

PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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Indian Electricity Grid Code, Regulations, 2023

- Central Electricity Regulatory Commission (**CERC**) vide notification dated May 29, 2023 has issued the CERC (Indian Electricity Grid Code) Regulations, 2023 (**IEGC Regulations 2023**), which provide for the roles, functions, and responsibilities of the concerned statutory bodies, generating companies and any other persons that may relate to the operation of power systems, and contain exhaustive provisions with respect to the following components:
 - Reliability and adequacy of resources
 - Technical and design criteria for connectivity to the grid including integration of new elements, trial operation and declaration of commercial operation of generation stations and inter-State transmission systems
 - Protection setting and performance monitoring of the protection systems including protection audit
 - Operational requirements and technical capabilities for secure and reliable grid operation including load generation balance, outage planning and system operation
 - Unit commitment, scheduling and dispatch criteria for physical delivery of electricity;
 - Integration of renewables
 - Ancillary services and reserves
 - Cyber security, etc.
- IEGC Regulations 2023 shall apply to all users, State Load Dispatch Centers, Renewable Energy Management Centers, Regional Load Dispatch Centers, National Load Dispatch Centre, Central Transmission Utility, State Transmission Utilities, licensees, Regional Power Committees, Settlement Nodal Agencies, Qualified Coordinating Agencies and Power Exchanges to the extent applicable.
- The IEGC Regulations have not been notified yet and shall come into effect from such date as the CERC may notify and in the meantime, the CERC (Indian Electricity Grid Code) Regulations, 2010 shall continue to apply.

APERC (The Grid Interactive Solar Rooftop Photovoltaic System under Gross/Net Metering) Regulations, 2023

- Vide a notification dated June 06, 2023 Andhra Pradesh Electricity Regulatory Commission (**APERC**) has proposed the Draft APERC (The Grid Interactive Solar Rooftop Photovoltaic Systems under Net/Gross Metering) Regulations, 2023 (**Draft Regulations**).

- The Draft Regulations proposed by APERC shall be applicable to all the grid interactive solar rooftop photovoltaic systems with/without battery energy storage systems installed and commissioned in the areas of DISCOMs in the State of Andhra Pradesh.
- APERC has invited stakeholder comments qua the concerned Draft Regulations, which may be submitted on or before July 04, 2023.
- The Draft Regulations, inter alia, provide for the following:
 - All registered companies, government entities, partnership companies/firms/individuals who are consumers of AP DISCOMs and group of persons or societies who are the consumers are eligible for setting up the grid interactive SRTPVS with or without BESS.
 - Capacity of grid interactive SRTPVS with or without BESS under Gross/Net metering shall be applicable in terms of the Regulations as proposed by APERC under Regulation 5.6.
 - Projects of capacity up to 5000kWp at a single location shall be permitted.
 - The permissible capacity of grid interactive SRTPVS at various voltage levels shall be applicable in terms of the Regulations as proposed by APERC under Regulation 5.7.
 - No transmission and wheeling charges & losses shall be collected from the prosumers under the Gross/Net metering, wherever the SRTPVSs and consumption are at the same point of the grid. In other cases, 5% of energy injected into the grid by SRTPVSs in kind shall be collected/adjusted towards T&D charges and losses. The grid support charges as determined by the Commission in the tariff orders from time to time shall be applicable.

Guidelines for tariff based competitive bidding process for procurement of firm and dispatchable power from grid connected renewable energy power projects with energy storage systems

- The Ministry of Power (**MoP**) issued the Guidelines for tariff based competitive bidding process for procurement of firm and dispatchable power from grid connected renewable energy power projects with energy storage systems, dated June 9, 2023 (**Bidding Guidelines**).
- The Bidding Guidelines have been issued with the following objectives:
 - To provide firm and dispatchable power to the DISCOMs from renewable energy sources
 - To facilitate renewable capacity addition and fulfilment of Renewable Purchase Obligation (RPO)/ Storage Power Obligations (SPO) requirement of DISCOMs
 - To provide a transparent, fair, standardized procurement framework based on open competitive bidding with appropriate risk-sharing between various stakeholders to enable procurement of power at competitive prices in consumer interest, improve bankability of projects and ensure reasonable returns to the investors
 - To provide a framework for the inter-State/intra-State, long-term, sale-purchase of power as a further measure to de-risk the sector
- These Bidding Guidelines apply to long-term procurement of firm and dispatchable power by procurers, such as DISCOMs, from renewable power projects through competitive bidding. This ensures that the procurement process aligns with the provisions of Section 63 of the Electricity Act, 2003 as the Bidding Guidelines provide parameters and structure that bidding documents and process must follow.

