

PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



In this Section

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Electricity (Late Payment Surcharge and Related Matters) Rules, 2022

- The Ministry of Power, Government of India (**MOP**) on June 3, 2022 notified the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (**LPSC Rules**), to bolster the provisions to recover the outstanding dues of the Distribution Companies (**DISCOM**).
- LPSC Rules will be applicable to outstanding dues of Generating Companies (**GENCOS**), Inter-State Transmission Licensees and Electricity Trading Licensees.

Salient aspects of LPSC Rules

- **Applicability of LPSC:** The LPSC Rules state that DISCOMs will be obligated to pay the late payment charges (LPS) on their outstanding amount after the Due Date at the Base Rate, applicable for the first month of default. Upon successive months of default, the rates will increase by 0.5% for every month of delay. However, capping is done which is not more than 3% higher than Base Rate and further, LPS shall not be higher than the rate of LPS specified in the agreement between the Parties.
- **Payment adjustments:** All payments made by the DISCOMs will be first adjusted towards LPS and thereafter, towards monthly charges, starting from the longest overdue bills.
- **Intimation of Payment Schedule:** By July 2, 2022, DISCOMs are required to communicate in writing to the Generating Companies (**GENCO**) Transmission Company (**TRANSCO**) or trading licensee (**Trader**), the outstanding dues and the number of EMIs in which the outstanding dues would be paid by them.
- **Operationalization of Payment Security Mechanism:** A DISCOM or other user of transmission system has to maintain unconditional, irrevocable, and adequate payment security mechanism (**PSM**) as required under this LPS Rules. Supply of power will only be made if adequate PSM is made available, otherwise the GENCOs would not be able to collect LPS from DISCOMS.
- **Mandatory scheduling obligations for requisitioning of power:** The DISCOM will have to intimate the respective GENCO its schedule for requisitioning power for each day at least two hours before the end of the time for placing bids in the day ahead market (**DAM**) for that day.
- **Regulation of access of power to defaulting entities:** In case of non-payment of dues, by DISCOM, even after 2.5 months after presentation of bill as per this LPS Rules, the short-term power supply to the defaulting entity shall be regulated entirely as per the process set in LPS Rules. Subsequent default after regulation of short-term supply or continuing default for 3.5 months would eventually lead to regulation of long term access (**LTA**) and medium term access (**MTA**) by 10%. Increase of 10% will be for subsequent defaults.

- **Supply obligation:** GENCOs are obligated to offer the contracted power to DISCOMs according to the mutually agreed terms. Prior consent of DISCOM is required by GENCOs to sell power to other parties under the LPS Rules.
- **EMI structure:** Total outstanding dues including LPS up to the date of notification of LPS Rules shall be re-scheduled and the due date of the payment shall also be re-determined in the following monthly instalments.

Outstanding dues (in INR Crore)	Maximum EMIs (in months)
Up to 500	12
501 - 1,000	20
1,001 - 2,000	28
2,001 - 4,000	34
4,001 - 10,000	40
>10,000	48

- **Operationalization of PSMs:** GENCOs, TRANSCOs, Traders are obligated to regulate supply of power depending upon maintenance or non-maintenance of requisite payment security.
- **Power supply arrangements:** Upon default in payment of outstanding dues, supply from GENCOs would be reduced to 75% and the remaining 25% would be sold through Power Exchange. Further, continuance of such default will give authority to the GENCO to sell full power through Power Exchange.
- **Pre-requisitioning of power by DISCOMs:** GENCOs are given the liberty to sell power at Power Exchange platforms if there is no intimation of schedule as per LPSC Rules. DISCOMs would be obligated to pay compensation for non-requisitioned power from must-run project, at applicable PPA tariff rate.
- **GENCO's failure to supply contracted power:** If the GENCO fails to offer the contracted power as agreed with DISCOM and sells such power to any third party without the DISCOM's consent, the said GENCO, on a complaint to this effect by the DISCOM to the load dispatch centre concerned, shall be debarred from participating in Power Exchanges and on the Discovery of Efficient Electricity Pricing portal and scheduling of any new short-term contracts from that GENCO for a period of three months from the date on which the default has been taken cognizance by the concerned load dispatch centre.
- **Compliance of EMI Schedule:** The LPS will be applicable on entire outstanding dues as on the date of notification of LPSC Rules, upon delay in payments in terms of the prescribed monthly instalment schedules. Non-compliance of payment obligations will result in regulation of access to the defaulting entities in terms of the procedure prescribed in the LPSC Rules.

