solar PV system for Renewable Energy Obligation (**RPO**) credit, if any.
- Lastly, the draft suggests that the Sub rule (13) of rule 11 of the Principal Rules, i.e., Electricity (Rights to Consumers) Rules, 2020, may be substituted to adjust the solar energy generated against the energy consumed and/or bill amount as per regulations prescribed by the Commission for Grid Interactive Rooftop Solar PV system.

MoP issues MoU with PGCIL for Year 2020-21 in both Houses of Parliament

- On March 22, 2021, a Memorandum of Understanding (**MoU**) was executed between MoP and PowerGrid Corporation of India (**PGCIL**) for the year 2020-21 which comprises of two parts namely – Part I (Vision, Mission, Values and Objectives) and Part II (Performance Criteria and Targets for FY-2020-21).
- As envisaged in Part I, the vision of this MoU is ‘World Class, Integrated, Global Transmission Company with Dominant Leadership in Emerging Power Markets, Ensuring Reliability, Safety and Economy.’
- The World Class mission includes setting superior standards in capital project management and at the global level, the mission is to leverage capabilities to consistently generate maximum value for all concerned stakeholders, whilst achieving continuous improvements through innovation and state-of-the-art technology and committing to highest standards in health, safety, security and environment.

- Having a zeal to excel and zest for change, integrity and fairness in all matters, respect for dignity and potential of individuals, strict adherence to commitments, ensuring speed of response, fostering learning and education along with team work and instilling loyalty and pride in POWERGRID are some of the core values that are to be inhibited.
- PGCIL has set following objectives in line with its vision and its status as 'Central Transmission Utility' to:
 - Undertake transmission of electric power through Inter-State Transmission System;
 - Discharge planning and coordination functions w.r.t Inter-State Transmission System with State Transmission Utilities, Central Government, State Government, Generating Companies, Regional Power Committees, Authority, Licensees and other person notified by Central Government on this behalf.
- Other objectives include providing smooth flow of electricity, efficient operation and maintenance of Transmission Systems and participating in long distance telecommunication business ventures, among others.
- Part-II contains a tabular description of various parameters based on which distinct targets have been set for the year 2020-21. The targets for each parameter have been sub categorized from a scale of 100% as 'Excellent', to 80% as Very Good, 60% as Good, 40% as fair and 20% as Poor. The achieved target of 2019-20 for all these parameters has been kept in consideration so as to better set the target for the following financial year.

MoP recommends relaxation given by MoF vide its three memorandums

- MoP has issued a letter dated March 23, 2021, requesting all the states and union territory government to provide relaxation given by Ministry of Finance (**MoF**) vide its three Office Memorandums (**OMs**) dated November 12, 2020, for projects being implemented under State/Union Territory government. Details of the OMs are stated below:
 - **OM I: Reduction in Performance Security from existing 5-10% to 3% of the value of the contract.**
 - Vide the OM dated November 12, 2020, MoF decided to reduce the existing performance security of 5-10% to as down as 3% of the value of the contract for all the existing contracts. However, the benefit of reduced performance security will not be provided to the contracts which are currently under dispute through arbitration/court proceedings.
 - Further, all tenders/contracts issued/ concluded till December 31, 2021 should have the provision of reduced performance security.
 - In all contracts entered into with the reduced percentage of security of 3%, there will be no subsequent increase in performance security even beyond December 31, 2021.
 - **OM II: Bid Security/Earnest Money Deposit**
 - MoF decided that the only provision required to be kept in Bid Document should be that of Bid Security Declaration. Further, it was decided that wherever there are compelling circumstances to ask for Bid Security, same should be done only with due approval of next higher authority to the authority competent to finalise the particular tender or the secretary of the Ministry/Department, whichever is lower.
 - **OM III: Additional Performance Security in case of Abnormally Low Bids (ALBs)**
 - In this context, it was noted that Additional Performance Security in case of ALBs is being taken from the contractors by various Iv ministries/ departments though there is no provision for the same in the General Financial Rules (**GFRs**), 2011 or the Manual for procurement issued by MOF.
 - Therefore, it was reiterated that no provisions are required in the bid documents regarding Additional Performance Security/Bank Guarantee (**BG**) in case of ALBs. However, when there are compelling circumstances to ask for Additional security deposit BG in case of ALBs, the same should be taken only after due approval of next higher authority to the authority competent to finalise that tender, or Secretary of the Ministry/Department, whichever is lower.

RERC directs for installation of solar power systems at the schools of State Government in the State of Rajasthan

- In order to promote Renewable Energy, as mandated under Section 86(1)(e) of the Electricity Act, 2003, the RERC vide Order dated March 25, 2021 observed that it would be appropriate that in the State Government schools where there is no electricity connection, solar power systems with appropriate battery storage may be installed and such schools may avail electricity from such systems. The aforesaid direction is in order to relieve the Distribution Companies (**DISCOMs**) of releasing the connection, which reduce upfront cost but also will reduce their expenditure towards maintenance etc. This will not only improve the quality of life, but the objective of educating the children would also be achieved.

- The respective Discom would be the Nodal Agency for coordination, monitoring and installation of the solar power system installations at the identified locations in their respective areas of supply. The Nodal Agency will evolve an appropriate procedure in this respect. The Nodal Agency is required to identify the appropriate locations in coordination with the State Govt. All entities involved will coordinate with the Nodal Agency from the identification stage to the installation.