Amendments to APERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2022

- Andhra Pradesh Electricity Regulatory Commission (**APERC**), vide its notification dated May 06, 2023 has proposed the following amendments to the APERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2022 which are illustrated below:
 - Insertion of new proviso under Sub-Clause 3.2: *‘Provided that the purchase of Renewable Energy by the Open Access Consumer from the Distribution Licensee as per the procedure stipulated in Clause 3.4 of this regulation shall also be counted towards the fulfilment of RPPO by such an Open Access Consumer.’*
 - Insertion of new proviso under Sub-Clause 3.3: *‘Provided that the purchase of Renewable Energy by the captive consume from the Distribution Licensee as per the procedure stipulated in Clause 3.4 of this regulation shall also be counted towards the fulfilment of RPPO by such a captive Consumer.’*

- The draft amendment has also inserted a new Sub-Clause 3.4 providing for procurement of renewable energy from distribution licensee by obligated/non-obligated entities at green tariff without needing to opt for a separate category 'green power'.

Discussion Paper on 'Determination of tariff for procurement of power by DISCOMs and others from municipal solid waste to energy projects in the State of Gujarat'

- The Gujarat Electricity Regulatory Commission (**GERC**), by way of notification dated June 05, 2023 has issued a Discussion Paper on 'Determination of tariff for procurement of power by DISCOMs and others from municipal solid waste to energy projects in the State of Gujarat' (**Discussion Paper**).
- GERC intends to initiate the process for determination of generic tariff for the control period up to March 31, 2028, for procurement of power generated by the MSW Projects in the State of Gujarat by DISCOMs. Interested parties can submit their submissions till July 05, 2023.

Clarifications on Karnataka Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access (GEOA) Regulations, 2022

- The Karnataka Electricity Regulatory Commission (**KERC**) has issued a clarification to the KERC (Terms and Conditions for Green Energy Open Access, Regulations, 2022 (**GEOA Regulations**)). Key aspects:
 - **Implementation of Time of Day (TOD) settlement of energy injected/drawn:** KERC has clarified that in line with the methodology developed by Forum of Regulators (**FOR**), 2% of the banked energy in kind in addition to the 8% banking charges should be charged for drawl of off-peak energy during peak hours. The TOD slots shall be as specified in the tariff orders issued from time to time and shall be applicable to low tension consumers also who seek open access under the KERC GEOA Regulations. The morning peak slot shall be from 06:00 HRS to 10:00 HRS and the evening peak slot shall be from 18:00 HRS to 22:00 HRS, unless it is modified.
 - **Settlement priority between different generation sources:** KERC has clarified that inter-State transactions shall be given priority under existing Clause 6.1.3 of Wheeling Banking Agreement (**WBA**) under the KERC (Terms and Conditions for Open Access) Regulations. In case, the consumer buys power under the old regime as well as under the new regime of the GEOA, the energy should be allocated on pro-rata basis of the contracted capacity under different regime, till such time the generating units which come under GEOA provide separate meters so that they can be treated separately for energy accounting purpose. Further, while billing the energy under GEOA should be settled first followed by settlement of energy under old regime, with annual banking.
 - **Charges to be paid by new consumers to be added to an existing WBA (signed before issue of the GEOA Regulations):** KERC clarified that any generator can add or delete consumers under the existing WBA. As far as the open access charges are concerned for these new consumers and for any capacity addition by existing consumers under the old WBA regime, the charges in terms of GEOA must be paid as the GEOA Regulations are applicable to all consumers who seek open access after coming into effect of the GEOA Regulations.
 - **Applicability of transmission charges for intra-State wheeling of energy:** KERC has clarified that in case the wheeling of energy involves usage of transmission network or network of more than one licensee, the charges shall be as indicated below:
 - If only transmission network is used, transmission charges including losses determined by KERC shall be as payable to the transmission licensee;
 - If the transmission network and the DISCOMs network is used, transmission charges shall be payable to the transmission licensee, in addition to transmission and DISCOMs technical losses and wheeling charges shall be payable to the DISCOM where the power is drawn. Wheeling charges of the DISCOM where the power is drawn shall be shared equally among the DISCOMs whose networks are used.
 - If DISCOMs network only is used, after deducting the DISCOMs technical loss of the wheeling charges of the DISCOM where the power is drawn is payable and shall be shared equally among the DISCOMs whose networks are used.
 - **Charges applicable under the GEOA Regulations:** Till KERC adopts and determines the charges in accordance with the methodology specified by FOR, Karnataka Transmission Company Ltd/ State Load Dispatch Centre/ DISCOMs are directed to collect the following:

- The transmission charges along with the transmission losses as determined by the KERC in its tariff order shall also be applicable for all transactions coming under GEOA Rules.
- Wheeling charges, wheeling losses, additional surcharge, and cross subsidy surcharge in full, as determined by the KERC in its tariff orders issued from time to time.
- Standby charges as per the GEOA Rules specified by Ministry of Power.
- Banking charges as specified by FOR (8% of the banked energy).
- Any other charges as determined by the KERC from time to time.

Approved Models and Manufacturers of Solar Power Photovoltaic Models (Requirements for Compulsory Registration) Order, 2019: Amendment Regulation

- The Ministry of New & Renewable Energy (**MNRE**) on May 12, 2023, issued Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019: Amendment Regulation (**Amended Regulation**).
- The Guidelines under 'Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Registration) Order' dated January 02, 2019 (**Principal Regulations**) were brought in to provide procedural framework for the implementation of registration of the manufacturers of the solar power photovoltaic models.
- The amendment provides that the application fee of the registration of PV modules manufacturers having total installed production capacity less than or equal to 50 MW per year shall be INR 500 and for capacity greater than 50 MW per year shall be INR 1000.
- Similarly, the Inspection fee for PV Modules manufacturers located in South Asian Association for Regional Cooperation countries (**SAARC**) having total installed production capacity up to 100 MW shall be INR 0.75 lakh, for more than 100 MW & up to 500 MW shall be INR 2.5 lakh and for more than 500 MW shall be INR 7.5 lakh and manufacturers situated in non-SAARC countries shall be INR 15 lakh for all capacities.
- The amended regulation along with application and inspection fees also provides for provisional ALMM enlistment, validity of such enlistment, minimum module efficiency thresholds for such enlistments.

Determination of Green Tariff under Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022

- The Ministry of Power (**MoP**) on May 13, 2023 issued a Notice providing for implementation of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 which were previously notified as on June 6, 2022, and amended on January 27, 2023 (**Rules**).
- The Rules provides that the tariff for the supply of green energy shall be determined separately by the appropriate Commission based on the average pooled power purchase cost of the renewable energy, cross-subsidy charges (if any), and service charges covering the prudent cost of the distribution licensee for providing the green energy.
- The Ministry noticed that since only a few States have determined the green tariffs, however such tariffs had been set at a rate much higher than the average power purchase cost of renewable energy procured by the DISCOMs, the MoP called for implementation of the tariff provided by the Rules, i.e., in no case the green tariff should be higher than average power purchase cost of RE + surcharge @ 20% of ACoS + (say) a reasonable margin of 25 paisa.
- Accordingly, by way of this notice MoP has conveyed to all SERCs to take appropriate action for determination of green tariff, implement the Green Open Access Rules notified by the Central Government and align open access Regulations in accordance with the notified Rules, at the earliest.