Ministry of Power's Order on Renewable Purchase Obligation and Energy Storage Obligation Trajectory till FY-2029-30

- The MOP vide its Order dated July 22, 2022 (**Order**), notified the Renewable Purchase Obligation (**RPO**) and Energy Storage Obligation (**ESO**) Trajectory till FY 2029-30, whereby a long-term growth trajectory has been set out.
- The Order has been issued in pursuance of Para. 6.4 (1) of the National Tariff Policy, 2016, which stipulates that the MOP in consultation with the Ministry of New and Renewable Energy (**MNRE**) will prescribe such long-term trajectory. Notably, the Government on March 8, 2019, recognized Large Hydro Projects (**LHPs**) including Pumped Storage Projects (**PSPs**), over 25 MW as part of Renewable Energy (**RE**). Energy from all LHPs commissioned after March 8, 2019 will be considered as part of RPO through a separate Hydro Power Purchase Obligation (**HPO**).
- The MOP in consultation with MNRE has previously notified the HPO trajectory until FY 2021-22. Through the present Order, the trajectory to be followed beyond the said period has been provided, details of which are discussed in this note.
- **RPO trajectories:**
 - The RPO trajectory notified for the period after FY 2022 is set out below:

Year	Wind RPO (%)	HPO (%)	Other RPO (%)	Total RPO (%)
2022-23	0.81%	0.35	23.44	24.61
2023-24	1.60%	0.66	24.81	27.08
2024-25	2.46%	1.08	26.37	29.91
2025-26	3.36%	1.48	28.17	33.01
2026-27	4.29%	1.8	29.86	35.95
2027-28	5.23%	2.15	31.43	38.81
2028-29	6.16%	2.51	32.69	41.36
2029-30	6.94%	2.82	33.57	43.33

- FY 2022-23 onwards, the energy from all Hydro Power Projects (HPP) will be considered a part of RPO, under the category of (Other RPO). Notably, Wind RPO targets can be only met when the energy is produced from the Wind Power Projects (WPPs), HPO targets can be only met through energy produced from LHPs including PSPs and Other RPO targets can be met through energy produced from other sources apart from Wind and Hydro power.
- It can be seen from the table above that, for FY 2022-23, MOP has mandated that 24.61 % of the total energy procured by a Distribution Licensee (DISCOM) will have to be from RE sources. Such RPO includes 0.81 % Wind RPO, 0.35 % HPO and 23.44 % Other RPO.
- The target to be met by FY 2029-30 is that a DISCOM procures 43.33 % of its total consumption from RE sources (6.94 % Wind RPO, 2.82 % HPO and 33.57 % Other RPO).
- RPO is to be calculated in terms of energy which is percentage of total consumption of electricity. HPO obligations can be met through power procured from eligible LHPs commissioned on and after March 8, 2019, till March 31, 2030.
- State Electricity Regulatory Commission(s) have been granted the liberty to notify RPO trajectory including HPO and ESO for their respective States, over and above the RPO, HPO and ESO trajectory notified vide the present Order.
- **HPO of DISCOM(s):**
 - The HPO of DISCOM(s) can be met out through free power provided to the state from LHPs including PSPs commissioned after March 8, 2022, according to the agreement prevailing at that time. However, the contribution towards Local Area Development Fund will be excluded from the same if it is consumed within the State or DISCOM(s) area of supply.
 - In case of shortage of free power, the State is required to buy additional Hydro Power to meet its HPO. Alternatively, the State may have to buy Renewable Energy Certificates(s) (REC / RECs) corresponding to Hydro Power required to meet HPO.
- **REC Mechanism:**
 - The Central Electricity Regulatory Commission (CERC) shall develop the REC Mechanism in order to facilitate HPO compliance, which will have a capping price of INR 5.50/Unit of electrical energy w.e.f. March 8, 2019, to March 31, 2021. The annual escalation will be 5% for HPO compliance purposes. HPO trajectory is to be trued-up annually on the basis of revised commissioning schedule of Hydro Projects.
 - Hydro Power imported from outside India shall not be considered for meeting HPO.
 - Shortfall in achievement of Other RPO in a particular financial year, can be met through excess energy consumed from WPPs commissioned after March 31, 2022 (beyond Wind RPO for that particular year) or through excess energy consumed from LHPs commissioned after March 8, 2019 (beyond the HPO), or partly from both sources.
 - Further, the Order states that CERC may consider devising an appropriate mechanism which will be similar to REC mechanism to ensure HPO compliance.
- **ESO:**
 - ESO has been fixed at 1% for FY 2023-24 and 4% for FY 2029-30. It has been specified that the ESO shall be calculated in energy terms as a percentage of total consumption of electricity and shall be fulfilled only when at least 85% of the total energy is stored in the Energy Storage System (ESS).
 - ESO to the extent of energy stored from RE sources shall be considered as a part of fulfilment of total RPO.
- **Management of RPO data:**
 - The Power System Operation Corporation has been designated to maintain the data related to compliance of RPO obligations.

RECENT JUDGMENTS



In this Section

Jindal Power Ltd v. Tamil Nadu Generation and Distribution Corporation Ltd

Maharashtra State Electricity Distribution Company Ltd v. GMR Warora Energy Limited & Anr

Shree Cement Ltd v. Vedanta Ltd & Anr

In the matter of fulfilment of Renewable Purchase Obligations (RPO) for FY 2020-21 by MP Power Management Company Ltd (MPPMCL)

Sardar Sarovar Narmada Nigam Ltd v. Central Electricity Regulatory Commission & Ors

