

# PROJECTS, ENERGY & INFRASTRUCTURE

## MONTHLY NEWSLETTER

### JUNE 2022



# LEGAL & POLICY UPDATES



## In this Section

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Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2022

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## Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022

- The Ministry of Power, Government of India (**MOP**) on June 06, 2022 notified the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 (**REOA Rules**), which will be applicable for generation, purchase and consumption of green energy as defined therein, including the energy from Waste-to-Energy plant(s). Consumers except captive consumers will be eligible for green energy open access if they have a contracted demand or sanctioned load of 100 kW or more. Some of the salient aspects of REOA Rules are:
  - **Renewable Purchase Obligation (RPO)**
    - The REOA Rules have introduced a uniform renewable purchase obligation on all obligated entities in area of a distribution licensee. Any entity may opt to generate, purchase and consume renewable energy as per its requirements by one or more of the following methods:
      - There is no capacity limit for installing power plants from renewable energy sources by entities for their consumption. Such projects may be set up at any location in India and power shall be transmitted using open access.
      - By procuring renewable energy through open access from any developer either directly or through a trading licensee or power markets.
      - Any entity may purchase green energy either up to a certain percentage of the consumption or its total consumption. The entity may place a requisition for this with its distribution licensee, which shall procure such quantity of green energy and supply it. The consumer will have the flexibility to give separate requisitions for solar and non-solar. The green energy purchased from the distribution licensee or renewable energy sources other than the distribution licensee above the RPO target of the obligated entity will be counted towards the RPO compliance of the distribution licensee.
      - By consuming green energy from captive power projects.
      - The obligated entity can also meet its RPO by purchasing green hydrogen or green ammonia.
  - **Nodal Agency and Applications for Green Energy Open Access**
    - All applications for open access to green energy will be allowed by the nodal agency within fifteen days. Reasonable conditions such as the minimum number of time blocks, which should not be more than twelve-time blocks, for which the consumer shall not change the quantum of power consumed through open access may be imposed so as to avoid high variation in demand to be met by the distribution licensee.

- The REOA Rules stipulate that a nodal agency will be appointed by the Central Government to set up and operate a single window green energy open access system for renewable energy. The Central Nodal agency shall set up a centralised registry for all Green Energy Open Access consumers and all the applications related to green energy open access shall be submitted on the portal set up by the said the Central Nodal Agency and these applications shall get routed to the concerned nodal agency notified by the Appropriate Commission for grant of green energy open access.
- The Appropriate Commission shall notify the appropriate Load Despatch Centre as the nodal agency for grant of green energy open access for short term, to be defined by the Appropriate Commission, and the State or Central Transmission Utility, as the case may be.
- The appropriate commission will notify the appropriate Load Despatch Centre as the nodal agency for grant of green energy open access for the short term, and the State or Central transmission utility as the nodal agency for grant of green energy open access for medium and long term.
- **Banking**
  - Banking will be permitted at least every month on payment of charges to compensate additional costs to the distribution licensee, and the appropriate commission will determine the applicable charges.
  - The permitted quantum of banked energy by the green energy open access consumers will be at least 30% of the total monthly electricity consumption from the distribution licensee.
- **Charges to be levied for Open Access**
  - The cross-subsidy surcharge (**CSS**) for the open access consumer purchasing green energy will not be increased by more than 50% of the surcharge determined for the year in which open access has been granted for twelve years from the operation of the generating plant.
  - If power produced from a waste-to-energy plant is supplied to the open access consumer, the CSS and additional surcharge (**AS**) will not apply. CSS and AS will not be applicable if green energy is utilized to produce green hydrogen and green ammonia.
  - The distribution licensee would give green certificates on a yearly basis to the consumers for the green energy on a request beyond the renewable purchase obligation.
  - The appropriate commission may introduce the concept of rating the consumer of the distribution licensee based on the percentage of green energy purchased.
- **Procedure for grant of open access**
  - Within 60 days of commencement of the REOA Rules, the nodal agency should prepare a common application format for the green energy open access in consultation with the Forum of Regulators.
  - The concerned nodal agency will approve the applications within 15 days, failing which it will be deemed to have been approved subject to the fulfilment of the technical requirements as specified by the appropriate commission.
  - Short-term and medium-term open access will be allowed if sufficient spare capacity is available in the transmission system without any augmentation. In contrast, the transmission system may be augmented if required for long-term open access.

## Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2022

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- Central Electricity Regulatory Commission (**CERC**) on June 11, 2022 issued the Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2022 (**Draft Amendment Regulations**) through which it has proposed certain amendments in the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (**Principal Regulations**).
- CERC has invited comments/suggestions/objections from the stakeholders and interested persons and the same have to be sent on or before July 11, 2022. These amendments shall come into effect from such date as may be notified by CERC.
- Some important amendments proposed are as under:
  - Under the Principal Regulations, the Yearly Transmission Charges (**YTS**) were to be shared by drawee Inter-State Transmission System (**ISTS**) customers of the receiving region and designated ISTS customers with untied Long-Term Access (**LTA**) in the receiving region, in proportion to the quantity of LTA plus Medium-Term Open Access (**MTOA**) and untied LTA, respectively. As per the amendment proposed, YTC will be shared by drawee ISTS customers of the receiving region in proportion to their quantity/quantum of General Network Access (**GNA**).
  - Under the Principal Regulations, the Short-Term Open Access (**STOA**) rate (in paise/kWh) for each billing month was to be calculated as  $\frac{\text{Transmission charges of the state for the billing month}}{7200 \times \text{the quantity, in MW, of long-term access plus medium-term open}}$



access of the state for the corresponding billing period). However, through the proposed amendment, STOA has been substituted by Temporary-GNA (**T-GNA**) for which the rate (in ₹/MW/block) will be published for each billing month by the implementing agency, which will be calculated state-wise as: Transmission charges for GNA for entities located in the state, for the billing month, under the first bill  $\times 1.10 / (\text{number of days in a month} \times 96 \times \text{GNA quantity, in MW, for the corresponding billing period})$ .

- Under the Principal Regulation, aforesaid charges were to be paid by generating stations located in the state, as per the last published rate. As per the proposed amendment, the same will be payable by drawee entities located in the state, as per the last published T-GNA rate for the state.
- Under the Principal Regulations, when the generating station's Commercial Operation Date (**COD**) was delayed and the Associated Transmission System (**ATS**) had achieved its commercial operation, it was required to pay transmission charges corresponding to the LTA granted to such generating station. As per the proposed amendment, if the COD of the connectivity grantee is delayed and the ATS has achieved commercial operation, the connectivity grantee shall have to pay the YTC corresponding to connectivity capacity which has not yet achieved COD.
- Under the Principal Regulations, when LTA is granted to a generating station on existing margins and the COD of the generating station is delayed, then the generating station will pay transmission charges at 10% of the transmission charge per MW for the state where it is located, corresponding to the capacity that is delayed. According to the proposed amendment, in such cases the connectivity grantee shall, corresponding to the capacity that is delayed, pay transmission charges from the start date of such connectivity at the rate of Rs. 3000/MW/month.
- Under the Principal Regulations, generating stations drawing start-up power from ISTS had to pay transmission charges at the rate of the transmission deviation in the state where they were located. As per the proposed amendment, Regional Entity Generating Stations (**REGS**), (a) drawing start-up power or (b) drawing power during shutdown after COD or (c) for REGS drawing power during non-generation hours or (d) injecting infirm power, through ISTS, shall pay transmission charges for injection or drawl beyond its T-GNA, at the rate of transmission deviation rate for the State in which they are located.
- The proposed amendment also provides that the Implementing Agency shall, within 45 days of the notification of proposed amendment, publish the revised detailed procedures for implementation of the provisions of the said amendment after stakeholder consultation.