RECENT JUDGMENTS



In this Section

KC Ninan v. Kerala State Electricity Board & Ors

Power Grid Corporation of India Ltd v. Central Electricity Regulatory Commission & Anr

Southern Power Distribution Company of Telangana Ltd v. Telangana State Electricity Regulatory Commission & Ors

Maharashtra State Electricity Distribution Company Ltd v. GMR Energy Trading Ltd & Ors

Jaipur Vidyut Vitran Nigam Ltd & Ors v. North Western Railways & Ors

KC Ninan v. Kerala State Electricity Board & Ors

Supreme Court of India | Judgement dated May 19, 2023 | Civil Appeal No 2109-2110 of 2004

Background facts

- In the aforesaid batch of appeals, 19 cases following a similar pattern of facts were included.
- The supply of electricity was discontinued due to the failure of the previous owners to pay the dues for consumption of electricity on the premises.
- The previous owners had borrowed money or raised loans on the security of their premises. In some cases, the erstwhile owner went into liquidation. The premises were sold in auction, generally on an 'as is where is' basis.
- The new owners, who purchased the properties in the auction, applied for new electricity connections for the premises to which electricity had been disconnected for failure to pay the dues.
- The electric utilities refused to provide an electricity connection unless the auction purchaser paid the dues of the previous owner. This refusal was derived from powers conferred under subordinate legislations, notifications, electricity supply codes, or State Regulations.
- The denial of electricity supply resulted in the institution of Petitions under Article 226 before the High Court, leading to the judgments being appealed before the Supreme Court of India (SC).

Issues at hand

The issue *inter alia* which is raised in these appeals is whether the arrears of unpaid electricity dues outstanding from the erstwhile owner can be claimed from the subsequent owner, who has acquired the property in proceedings initiated to enforce mortgages or to pay off the dues of creditors. The other issues are:

- Whether the Universal Service Obligation under Section 43 of the Electricity Act, 2003 (Act) is linked to premises to which the connection is sought?
- Whether a connection of electricity supply sought by an auction-purchaser comprises a reconnection or a fresh connection?
- Whether the power to recover arrears of a previous owner or occupier from an auction-purchaser of the premises falls within the regulatory regime of the Act?
- Whether the power to enable the recovery of arrears of the previous owner or occupier from an auction-purchaser can be provided through subordinate legislation by the State Commissions?
- Whether the Electricity Act, 1910; Electricity Act, 1948; and Electricity Act, 2003 have express provisions enabling the creation of a charge or encumbrance over the premises?
- Whether the statutory bar on recovery of electricity dues after the limitation of two years provided under Section 56(2) of the Act, will have an implication on civil remedies of the electric utilities to recover such arrears?

- What is the implication of an auction-sale of premises on “as is where is’ basis, with or without reference to electricity arrears of the premises?

Decision of the Court

- The duty to supply electricity under Section 43 of the Act is not absolute and is subject to such charges and compliances stipulated by the electric utilities as part of the application for supply of electricity.
- The duty to supply electricity under Section 43 of the Act is with respect to the owner or occupier of the premises. The Act contemplates a synergy between the consumer and premises. Under Section 43 of the Act, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those premises for which electricity is sought and provided by the electric utilities.
- For an application to be considered as a ‘reconnection’, the Applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection.
- A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character.
- The scope of the regulatory powers of the State Commission under Section 50 of the Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners.
- The Rule making power contained under Section 181 read with Section 50 of the Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge.
- The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the Act.
- The implication of the expression ‘as is where is’ basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities.
- Thus, in view of the above and in the exercise of the jurisdiction under Article 142 of the Constitution, the electric utilities have been directed by the Supreme Court to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.



HSA Viewpoint

The Supreme Court has passed a cardinal decision clarifying that Universal Service Obligation is not absolute and the right of an Applicant to seek a supply of electricity under Section 43 of the Act is not plenary unless the Applicant/owner/occupier pays all charges and complies with all applicable conditions.