Sadashiva Sugars Limited v. State Load Dispatch Centre – Karnataka

Falcon Tyres Ltd v. State Load Dispatch Centre – Karnataka

Dhruvesh Metasteel Pvt Ltd v. State Load Dispatch Centre – Karnataka

Shamanur Sugars Ltd v. State Load Dispatch Centre – Karnataka

Jindal Power Ltd v. Tamil Nadu Generation and Distribution Corporation Ltd

CERC | Order dated July 8, 2022 in Petition No 199/MP/2021

Background facts

- The Petitioner – Jindal Power Ltd (**JPL/Petitioner**) has set up a coal based Thermal Power Station at Tamnar, Raigarh district in the State of Chhattisgarh with an installed capacity of 1000 MW (4 X 250 MW) in Phase-I and 2400 MW (4 X 600 MW) in Phase-II, totalling 3400 MW. Tamil Nadu Generation and Distribution Corporation Limited (**TANGEDCO**) issued a Request for Proposal (**RfP**) on December 5, 2011 for procurement of power for ‘Medium Term’ under Case I bidding process for meeting its base load power requirements in the State of Tamil Nadu. JPL participated in the bid and was declared as the successful bidder at a levelized tariff of INR 4.9165/kWh for supply of 200 MW RTC (round the clock) power.
- Pursuant to the above, on June 29, 2012, JPL and TANGEDCO entered into a Power Purchase Agreement (**MT- PPA**) for the period from September 1, 2012 to August 31, 2017. The MT-PPA and levelized tariff was approved and adopted by the Tamil Nadu Electricity Regulatory Commission (**TNERC**) under Section 63 of the Electricity Act, 2003 (**Act**) vide order dated April 17, 2013 passed in PPAP No 7 of 2012.
- Article 8.3.5 of the MT-PPA provides that that ‘*In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly interest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.*’
- On December 21, 2012, TANGEDCO issued another RfP for procurement of 1000 MW \pm 20% RTC supply of power. The Petitioner was declared as the winner of the bid, and thereafter entered into a Long-Term Power Purchase agreement (**LT-PPA**) on August 23, 2013. The LT-PPA was for the period of 14 years from February 1, 2014 to September 30, 2028.
- Article 8 of the LT-PPA stated that in the event of delay in payment of a Monthly Bill by the procurer beyond its due date, a Late Payment Surcharge (**LPS**) shall be payable by such procurer to the seller at the rate equal to SBI-PLR per annum, on the amount of outstanding payment, calculated on a day-to-day basis (and compounded with monthly interest), for each day of the delay. The LPS is to be claimed by the seller through the supplementary bill.
- From November 2016 against the MT-PPA and December 2016 against the LT-PPA, the TANGEDCO defaulted on the payment of bills. Thus, the petition was filed seeking direction from the CERC to direct TANGEDCO to pay the amount due and payable to JPL towards LPS on account of delay as per the respective MT-PPA and LT-PPA.

- In response to the specific query of CERC regarding JPL having taken any remedial actions as per the provisions of the PPAs, Rules notified by the Ministry of Power in this regard, etc., JPL submitted that the Letter of Credits (LCs) furnished under the PPAs are not sufficient to meet the outstanding amount of LPS. Also, the LCs initially furnished by TANGEDCO were conditional and the corrective steps were taken by TANGEDCO only recently. As regard to the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (LPS Rules) notified by the Ministry of Power on June 3, 2022, JPL submitted that the LPS Rules would not impact the adjudicatory process initiated by JPL upon filing of present petition back in September 2021 as the cause of action for the petition had accrued much earlier to the date of notification of the LPS Rules.
- TANGEDCO submitted that JPL's submission that the LPS Rules would not apply in the present case may not be correct as the LPS Rules specifically provide for liquidation of arrears.

Issue at hand

- Whether the LPS Rules are applicable to the facts and circumstances of the present case?

Decision of the Commission

- In view of the facts and circumstances mentioned above, the CERC noted and held as under:
 - The fact that the TANGEDCO has neither denied the liability to pay LPS nor disputed the claimed amount, therefore there exist no dispute to be adjudicated under Section 79(1)(f) of the Act.
 - Rule 5 of the LPS Rules expressly recognizes the arrears/past liabilities accumulated up to the date of notification of LPS Rules and provides for liquidation process in equal monthly instalments.
 - The CERC also observed that APTEL in paragraph 62 of its judgment dated April 5, 2022 in Petition No 1 of 2022 and connected matters (*NRSS-XXIX Transmission Ltd v. Central Electricity Regulatory Commission & Ors*¹) has held that 'a statute which creates new rights, liabilities, disabilities, obligations shall be prospective in operation, unless otherwise provided, either expressly or by necessary implication'. Rule 5 of the LPS Rules expressly recognizes the arrears/past liabilities accumulated up to the date of notification of LPS Rules and provides for liquidation process in equal monthly instalments
 - From June 3, 2022 onwards, the LPS Rules are applicable to JPL and JPL cannot circumvent Rule 5 'Liquidation of arrears' on account of pending adjudication of the petition.
- Accordingly, the JPL and TANGEDCO were directed to take further steps in compliance of the LPS Rules.



HSA Viewpoint

CERC has held that the LPS Rules will be applicable to JPL prospectively only, i.e., from June 3, 2022. CERC has relied on the Order dated April 5, 2022 in Original Petition No. 1 of 2022 by the APTEL, wherein it is held that any statute which creates new rights or liabilities or obligations has to be prospective in nature, unless specifically provided in that statute.