MoP Issues Reduction in Contract Performance Guarantee for Tariff Based Competitive Bidding (TBCB) Transmission Projects

- The Department of Expenditure (DoE) under the Ministry of Finance (MoF), in view of the acute financial crunch and slowdown in economy due to the Covid-19 pandemic and the requests from the contractor for reduction of Performance Security (amount secured to ensure due performance of the contract) in Government Contracts, issued an Office Memorandum (OM) on November 12, 2020, stipulating the reduced Performance Security from existing 5-10% to 3% of the value of the contract for all existing contracts/ tenders as well as the ones to be issued or concluded till December 31, 2021.
- In view of the above- mentioned step taken by the DoE and thereby the request received from Transmission Developers Association to reduce the Contract Performance Guarantee (CPG) for Tariff Based Competitive Bidding (TBCB) projects in line with the DoE's OM dated November 12, 2020, the Ministry of Power on March 25, 2021, has issued notification to reduce the CPG value for the TBCB transmission projects from existing INR 13.5 lakh per km for the total Transmission Line length and INR 1.125 lakh per MVA for sub stations to INR 5.25 lakh per km for the total Transmission Line length and INR 0.45 lakh per MVA for substations.
- However, according to the notification, the benefit of the reduced CPG value is not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated.
- As per the notification, the reduction in CPG is subject to the condition that there shall be no subsequent increase in the Performance Security even beyond December 31, 2021. In addition, in case of compelling circumstances, where the CPG is demanded in excess of the reduced value, an approval from concerned authority with justified reason will be required.

MoP issues guidelines for DISCOMs to either continue or exit from the PPA after completion of the term of the PPA

- MoP on March 22, 2021, issued guidelines for enabling the distribution companies (DISCOMs) to either continue or exit from the Power Purchase Agreement (PPA) after completion of the term of the PPA i.e., either 25 years from date of commissioning of the plant or a period specified in the PPA, and allow flexibility to the Generators to sell power in any mode after State/DISCOM exit from PPA.
- The Guidelines state that the first right to avail power from Central Generating Stations (CGSs) will stay with the States/DISCOMs with whom the PPA was signed, even beyond the term of the PPA.
- According to the guidelines, the willing State/DISCOMs can submit request for relinquishment of their share of power from the CGSs only after the expiry of the term of the PPA and with the due approval of the State Commission. All the eligible past dues and payments from the end of State/DISCOM shall be cleared for consideration of such relinquishment.
- The State/DISCOMs having Long- term PPAs with the CGSs, which are due to expire in near future can opt to relinquish the entire allocated power (firm and unallocated share except some specific allocation e.g. power which has been bundled with solar etc.) from such eligible CGSs by giving six months advance notice of their intention to relinquish such power. For the Stations, which have already completed 25 years, States may exit from the PPA of such eligible CGS after giving six months of notice of relinquishment of such power.
- The Guidelines states that any CGSs' share once relinquished by the State will not be allowed to be taken back by the state under the same PPA conditions.
- The Guidelines has empowered the Department of Atomic Energy to decide the mechanism of relinquishment of power from Nuclear Power Generating Stations after completion of term of PPA.
- Further, as per the guidelines, the CGSs are free to sell its relinquished power under various avenues. It allows the CGSs to tie up with the buyers and enter into a PPA through competitive bidding for such sale. They can even sell the relinquished power in the power exchanges and get the power reallocated to the willing buyers.

RECENT JUDGMENTS



In this Section

[SECI v. Shapoorji Pallonji Infrastructure Capital Co Pvt Ltd & Ors](#)

[In Re Tata Power Co Ltd \(Distribution\)](#)

[ACME Aklera Power Technology Pvt Ltd & Anr v. SECI & Anr](#)

[M.K. Ranjitsinh & Ors v. Union of India & Ors](#)

[Satya Maharshi Power Corp Ltd v. APTRANSCO & Ors](#)

[Power Exchange India Ltd](#)

[GMR Kamalanga Energy Ltd & Anr v. Dakshin Haryana Bijli Vitran Nigam Ltd & Ors](#)

[NHPC Ltd v. Punjab State Power State Corp Ltd & Ors](#)

[NTPC Ltd v. Eastern Regional Power Committee](#)

[Extension of Pilot on Security Constrained Economic Dispatch \(SCED\)](#)

SECI v. Shapoorji Pallonji Infrastructure Capital Co Pvt Ltd & Ors

CERC Order dated April 15, 2021 in Petition No. 52/AT/2021

Background facts

- Solar Energy Corporation of India (**SECI**) filed petition under Section 63 of the Electricity Act, 2003 (**Act**) before Central Electricity Regulatory Commission (**CERC**) for adoption of tariff for (3x50) MW grid-connected floating solar power projects selected through competitive bidding process as per the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' (**Guidelines**) dated August 3, 2017 issued by the Ministry of Power, Government of India.
- In the instant case, at the behest of Uttar Pradesh Power Corp Ltd (**UPPCL**), SECI issued Request for Selection (**RFS**) for setting up of (3x50) MW solar power projects in the state of Uttar Pradesh (**Project**) in terms of the Guidelines. Two developers i.e. Shapoorji Pallonji Infrastructure Capital Co Pvt Ltd and ReNew Solar Power Pvt Ltd (**SPDs**) were selected and awarded 50MW and 100 MW respectively for developing the Project. Accordingly, SECI entered into separate Power Purchase Agreements (**PPA**) with SPDs for purchase of power from their respective quantum of Projects and supply the same on back to back basis to UPPCL vide Power Sale Agreement (**PSA**).
- On the issue of jurisdiction, SECI contended that CERC is the 'Appropriate Commission' under Section 63 of the Act to adopt tariff for the project as it has entered into PPA and PSA in its capacity as the nodal agency of the Central Government. Further, since it has been designated as an inter-state trading license, it is vested with the authority to sell the power purchased from the SPDs at any time in other States.
- SECI further contended that the PPA also defined CERC as the 'Appropriate Commission'.

Issues at hand?

- Whether CERC is the 'Appropriate Commission' under Section 63 of the Act for adoption of tariff for the Project?

Decision of the Commission

- CERC observed that mere involvement of an inter-State trading licensee as an Intermediary Procurer does not render the generating company to qualify as a composite scheme for generation and sale of power in more than one State in terms of Section 79(1)(b) of Act.
- Moreover, as RFS documents specify that all the generating companies shall be located in the State of Uttar Pradesh and sell power to the end-procurer, UPPCL, the entire transaction clearly qualifies as intra-state in nature.