Power Grid Corporation of India Ltd v. Central Electricity Regulatory Commission & Anr

Appellate Tribunal for Electricity (APTEL) | Judgement dated May 25, 2023 | Appeal DFR No. 312 of 2022

Background facts

- The Petitioner, Power Grid Corporation of India Ltd (**PGCIL**), filed a Petition seeking review of the order passed in Appeal No. 53 of 2022 dated April 12, 2022. APTEL had set aside the order passed by the Central Electricity Regulatory Commission (**CERC**) in Petition No. 523/MP/2020 dated February 15, 2022 directing forfeiture of INR 50 lakh each from the connectivity bank guarantees and had allowed the Petition filed by the Appellant before the CERC seeking grant of substantial reliefs.
- Further, in the instant appeal PGCIL had sought condonation of delay of 77 days in filing of the Petition and has stated that the delay was caused on account of internal discussion within the management of the PGCIL, and an opinion was sought from their counsel on April 20, 2022; thereafter, the matter was further deliberated, and it was decided to file the Review Petition. Therefore, on account of internal discussion and finalization of the Petition, the delay occurred in filing of the Review Petition.

Issue at hand

- Whether this Tribunal has the power to condone the delay in filing the Review Petition beyond 30 days?

Decision of the Tribunal

- APTEL held that as per Section 120(1) of the Electricity Act, 2003, this Tribunal has the powers to regulate its own procedure.
- The APTEL further held that Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and the Notification issued by Tribunal under Section 120(1) read with Section 120(2)(f) is a special law and have overriding effect in terms of filing of Review Petition. But at the same time, there is no inconsistency or conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act.
- The power conferred on this Tribunal, under Section 120(2)(f) of the Electricity Act, is a judicial power. In such a situation the provisions of Section 175 of the Electricity Act would, in an appropriate case, enable a specified period to be excluded in computing limitation, or to condone the delay, in view of the salutary principles underlying Section 5 of the Limitation Act.
- Moreover, sufficient cause must receive a liberal construction to advance substantial justice and generally delays are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. Rules of limitation are not meant to destroy the rights of parties. In every case of delay, there is some lapse on the part of the litigant concerned. The tribunal should not, ordinarily, proceed with the tendency of finding fault with the cause shown and reject the Petition. Acceptance of the explanation furnished should be the rule, and refusal an exception.
- There is no presumption that delay in approaching the Court is always deliberate. It is delay of a short duration and the doctrine of prejudice is not attracted and it calls for a liberal delineation. Applying these tests, the delay in the Review Petitions are not as inordinate as to justify denying the Petitioners a hearing on the Review Petitions filed by them.
- In these circumstances, APTEL condoned the delay in filing the Review Petitions, with a condition that the Applicant Review Petitioners pay costs of INR 75,000 in each case to the Respondents.



HSA Viewpoint

As stated by APTEL, it is necessary for delivering justice that delay can be condoned by the Tribunal. APTEL has given a well-reasoned judgment upholding the powers of APTEL to condone delay in case of review proceedings.

Southern Power Distribution Company of Telangana Ltd v. Telangana State Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity (APTEL) | Judgement dated May 30, 2023 | Appeal No. 281 of 2022

Background facts

- The Telangana Solar Power Policy 2015 was introduced to promote the development of solar power projects in the State. Under this policy, Solar Power Developers (SPDs) were eligible for various incentives and benefits, including the facilitation of grid synchronization and open access by the distribution companies.
- The Appellant, Southern Power Distribution Company of Telangana Ltd, claimed that the Respondents had failed to commission and synchronize their solar power projects within the stipulated time as per the terms and conditions of the policy. As a result, the Appellant argued that they were entitled to invoke the bank guarantees furnished by the Respondents.
- The Respondents, Tejas India Solar Pvt Ltd (TISPL) and BVM Energy & Residency Pvt Ltd (BERPL), disputed the Appellant's claims and argued that they had faced various challenges and delays in the commissioning process, which were beyond their control. They contended that the Appellant's decision to invoke the bank guarantees was arbitrary and illegal.
- The Telangana State Electricity Regulatory Commission (TSERC) examined the matter and passed orders in favor of the Respondents. The State Commission directed the Appellant to facilitate the synchronization of the solar power projects owned by the Respondents within 30 days. It also directed to Appellant to grant open access to the projects, considering them for 'special consideration' under the Electricity Act.
- Aggrieved by the order passed by TSERC, the Appellant filed appeals challenging the same.