Maharashtra State Electricity Distribution Company Ltd v. GMR Warora Energy Limited & Anr

CERC | Order dated June 27, 2022 in Petition No 187/MP/2021

Background facts

- Maharashtra State Electricity Distribution Company Limited (MSEDCL) is a Distribution Licensee under the provisions of the Electricity Act, 2003 (Act) having license to supply electricity in the State of Maharashtra, except some parts of the city of Mumbai. On March 17, 2010 MSEDCL executed a Power Purchase Agreement (PPA) with GMR Warora Energy Limited (GMRWEL) for procurement of 200 MW of power under Case-1 bidding, through tariff based competitive bidding process, in terms of the guidelines issued by the Central Government.
- MSEDCL has also executed a PPA with Respondent No. 2 i.e. Coastal Gujarat Power Limited (CGPL) on April 22, 2007 for procurement of 760 MW of power from Mundra Ultra Mega Power Project.
- MSEDCL submitted before the CERC that the due to the COVID-19, the demand for supply of electricity by the MSEDCL has crashed by about 4500-5000 MW than the expected projected demand. Due to this situation, the revenue cycle of MSEDCL has also been badly hampered.
- The CERC in its order dated April 3, 2020 in Petition No. 06/SM/2020 has stated that in case of any delayed payment by the Distribution Companies to the Generating Companies and Inter-State Transmission Licensees beyond 45 days from the date of the presentation of the bills falling

¹ Petition No. 49/MP/2021

between March 24, 2020 and June 30, 2020, the concerned Distribution Companies shall make the payment with LPS at the reduced rate of 12% per annum, that translates into 1% per month.

- Further, on May 15, 2020 MOP vide its communication deferred the fixed charges on power of Central Generating Companies, which were not scheduled for the lockdown period. Further, the same would be repaid in three equal, interest free instalments in subsequent months. The CPSUs had also been suggested to grant a rebate of 20-25 per cent on power supplied (fixed cost) including Inter-State Transmission Charges (ISTS) payable to PGCIL for the lockdown period.
- Further, vide letter dated August 20, 2020 and clarification letter dated November 20, 2020, MOP advised all the Generating & Transmission Companies to charge LPS at the rate not exceeding 1% p.m. on the principle due for all payments, which are due either from projects developed under Section 62 or Section 63 of the Act, made by the Distribution Company.
- MSEDCL placed reliance on the MOP Notifications dated May 15, 2020 and its corrigendum dated May 16, 2020 and CERC's order dated April 3, 2020 in Petition No 06/ SM/2020 to seek directions upon the GMRWEL and CGPL, to defer the fixed charge on power not scheduled for lockdown period, to be repaid in interest free three equal instalments in subsequent months, and also to provide rebate on the power supplied during the months of lockdown period where the demand was at lower side, including the reduction of LPS, keeping in view the hardship faced by it, on account of COVID-19 pandemic.

Issues at hand

- Whether in light of CERC's order dated April 3, 2020, MSEDCL's claim for LPS reduction is maintainable?
- Whether the concessions to the Distribution Companies through MOP, GOI advisory dated May 15, 2020 for deferment of capacity charges are applicable on independent power projects?
- Whether Covid-19 can be acknowledged as a Force Majeure event under the PPAs?

Decision of the Commission

- With regard to maintainability of MSEDCL's prayer for reduction in LPS in view of CERC's order dated April 3, 2020, CERC observed that vide the said order the relief of reduction in LPS was made applicable to Generating Companies and ISTS licensees, whose tariff is determined under Section 62 read with Section 79(1)(a), (b) and (d) of the Act, in accordance with the tariff regulations framed under Section 61 read with Section 178 of the Act.
- The relief on LPS for MSEDCL is to be guided by the Force Majeure provisions of the respective PPAs and not in terms of the tariff regulations notified by CERC. Therefore, CERC held that MSEDCL's prayer for reduction in LPS is not maintainable.
- With regard to concessions to the Distribution Companies through MOP advisory dated May 15, 2020, for deferment of capacity charges for power not scheduled, to be payable without interest after the end of lockdown period in three equal instalments and a rebate of about 20-25% on power supply billed (fixed cost) to DISCOMS and ISTS charges levied by PGCIL, the CERC held that the same are applicable only to the Power Generation and Transmission CPSEs and all subsidiaries/JVs of Power Generation and Transmission CPSEs under the MOP and not to the independent power projects of GMRWEL and CGPL.
- CERC while placing reliance on its order dated January 20, 2022 in Petition No 594/MP/2020, held that lockdown due to outbreak of Covid-19 cannot be considered as a Force Majeure event hindering performance of obligations under the PPA. Therefore, the prayer of MSEDCL to acknowledge Covid-19 as a Force Majeure event is not acceptable.



HSA Viewpoint

CERC clarified that the relief of reduction in LPS granted vide its Order dated April 3, 2020 in Petition No 06/SM/2020 is applicable only to Generating Companies and ISTS Licensees, whose tariff is determined under Section 62 and cannot be extended to Generating Companies whose tariff has been adopted under Section 63 of the Act. The CERC has further rightly held that the MOP advisory dated May 15, 2020 is not applicable to independent power projects.