## CERC (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022

- On June 7, 2022, the CERC notified the CERC (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 (**GNA Regulations, 2022**) with the objective of providing a non-discriminatory regulatory framework for granting connectivity to open access to the Inter State Transmission System (**ISTS**).
- The salient aspects of GNA Regulations 2022, are:
  - The GNA Regulations, 2022 have designated Central Transmission Utility (**CTU**) as the nodal agency for grant of connectivity to the ISTS (**Connectivity**) or for General Network Access (open access to the ISTS) (**GNA**), the Regional Load Despatch Centre (**RLDC**) or the National Load Despatch Centre (**NLDC**) as the nodal agency for Temporary General Network Access (**T-GNA**) for bilateral transaction and collective transactions respectively. NLDC is also responsible for implementation and operation of National Open Access Registry (**NOAR**).
  - Application for grant of Connectivity or GNA shall be made online to the nodal agency (CTU) with a fee of INR 5 lakh. Within a week of receiving such applications, CTU will inform an applicant of any deficiencies in their application which must be cleared by such applicant within a week thereof, failing which the application would be closed and 20% of the application fee would be forfeited. Within 15 days, the remaining fee will be refunded.
  - The entity applying for Connectivity to ISTS shall have an agreement with the said generating station to share its electrical system and / or DTL(s). The following entities are eligible for connectivity:
    - Generating Station(s) including Renewable Energy Generator(s) (**REG**), with or without Energy Storage System (ESS), with an installed capacity of 50 MW and above individually or aggregate installed capacity of 50 MW and above through a Lead Generator or Lead ESS
    - Captive generating plant with capacity for injection to ISTS of 50 MW and above
    - Standalone ESS with an installed capacity of 50 MW and above individually or with an aggregate installed capacity of 50 MW and above through a Lead ESS or Lead Generator
    - Renewable Power Park Developer

- REGs or standalone ESS with an installed capacity of 5 MW and above applying for Connectivity to ISTS through the electrical system and dedicated transmission lines (DTL), if any
- The following entities are eligible for GNA and T-GNA:
  - STU on behalf of intra-State entities including distribution licensees
  - A drawee entity connected to intra-State transmission system
  - A distribution licensee or a Bulk consumer, seeking to connect to ISTS, directly, with a load of 50 MW and above
  - Trading licensees engaged in cross border trade of electricity in terms of the Cross Border Regulations
  - Transmission Licensee connected to ISTS for drawl of auxiliary power
  - Entities not covered above, which at the time of coming into force of the GNA Regulations, are connected to ISTS or for whom Connectivity granted under 2009 Connectivity Regulations has become effective, shall be eligible for applying for GNA to the ISTS for the quantum equal to the quantum of Connectivity
- The GNA Regulations require the applicant to submit a Connectivity bank guarantee in three parts: Conn BG 1 of INR 50 lakh, Conn BG 2 based on the number and voltage level of terminal bays requested for connection, and Conn BG 3 of INR 2 lakh/MW for existing ISTS. These have to be submitted within 1 month of in-principle grant of Connectivity.
- Final grant of Connectivity shall be intimated within 15 days of the receipt of Conn BG 2 and Conn BG 3 thereafter a Connection Agreement shall be executed between CTU and the applicant entity within 30 days subject to providing relevant data to CTU. Conn BG 1 will be returned within 30 days of the commercial operation of the connectivity grantee. Conn BG 2 and Conn BG 3 shall be returned within five parts over five years as per the generation capacity declared by the connectivity grantee.
- CTU shall grant GNA within two months after successful application for the same. Additional GNA would be based on available transmission capacity or on a pro-rata basis.
- Regulation 18 provides for deemed grant of GNA for State and other entities (listed in Annexure-I). Further for long-term access and medium term access that have become effective, GNA will be deemed to have been granted until it expires whereas for short-term open access, it will be treated as T-GNA under exigency application category.
- Curtailment of power already scheduled is allowed in case of transmission constraints or in the interest of grid security by the RLDC. Power under T-GNA would be curtailed before power under GNA.
- Relinquishment of GNA connectivity in full or part can be granted with a notice of 30 days to appropriate nodal agency. Upon such relinquishment, Conn BG 1 and Conn BG 3 shall be encashed while Conn BG 2 encashment will depend on status of allotted terminal bays.

# RECENT JUDGMENTS



## In this Section

Chhattisgarh State Power & Distribution Company Ltd v. CSERC & Ors

Indian Wind Power Association (Northern Region Council) (IWPA) v. Ministry of Power (MOP) & Ors

West Bengal State Electricity Transmission Company Ltd v. West Bengal Electricity Regulatory Commission

Sprng Renewable Energy Pvt Ltd (SREPL) v. CTUIL & Anr

Indian Energy Exchange v. Power Systems Operation Corporation  
AND  
Power Exchange India Limited v. Power Systems Operation Corporation

ACME Deoghar Solar Power Pvt Ltd & Ors v. PGCIL & Ors & Batch

Gujarat Urja Vikas Nigam Ltd v. Adani Power (Mundra) Ltd

Madhya Pradesh Urja Vikas Nigam Ltd v. MP Power Management Co Ltd

CLP Wind Farms India Pvt Ltd (now Apraava Renewable Energy Pvt Ltd) v. MPPMCL

Tata Power Renewable Energy Ltd v. Tata Power Company Ltd- Distribution

## Chhattisgarh State Power & Distribution Company Ltd v. CSERC & Ors

**Supreme Court of India** | Judgment dated May 12, 2022 in Civil Appeal Nos. 2578, 2579, 2868, 2941 and 2942 of 2008

### Background facts

- Dispute pertains to a 13 MW captive generation plant set up by Sri Bajrang Power and Ispat Ltd (SBPIL)
- SBPIL filed a petition before Chhattisgarh State Electricity Regulatory Commission (CSERC) seeking:
  - Open access
  - Wheeling of power through transmission system of Chhattisgarh State Power Distribution Company Limited (CSDCPL) for captive usage by Sri Bajrang Metallica Pvt Ltd (SBMPL), which is a sister concern of SBPIL and holds 27.6% of the equity shares of SBPIL.
- SBPIL sought to supply 51% of the total power generation to SBMPL i.e., 54 MU per annum and 14.16% of the total power generation was to be consumed by SBPIL itself.
- CSPDCL protested and contended that even though SBPIL holds back more than 72% shares in SBPIL itself, its self-consumption is only 14.16%, whereas SBMPL's consumption is 57.87% and it is not proportionate to the ownership of the power plant.
- The CSERC held as follows:
  - Allowed the petition and held SBPIL entitled to supply electricity to SBMPL
  - Supply of electricity to SBMPL by SBPIL to be treated as 'Own Consumption' as per Section 9 read with Section 2(8) of the Electricity Act, 2003 (Act) read with Rule 3 of the Electricity Rules 2005 (Rules)
  - Conditions imposed:
    - Consumption by captive users not to be less than 51%
    - If consumption less than 51%, supply to be treated as per Rule 3(2) - Generating Company
    - CSDCPL entitled to charge for wheeling of electricity and other charges
    - SBPIL may execute agreement with CSDCPL for supply of remaining power
- This Order of the CSERC was challenged before the Appellate Tribunal for Electricity (APTEL), wherein APTEL dismissed these appeals on Dec 06, 2007. Aggrieved by the same, CSPDCL moved the Supreme Court.

### Issue at hand

- Whether the open access for transmitting electricity from SBPIL to SBMPL would be for own use or not?

## Decision of the Court

- The Supreme Court observed that:
  - As per the rules, for a power plant to qualify as a captive generating plant, first requirement is that not less than 26% of the ownership is held by captive users and the second requirement is that not less than 51% of the aggregate electricity generated on annual basis is for captive use.
  - First requirement is fulfilled as 27.6% shares of SBMPL held by SBPIL and second requirement also met since joint consumption by SBIPL and SBMPL is more than 51%.
  - Reference to ‘Captive Generation’ in National Electricity Policy, 2005 was also made, and it was held that the policy as issued under Section 3 of the Act has a statutory flavour and is in terms with Section 2(8) and Section 9 of the Act.
  - Interpretation which advances the object and purpose of the Act has to be preferred.
- In light of the above, the Supreme Court dismissed the Appeals.



### HSA Viewpoint

The Court has held that Rule 3 of Electricity Rules, 2005 and the conditions stipulated therein for categorization as a ‘captive generating plant’ would be applicable to even an association of corporate bodies setting up a captive power plant.