Issue at hand

- Whether the synchronization and grant of open access to the SPDs for supplying electricity to captive users or for third party sale can be denied if the SPPs fails to comply with the terms and conditions of the solar policy?

Decision of the Tribunal

- APTEL opined that SPDs has not claimed any benefits under the solar policy before APTEL and have only requested for connectivity and synchronization as a generator/captive energy-generating equipment for captive or external consumers.
- APTEL held that there is no substance in Appellants claim in terms of the provisions of the relevant Act and Rules, since the benefits and incentives can be extended only to the SPDs commissioned within the specified time period, otherwise, the projects shall be treated as any other generating project under the provisions of the Act and the Rules/Regulations framed thereunder.
- The Tribunal noted that as per the Electricity Act, 2003, anyone may build, run and maintain a generating station or captive generating plant as long as it complies with the technical requirements for grid connectivity mentioned in Clause (b) of Section 73 of the Act, or more specifically, the Regulations announced by the Central Electricity Authority under Section 177 of the Act. Additionally, the distribution licensee is responsible for creating and maintaining the distribution network in his area of supply, while the State Commission is responsible for establishing open access policies that do not discriminate when it comes to the use of distribution networks or the facilities that go along with them.
- APTEL categorically noted that no incentives or remedies were sought by the Appellant under the solar policy, therefore regardless of its capability, it is entitled to all of the protections provided by the Act. Further, APTEL clarified that the Appellant has failed to provide any justification for seeking any relief as stated in the afore-stated paras. Thus, the appeals filed by the Appellants were dismissed by APTEL.



HSA **Viewpoint**

APTEL has given a well-reasoned judgment whereby the Tribunal has correctly held that a party claiming any relief under the provisions of Act, Rules or any Regulations are required to specifically rely upon them in their pleadings. If the same is not specifically pleaded, then it cannot be claimed before any forum.

Maharashtra State Electricity Distribution Company Ltd v. GMR Energy Trading Ltd & Ors

Central Electricity Regulatory Commission (CERC) | Judgment dated June 02, 2023 | Petition No. 83/MP/2019 & Batch

Background facts

- In the present case, MSEDCL floated a tender i.e., ET- 58 on DEEP portal for 500 MW on RTC and day period each for 10 requisitions (each having 15 or 16 days) during the period from August 1, 2018 to December 31, 2018.
- TPTCL participated in the bid on the assurance provided by DB Power to supply power on a back-to-back basis.
- To the extent the case of TPTCL is concerned, MSEDCL subsequent to the bidding process issued three LOIs i.e., September 26, 2018, October 09, 2018 and October 25, 2018, out of which only September 26, 2018 was accepted and remaining two LOIs were not accepted by TPTCL.
- It is the alleged case of MSEDCL that due to non-supply of power by TPTCL / DB Power, MSEDCL was constrained to procure the costly power from the Power Exchange. Accordingly, MSEDCL filed Petition No. 83/MP/2019 seeking revocation of the trading license of TPTCL (along with the licensees of other trading licensees which participated in the said bid).
- In the meanwhile, MSEDCL owing to non-supply of power (as alleged in Petition No. 83/MP/2019) deducted INR 3 crore (approx.) from the bills of TPTCL, which TPTCL (having back-to-back arrangement with DB Power) deducted the same from the bills of DB Power.
- Aggrieved by the same, DB Power also approached CERC vide Petition No. 21/MP/2021 and sought refund of the payment as deducted by MSEDCL / TPTCL.

Issues at hand

- Whether MSEDCL has made out the case for initiation of proceedings for revocation of license of the Respondent trading licensees?

- Whether MSEDCL is entitled for damages or compensation for short supply or non-supply of power by traders/source generators? If yes, then to what extent?