Shree Cement Ltd v. Vedanta Ltd & Anr

CERC | Order dated June 27, 2022 in Petition No 162/MP/2020

Background facts

- The Southern Power Distribution Company of Telangana Ltd (TSSPDCL) on July 30, 2014 invited bids for purchase of power at Southern Region periphery (**delivery point**) for the period from May 29, 2015 to May 26, 2016 (**time period**). Pursuant to this, Vedanta Limited (**VL**) authorised the

Petitioner for supply of 300 MW power to TSSPDCL during the time period and was subsequently selected as a successful bidder.

- Shree Cement Limited (**SCL**) entered into a PPA dated October 29, 2014 (**PPA 1**) with TSSPDCL for supply of power procured from VL. Under Clause 3.2 of PPA 1, Generator Point of Connection (**PoC**) injection charges and the losses up to the delivery point were required to be borne by SCL while Withdrawal PoC charges and losses were required to be borne by TSSPDCL.
- SCL also entered into a PPA dated October 31, 2014 (**PPA 2**) with VL for supply of 300 MW RTC Power from the generating station to TSSPDCL (through SCL as Trader) for the time period. As per Clause 3.2 of PPA1, the Generator PoC injection charges and the losses up to delivery point were to be borne by VL whereas SCL was to bear the Telangana PoC drawal charges and losses etc.
- In furtherance of Clause 3.4 of PPA 1, SCL made various applications to CTUIL for grant of Medium Term Open Access (**MTOA**)/Short Term Open Access (**STOA**) for period of May 2015 to April 2016; power was supplied to TSSPDCL under STOA. On March 04, 2016, CTUIL informed about the operationalization of MTOA. Hence, the Petitioner supplied around 62 MW to TSSPDCL between April 01, 2016 to May 26, 2016 under MTOA. Pursuant to this, PGCIL raised PoC bill of INR 1, 53, 94, 243 (INR One Crore, Fifty-Three Lacs, Ninety-Four Thousand Two Hundred Forty-Three) on SCL under CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (**Sharing Regulations 2010**).
- Upon consideration of reimbursement of the said PoC dues, TSSPDCL claimed that under Clause 3.2 of PPA 1, it is liable to pay 50% of PoC charges for drawl of power beyond the delivery point, while the balance charges are payable by VL. VL, relying upon 3rd Amendment of 2010 Sharing Regulations and Order of CERC dated July 14, 2015 determining PoC rates and transmission losses for May and June 2015, took the position that as PoC injection charges were merged into withdrawal charges, it was not liable to pay any such charges.
- The aggrieved Petitioner approached the Telangana State Electricity Regulatory Commission (**TSERC**) through Petition OP No. 8 of 2017; vide Order dated November 01, 2018, wherein it was observed that:
 - TSERC had no jurisdiction to implement PPA 2's terms since any disputes under it were triable only in courts at New Delhi
 - As liability to pay the balance charges was on VL, it was the SCL's responsibility to pay and collect the same from VL as per the terms of PPA 2, and not that of TSSPDCL
- In furtherance of the aforementioned Order, SCL approached VL repeatedly to comply with its liabilities; however, the latter did not comply.
- Aggrieved, SCL issued the Notice of Invocation of Arbitration (Clause 3.13 of PPA 2) to VL. In response of this, VL further denied its liability to pay the dues and stated that TSERC's Order is not applicable to it and that there is no dispute between the parties.
- SCL, in pursuance of the TSERC's Order, filed a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (Petition No 788 of 2019) before the Hon'ble High Court of Delhi (HC) seeking appointment of a Sole Arbitrator to constitute the Arbitral Tribunal for dispute resolution between the parties. VL objected to the maintainability of the Petition before the Delhi HC and argued, relying on the Gujarat Urja Vikas Nigam Ltd judgement, to approach the CERC for appointment of arbitrator. Accordingly, the Delhi HC vide order dated December 04, 2019 allowed SCL to withdraw the Petition and approach the CERC. Accordingly, the present Petition has been filed, admitted on August 07, 2021.

Issues at hand

- Whether SCL, who is an Inter-State Trading Licensee, is liable to pay PoC charges or not?
- Whether the 3rd Amendment to CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 exempt the Generator from payment of PoC Charges?

Decision of the Commission

- Based on the combined reading of Clause 3.2 of PPA 1 and Clauses 3.1 and 3.2 of PPA 2, it is ultimately VL that is liable to reimburse the charges to SCL, if any, paid by it under PPA 1. Further, as per PPA 1, the PoC withdrawal charges were to be borne by TSSPDCL to wheel power from Southern Region Periphery to the drawl point of Telangana.
- That VL had already considered liability of such PoC charges while determining the price of electricity being supplied by it. Further, such PoC Charges included in the generation tariff for VL has already been recovered by VL. Therefore, refusal of VL to bear its share of PoC charges has resulted in unjust enrichment on the part of VL.
- The Commission took cognizance of the Third Amendment to Share Regulations and its Statement of Reasons and held that the generator (VL) shall be liable to pay 50% of withdrawal PoC charges for the quantum under the instant contract. Additionally, it is held that neither the Amendment nor its Statement of Objects and Reasons exempt the generator from its contractual obligations to share the PoC charges and thus, the same are not relevant in the instant case.