- With regard to CERC been defined as the ‘Appropriate Commission’ under the provisions of PPA, the Commission observed that it is a well settled principle that the parties cannot confer the jurisdiction on any forum by consent. Unless the jurisdiction of CERC can be traced to the provisions of the Act and the Guidelines, the definition under the PPAs as agreed to between the parties will not have any bearing while examining the jurisdiction of the Commission.
- SECI’s contention that it is also a Central Government Company owning and maintaining generating stations in other states in terms of Section 79(1) of the Act is irrelevant for the instant case. Herein, SECI is not acting/functioning in its capacity of Central Government controlling/owning generating company. Accordingly, the jurisdiction of CERC under Section 63 read with Section 79(1)(a) of the Act cannot be invoked in the instant case particularly when SECI has been functioning in its capacity of an Intermediary Trader as provided in the Guidelines.
- With regard to, SECI’s reliance on the order passed in Petition No. 95/MP/2017 by CERC whereby the solar power project was located in Maharashtra and entire power was being supplied to Maharashtra distribution company, the Commission observed that project in the said petition was set-up under the Jawaharlal Nehru National Solar Mission (JNNSM) Phase-II, Batch-III State Specific Viability Gap Funding (VGF) Scheme (Scheme). As per the provisions of the said JNNSM Scheme, Ministry of New and Renewable Energy was required to specify the total State-wise capacity for the Projects based on commitments from the State for off-take of not less than 90% of power and for the remaining 10% of power, the host State is required to facilitate inter-State transfer of power to sell to other buying entities. Since the JNNSM Scheme, itself envisaged that the power from the project developed under the Scheme shall be supplied to more than one State, accordingly, CERC exercised its jurisdiction in the said Project. However, in the instant case, the Project is not being set-up under the JNNSM scheme, hence, 95/MP/2017 is inapplicable. event.



Our viewpoint

The order has upheld the principles settled in the Apex Court’s judgment passed in [Energy Watchdog v. Central Electricity Regulatory Commission](#) and further clarified that irrespective of Intermediary Procurer being established under Central Government, if its role is limited to trading of electricity and the transaction involves the generation and sale of electricity within one state, the State Commission will be considered as an ‘Appropriate Commission’ under Section 86 of the Act. The Commission has also discussed the significance of Guidelines/Scheme under which the projects are set up in determining the jurisdiction of the ‘Appropriate Commission’.

In Re Tata Power Co Ltd (Distribution)

MERC Order dated March 22, 2021 in Case No. 134 of 2020

Background facts

- Tata Power Company Limited (Distribution) (TPC-D) filed the instant petition before the Maharashtra Electricity Regulatory Commission (Commission), seeking in- principle approval for levying ‘Green Power Tariff’ to supply Renewable Energy (RE) to consumers opting for 100% green energy for meeting their entire demand.
- TPC-D submitted that Green Power Tariff being voluntary in nature would give a choice to consumers to opt for green energy ; further it shall also help in reducing the hesitation of Distribution Licensees in going for high cost of power purchase from RE sources whilst not impacting the general tariff etc. TPC-D further insisted that there should be a standardized methodology for calculating the Green Power Tariff and that it should be followed by all the DISCOMs. Since, the Green Power tariff is not specific to TPC-D only, the commission ordered to implead other DISCOMs in the state.
- Further, TPC-D has mentioned that instances where additional RE power is essential to be considered for RPO fulfilment, it would arrange for additional RE provided the renewable power requirement exceeds the existing tied-up renewable power capacity.
- With regard to the treatment of revenue from Green Power Tariff as ‘income from other business’ TPC-D relied on the MYT Regulations, 2019 and contended that since, the proposed Green Power Tariff for providing 100% RE power is over and above the approved Tariff of the Commission, it has considered it under the ambit of Other Business Income.

Issues at hand

- Whether a separate ‘Green Power Tariff’ to be levied on consumers opting for 100% green energy? If yes, what will be the methodology for computation of Green Power Tariff?
- Whether revenue from the Green Power Tariff to be considered as ‘Income from other business’?
- Whether additional RE power to be considered for RPO fulfilment in case not opted by the consumers?

Decision of the Commission

- The Commission granted in-principle approval of levy of Green Power Tariff on consumers opting for 100% RE for meeting their consumption. The Commission observed that by providing option to consumers to meet their demand only through RE, it will help in promotion of RE sources, which is one of the mandates of the Commission under Electricity Act, 2003. However, Distribution Licensees would have to incur additional expenses for arranging RE for such consumers. Such additional expenses need to be recovered from same set of consumers without burdening other consumers.
- Green Power Tariff is to be computed as difference between pooled power purchase cost of non-conventional and conventional sources of energy (only variable cost) for all Distribution Licensees in the State. While doing so, instead of computing year wise different tariff, uniform number for MYT control period is computed for providing certainty in rate. However, this approach may be reviewed at the time of MTR proceedings. Accordingly, INR 1.33/kWh was calculated to be Green Power Tariff in terms of the aforesaid methodology.
- However, as this concept is being introduced for the first time and also considering the fact that Distribution Licensee would be able to use such power consumed by consumers towards fulfilment of its RPO target, certain benefit of the same needs to be passed on to concerned consumers. Hence, the Commission decides to levy only 50% of charge determined above i.e. 0.66/kWh as Green Power Tariff to the consumer opting for meeting its 100% of power requirement through RE sources. Such Green Power Tariff would be in addition to regular tariff approved in MYT Order.
- The Commission observed that all consumers (Extra High Voltage, High Voltage and Low Voltage) shall be eligible for opting 100% RE power on payment of Green Power Tariff.
- The Commission also observed that the tariff would be uniform for all DISCOMs in the state, diminishing the difficulties in stipulating DISCOM-wise Green Power Tariff.
- The Commission noted that vide its RPO-REC Regulations, 2019, it has set out an increasing trajectory for fulfilment of RPO compliance by the obligated entities. Therefore, if the consumer is not an obligated entity under RPO Regulations, it would be appropriate to count that energy towards RPO fulfilment of Distribution Licensee which will reduce the additional cost of the utility for purchasing the same and ultimately benefit its consumers.
- With regard to the issue on treatment of revenue from Green Power Tariff as Other Business Income, the Commission observed that TPC-D is carrying out energy distribution and supply business and not optimizing its assets to other business as required under the provisions of 'Income from Other business' in MYT Regulations, 2019. Therefore, revenue earned through Green Power Tariff shall be treated as tariff income of Supply Business and thereby be fully accounted for reduction in ARR of supply business.