Decision of the Commission

- To the extent the issue of revocation of trading license is concerned, CERC in the Final Order held that the allegation of willful and prolonged default on the part of the trading licensees could not be conclusively established, no case for revocation of trading licenses (as pleaded by MSEDCL) is made out. Accordingly, the prayer to this extent was rejected by CERC.
- As far as issue of payment of compensation is concerned, CERC held that where the LOIs have been accepted by the generator/trader, the same construes to a concluded contract, and where no LOI has been accepted by the generator/trader, there no concluded contract is established. Accordingly, CERC in para 67 of the Final Order held as following:
 - Since TPTCL has accepted the LOIs dated September 26, 2018, thus the said LOI has resulted in concluded contract. However, in case of LOIs dated October 09, 2018 and October 25, 2018 where TPTCL has not acknowledged the LOIs through acceptance, in such cases LOIs did not resulted into concluded contracts.
 - Thus, for the LOIs dated October 09, 2018 and October 25, 2018 (where TPTCL have not acknowledged the LOIs through acceptance), MSEDCL is entitled to forfeit the EMD only.
 - As far as LOI dated September 26, 2018 (where TPTCL accepted it) is concerned, MSEDCL is entitled to recover liquidated damages in terms of Clause 23 of the tender ET-58 if the deviation in scheduled energy from bidders' side is more than 15% of the contracted power. Accordingly, the Bidder shall be liable to pay compensation to procurer i.e., MSEDCL at 20% of tariff per kWh for the quantum in excess of permitted deviation. Further, MSEDCL is entitled to claim damages to the extent of contract performance guarantee under Clause 15.4 of the tender ET-58.
- On account of the aforesaid, CERC vide the Final Order has directed MSEDCL and TPTCL to reconcile in terms of the directions passed by CERC. Additionally, CERC has duly noted that since there is a back-to-back arrangement between DB Power and TPTCL, therefore, TPTCL shall settle the claims of DB Power in terms of the settlement reached between MSEDCL and TPTCL in terms of the Final Order dated June 02, 2023 passed by CERC in the present matter.
- CERC has further directed parties to reconcile their claims in terms of the order and directed MSEDCL to claim amount of compensation only with respect to the limited loss suffered on account of shortage of supply qua the concerned period/particular arrangement.



HSA Viewpoint

The order passed by the Commission allowing the compensation to MSEDCL in terms of the non-compliance of the arrangement between the parties and accordingly granted relief to MSEDCL strictly in terms of the agreed provisions of between the parties therein. Therefore, the order passed by CERC is in strict terms of the arrangement between the parties only.

Jaipur Vidyut Vitran Nigam Ltd & Ors v. North Western Railways & Ors

Rajasthan Electricity Regulatory Commission (RERC) | Judgement dated May 24, 2023 | Petition No. 1911 of 2021

Background facts

- The Petitioners i.e. Jaipur Vidyut Vitran Nigam Ltd, Ajmer Vidyut Vitran Nigam Ltd and Jodhpur Vidyut Vitran Nigam Ltd, the three Distribution Licensees (**DISCOMs**) in the State of Rajasthan, filed a Petition under Section 86 read with Section 181 of the Electricity Act, 2003 and Regulation 25 & 26 of the RERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017 (**RERC F&S Regulations**) before Rajasthan Electricity Regulatory Commission (**RERC/State Commission**)
- The RERC F&S Regulations stipulates penalty in case of deviations from the schedule and actual power injected by RE generators.
- The Petitioners requested the Commission to consider making necessary amendments in the RERC F&S Regulations to avoid unwarranted burden upon the DISCOMs due to deviations of RE Generation sources of the Indian Railways.
- Respondent No. 1 i.e., North-Western Railways (**NWR**), being a deemed licensee, submitted that NWR sources its power from various sources within and outside the State of Rajasthan. In the case of power sourced by Indian Railways, the charges payable for under/over injection for such power are covered under the RERC F&S Regulations. However, due to such deviations, the charges payable by the State to Northern Region Load Dispatch Centre (**NRLDC**) via the State DSM pool,

which are chargeable to DISCOMs as per the RERC (Deviation Settlement & Related Matters Regulations, are significantly higher than the charges levied upon the Indian Railways as per the RERC F&S Regulations.