- Hence, it was held that SCL being an inter-state trading licensee is entitled to trading margin in a back-to-back contract and in no manner can be forced to bear the burden of the PoC charges.
- Thus, VL had the contractual liability to pay the PoC charges till the delivery point. Such liability has not been changed or done away with by the amendment in the Sharing Regulations which merely prescribe a change in method to compute PoC charges. Hence, it is liable to pay 50% of the PoC charges towards injection of power and up to the delivery point in terms of PPA 2.



HSA Viewpoint

CERC has clarified that the 3rd Amendment to CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 does not allow generators to claim exemption from the payment of PoC Charges but merely puts forth a mechanism under which computation of such PoC charges may take place. CERC has also held that Inter-State trading licensees are entitled to trading margin and cannot be made liable for PoC charges as they are merely facilitating the supply of electricity from a generator to a licensee or a consumer.

In the matter of fulfilment of Renewable Purchase Obligations (RPO) for FY 2020-21 by MP Power Management Company Ltd (MPPMCL)

MPERC | Suo-Motu Order dated July 04, 2022

Background facts

- On account of shortfall in compliance of its RPO targets for FY-2020-21, MPERC sought a comprehensive reply from MPPMCL and thereafter vide order dated December 23, 2021 imposed liability on MPPMCL.
- In response to the aforesaid order, MPPMCL requested the MPERC to condone the shortcomings in achieving the targets. MPPMCL requested MPERC to repeal the penalty proposed to be imposed on MPPMCL and the directives for creating separate fund for procurement of RE Certificates.
- MPPMCL in its submission stated that non-fulfilment of RPO targets happened due to the following reasons:
 - In order to match the RPO Trajectory in future, MPPMCL executed PPA with various bidders, for procurement of Solar PV Power from 305 MW capacity, out of which only 205 MW capacity could be commissioned, with one of the power plants of 50 MW capacity under litigation and another 50 MW power plant having been abandoned by the developer.
 - MPPMCL executed PSA with Solar Corporation of India (SECI) for 950 MW wind capacity which was scheduled to be commissioned in FY 2019-20 but due to COVID-19, these projects were delayed and could not be commissioned within the timelines under PPA/ PSAs.
 - There was a fall in generation from wind energy projects during FY 2020-21 due to its infirm nature.
 - There was a reduction in energy generation from hydro station during FY 2020-21 due to lower rainfall.
 - REC for meeting its RPO shortfall was not available because the trading of REC was kept on hold by APTEL till the final outcome of Appeal No. 113/117/118/123/137/138 of 2020.
 - The rates of green energy in Energy Exchange are on higher side as compared to the PPAs executed by MPPMCL.
 - MPPMCL has referred Regulation 15.4 of the MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) (Revision-II), Regulations, 2021, which allows the parties to approach the MPERC to carry forward the compliance requirement for next year.

Issue at hand

- Whether carry forward can be allowed for complying with requirements of RPO compliance for the current Financial Year?

Decision of the Commission

- MPERC has observed that non-fulfilment of RPO targets by MPPCL during the FY-2020-21 was mainly due to:
 - Delay in commissioning of new solar projects under competitive bidding
 - Reduction in infirm power of wind energy and hydro power due to low rainfall

- The trading of RECs was kept on hold under order by APTEL for a substantial period
- The Green Energy market from Power Exchange (PX) started operating w.e.f. August 2020
- MPERC further observed that the reasons stated by MPPMCL are not sufficient to escape from its obligation to achieve RPO targets because Green Energy Market was available with effect from August 2020. The MPERC observed that since it was in the knowledge of MPPMCL that the Regulations applicable during the FY-2020-21 did not have a provision for carry forward of its obligations in the subsequent year, so MPERC made MPPMCL liable and directed it to deposit an amount equivalent to the deficit in fulfilment of RPO targets set out by the MPERC in a separate fund as per Regulation 15 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I).
- In pursuance to the submissions of MPPMCL and aforesaid observations, MPERC stated that as this order would serve ends of justice, therefore, it is not necessary to pursue the matter regarding levy of penalty.



HSA
Viewpoint

MPERC has passed a well-reasoned order by setting a benchmark regarding compliance of RPO targets of a particular financial year by the obligated entities of Madhya Pradesh. With the coming in force of this order, the ambiguities regarding carry forward of the obligations are resolved.