Our viewpoint

The Commission has laid down a positive interpretation of the TPC-D's proposal and observed it to be of extreme help and value to the consumers, as well as a means to increase their awareness. It may be said that the order is a strategic approach catering towards the concerns of consumers who wish to source all their power requirements from renewable energy hence being a step ahead towards building a zero-carbon economy and advancing towards environment protection.

ACME Aklera Power Technology Pvt Ltd & Anr v. SECI & Anr

RERC Order dated March, 24 2021 in Petition Nos. RERC/1835/20 and RERC/1732/20

Background facts

- A Petition was filed by ACME Aklera Power Technology Pvt Ltd and ACME Solar Holdings Pvt Ltd (**Petitioners**), under Section 86 of the Electricity Act, 2003 against Solar Energy Corporation of India Ltd (**SECI**) and Rajasthan Urja Vikas Nigam Ltd (**RUVNL**) before Rajasthan Electricity Regulatory Commission (**RERC**) seeking directions to restrain SECI from invocation of bank guarantees and for return of bank guarantees.
- Petitioners submitted that they were unable to comply with the timelines under the Power Purchase Agreement (**PPA**) executed with SECI in view of impact of Force Majeure event in form of Covid-19. Further, as per Article 13.5.1 of the PPA provided that if a Force Majeure event or its effect continues for a period beyond the period specified under Article 4.5.3 (i.e. 3 months), either party has the right to terminate the PPA. As such, the Petitioner No. 1 terminated the PPA on May 19, 2020, under the right available under Article 13.5.1 of the PPA.
- It is the case of the Petitioners that once the PPA stood terminated in accordance with the provisions thereof, the purpose of bank guarantees did not survive and accordingly, SECI ought to be directed to return the bank guarantees to Petitioner No.1 forthwith.

- SECI contended that RERC has no jurisdiction under Section 86 of the Electricity Act, 2003 to adjudicate the dispute purported to be raised by the Petitioners as the jurisdiction to deal with and adjudicate upon the disputes in regard to the PPA rests in Central Electricity Regulatory Commission (CERC) in terms of Section 79 (1)(f) of the Electricity Act, 2003.

Issues at hand

- Whether RERC is the 'appropriate jurisdiction' to decide the issues raised in the Petition, in terms of the relevant contractual provisions and the statutory framework?
- Whether Covid-19 falls under Force Majeure and what relief could be granted to the Petitioners?

Decision of the Commission

- RERC observed that as per Request for Selection document (RFS) issued by SECI for selection of Solar power developers for setting up of 750 MW grid connected solar photovoltaic power projects in Rajasthan, power procured from the above Project has been provisioned to be sold in Rajasthan to RUVNL. It was clear that the solar power project is located in Rajasthan and the entire power is being supplied to Rajasthan. Therefore, RERC is the appropriate Commission as per the PPA read with RFS to adjudicate the disputes in the instant petition.
- As regards the relief claimed by the Petitioners with respect to spread of Covid-19, the RERC observed that due to spread of Covid-19 and subsequent lockdown imposed in India from March, 2020, supply chain was disrupted and Petitioners could not get required manpower/material for commissioning of the Project.
- RERC further observed that the Petitioners had a time period of around Nine months to complete the Project, if the situation of Force Majeure due to Covid-19 had not occurred. As such, it was considered legitimate that for establishing the Project, the Petitioners had to be put back in the same situation as if no Force Majeure has happened. RERC, therefore, deemed it appropriate to allow extension of Nine (9) months to achieve the commissioning of Project without any compensation. Petitioners have thus been directed to achieve date of commissioning on or before December 31, 2021. Accordingly, the timeline for scheduled commissioning date of the Project is extended to December 31, 2021 without any compensation.



Our viewpoint

RERC appreciated the reasons pertaining to impact of COVID-19 as being beyond the reasonable control of the Petitioner and granted suitable extension to the Petitioner. Moreover, the Commission has relied on the provisions of Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Project dated August 3, 2017 (under which RFS was issued), PPA, RFS and facts of the case and determined that RERC is the appropriate commission to adjudicate the instant dispute.

M.K. Ranjitsinh & Ors v. Union of India & Ors

SC Order dated April 19, 2021 in I.A. No. 85618 of 2020 in Writ Petition (Civil) No. 838 of 2019

Background facts

- A writ petition was filed in the nature of public interest by the Petitioner seeking protection of two species of birds namely – the Great Indian Bustard (GIB) and the Lesser Florican, which are on the verge of extinction due to collisional deaths with the overhead power lines. In the said writ petition, various stakeholders were made parties including Union of India and state governments.
- Further, an Interlocutory Application bearing I.A. No. 85618/ 2020 was filed in the aforesaid writ petition seeking interim directions to the State of Rajasthan (Respondent No. 5 and 6) and the State of Gujarat (Respondent No. 9 and 11) (Rajasthan and Gujarat Government) to (i) ensure predator-proof fencing, controlled grazing in enclosure development; (ii) direct the said Respondents not to permit installation of overhead power lines and not permit further construction of windmills and installation of solar infrastructure in Priority and Potential habitat as identified by Wildlife Institute of India (Priority and Potential areas); (iii) install bird-diverters on the overhead powerlines.