## Indian Wind Power Association (Northern Region Council) (IWPA) v. Ministry of Power (MOP) & Ors

Delhi High Court | Order dated June 03, 2022 in Writ Petition No. W.P.(C) 9152/2022 & CM APPL. 27531/2022

### Background facts

- The present petition had been filed by Indian Wind Power Association (Northern Region Council) (IWPA) (Petitioner) against the MOP & Ors (Respondents) challenging the validity of the new CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 (REC Regulations 2022) published by the Central Electricity Regulatory Commission (CERC) in the official Gazette on May 28, 2021.
- The Petitioner sought ad interim reliefs qua the said regulations and contended that the provision for floor price of the RECs has been arbitrarily removed from the REC framework in the latest regulations while highlighting the plight of its member renewable energy power generators (Generators), who had set up their wind power plants under the earlier REC framework.
- The primary contention of the Petitioner was that the REC trading should be done as per the prevailing REC Regulations 2010 as certain provisions of the REC Regulations 2022 are violative of the provisions of the Act.
- CERC submitted that the present petition is premature as the REC Regulations 2022, which the Petitioner sought to be impugned, has not been notified and, therefore, is not operative. The said regulations have been published but expressly states that they shall come into effect on the date as notified.
- The Petitioner, in anticipation that the CERC may determine the REC price as per the REC Regulations 2022, filed the present Writ Petition seeking interim relief in the form of stay on the REC Regulations 2022. The Petitioner further submitted that it would be fully satisfied if the present Petition is considered as a representation by CERC and an appropriate decision is taken by them accordingly. Petitioner’s apprehension was that the CERC may notify the regulations without considering Petitioner’s representation and would eventually cause humongous loss to the Petitioner.

### Issue at hand

- Whether the present Petition sustains in light of the fact that the Regulations challenged therein are yet to come into effect?

### Decision of the Court

- The Delhi High Court, in light of the submissions of the parties, disposed of the Writ Petition and directed CERC to consider the present Petition as a representation (keeping in view the submissions of the Petitioner) and to subsequently communicate its decision to the Petitioner within a period of six weeks from the date of the Order. Further, CERC was directed not to notify

the REC Regulations 2022 in the meantime. No views on merits have been expressed by the Delhi High Court, and the rights and contentions of the parties were reserved.



HSA  
**Viewpoint**

This Order comes as a much-needed relief to the members of the Petitioner association, who would have suffered substantial losses if the REC trading took place according to the REC Regulations 2022 brought into force by the CERC. The order follows the settled principles of natural justice that the appropriate Commission has to consider the submissions/views of the stakeholders before notifying regulations.

## West Bengal State Electricity Transmission Company Ltd v. West Bengal Electricity Regulatory Commission

APTEL | Judgment dated May 26, 2022 in Appeal Nos 20 and 21 of 2015

### Background facts

- West Bengal State Electricity Regulatory Commission (**WBERC**) passed Order dated June 10, 2014 in Review Petition No. APR (R)-1/12-13 (**Impugned Order 1**) reviewing its own Order dated October 19, 2012 in Case No. APR-26/11-12 and Order dated September 09, 2013 in Case No. APR-32/12-13 (**Impugned Order 2**) deciding the Tariff for West Bengal State Electricity Transmission Co Ltd (**WBSETCL**). Aggrieved by these Orders, the WBSETCL approached the Appellate Tribunal for Electricity (**APTEL**) in Petition Nos 20 and 21 of 2015 challenging Impugned Order 1 and Impugned Order 2.
- By way of these Appeals, WBSETCL challenged the following components of the Tariff determined by WBERC:
  - Rate of interest on working capital
  - Incentive
  - Interest on normative loan
  - Interest on normative working capital
  - Advance against depreciation
- During the course of hearing before the APTEL, WBERC conceded to revisit the claims of WBSETCL on issue of interest on normative loan and interest on normative working capital. On the remaining issues, WBSETCL submitted as follows:
  - The rate of interest has been wrongly applied as 7.36% instead of the actual Short-Term Prime Lending Rate of the State Bank of India at 9.25% as per Regulation 4.6.5.1 of the WBERC (Terms and Conditions of Tariff) Regulations, 2007
  - The WBERC had wrongly denied incentives on performance above target availability and then refused to consider WBSETCL later submissions evincing the same
  - The actual loans taken during year 2011-12 were not considered by the WBERC when determining the advance against depreciation
- Additionally, WBERC submitted that WBSETCL in Appeal No. 20 was required to challenge the original order dated October 19, 2012 in view of the fact that once the review is dismissed, the right of appeal accrues only in respect of the original order and not in respect of the order passed in review. Per contra, WBSETCL submitted that the Review Petitions have been filed on various issues, of which some of the issues have been considered by WBERC. Therefore, the main order is amended and the review order succeeds the main order which has been appropriately challenged before the APTEL.

### Issues at hand

- Whether the WBERC (State Commission) has erred in determining the rate of interest on working capital for FY 2010-11?
- Whether the State Commission had wrongly disallowed the incentives, amounting to INR 175.64 lakh, for performance above stipulated targets on the grounds of non-submission of documents?
- Whether the State Commission had wrongly calculated advance against depreciation without considering WBSETCL's claim of INR 4875.11 lakh?

### Decision of the Tribunal

- Upon consideration of the submissions of both parties, APTEL held as follows:
  - As per the decision of the Supreme Court in *DSR Steel Pvt Limited v. State of Rajasthan*, in case a Review Petition reverses/modifies the decree/order in the original petition, such an order forms a composite order which vacates the original order and which is then to be



considered for appeal. On this basis, the contention of WBERC was declined in favour of WBSETCL.

- The Tribunal held that interest on working capital in case there is no actual borrowings for the working capital during the year in question, will be at the interest rate equivalent to the Short-Term Prime Lending Rate of the State Bank of India (i.e., 9.25%) as per the applicable regulations. It was further stated that the State Commission is bound by its own regulations and could not have calculated interest rate at 7.36% based on average rate of interest payable by WBSETCL on the borrowings under the revenue head which have no nexus to the working capital requirement of WBSETCL.
- The Tribunal stated that the action of the State Commission to not allow WBSETCL to submit documents substantiating their claim for incentives under the relevant regulations was against the settled law that review jurisdiction is to be exercised not merely for apparent error but to avoid injustice and the resultant multifarious proceedings.
- In light of the fact that such documents were never sought by the State Commission before the filing of the original Petition and consequently were not considered in the subsequent Review Petition, the Tribunal agreed with the contentions of WBSETCL and stated that the State Commission should have allowed the review of the Order once such completed documents were placed before it.
- The State Commission had already agreed to consider afresh issues relating to interest on normative loan and interest on working capital and, therefore, the Tribunal directed that the issue of advance against depreciation, which depends on the aforesaid components, must also be remitted back to the State Commission for reconsideration.
- In light of the above findings the Tribunal was pleased to direct the State Commission to pass fresh and reasonable orders within four months on all the issues raised by the WBSETCL in these Appeals.



#### HSA Viewpoint

APTEL has applied the well settled principle of law that once a Review Petition has been allowed, an appeal from the same is maintainable before the APTEL. Further, APTEL has justifiably chosen to remand a matter back to the State Commission wherein the Bench has felt that certain components of Tariff could have received more detailed consideration.