Sardar Sarovar Narmada Nigam Ltd v. Central Electricity Regulatory Commission & Ors

APTEL | Order dated July 14, 2022 in Appeal No 228 of 2015

Background facts

- Sardar Sarovar Narmada Nigam Ltd. (**Appellant**) was incorporated by Government of Gujarat as a Special Purpose Vehicle (**SPV**) in 1988 to establish and operate hydro project named Sardar Sarovar Project (**SSP**) on the river Narmada.
- The electricity generated by SSP is shared by three States viz. Gujarat, Maharashtra and Madhya Pradesh in the ratio of 16:27:57 respectively through 400 kV double circuit transmission lines viz. SSP-Kasor and SSP-Asoj for Gujarat, SSP-Dhule double circuit line to Maharashtra and SSP-Nagda double circuit line to Madhya Pradesh.
- The present dispute was initiated when CERC through Suo Motu Order dated June 30, 2015, passed in Petition No. 267/SM/2012 held that the Appellant is a Generating Company having a composite scheme for generation and sale of electricity in more than one State and, therefore, the jurisdiction for determination of tariff for generation and supply of electricity by Appellant is vested with CERC.
- Accordingly, the CERC through the said order directed the Appellant to make an application before CERC for approval of the tariff of generating station and transmission lines, in accordance with Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (CERC Tariff Regulations) for the period of FY 2014-19.
- Aggrieved by the aforementioned order, the Appellant approached APTEL challenging the jurisdiction of CERC to adjudicate and determine tariff of Appellant's hydro project and accordingly challenged the maintainability of aforementioned order.

Issues at hand

- Whether the Appellant is engaged in sale of electricity in more than one State?
- Whether the Appellant is engaged in inter-State transmission of electricity?

Decision of the Tribunal

- APTEL, after taking note of the definitions of inter-State and intra-State transmission systems, observed that it is necessary for the CERC to demonstrate that the process undertaken by the Appellant involves conveyance of electricity from the territory of one State to another State, and the power generated by SSP is distributed amongst the three participating States (namely, Madhya Pradesh, Maharashtra, and Gujarat) at the respective share of 57:27:16, respectively.
- However, the APTEL after perusing the materials placed on record, especially the Award dated December 12, 1979 passed by Narmada Water Disputes Tribunal (**NWDT**), found that the share of power generated from SSP apportioned between Madhya Pradesh, Maharashtra and Gujarat is to be utilized by the concerned States under mutual agreement and there is no sale of power between the parties.

- As the Appellant does not have any power for sale of electricity to participating States which are entitled to draw their respective share, there is only sharing of the electricity amongst the three States and not sale of power by the Appellant to any such State.
- The reliance of CERC on Section 62(1)(a) of the Electricity Act, 2003 to assert its statutory obligation to determine tariff under the law for supply of electricity by the Appellant to the Distribution Licensees is of no merit as Section 62(1), by itself, does not confer exclusive jurisdiction to CERC.
- Therefore, after interpreting Section 79 and Section 2(70) of the Electricity Act, 2003, the APTEL held that that as the Appellant has not been engaged in supply or sale of electricity to the Distribution Licensees operating in the States of Madhya Pradesh or Maharashtra, the CERC under Electricity Act, 2003 has no jurisdiction to determine tariff of SSP.
- Accordingly, the APTEL held that CERC is not entitled in law to exercise any such jurisdiction as has been asserted through the impugned decision, the matter falling squarely within the domain and statutory functions of the State Commissions, as rightly exercised by them.



HSA
Viewpoint

APTEL in the present judgment has settled new law for determining jurisdiction under Section 79 and 86 of the Electricity Act, 2003, wherein the APTEL has held that if there is no sale of power between the parties and the power is consumed against the mere share of a state to get such power as a matter of right, then such a transaction does not qualify as composite scheme and the CERC has no jurisdiction to determine tariff in such factual matrix.

Sadashiva Sugars Limited v. State Load Dispatch Centre – Karnataka

Falcon Tyres Ltd v. State Load Dispatch Centre – Karnataka

Dhruvesh Metasteel Pvt Ltd v. State Load Dispatch Centre – Karnataka

Shamanur Sugars Ltd v. State Load Dispatch Centre – Karnataka

CERC | Order dated July 07, 2022, in Petition No 1/MP/2012, 124/MP/2012, 82/MP/2013, 10/MP/2014

Background facts

- APTEL vide its judgment dated April 16, 2019 in Appeal No 26 of 2013 & Batch Matters remitted back the present batch of Petitions containing similar question of law; Applicability of Unsheduled Interchange Chargers (**UI Charges**) and Back-Up Supply Charges (**BPS Charges**).
- The contentions of the parties in the present batch of Petitions are as follows:
- Sadashiva Sugars Limited (**SSL**) in Petition No 1/MP/2012 owns and operates a 15.5 MW cogeneration power plant at Nainegalli Village in Bagalkot District in the State of Karnataka.
- Falcon Tyres Limited (**FTL**) in Petition No 124/MP/2012 owns and operates a 6 MW biomass-based power generating station in Mysore in the State of Karnataka.
- Dhruvesh Metasteel Private Limited (**DMPL**) in Petition No 82/MP/2013 owns and operates a 10 MW cogeneration based captive power plant at Hirebaganal village in Koppal Taluk and District in the State of Karnataka.
- Shamanur Sugars Limited (**ShSL**) in Petition No 10/MP/2014 owns and operates bagasse-based cogeneration power plant in the State of Karnataka.
- The Petitioners in the aforementioned Petitions had contended that State Load Dispatch Center, Karnataka (**SLDC**) was not entitled to collect the BPS Charges as it did not supply the backup power.
- SLDC contended that the BPS Charges are payable by the generating company drawing electricity in terms of the Karnataka Open Access Regulations, 2004 (**OA Regulations**) which states that BPS charges shall be levied on generators for consumption of electricity by drawing power from grid for start-up and other purposes in terms of the OA Regulations.