Issues at hand

- Whether the issue of payment of fixed charges raised by the Petitioners is covered by the Order dated October 28, 2020 passed by the RERC in Petition Nos. 1735/2020 and 1754/2020 whereby the Petitions were dismissed?
- Whether the present Petitions are maintainable inasmuch as the Petitioners have not challenged the Order dated June 13, 2019 passed by RERC with respect to Special Fuel Surcharge?



Our viewpoint

SC has made it very clear that all powerlines in the potential GIB area have to be laid underground, if technically feasible. If the committee determines that underground lines are not feasible, then only diverters will be installed. Further, the court has given a strict timeline for implementation, i.e., one year from the date of the order. It will be interesting to see how the distribution companies are going to bear the cost. Every entity that has contractual protection of the 'Change in Law' will claim the compensation. Considering the direction of the Supreme Court, the distribution companies will pass the expenditure to the consumers unless there is assistance from the government.

Decision of the Court

Re: Constitution of High- Level Committee

- Vide its Order dated April 19, 2021, the Supreme Court (SC) has observed that laying of the underground power lines more particularly of high-voltage power lines will require technical evaluation on a case-to-case basis. Considering this, the SC has constituted a three-member Committee to examine the feasibility of under-grounding of overhead transmission power lines in the State of Rajasthan and Gujarat, in order to protect the Great Indian Bustard from extinction (Committee). Further, the Committee has been empowered to obtain technical reports, if required, from experts in the field of electricity supply to arrive at their decision. Further, the Government of India will also provide all assistance to this Committee.

Re: Undergrounding of Existing and Future Overhead Powerlines

- In the case of existing overhead powerlines, the SC has directed the Rajasthan and Gujarat Government to take immediate steps to install bird-divertors.
- Further, in respect of the existing overhead powerlines, for all the future cases of installation of the transmission lines, a feasibility study will be conducted for the power lines to be laid underground. In all such cases where undergrounding of power lines is feasible, steps shall be taken to lay the transmission line underground.
- In the event, for the powerlines to be laid in the future, if the technical feasibility report indicates that undergrounding of the overhead powerlines is not feasible, and the same is also ratified by the Committee, installation of the bird-diverters will be a condition attached in the contract to be entered with Generating Companies (GENCOs). Insofar as, the cost incurred in the said process is concerned, the Rajasthan and Gujarat Government will work out a strategy and the Respondents No. 1 to 4 i.e., Union of India will aid in this regard. Further, it will be open to the government to muster the resources in accordance with law. In cases where GENCOs are required to bear the additional amount qua production cost, it will be open to regulate the manner in which such cost will be mitigated in accordance with the contractual terms.
- SC has further directed the Rajasthan and Gujarat Government, that while arranging to lay the powerlines underground, the feasibility of the powerlines which is not in doubt shall proceed with the work right away. However, in cases where it is found that there are issues relating to feasibility, the matter shall be referred to the Committee with all relevant material and particulars. The Committee shall assess the matter and arrive at a conclusion qua undergrounding of powerlines. Based on the report to be rendered by the Committee the further actions shall be taken.
- SC has further directed that all the existing and future low voltage powerlines falling under Priority and Potential areas will be laid underground. The high-voltage powerlines in Priority and Potential areas, more particularly the powerlines as indicated in Order will be converted into underground powerlines.
- While considering the cases where overhead powerlines exist in the Priority and Potential areas as on the date of this Order i.e., April 19, 2021, SC observed that the bird-diverters must be immediately installed on such powerlines. Further, the SC has directed the Rajasthan and Gujarat Governments to convert the overhead electric cables into underground power lines, wherever feasible, within one year and till such time bird diverters must be hung from existing powerlines.

Re: Mobilization of Financial Resources

- Inviting attention of each electricity utility engaged in the generation of power, to bear the cost of undergrounding of the power lines under Section 135 of the Companies Act, 2013, which imposes Corporate Social Responsibility obligation on such entities to save the ecosystem.
- A mechanism can be developed to raise money in accordance with the Section 3 to 6 of the Compensatory Afforestation Act, 2016, which provide for utilisation of the National and State funds for measures to mitigate threats to wildlife.

Satya Maharshi Power Corp Ltd v. A. P. TRANSCO & Ors

APERC order dated April 12, 2021 in O.P.No.18 of 2019

Background facts

- The petitioners were three Power Generation Companies, namely (i) Satya Maharshi Power Corp Ltd (ii) SLS Power Ltd (iii) Sree Venkata Sreedevi Power LLP (Petitioners) who had established certain power projects for supplying power generated to A.P. TRANSCO under respective PPAs which were duly approved by the Commission under Section 21 of A.P. Electricity Reforms Act, 1998.
- By an order from the Divisional Engineer of APTRANSCO, the petitioners were directed to back down Bagasse, Biomass, Municipal Solid Waste and Industrial Waste Generation Plants with immediate effect, following which the petitioners had requested the concerned Superintending Engineers to withdraw the orders for they seemed to run contrary to the directions of the Commission.

- The Petitioners filed 'Original Petitions' under Section 86(1)(f) of Electricity Act 2003 to direct Discom to pay fixed costs on the respective deemed generation rates from June 9, 2017 to July 18, 2017 at 80% PLF and for damages incurred during the period of stoppage of Petitioners' companies with interest at 18% p.a.

Issue at hand

- Whether the Petitioners were entitled to claim relief by way of fixed claims/compensation if they suffered losses due to stoppage of power generation, as was directed by the Respondents?