## Spring Renewable Energy Pvt Ltd (SREPL) v. Central Transmission Utility of India Ltd (CTUIL) & Anr

CERC | Order dated May 23, 2022, in Petition No. 525/MP/2020

### Background facts

- Solar Energy Corporation of India Ltd. (SECI) vide RFS dated February 5, 2018, invited bids for setting up 2000 MW of Wind Power Projects in India. Upon notification of the RFS, Spring Energy Pvt Ltd (SEPL) participated in the bidding process, proposing to construct and commission a 300 MW Tranche-IV Project. SECI vide LOA dated June 1, 2018, intimated that SEPL had been selected as a Successful Bidder for implementing the Project. SREPL is a 100 % owned subsidiary of SEPL.
- Pursuant to the above, SREPL executed Power Purchase Agreement (PPA) dated September 9, 2018, with SECI, for developing a 300 MW wind power project, as per which original Scheduled Commercial Operation Date (SCOD) of the Project was February 28, 2020. SREPL sought extension of SCOD due to Force Majeure and Change in Law events and SECI vide multiple extensions extended and revised SCOD of the Project and the final SCOD of the Project has been extended by SECI until July 13, 2021, vide its letter dated August 2, 2021. Project has been fully commissioned on October 30, 2021.
- Long Term Access Agreement (LTAA) dated September 20, 2018 was entered into between SREPL and CTUIL to avail LTA of transmission utilities for transfer of 300 MW power from the Wind Farm on the target region basis in Northern Region. SREPL has been granted Long Term Access (LTA) for 300 MW on the existing transmission system with start date of LTA as November 30, 2019, as sought by the SREPL.
- SREPL filed the present Petition under Section 79 of the Act, read with Regulations 20 and 21 of the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations), read with Regulation 33A and Regulation 33B of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) and Regulation 111 and Regulation 112 of the CERC (Conduct of Business) Regulations, 1999 for resolving dispute arising on account of conflict between the SCOD under the PPA dated September 04, 2018 between SECI and SREPL and the date of operationalization of connectivity and LTA granted by Central Transmission Utility

(CTU) to SREPL and seeking appropriate reliefs with regard to exemption from payment of transmission charges, opening a Letter of Credit (LC) for PoC charges and quashing of the Default Notice issued by the CTU.

- SREPL sought an extension of start date of LTA in view of extension of SCOD granted by SECI until July 13, 2021. However, the CTU had already operationalized the LTA on November 30, 2019. Therefore, the issue is with respect to liability of transmission charges for the period between the start date of LTA i.e., November 30, 2019, to July 13, 2021, i.e., SCOD as extended by SECI.

### Issues at hand

- What shall be the date of commencement of LTA of SREPL?
- Whether the Petitioner can claim any relief on account of Force Majeure and Change in law faced by the Project as claimed by the Petitioner?
- Whether the MOP Orders dated February 13, 2018, January 15, 2021, and November 30, 2021, are applicable in the present case as claimed by Petitioner?
- What shall be the liability of Petitioner for payment of transmission charges for period before COD of its Project?

### Decision of the Commission

- The Central Electricity Regulatory Commission (**CERC**), in terms of the pleadings /submissions, held as under:

#### **Issue No. 1: Date of commencement of LTA of SREPL**

- The Petitioner had prayed to defer the operationalization of connectivity and LTA and to align the same with the revised SCOD under the PPA and to direct CTU to operationalize the connectivity and LTA in phases corresponding to the commissioned Project capacity.
- The CERC observed that as on the date of signing of LTA agreement with the start date of LTA as November 30, 2019, Petitioner was fully aware that its LTA start date is approximately three months prior to the SCOD of the Project. According to CTU SREPL was made aware that the transmission charges shall be applicable from the date of start of LTA, as sought by applicant, irrespective of the status of commissioning of generation project and the applicants, including SREPL had stated that they are aware of such liability towards payment of transmission charges.
- The CERC perused the relevant provisions of the RFS, PPA and LTA and observed that the same do not provide for any correlation between SCOD and date of operationalization of LTA.
- With regard to the contention of SREPL that it wanted to apply for a staggered LTA operationalization but had to opt for a single date on account of the fact that there was no such provision under the LTA application, the CERC observed that Connectivity Regulations neither debar the applicant nor impose any such conditions, rather it provides flexibility to the applicant to apply for any quantum of LTA and from any start date as per applicant's requirements.
- The CERC held that RFS/PPA and LTA Agreement are two entirely different and distinct agreements and the liabilities and obligations contained therein are also different. The obligation of the Petitioner arising out of the PPAs is independent of its obligation to meet the timeline which the Petitioner has sought under the LTA application and LTA Agreement. There is no reference of PPA clauses in the LTA Agreement and deferment of start date of LTA is provided neither in LTA Agreement nor in any Regulation. Therefore, the Petitioner cannot contend that CTU should have matched the SCOD in the PPA and the date of operationalization of LTA. It was the sole responsibility of the Petitioner to correctly assess and inform the correct start date of LTA. Therefore, SREPL's LTA stands operationalized on November 30, 2019.

#### **Issue No. 2: Deferment of commencement of LTA on account of Force Majeure and Change in Law**

- The CERC noted that contrary to SREPL's contention, SECI has denied that it has extended the SCOD considering events as Force Majeure or Change in Law and that SREPL has not even issued any notice under Article 11.5 of PPA for such events. Thus, in the opinion of the CERC, SREPL never invoked the provisions of Force Majeure.
- Clause 14.4 of TSA deals with the notification of event of force majeure event and according to Clause 14.4.1 of the TSA, SREPL was required to give notice to CTU as well as other party (all DICs in this case) within 7 days after the party knew of the commencement of event of Force Majeure.
- The CERC noted that SREPL did not comply with requirement of TSA under Clause 14.4.1 as SREPL neither issued any notice to any other parties nor did it do so within 7 days of the alleged event, as required under Clause 14.4.1 of the TSA.
- Therefore, the CERC held that in view of the fact that SREPL never invoked the provisions of Force Majeure and considering the finding that there is no linkage between obligations under

PPA and that under LTA Agreement, SREPL cannot claim any relief on account of Force Majeure.

**Issue No. 3: Applicability of MoP Orders dated February 13, 2018; January 15, 2021; and November 30, 2021**

- The said MOP Orders deal with waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy. The CERC observed that from the subject of the aforesaid orders, it is abundantly clear that waiver of transmission charges is on ‘electricity generated’.
- The CERC observed that the said MOP Orders are issued under paragraph 6.4(6) of the Tariff Policy, 2016 and the said paragraph clearly shows that no transmission charges are to be levied for the purpose of ‘sale’.
- The CERC noted that CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020 (**2020 Sharing Regulations**) clearly provide that waiver of transmission charges is for generation of electricity. The same cannot be read as providing relief from payment of transmission charges due to delay of the generation project.
- With regard to SREPL’s contention that, when extension is granted in COD, the commencement and period of LTA shall get extended accordingly and waiver should be granted, the CERC observed that the provision of Order dated January 15, 2021, referred to by SREPL i.e., paragraph 56, provides that for an entity which is provided extension of COD by the competent authority, LTA under waiver shall start from such COD date and waiver shall be applicable for the period as specified.
- Thus, the entire provision is for waiver of transmission charges after COD of the generating station and does not apply to a case wherein the generator has not declared COD and therefore SREPL is liable to pay transmission charges for the period between LTA commencement and COD.
- The CERC also held that reliance SREPL on the said Orders is misplaced because it is specifically mentioned in the Orders that these would be applicable prospectively and SREPL’s LTA has been operationalized much before on November 30, 2019.

**Issue No. 4: Liability of SREPL for payment of transmission charges for period before COD of its Project**

- The CERC held that SREPL shall be liable to pay transmission charges for the delay of its project in terms of the 2010 Sharing regulations and the 2020 Sharing regulations for the respective applicable period.
- For the period between the commencement of LTA and effective date of 2020 Sharing Regulations i.e., October 31, 2020, the transmission charges will be levied as per 2010 Sharing Regulations.
- The CERC noted that as per Regulation 8 of the 2010 Sharing Regulations, in case transmission elements are identified for a LTA grantee, it is liable to pay transmission charges under Regulation 8(6) of 2010 Sharing regulations prior to COD. However, in case no transmission elements are identified for LTA, Regulation 8(5) provides for levying of ‘Withdrawal Charges at the average withdrawal rate of the target region’.
- The CERC held that CTUIL is required to identify the associated transmission elements in such cases where LTA was granted on ‘existing transmission system’ for the purpose of levying transmission charges for delay. In cases where no transmission elements can be identified, for such cases Withdrawal Charges shall be applicable as per Regulation 8(5) of 2010 Sharing regulations.
- Further with regard to the transmission charges for the period between October 31, 2020, and COD, the CERC held that according to Regulation 13 of the 2020 Sharing Regulations, SREPL shall be liable to pay transmission charges corresponding to capacity that is delayed at the rate of 10% of transmission charge per MW for the State where such generating station is located.