Issues at hand

- Whether the SLDC Karnataka was entitled to collect the BPS Charges and UI Charges from Petitioners?
- Whether a generating station which is under State Control Area and draws power from State Grid shall be governed under Regulation 20(6) of CERC (Open Access in Inter-State Transmission)

Regulations, 2008 or shall be governed by the Regulations of State Commission for payment of charges for such consumption?

Decision of the Commission

- The CERC while disposing of the present matters took note of the earlier orders passed in various petitions wherein it has observed that in case the Petitioner is drawing power from the State Grid for any propose, it cannot repudiate its liability to pay the charges for the power consumed and the charges have to be billed and collected in accordance with the regulations or orders of the State Commission.
- It also held that the backup supply charges and fixed charges shall be governed by the Regulations of Karnataka Electricity Regulatory Commission only. Further, the CERC took note of the judgment dated April 16, 2019 passed by the APTEL in Appeal No 26 of 2013 & Batch wherein it gave a clear finding that power consumed from State grid by generating companies is chargeable as per the State Regulations. Thus, SLDC can levy such charges on behalf of distribution licensee as per KERC's Regulations.
- The CERC while dealing with the issue at hand discussed Regulation 20(4) and 20(6) of the CERC (Open Access in inter-State Transmission) Regulations, 2008 and observed that a reading of above Regulation makes it clear that the mismatch between schedules and actual will be covered in the intra- state UI accounting scheme. Regulation 20 (6) makes it clear that no charges other than those applicable in accordance with these regulations shall be applied on the open access customers.
- In view of the above, the CERC disposed of the Petitions No. 1/MP/2012, 124/MP/2012, 84/MP/2013 and 10/MP/2014 with a view that if a generating station which is under State Control area, draws power from State Grid, for any purpose, the same shall not be covered under Regulation 20(6) of CERC (Open Access in Inter-State Transmission) Regulations, 2008 and shall be governed by the Regulations of State Commission for payment of charges for such consumption.



HSA **Viewpoint**

The decision of CERC has settled any inconsistency in regard to Regulation 20(6) of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 and State Regulations on Open Access. CERC has clarified that the aforesaid section would not prohibit State Commissions from levying charges for any electricity drawn from the State Grid by any entity as per the terms provided under the Regulations of that State.

RECENT DEVELOPMENTS

In this Section

CERC's Order dated June 30, 2022 in Petition 9/SM/2022 issuing Directions to the Power Exchanges registered under the Power Market Regulations, 2021

Hindustan Power Exchange gets approval of the technology to be used by Order of CERC dated June 27, 2022 in Petition No. 159/MP/2022

CERC's Order dated June 30, 2022 in Petition 9/SM/2022 issuing Directions to the Power Exchanges registered under the Power Market Regulations, 2021

- CERC by way of its Order dated May 06, 2022, in Petition No. 5/SM/2022 (Suo-Motu) took note of the high demand of power and in the interests of the consumer directed the capping of prices at the Power Exchanges at INR 12/kWh for various markets (DAM (including GDAM), RTM, Intra-day, Day Ahead Contingency and Term-Ahead (including GTAM) Contracts). The order was made effective from the date of the Order to June 30, 2022.
- Consequently, upon further monitoring of the market conditions and demand and supply position in the power sector, CERC has stated that the high demand for electricity is likely to continue over the next few months. Thus, since the increasing trend of demand is likely to put pressure on market prices due to the lack of commensurate increase in supply in the Power Market, CERC, in exercise of its power under Regulation 51 of the CERC (Power Market) Regulation, 2021 (PMR) has decided to extend the applicability of the aforesaid Order in Petition No. 05/SM/2022 (Suo Motu) till September 30, 2022.

Hindustan Power Exchange gets approval of the technology to be used by Order of CERC dated June 27, 2022 in Petition No. 159/MP/2022

- Hindustan Power Exchange (HPX) filed Petition No. 159/MP/2022 for approval of the technology being used by HPX as per Regulation 28 of PMR. As per the regulations, HPX submitted detailed information regarding the technology behind the platform including its technical aspects and the audit report of the algorithm being used. Earlier, CERC by way of its Order dated May 12, 2021 in Petition No. 287/MP/2018 had granted registration of HPX and directed framing of Bye-Laws, Rules, and Business Rules and the approval of technology, including trading software of HPX. Subsequently, CERC vide Order dated February 16, 2022 in Petition No. 160/MP/2021 had approved such Bye-Laws, Rules, and Business Rules.
- Accordingly, by way of the Order in Petition No. 159/MP/2022, CERC has granted approval of the technology and trading software utilized by HPX. CERC has further directed HPX to submit a detailed report within one month after completion of six months of its operations regarding operational experience and compliance of the requirements specified in PMR and its Business Rules. HPX has also been directed to make appropriate changes in its software and to align its Business Rules, Rules and Bye-Laws before the commencement of operations of its Power Exchange in accordance with the directions of this Order and upload these documents on its website before commencement of operation of its Power Exchange business.

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PROJECTS, ENERGY & INFRASTRUCTURE

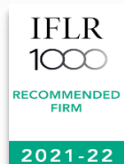


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