Decision of the Commission

- The Commission held that the Petitioners could not be provided any fixed claim/compensation even if they suffered losses after they were directed to stop power generation. The reasons for it were iterated as hereunder:
 - Section 32 of the Electricity Act provides the functions of SLDC which include carrying out Grid Control Operations and despatch of electricity as per the Grid Standards and the State Grid Code.
 - Section 33 empowers SLDC to issue directions and exercise supervision as deemed fit by them for ensuring maximum efficiency in operation of Power System. Also, Section 33(2) specifies that *'Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre under sub-section (1)'*.
 - In light of the above sections, it was opined that the SLDC had no option but to comply scrupulously with the directions of Chief Engineer, and therefore their action of issuing direction to the petitioners to Bagasse, Biomass, Municipal Solid Waste and Industrial Waste Generation Plants with immediate effect stands justified.
- Moreover, according to the Commission, this action by SLDC stood justified in view of the low demand and high frequency in the Grid, which required immediate halt in generation of power.
- Thus, the Commission of the view that the petitioners could not be granted any relief in this respect and therefore the petition was disposed off accordingly.



Our viewpoint

The APERC, through this judgment upheld wide ambit of powers that are exercised by SLDC (and its authorities) and showcased a stricter interpretation of the Electricity Act, 2003; thereby applying literal construction while holding their decision. Not only does this case outshine the power vested in the Regulatory Authorities as have been stipulated in the Act, but also this judgment recognizes the stern actions that may be taken by the SLDC if they deem it fit in lieu of maintaining maximum efficiency in the Power industry circumscribed within the State.

Power Exchange India Ltd

CERC Order dated March 19, 2021 in Petition No. 228/MP/2020

Background facts

- The present Petition has been filed by the Petitioner under Regulation 6 and 7 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (**Power Market Regulations**) seeking approval for introduction of Green Term-Ahead Market (Renewable Energy) Contracts (**GTAM Contracts**) on its platform.
- The Petitioner has proposed to introduce GTAM Contracts on its platform to provide avenues to renewable energy generators for sale of renewable energy through PXIL platform and obligated entities to fulfil their Renewable Purchase Obligations (RPOs).
- The Petitioner under the present Petition has proposed to introduce GTAM through the following contracts:
 - Green Intra Day Contracts
 - Green Day Ahead Contingency Contracts
 - Green Weekly Contracts
 - Green Any Day Contracts
- The non-solar segment shall comprise of selling entities that generate electricity from wind, small hydro, biomass (bagasse) co-generation, biomass (non-bagasse) cogeneration and waste to energy.
- The Petitioner has further proposed the following eligibility conditions for the buyers and sellers to participate in the GTAM Contracts:
 - Solar power plants shall be eligible to participate in solar sessions of Green Intra Day Contract, Green Day Ahead Contingency Contract, Green Weekly Contract and Green Any Day Contract.

- Non-solar power plants shall be eligible to participate in non-solar sessions of Green Intra Day Contract, Green Day Ahead Contingency Contract, Green Weekly Contract and Green Any Day Contract.
 - The nodal RLDC/SLDC shall issue NoC/ standing clearance mentioning the type (solar or non-solar) of RE plant.
 - Eligibility of selling entity shall be ascertained at the time of registration at the Power Exchange based on NoC/ standing clearance issued by nodal RLDC/SLDC as applicable.
 - The buyers comprising of distribution licensees and open access consumers shall be issued obligation report mentioning the quantum of green energy purchased, which shall then be helpful for buyer in meeting their RPO.
- On the basis of the above, the Petitioner filed the present Petition before CERC for seeking approval for introduction of GTAM Contracts, as mentioned above, on its platform

Issue at hand

- Whether proposal made by Petitioner is in terms of existing laws and whether it should be allowed?

Decision of the Commission

- CERC after considering the proposal made by the Petitioner and the objections raised by various stakeholders, while keeping in mind the betterment and increase in growth of the RE trading market sector, has approved the GTAM Contracts proposed by the Petitioner.
- However, CERC in regard to the timelines of the contract has directed the Petitioner to ensure that the delivery of power under Green Intra Day Contracts and Green Contingency Contracts shall be subject to the condition that their delivery period does not overlap with the specified period of delivery of the 'Real Time Market' as stipulated in Regulation 2(i)(o) of Power Market Regulations.
- Further, w.r.t the scheduling of electricity, CERC has disallowed the proposal for allowing revisions to RE generators during the day or intimate the schedule on D-1 basis, considering that the same may require certain amendments/modifications to the existing regulations,.
- CERC has further held that the revisions in scheduling as well as intimation of schedule have to be done in accordance with the provisions of the existing open access regulations of the commission.
- CERC further held that the Fixed Rate for settlement of deviation on account of sale of power through open access by an RE generator to an obligated entity for meeting its RPO compliance shall be Average Power Purchase Cost (**APPC**) rate at the National level, as notified in terms of Regulation 5 of the DSM Regulations.
- On basis of the above, CERC allowed the proposal made by the Petitioner in the present Petition.



Our viewpoint

CERC while allowing the proposed GTAM Contracts has looked into and clarified various issues which the stakeholders may encounter while implementing / executing such contracts. CERC while keeping in mind the growth in the RE sector and various existing issues / difficulties being faced by the stakeholders in the existing trading market, which such a proposal may resolve, has allowed the contracts proposed by the Petitioner in the present Petition.

GMR Kamalanga Energy Ltd & Anr v. Dakshin Haryana Bijli Vitran Nigam Ltd & Ors

CERC Order dated March 22, 2021 in Petition No. 405/MP/2019

Background facts

- The present Petition has been filed by the Petitioner under Section 79 of the Electricity Act, 2003 read Article 10 of the PPA dated November 9, 2011 and Article 13 of the PPA dated March 12, 2009 for compensation due to Change in Law on account of levy of charges for transportation of fly ash and for evolving / devising a mechanism for grant of appropriate adjustment/compensation to offset financial impact on account of levy of such charges.
- The Petitioners are thermal power generators in the State of Odisha. The Petitioners on the earlier occasion have filed Petition No. 131/MP/2016 seeking relief towards levy of charge for transportation of fly ash pursuant to the Notification dated January 25, 2016 (Notification) issued by Ministry of Environment, Forest and Climate Change (**MoEF&CC**) under Change in Law provisions of the PPA. CERC vide its order dated February 21, 2018 has allowed levy of charges for transportation of fly ash as Change in Law event under the PPA and has directed the Petitioners to file a separate petition for determination of compensation.