**HSA  
Viewpoint**

CERC, after considering various clauses of PPA and TSA, has rightly held that CTU is not obligated to align the date of commencement of LTA with the SCOD. Further CERC has reiterated that the MoP Orders on subject of waiver are applicable only after COD and not before that. Further, CERC has rightly held that SREPL is liable to pay transmission charges till COD as per the respective Sharing Regulations.

# Indian Energy Exchange v. Power Systems Operation Corporation AND Power Exchange India Limited v. Power Systems Operation Corporation

CERC | Order dated June 07, 2022 in Petition No. 219/MP/2022 AND Petition No. 229/MP/2022

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## Background facts

- On October 26, 2018, the Ministry of Power constituted a committee on Efficient Regulation of Electricity Derivates to examine the technical, operational and legal framework for futures/forward and derivate contracts in electricity which submitted its report on October 30, 2019 with the following recommendations:
  - The Central Electricity Regulatory Commission shall regulate all Ready Delivery Contracts and Non-Transferable Specific Delivery (**NTSD**) Contracts as defined in the Securities Contracts (Regulation) Act, 1956 (**SCRA**) entered into by members of power exchanges
  - Commodity Derivates in electricity other than NTSD shall be regulated by Securities and Exchange Board of India (**SEBI**)
- Setting up of a Joint Working Group between SEBI and CERC
- SEBI and CERC basis the recommendations of the committee came to an agreement that CERC shall regulate all physical delivery based forward contracts whereas SEBI would regulate all financial derivatives.
- On October 06, 2021, the Hon'ble Supreme Court in Civil Appeals 5290-5291 of 2011 upheld this agreement arrived at between SEBI and CERC.
- The Indian Energy Exchange (**IEX**) and Power Exchange India Limited (**PEX**) presently offer Day Ahead Contracts, Intraday Contracts, Day Ahead Contingency Contracts, Real Time Contracts and Term Ahead Contracts for trading of electricity. It also offers exchange of Renewable Energy Certificates and Energy Saving Certificates. The present petition is being filed by IEX and PEX to introduce new type of contracts and change in delivery/trading timeline of contracts viz.:
  - IEX – fortnightly, Monthly, Quarterly, half yearly and yearly contracts as well as Any-Day contracts with delivery and trading timelines beyond 11 days.
  - PEX- Monthly contracts based on one, two and three months ahead basis and Any-Day contracts
- The Petitioners have, inter alia, given the following submissions to support the introduction of new markets and change the timelines of existing ones:
  - Currently, contracts are offered up to 11 days ahead, and participants of power exchanges enter into bilateral contracts in isolation for periods beyond 11 days. Such bilateral arrangements do not provide end-to-end service and lack risk sharing mechanism.
  - Allowing the power exchanges to offer contracts beyond 11 days will address these issues and provide price discovery, power scheduling, clearing and settlement in transparent and efficient manner.
  - This meet the demand of Distribution Companies who have been trying to use a judicious mix of long-term and short-term contracts to optimize their power procurement costs.
  - Months Ahead Contracts would operate under the provisions of the CERC (Open access in inter State Transmission) Regulations, 2008, CERC (Sharing of transmission charge and loss in Inter State transmission) Regulations, 2020 and Procedure for Scheduling Bilateral transactions.
  - The contracts would be subject to constraints in transmission system and real time curtailment by appropriate Load Despatch Centre.

## Issue at hand

- Approval for Introduction of Additional Term Ahead Contracts beyond 11 days at Indian Energy Exchange and Power Exchange India Limited.

## Decision of the Commission

- The CERC noted that the decision of the Supreme Court dated October 6, 2021 categorically observed the regulatory jurisdiction of the CERC in matters related to power exchanges. Accordingly, in the present matter, it held as follows:
- Regulation 25 of the CERC (Power Market) Regulations, 2021 stipulates the required details to be supplied to the CERC for approving a contract:
  - Type of contract
  - Price discovery and matching methodology proposed



- Timelines; commencement of bidding and duration of bidding session till delivery commences
- Delivery mechanism and delivery
- Risk management mechanism; margining and final price settlement mechanism
- Upon considering the Petitioners' submissions on the aforesaid details, CERC held as follows:
  - CERC held that there is need for a gradual approach in introducing new segments in a market as there may be low liquidity during the initial impact and the large number of proposed contracts may have overlapping effects, adversely affecting volume per contract.
  - Thus, approval was granted for the proposal to introduce monthly contracts, and modified timelines for daily and weekly contracts for pre-specified time blocks notified to the market participants well in advance in both Term Ahead Market and Green Term Ahead Market.
  - However, Approval was not granted for fortnightly contracts and variants of Any-Day and weekly contracts.
  - CERC approved Uniform Price Auction (renamed as 'Uniform Price Step Auction') for Daily, Weekly and Monthly Contracts stating its merits in terms of transparency and efficiency as a mechanism for price discovery. For Any-Day Single sided contracts, CERC noted that reverse auction should be used a price matching methodology.
  - CERC also approved delivery duration for such contracts as T+2 to T+90 days for daily contracts, TW+1 to TW+12 for weekly contracts, TM+1 to TM+3 months for monthly contracts, and T+2 to T+90 days for any day single-sided contracts, wherein T denotes the zero-day of trading, TW denotes the zero-week of trading and TM denotes the zero-month of trading.
  - CERC directed the Petitioners to abide by conditions stipulated for NTSD contracts for risk management. Further, CERC has stated that the contracts can be annulled or curtailed, without any transfer of positions, due to constraints in the transmission system or due to force majeure subject to the validation by the system operator and default mechanism of the power exchange.
- In light of the above, CERC directed as under:
  - The Petitioners to update their software and align its Business Rules, Rules and Bye-Laws as per the directions in this Order. The updated Business Rules, Rules and Bye must be put up on the Petitioners' website before commencement of new contracts. Within two weeks of this Order, the Petitioners must submit a compliance report of the same.
  - Power Systems Operation Corporation shall submit a report within three months from the date of introduction of the contracts as approved in this Order.



#### HSA **Viewpoint**

The CERC's jurisdiction to regulate power exchange is settled by the Supreme Court. The introduction of new contracts with varying lengths would provide more opportunities to market participants to strategize offtake of power through a mix of long-term and short-term contracts. Such flexibility has been well received as is evidenced from the positive feedback from the stakeholders on the proposal for such contracts. These markets will have to be updated as key regulations like GNA Regulations, Amendments to the Short Term Bidding Guidelines and Green Open Access Rules have been finalized.

## ACME Deoghar Solar Power Pvt Ltd & Ors v. Power Grid Corporation of India Ltd & Ors & Batch

CERC | Order dated June 08, 2022 in Petition Nos. 103/MP/2021, 104/MP/2021, 35/MP/2022, and 36/MP/2022

### Background facts

- ACME Deoghar Solar Power Pvt Ltd (**ACME Deoghar**) and ACME Dhaulpur Powertech Pvt Ltd (**ACME Dhaulpur**) filed Petition No. 103/MP/2021 and ACME Phalodi Solar Energy Pvt Ltd (**ACME Phalodi**) and ACME Raisar Solar Energy Pvt Ltd (**ACME Raisar**) filed Petition No. 104/MP/2021 (Petitioners) seeking declaration that they are not liable to pay the transmission charges for the period of mismatch between the date of Long Term Access (**LTA**) operationalization and the extended Scheduled Commercial Operation Date (**SCOD**) of their projects by Solar Energy Corporation of India Ltd (**SECI**) due to Force Majeure events.
- Subsequent to the above, they filed Petition No. 35/MP/2022 (related to ACME Phalodi and ACME Raisar) and Petition No. 36/MP/2022 (related to ACME Deoghar and ACME Dhaulpur) seeking directions to SECI to extend SCOD of their projects up to July 18, 2023, and directions to CTUL to align the date of commencement of LTA with the revised SCOD of their projects as extended by SECI.