- The Respondent No. 2 i.e., State Load Dispatch Centre (**SLDC**) had proposed two options and requested the Commission to consider any one of those options and issue necessary directions under Regulation 25 to remove the difficulties to implement both the aforesaid Regulations in their spirit. The options proposed were:
 - **Option 1:** The DSM rates and methodology to compute the DSM charges for the RE generator (used by the deemed licensee in captive mode) in the intra-State open access may be taken as in case of inter-State open access transaction wherein the rates have been defined in the relevant para of the RERC F&S Regulations as narrated below: -'Fixed Rate for open access participant, selling power which is not accounted for RPO compliance of the buyer, and the captive wind or solar plants shall be the Average Power Purchase Cost (APPC) rate at the National level, as determined by the CERC from time to time. For this purpose, the State Commission may also determine any other rate as and when considered appropriate. In that case the same shall be applicable.
 - **Option 2:** The drawl schedule of the Indian Railways may be prepared considering actual generation of the RE generator instead of the scheduled generation and accordingly deviation charges would be calculated at drawl points. In that case an ABT meter on 33 kV Railway feeder at 220 kV GSS Dangri (Pooling Stations) shall be installed with AMR facility and it should be integrated with SLDC system. The cost of the metering system shall be borne by the Indian Railways.

Issue at hand

- Whether necessary amendments to RERC (Forecasting, Scheduling, Deviation Settlement and related Matters of Solar and Wind Generation Sources) Regulations, 2017 should be admitted and approved?

Decision of the Commission

- RERC was of the view that if Option-2 is implemented, there will not be any undue benefit to either the Petitioners/DISCOMs or the North-Western Railway (**NWR**) and thus, the interests of both the parties will be protected and balanced.
- With regards to the request of the Petitioner seeking amendment to the Regulations, RERC stated that it cannot be accepted as it cannot be undertaken by way of this Petition for which due process envisaged under the Act is to be followed. However, to deal with the peculiar situation arising in this case, in our view regulatory powers need to be exercised by the State Commission.
- In exercise of the power conferred under Regulation 25 of the RERC F&S Regulations, in the interest of justice and equity and to keep both the parties on same pedestal, RERC directed that SLDC should prepare the drawl schedule of the NWR considering the actual generation from the RE generator instead of the scheduled generation and accordingly, deviation charges may be worked out at drawl points.
- Further, RERC directed that ABT meters shall be installed, if already not installed, at 33 kV railway feeder at 220 kV GSS Dangri Pooling Station with AMR facility which should be integrated with SLDC system and cost of the same shall be borne by NWR.



HSA **Viewpoint**

The present order passed by RERC shall have far reaching impact on NWR on account of its huge power requirement for traction as well as non-traction load more so because of the fact that NWR, as a drawing entity, is governed by RERC DSM Regulation for the purpose of accounting for deviation in drawl of power while the Wind Power Plant which caters to NWR's power demand is governed by RERC F&S Regulations and is being treated as intra-State generator.

CONTRIBUTIONS BY

Molshree Bhatnagar | Partner
Nipun Sharma | Principal Associate
Deepak Thakur | Associate
Shubham Singh | Trainee Associate

Shreshth Sharma | Partner
Nishant Talwar | Principal Associate
Neelkandan Rahate | Associate
Varnika Tyagi | Trainee Associate

Nimesh Jha | Principal Associate
Parichita Chowdhury | Principal Associate
Rishabh Sehgal | Associate

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REAL ESTATE



TAXATION



CORPORATE & COMMERCIAL



ENVIRONMENT, HEALTH & SAFETY



PROJECTS, ENERGY & INFRASTRUCTURE



REGULATORY & POLICY



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION



CONTACT US



www.hsalegal.com



mail@hsalegal.com



HSA Advocates

PAN INDIA PRESENCE

New Delhi

Email: newdelhi@hsalegal.com

Mumbai

Email: mumbai@hsalegal.com

Bengaluru

Email: bengaluru@hsalegal.com

Kolkata

Email: kolkata@hsalegal.com