- Pursuant to the aforementioned order, the Petitioners issued an open tender/bid documents on July 2, 2018 and awarded the contract for transportation of fly ash through competitive bidding process to Ashtech (India) Pvt Ltd and Samal Builders Pvt Ltd.
- Accordingly, the Petitioners have filed the present Petition before CERC for determination and seeking directions against the Respondent to compensate the Petitioner for the additional cost incurred by them pursuant to the happening of change in law event, in terms of the provisions of the PPAs.

Issue at hand

- Whether the Petitioners in terms of the provisions of the PPAs are entitled to the compensation amount as claimed in the present Petition?

Decision of the Commission

- CERC has allowed the cost paid to the transporters / contractors for transporting fly ash for first 100 kms. However, considering the fact, that as per the Notification, cost of transportation beyond the radius of 100 km and up to 300 km shall be shared between the user and the coal or lignite based thermal power plant equally, CERC has held that the Petitioners shall be entitled to receive only 50% of the claimed amount beyond 100 km radius from the Respondent DISCOMs.
- CERC further directed the Petitioners to furnish a copy of agreements entered into with transporters / contractors to the Respondents, along with invoices and tax challans, before seeking claimed amount from the DISCOMs.
- Further, CERC held that the costs shall be recovered from the DISCOMs in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per the applicable Tariff Regulations of the Hon'ble CERC or at actual, whichever is lower, for supply of electricity to the respective DISCOMs. Thus, CERC directed the Petitioners to furnish monthly regular and/or supplementary bill(s) along with the computations duly certified by the auditor to the Respondent DISCOMs. CERC directed Petitioners and the Respondent DISCOMs to carry out reconciliation annually.
- CERC has also allowed the Petitioners to claim 100% compensation towards GST paid on transportation cost incurred for transportation of ash up to a distance of 100 km and 50% compensation towards GST paid on the transportation cost incurred for transportation of ash beyond a distance of 100 km.
- With respect to carrying cost, CERC has allowed the Petitioners to claim carrying cost at the actual interest rate paid by the Petitioners for arranging funds.
- CERC has also devised a methodology / mechanism for recovery of future expenditure incurred on transportation of fly ash pursuant to the Notification, which will have to be adhered to by the parties.



Our viewpoint

The present order passed by CERC lays down the pathway to be followed by other electricity regulatory commissions for computing and devising the mechanism to compensate the power developers on account additional cost which they might be required to incur for transporting fly ash, as per the Notification.

NHPC Ltd v. Punjab State Power State Corp Ltd & Ors

CERC Order dated March 19, 2021 in Petition No. 369/MP/2018

Background facts

- The present Petition has been filed by the Petitioner under Regulation 31(6) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (**CERC Tariff Regulations**) for modification of Energy Charge Rate (**ECR**) and for recovery of under-recovered energy charges due to shortfall in energy generation for reasons beyond the control of the Petitioner during the FY 2016-17 in respect of Bairasiul Generating Station.
- The generating station of the Petitioner is under commercial operation since April 1, 1982 and the generating station has completed its useful life on March 31, 2017.
- The power generated from the generating station is being supplied to six bulk power-customers/beneficiaries/successor utilities in Northern Region. The approved annual Design Energy (**DE**) of the Generating Station is 779.28 MU and considering 1% auxiliary losses and 12% free power to home state, the saleable energy is 678.91 MU.
- The present Petition has been filed before CERC seeking recovery of shortfall in energy charges due to shortfall in generation as per Regulation 31(6)(b) of the CERC Tariff Regulations.

Issue at hand

- Whether the Petitioner is entitled to recover the shortfall in energy charges on account of shortfall in generation on account of uncontrollable factors as claimed in the present Petition?

Decision of the Commission

- CERC has analysed following uncontrollable factors due to which there was a short fall in generation:
 - Low inflows in comparison to the design inflows associated with design year.
 - Prolonged planned/forced outage of machines.
 - Inefficient operation of the plant (which may include low overall efficiency of turbine and generator, high auxiliary power consumption, high losses in water conductor system etc.).
 - Non-utilization of maximum power potential of actual inflows due to excessive spillage.
- CERC has in terms of Regulation 31(6) of the 2014 Tariff Regulations, the Design Energy for 2018-19 shall be modified to 531.61 MU (A1+A2-DE), considering the actual generation (A1) of 669.20 MU during FY 2016-17, actual generation (A2) of 641.69 MU during FY 2017-18, and DE of 779.28 MU, till the energy charge shortfall of INR 5.71 Ccrore for FY 2016-17 is recovered by the Petitioner after revising the ECR.
- After recovery of the shortfall of INR 5.71 Crore, the normal ECR for the year 2018-19 shall be applicable for the balance period. Further, the difference in energy charge shortfall to be recovered for the FY 2016-17 which may arise after true up of tariff for the period 2014-19 shall be recovered directly by the Generating Station from the beneficiaries through supplementary bills after true-up.



Our viewpoint

CERC vide the present order has allowed claim made by the Petitioner for the modification of ECR and accordingly has allowed recovery of under-recovered energy charges due to shortfall in energy generation for reasons beyond the control of the Petitioner for the FY 2016-17 in terms of Regulation 31(6) of the CERC Tariff Regulations.