- The Petitioners submitted that their Projects fall within the potential habitat of Great Indian Bustard (GIB) and there are certain difficulties in implementation of the Projects in terms of Hon'ble Supreme Court order dated April 19, 2021 in I.A No. 85618 of 2020 in WP.838 of 2019 in view of which it is not possible to construct an overhead transmission line in the GIB potential area. Further, the sub-station land was made available to the Petitioners after considerable delay.
- The Petitioners have already been granted an extension of SCOD of the Project by 556 days due to (i) Covid-19 Pandemic and (ii) land at Fatehgarh Sub-station being not available due stay order by Rajasthan High Court. The said extension is expiring on May 4, 2022.
- As regards GIB issue, MNRE has issued office memorandum dated February 3, 2022, wherein renewable energy implementing agencies (including SECI) are directed to extend SCOD of all renewable projects which are situated in GIB habitat to a date which is 30 days after the date of passing final order by Supreme Court. Accordingly, SECI vide email dated March 20, 2022, has requested the Petitioners to submit an undertaking to substantiate their claim for extension of time in terms of Office Memorandum dated February 3, 2022.

### Issues at hand

- Whether the date of commencement of LTA can be aligned with revised SCOD of Projects of Petitioners?
- Whether the Petitioners can claim any relief on account of Force Majeure as claimed by the Petitioners?
- Whether the Petitioners are entitled to get exemption from the payment of transmission charges in terms of MOP Orders on waiver dated January 15, 2021, November 23, 2021, and November 30, 2021?
- Whether the Petitioners are entitled for extension of SCOD of its Projects up to July 18, 2023?

### Decision of the Commission

- The Central Electricity Regulatory Commission (**CERC**), in terms of the pleadings /submissions, held as under:

#### **Issue No. 1: Whether the date of commencement of LTA can be aligned with revised SCOD of Projects of Petitioners?**

- The Petitioners had sought an extension in operationalization of connectivity and LTA and to align the same with the revised SCOD under the PPA. The CERC observed that it is the responsibility of the LTA applicant to synchronize and match the dates between the two sets of agreements i.e., PPA and LTA Agreement, as it is the LTA applicant which signs both the sets of the agreements.
- On the contention of Petitioners that as per the Revised Detailed Procedure dated February 20, 2021, a Stage-II Connectivity grantee they are allowed to complete dedicated transmission infrastructure by the revised SCOD and therefore no transmission charges can be imposed by PGCIL for delay in start of LTA, the CERC observed that maximum time allowed to construct the dedicated line is part of the Connectivity and has no bearing on date of start of LTA sought by the Petitioners.
- The CERC perused the relevant provisions of the RFS, PPA and LTA and observed that the same do not provide for any correlation between SCOD and date of operationalization of LTA.
- The CERC held that RFS/PPA and LTA Agreement are two entirely different and distinct agreements and the liabilities and obligations contained therein are also different. The obligation of the Petitioners arising out of the PPAs is independent of its obligation to meet the timeline which the Petitioners have sought under the LTA application and LTA Agreement. Therefore, the CERC rejected Petitioners' prayer to align LTA commencement date with revised SCOD.
- The CERC held that as per Regulation 13(3) of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, in the event the generating station is delayed and the Associated Transmission System (**ATS**) has achieved COD, the generating station shall pay Yearly Transmission Charges (**YTC**) for the ATS corresponding to LTA granted for the generating station.

#### **Issue No. 2: Whether the Petitioners can claim any relief on account of Force Majeure as claimed by the Petitioners?**

- Clause 14.4 of Transmission Service Agreement (TSA) January 28, 2019, deals with the notification of event of force majeure event and according to Clause 14.4.1 of the TSA, The Petitioners were required to give notice to CTU as well as other party (all DICs in this case) within 7 days after the party knew of the commencement of event of Force Majeure. The CERC noted that the Petitioners did not comply with requirement of TSA under Clause 14.4.1 as the Petitioners had not issued any notice to any other Petitioners as required under Clause 14.4.1 of the TSA.

- Therefore, the CERC held that due to non-compliance of Article 14.4.1 of TSA, Petitioners cannot claim any relief on account of Force Majeure.

**Issue No. 3: Whether the Petitioners are entitled to get exemption from the payment of transmission charges in terms of MoP Orders on waiver dated January 15, 2021, November 23, 2021, and November 30, 2021?**

- The CERC placed reliance on its order dated May 23, 2022, in Petition No. 525/MP/2020 titled *Sprng Renewable Energy Pvt Ltd v. Central Transmission Utility of India Limited & Anr*, and held that waiver of transmission charges, if any, in terms of said MoP Orders apply after COD of the generating station and does not provide any exemption from payment of charges before COD.

**Issue No. 4: Whether the Petitioners are entitled for extension of SCOD of its Projects up to July 18, 2023?**

- The CERC noted that the Petitioners had sought extension of SCOD of their projects till July 18, 2023, on account of force majeure events, namely (i) status quo orders by the Rajasthan High Court and (ii) outbreak of Covid-19 and have allegedly been adversely impacted by the order dated April 19, 2021 by the Supreme Court of India in WP (C) No. 838 of 2019 titled M.K. Ranjitsinh & Ors v. Union of India & Ors (**GIB Order**), which has prohibited laying of overhead transmission lines in priority and potential GIB habitat areas.
- SECI, vide emails dated March 20, 2022, and March 22, 2022, had informed that extension request in terms of MNRE's Office Memorandum dated February 03, 2022 will be processed only after submission of undertaking in the format provided by SECI along with its email dated March 20, 2022.
- CERC observed that SECI has already extended the SCOD for the said generating stations till January and February respectively and SECI has also submitted that SCOD will be further extended 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE' subject to furnishing of undertaking by Petitioners.



**HSA  
Viewpoint**

CERC, after considering various clauses of PPA and TSA, has rightly held that CTU is not obligated to align the date of commencement of LTA with the SCOD. Further CERC has reiterated that the MoP Orders on subject of waiver are applicable only after COD and not before that. This view, espoused in 525/MP/2020 has now been reiterated in this matter, lending further clarity to the approach adopted by CERC in matters relating to the mismatch of commencement of LTA and SCOD.

## Gujarat Urja Vikas Nigam Ltd v. Adani Power (Mundra) Ltd

**CERC | Order dated June 13, 2022 in Petition No. 111/MP/2022**

### Background facts

- On February 02, 2007 and February 06, 2007 GUVNL and Adani Power (**APMuL**) executed two PPAs for supply of 1000MW power each from Units 5 and 6 (**Bid-1 PPA**) and Units 1-4 (**Bid-2 PPA**).
- On September 23, 2010, the Indonesian Government promulgated the Regulation of Ministry of Energy and Mineral Resources No. 17 of 2010 (**Regulation 17 of 2010**) which mandated that any sale of coal from Indonesia must be aligned with the Harga Batubara Acuan (**HBA**) price. APMuL by way of Petition No. 155/MP/2012 approached CERC seeking a mechanism to restore APMuL to the same economic position as prevailing prior to promulgation of Indonesian Regulations.
- Therein, CERC held that Regulation 17 of 2010 was neither covered under Change in Law nor under Force Majeure but granted relief as per Section 79(1)(b) of the Act. Subsequently, the matter went before the Hon'ble Supreme Court, wherein, the Court decided in *Energy Watchdog v. Central Electricity Regulatory Commission & Ors* (**Energy Watchdog Case**) that promulgation of Regulation 17 of 2010 did not constitute either change in law or Force Majeure.
- The Government of Gujarat set up a High Powered Committee (**HPC**) to determine how to resolve issues of imported coal based on power projects operating in the State of Gujarat. The HPC recommended financial and commercial resolution packages and the Government of Gujarat by way of policy directive GR dated Dec 1, 2018, accepted some of the recommendations of the HPC. Consequently, Gujarat Urja Vikas Nigam Limited (**GUVNL**) and APMuL signed supplementary PPAs dated Dec 5, 2018, to Bid-1 PPA and Bid-2 PPA (**SPPA 2018**) which were subsequently approved by CERC by its Order dated April 12, 2019.
- On February 25, 2022, the Government of Gujarat issued GR regarding the signing of Supplemental PPAs between GUVNL and APMuL and approaching CERC for determination of base rate as on October 15, 2018, for FOB Coal Cost including other charges viz. Ocean Freight and Port

Handling Charges as per the normative operating parameters in SPPA 2018. Pursuant to the same APMuL and GUVNL entered into a Supplementary PPAs dated March 30, 2022, in Bid-01 PPA and Bid-02 PPA (SPPA 2022) incorporating terms of Settlement Deed dated January 03, 2022 (**Settlement Deed**).