NTPC Ltd v. Eastern Regional Power Committee

CERC Order dated March 24, 2021 in Petition No. 80/MP/2021

Background facts

- This Petition was filed by under Regulation 8 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (**CERC Connectivity Regulations**) for seeking extension of time for interchange of power of Unit-I (660 MW) of Barh Super Thermal Power Station, Stage-I (3X660 MW) (**Project**) beyond six months from the date of initial synchronization up to September 25, 2021.
- The Petitioner in the present Petition has sought extension of time based on the fact that it was unable to commission one of its unit due to the following reasons:
 - Restriction on foreign travel due to the current pandemic of Covid-19, due to which the required experts of OEM were unable to travel to India.
 - Covid-19 positive cases at the project site further restricted the construction process.

Issue at hand

- Whether extension to inject infirm power into the grid, as sought under present Petition, is permissible?

Decision of the Commission

- CERC after taking into consideration the difficulties experienced by the Petitioner while commissioning the Project, has allowed the extension of time under Regulation 8(7) of the CERC Connectivity Regulations as sought by the Petitioner under the present Petition for injecting infirm power into the grid for commissioning tests (including full load test of Unit-I) up to September 25, 2021 or actual date of commercial operation, whichever is earlier.
- Further, CERC in the present order has clarified that extension of time granted to the Petitioner shall not automatically entitle the Petitioner for IEDC/IDC for the delay in declaration of COD from the SCOD. The same will be decided in accordance with the relevant provisions of the Tariff Regulations.



Our viewpoint

CERC has considered the claims of the Petitioner and allowed extension of time as sought by the Petitioner, in terms of Regulation 8 (7) of the CERC Connectivity Regulations. However, it will be interesting to see the stance which will be adopted by CERC in the future considering its present finding that the Petitioner will not automatically be entitled for IDC/IEDC on account of delay in achieving COD.

Extension of Pilot on Security Constrained Economic Dispatch (SCED)

CERC Order dated March 31, 2021 in Petition No. 03/SM/2021

Background facts

- The Commission vide its suo motu Order dated January 31, 2019 in Petition No. 02/SM/2019, directed Power System Operation Corporation (**POSOCO**) to implement a pilot on Security Constrained Economic Dispatch (**SCED**) w.e.f. April 1, 2019, for thermal Inter-State Generating Stations. The Commission extended the pilot on SCED up to March 31, 2020 vide its order dated September 11, 2019 in Petition No. 08/SM/2019; up to May 31, 2020 vide order March 23, 2020 in Petition No. 01/SM/2020; and up to March 31, 2021 vide order dated April 18, 2020 in Petition No. 08/SM/2020.
- Salient features of the SCED framework given vide order dated 18.04.2020 in Petition No. 08/SM/2020 are as follows:
 - SCED pilot shall be open to all generating stations that are willing to participate, including the generating stations owned by the State and having capabilities to communicate with Regional Load Despatch Centers (**RLDCs**)/ National Load Despatch Center (**NLDC**); generating stations whose scheduling is done by RLDCs; and State-embedded generating stations whose scheduling, metering, accounting, and settlement is in place and whose scheduling related information exchange can be enabled through the SLDC interfacing with the concerned RLDC/ NLDC. Scheduling for those generators that are done through SLDC, shall continue to be done by the respective SLDC while increment/ decrement instructions under SCED shall be communicated from NLDC/RLDCs to the respective SLDC.
 - The schedules of the States/ beneficiaries shall not be changed on account of SCED and the discoms/beneficiaries shall continue to pay the charges for the scheduled energy directly to the generator as per the existing practice. For any increment in the injection schedule of a generator due to SCED, the generator shall be paid from the National Pool Account (SCED) for the incremental generation at the rate of its variable charge. For any decrement in the schedule of a generator due to SCED, the generator shall pay to the aforesaid National Pool Account (**SCED**) for the decremental generation at the rate of its variable charge after discounting heat rate compensation due to part-load operation as certified by respective Regional Power Committees (**RPCs**) in case of regional entities and appropriate authority in case of other generators.
 - Any incremental change in schedule on account of optimization shall not be considered for incentive computation for the generating stations; deviation in respect of such generators shall be settled with reference to their revised schedule, and any increment or decrement of generation under the SCED shall not form part of RRAS.
 - Generators already participating in the SCED pilot shall continue to participate in the pilot. Other generators willing to participate in the extended period shall be required to provide a one-time consent for participation in the SCED pilot. Once the consent is communicated to POSOCO, it will be mandatory for the generator to participate in the SCED pilot for a minimum period of one month. Such generators shall declare their variable charge upfront, similar to the existing SCED generators participating in the pilot.
 - The generators shall declare their variable charge upfront to POSOCO, along with the technical, operational, and other parameters as required by NLDC/ RLDC/RPCs.

Issue at hand

- Whether the terms pertaining to SCED pilot for the for thermal Inter-State Generating Stations as mentioned in order dated April 18, 2020 in Petition No 08/SM/2020 are eligible to be extended?

Decision of the Commission

- It is evident that SCED has helped gain experience in the scope of optimisation at the ISGS level and has proved to be an important tool in optimising the available resources in the power system to reduce system cost.
- CERC noted that pan-India lockdown for containment of Covid-19 had an impact on SCED pilot as a significant portion of generation capacity went under reserve shut down due to demand reduction. The Commission observes that cost saving in SCED pilot has reduced in 2020 as compared to 2019. However, the cumulative savings of INR 1624 crores in generation cost from start of the SCED pilot in April 2019 up to January 2021 is significant.
- CERC extended the implementation of the SCED pilot till September 30, 2021, on the same terms as contained in the order dated April 18, 2020 in Petition No. 08/SM/2020.
- CERC also directed POSOCO to apprise CERC on the operation of the SCED on the monthly basis so that CERC can carry out any modification, as required. The CERC also directs POSOCO to submit periodic detailed feedback report covering all the aspects.



Our viewpoint

CERC recognised the challenges faced in implementation of the expanded SCED pilot as a result of Covid-19 pandemic and held that it would be prudent to further extend the SCED pilot and gain more insights on different aspects related to optimal scheduling and despatch across multiple market avenues.

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