- The SPPA 2022 stipulates that the Energy Charges would be calculated on the basis of a Base Rate as on October 15, 2018, and Escalation Rate both of which would be recommended by CERC subject to approval of the Government of Gujarat.
- Base Rate will be determined for the following parameters:
  - Free On Board (**FOB**) Coal cost and other charges
  - Ocean Freight charges
  - Port Handling charges
- Accordingly, the present petition was filed by APMuL seeking determination of the base rate. Since the SPPA 2022 does not specify the methodology/index to be used for determination of the base rate, the parties in the present Petition have submitted as follows:
  - APMuL has submitted that the base rate for FOB price of coal must be based on the HBA Index as per the Regulations of the Indonesian Government. To this effect they have submitted a detailed interpretation of the Indonesian regulatory framework to contend that coal cannot be imported from Indonesia below the HBA Index derived price.
  - Per Contra, GUVNL has sought for the application of Argus/Coalindo or S&P Global Platts Index to determine the Base Rate or the actual FOB price in case HBA Index derived price is used by CERC. Further, GUVNL has relied on data relating to the purchase of imported coal by Coastal Gujarat Power Limited (**CGPL**) to contend that coal can be bought at a price lesser than the HBA Index derived price.

### Issues at hand

- Whether export of coal from Indonesia is available at a price below the HBA Index or HPB price under the Indonesian Regulations?
- Whether the data pertaining to the import of coal by CGPL for consumption in its project during October 2018 as furnished by GUVNL are for the purpose of determination of base price of coal for supply of power by APMuL to GUVNL?
- What methodology should be adopted by the Commission to determine the Base Rate of coal as on 15.10.2018 keeping in view the provisions of the Deed of Settlement, SPPA 2018, SPPA 2022 and the actual coal consumed at the Mundra Power Project?

### Decision of the Commission

- Upon considering the submissions of the parties, CERC held as follows:
  - The Regulations promulgated by the Indonesian Government clearly stipulate that it is not permissible to export coal below the benchmark price failing which the coal company shall be subjected to administrative sanctions.
  - CERC held that the indices of Argus and S&P Global Platts cannot be considered appropriate for the purpose of determination of base price as:
    - After an independent analysis by CERC of the data given by both parties relating to 35 shipments of coal bought by CGPL, CERC concluded that in 31 out of the 35 shipments, prices paid for imported coal by CGPL were at a premium as compared to prices as per Argus and S&P Global Platts for the period between August 2018 to February 2019.
    - After referring to certain Orders of the MERC pertaining to the procurement of imported coal by Tata Power Company Limited (TPCL) for its station in Mumbai, CERC concluded that the FOB price of coal was either at HPB (HBA derived price) or with a premium but not less than HPB.
    - Neither HBA Index nor Argus Coalindo and S&P Global Platts can be used exclusively for determination of base rate of imported coal under the SPPAs because:
      - Pursuant to signing of the SPPAs, both parties have agreed to withdraw all pending cases including dispute relating to whether coal could be exported at a price below HPB.
      - The parties have not mutually agreed on the methodology for determination of the base rate.
      - As per the SPPA, both parties have agreed to adopt the CERC Escalation Rate for imported coal which is based on four indices. GUVNL's reliance on only two indices and APMuL's reliance on just HBA Index for determination of base rate is therefore misplaced. In light of these findings, CERC held that methodology for determination of base rate for FOB price of coal should be the CERC Composite Index as determined by CERC's Order dated Dec 23, 2013 in Petition No. 308/SM/2013 because:
        - While APMuL's projects currently utilize coal imported from Indonesia, the possibility of importing coal from other countries in future cannot be ruled out as APMuL is not bound by PPA/SPPA to only procure coal from Indonesia.



- Both parties have specifically agreed to allow CERC to determine base rate and agreed to apply CERC escalation rates over the base rates for determination of energy charges payable for the period from October 15, 2018, onwards. Therefore, using one index for Escalation Rates and a different index for Base Rate would be inappropriate/illogical.
- Based on these findings, CERC has recommended Base Rate of FOB price of coal as USD 64.06/MT and also determined the Base Rate of Energy Charge and made recommendations for related charges viz. Ocean Freight and Port Handling Charges.



#### HSA Viewpoint

The CERC vide this decision has lent clarity on the interpretation of the Indonesian regulatory framework governing the import of coal. The CERC's observation that coal cannot be imported at a price less than the HBA Index derived price would come as a welcome relief for other thermal power projects based on imported coal from Indonesia and should offer some finality on the applicability of the Indonesian Regulations.

## Madhya Pradesh Urja Vikas Nigam Ltd v. MP Power Management Co Ltd

Madhya Pradesh Electricity Regulatory Commission (MPERC) | Order dated June 15, 2022 in Petition No. 34 of 2022

### Background facts

- Madhya Pradesh Urja Vikas Nigam Ltd. (MPUVNL) had filed the captioned petition under Section 86(1)(b), (e) and (g) of the Act seeking approval in respect of certain deviations from the provisions of the Model Power Purchase Agreement (PPA) to be signed between Renewable Power Generator (RPG) and the Procurer i.e., MP Power Management Company Ltd. (MPPMCL).
- Thereafter, at the motion hearing, the counsel for MPUVNL was asked to inform the provision(s) of the Standard Bidding Guidelines issued by the MNRE, Government of India under which approval of Commission (MPERC/Commission) is sought for deviation(s) from the PPA.
- In response to the above, MPUVNL submitted that there is no provision(s) under the Standard Bidding Guidelines for seeking approval of MPERC for deviation from the Standard Bidding Guidelines, however, under Section 86(1)(b) and (e) of the Act, MPERC may approve deviations from the Model PPA.

### Issue at hand

- Whether the Commission can approve deviations from the Model PPA in absence of any provision in the Standard Bidding Guidelines with respect to deviation from the PPA?

### Decision of the Commission

- MPERC has observed that since the Standard Bidding Guidelines in the captioned matter do not have any provision for seeking approval of the Commission for deviations from PPA, the captioned matter is not maintainable before the Commission. MPERC also directed MPUVNL to approach the competent authority for approval of deviations to Model PPA.



#### HSA Viewpoint

The MPERC has given a well-reasoned order basis the provisions of the Standard Bidding Guidelines. The said decision of MPERC accentuate upon the fact that the provisions of the Standard Bidding Guidelines shall be strictly interpreted and followed.

## CLP Wind Farms India Pvt Ltd (now Apraava Renewable Energy Pvt Ltd) v. MPPMCL

Madhya Pradesh Electricity Regulatory Commission (MPERC) | Order dated May 20, 2022 in Petition No. 25 of 2018

### Background facts

- The present Petition had been filed by the Petitioner, Apraava Renewable Energy Private Limited (Apraava) under Section 142 of the Act seeking issuance of directions against MPPMCL for non-compliance with MPERC's previous Order dated 02.09.2016 whereby MPERC had issued specific directions to MPPMCL to make payment of outstanding bills to Apraava in terms of the PPAs/tariff

orders. Apraava had submitted that MPPMCL was making intermittent payments that too without the corresponding late payment surcharge.

- Initially, MPERC had disposed of the petition through its Order dated January 25, 2019 whereby instead of exercising its powers under Section 142, it directed the parties to amicably resolve the issues. Apraava challenged the said directions of MPERC before the Hon'ble APTEL by way of Appeal No. 184 of 2019.
- In the said proceedings, APTEL had issued interim directions to MPPMCL to make payments of 75% of the outstanding dues to Apraava. The said appeal was finally allowed by APTEL through the Judgment dated February 04, 2022, and the matter was relegated to MPERC with directions to exercise its powers and hear the petition afresh and considered each and every prayer therein.
- The present Order was issued subsequently in compliance of the directions issued by the APTEL.

### Issue at hand

- Whether the proceedings under Section 142 of the Act are tenable against MPPMCL's actions i.e., non-payment of dues for the power purchased from Apraava?

### Decision of the Commission

- The MPERC in its present Order has observed that MPPMCL was given adequate opportunity to comply with MPERC's directions in the Order dated September 02, 2016. MPPMCL has been making payments intermittently for principal amount only that too with a substantial delay and without surcharge on delayed payments. Further, requisite payments (75% of outstanding) were not made by MPPMCL to Apraava in the letter and spirit of the directions of Hon'ble APTEL in its Interlocutory Order dated March 02, 2020. MPPMCL made only 62% payment without any payment towards late payment surcharge.
- MPERC has thus directed MPPMCL to pay all the legitimate dues in terms of the PPAs to Apraava within 45 days from date of issuance of the present Order without discriminating it on non-waiver of late payment surcharge.
- Further, MPPMCL has been directed to pay a penalty of INR 1 Lakh to the MPERC within 45 days from the issuance of the present Order towards non-compliance of MPERC's Order dated September 02, 2016 in Petition No. 33 of 2016.
- Directions have also been issued to MPPMCL to open Letter of Credit in favour of Apraava to secure payment of future bills to be raised for supply of electricity from its wind generating units under subject petition in terms of PPAs executed between the parties.



#### HSA Viewpoint

MPERC's decision is a much-needed relief for generator's like Apraava who have been aggrieved for a prolonged period of time on account of non-payment of dues by distribution licensees. Interestingly, the said decision as well as the directions of the Hon'ble APTEL will have a sector wide impact and perhaps may act as a deterrent for procurers who are defaulting in payments regularly.

## Tata Power Renewable Energy Ltd v. Tata Power Company Ltd- Distribution

Madhya Pradesh Electricity Regulatory Commission (MPERC) | Order dated June 09, 2022 in Case No. 05 of 2022 and Case No. 21 of 2022

### Background facts

- The present Petitions had been filed by Tata Power Renewable Energy Limited (TPREL) under Section 86(1)(b),(e) and (f) of the Act read with Article 9 of the Power Purchase Agreement dated January 03, 2020 executed with Tata Power Company Limited- Distribution (TPC-D) seeking declaration that Notifications dated February 01, 2021 and July 29, 2020 increasing the Basic Custom Duty (BCD) from 5% to 20% and imposition of Safeguard duty (SGD) as events of 'Change in Law'. Further, TPREL had also sought compensation on account of Change in Law events.
- In Case No. 5 of 2022, TPREL had contended that it had submitted its quote for tariff through e-reverse auction held on October 10, 2019 for developing Solar PV Project. Further, it was submitted that the change in BCD had resulted in additional cost, which was not perceived and factored in at the time of bid submission. Therefore, TPREL had prayed for declaration of said Notification dated February 1, 2021 as "Change in Law" and sought for appropriate relief as per Article 9 of the PPA.

- In response, TPC-D submitted that at the present stage, TPREL had failed to place on record all the relevant documents to ascertain the Change in Law on account of the increase in the rate of BCD, there could not be any allowance of claim until TPREL submits all the relevant documents.
- In Case No. 21 of 2022, TPREL pointed out that MERC vide its Order dated March 05, 2021 in Case No. 218 of 2020 ruled that Ministry of Finance Notification dated July 29, 2020 extending the imposition of SGD is an event of Change in Law. It was further submitted that MERC had specified that the additional expenditure and other consequential impact would be considered on actual basis for reimbursement under Change in Law subject to prudent check after TPREL files its Petition with all the details in accordance with the provisions of the PPA.
- In response thereto, TPC-D submitted that the qualifications for considering event as Change in Law had been explicitly provided in the PPA, claims for which were not substantiated in the Petition. The option of one time payment settlement was also vehemently opposed by TPC-D.

### Issues at hand

- Whether Notification dated February 01, 2021 resulting in change in BCD from 5% to 20% qualifies as Change in Law event?
- What is the ascertainment of principal claim amount along with GST in both the cases?
- What are the modalities for carrying cost?
- What should be the frequency of payment of compensation amount?

### Decision of the Commission

- MERC observed that as on bid submission date, BCD of 5% and Social Welfare Charge of 10% on custom duty was applicable and subsequently, the Ministry of Finance by way of Notification dated February 01, 2021 which rescinded Notification dated January 06, 2011 providing exemption from levy of BCD in excess of 5% ad valorem, and from the whole of additional duty of customs leviable thereon under Section 3 of the Customs Tariff Act, 1975. Considering that the Notification dated February 01, 2021 (which was subsequent to Bid Submission date of September 25, 2019) had led to change in the rate of BCD from 5% to 20% effective from February 2, 2021. Thus, the MERC held that the Notification dated February 01, 2021 changing the rate of BCD is a Change in Law event under the PPA.
- As regards the claim in Case No. 05 of 2022, the MERC noted that Chartered Accountant's certificate dated November 15, 2021 categorically recorded that TPREL had paid out additional amount to the tune of INR 2,20,52,290.84 and the applicable GST rate for the project cost was 8.9%. Further, as regards TPREL's claim in Case No. 21 of 2022, the MERC noted that Chartered Accountant's certificate dated January 06, 2022 categorically recorded that TPREL had paid out additional amount to the tune of INR 38,49,83,628 and the applicable GST rate for the project cost was 8.9%.
- Considering that TPREL's claim was backed by CA certificates, the MERC was of the opinion that there was no point in delating Change in Law compensation which would increase carrying cost burden on the consumers. The MERC thus allowed the claim towards Change in Law compensation with the condition that one-to-one correlation exercise be completed within 3 months from the date of the Order and any adjustment in claim, if any, be carried out with associated carrying cost/ holding cost. TPREL was further directed to submit details of taxes, duties and levies, which stand withdrawn and no longer payable or reduced to TPC-D and include its impact, if any, in reconciliation process.
- As regards the carrying cost, MERC noted that it was well settled that compensation on account of Change in Law provisions was to be granted along with carrying cost as to restore the affected party to same economic position as if such Change in Law event had not occurred. Accordingly, MERC allowed levy of carrying cost at 1.25% plus SBI MCLR per annum on above compensation amount from the date of actual payment till the date of the Order.
- The MERC noted that in similar matters of compensation settlement, the MERC had opined that lumpsum payment would avoid further carrying cost on account of deferred payment. Further, Generator may willingly offer some discount on lumpsum payment. Considering all these aspects, the MERC has provided liberty to TPC-D to again decide whether it intends to opt for payment of the compensation on lumpsum basis or per unit basis over the PPA period, and communicate its option of compensation payment to TPREL within two weeks from the date of the Order.



#### HSA Viewpoint

The MERC has applied the well settled principles of law as regards the Change in Law compensation and restitution. Further, declaration of Notification dated February 1, 2021, as Change in Law event will serve as a precedent for various generators affected by the change in rates of BCD by the said Notification.

# RECENT DEVELOPMENTS

A decorative image in the top right corner of the page. It features a light-colored calendar grid with numbers 1 through 31 visible. Below the calendar, there are four colorful sticky notes (pink, yellow, magenta, and teal) and a brown paper folder or envelope, all set against a teal background.

## In this Section

Order of CERC in 8/SM/2022 restoring the Petitions disposed of pursuant to notification of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021

### Order of Central Electricity Regulatory Commission in 8/SM/2022 restoring the Petitions disposed of pursuant to notification of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021

- On April 5, 2022, APTEL, in Original Petition No.1 of 2022 and Batch, had held that CERC had erred in dismissing Petitions seeking Change in Law in light of the notification of CIL Rules instead of considering each of on the merits of the claims in accordance with law on the dispute(s) in proper exercise of its jurisdiction under Section 79 of the Act.
- The CERC has passed Order dated June 14, 2022, in 8/SM/2022, in compliance with this decision of the APTEL, wherein it has directed the restoration of the Petitions which had been dismissed pursuant to the notification of CIL Rules in the records of the CERC.
- Further, CERC has directed that the Petitions will be restored at same stages, as were existing prior to the disposal of petitions and that the concerned parties shall complete the pleadings in such restored Petitions within one month of the Order dated June 14, 2022.



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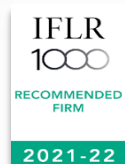


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