

# PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER  
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# LEGAL & POLICY UPDATES



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## Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023

- The Central Electricity Authority (CEA) on June 8, 2023 issued the CEA (Measures relating to Safety and Electric Supply) Regulations, 2023.
- By way of these Regulations, CEA has provided general safety requirements pertaining to the construction, installation, protection, operation and maintenance of electric supply lines and apparatus; and general conditions relating to the supply and use of electricity.
- The Regulations provide safety provisions for electrical installations and apparatus of voltage above and below 650 V, for overhead lines and underground cables, for renewable generating stations, electric vehicle charging stations, for high voltage direct current, among others.
- **Key aspects:**
  - These Regulations shall be applicable to electrical installations, including electrical plants and electric lines, and persons engaged in generation, transmission, distribution, trading, supply, or use of electricity.
  - The Regulations provide that the supplier, consumer, owner of the electrical installation, owner or agent or manager of a mine, agent of any company operating in an oil field, owner of a drilled well in an oil field, or a contractor who has entered into a contract with a supplier or consumer, owner of the electrical installation, owner or agent or manager of a mine, or agent of any company operating in an oil field, shall perform the duties incidental to the generation, transformation, transmission, conversion, distribution, or use of electricity.
  - The Regulations also state that the supplier, consumer, owner, or agent shall maintain a record, in paper or electronic form, wherein the names of the designated person and the purpose for which they are designated, shall be entered.
  - All suppliers of electricity including generating companies, transmission companies, and distribution companies shall designate an Electrical Safety Officer for ensuring observance of safety measures specified under these Regulations in their organization for the construction, operation, and maintenance of an electrical system of all generating stations, transmission lines, substations, distribution systems, and supply lines.
  - Whenever a licence is granted by the Appropriate Commission, two sets of maps specifying the particulars for which the licence is granted, shall be signed and dated corresponding to the date of notification of the licence by an officer designated by the Appropriate Commission.

- Within 30 days of the grant of the licence thereof the licence holder must have physical or digital copies of the licence and maps showing the area of supply as specified in the licence to exhibit the same for public inspection at all reasonable times at its head office, local offices, if any, and at the office of every local authority within the area of supply.

## Rajasthan Electricity Regulatory Commission (Renewable Purchase Obligations) Regulations, 2023

- Rajasthan Electricity Regulatory Commission (**RERC**) notified the Rajasthan Electricity Regulatory Commission (Renewable Purchase Obligations), Regulations 2023 (**RPO Regulations, 2023**), which will be applicable from April 1, 2024 onwards to the following:
  - Distribution Licensee including deemed licensee.
  - Open Access (**OA**) consumer.
  - Captive Power Plant (**CPP**) of installed capacity 1 MW and above.
- The Renewable Purchase Obligations have been stipulated for aforesaid entities under different categories as under:
  - Distribution Licensee including Deemed Licensee.
  - Wind RPO, which is required to be met from power generated by (i) Wind Power Projects (**WPPs**) which came into operation after March 03, 2022 (ii) in case of energy consumption over and above 7%, from WPPs commissioned till March 03, 2022. Wind RPO rises from 2.46% in 2024-2025 to 6.94% in 2029-30.
  - Hydropower RPO (HPO), which is required to be met from Hydro Power Projects (**HPP**) (inclusive of Pumped Hydro Storage Project (**PSP**) and Small Hydro Pumps (**SHPs**), that started operations after March 8, 2019. HPO of the State/DISCOM may possibly be fulfilled, out of the free power being given to the State from HPPs commissioned after March 8, 2019. However, to avail HPO benefit, the respective free power should not have been contributed for local area development. Pertinently, the hydro power imported from outside the territorial jurisdiction of India will be not accounted towards HPO. HPO rises from 1.08% in 2024-2025 to 2.82% in 2029-2030.
  - Other RPO, which is required to be met by energy produced from any RE based/green energy-based power projects not included within Wind RPO and HPO. Notably, from FY 2024-2025 onwards power from all other HPP, inclusive of free power from HPP commissioned before March 08, 2019, would form part of 'Other RPO'. Other RPO rises from 26.37% in 2024-2025 to 43.33% in 2029-2030.
  - The entity to purchase the additional hydro power to meet its HPO/ Renewable Energy Certificate (**REC**), in case the free power is insufficient to meet the criteria.
  - If obligate is unable to meet 'Other RPO' category in a particular year, the same can be met with surplus power consumed from appropriate HPP provided it is beyond 'HPO' for that year or partly from both. Similarly, the HPP with excess HPO can compensate the gap in accomplishment of 'Wind RPO' in a particular year and vice versa.
- CPP & OA Consumers with 1 MW and above:
  - There are no sub-categories of RPO in case of CPPs and OA Consumers. The RPO obligation rises from 29.91% in 2024-2025 to 43.33% in 2029-2030.
  - CPPs operationalized before April 1, 2016, need to meet the RPO level as directed by RERC for FY 2015-2016, and those operationalized after April 1, 2016, will have to meet the level as stipulated for the corresponding year of commissioning of such CPP.
  - In case of any augmentation of capacity, the RPO obligation of such CPP shall correspond with the year of such augmentation.
  - After meeting RPO, if there is surplus power by CPP, the same can be sold to distribution companies or in power exchange.
- Energy Storage Obligation (**ESO**):
  - Energy Storage Systems (**ESS**) by Distribution Licensee (including deemed licensee) are required to are required meet ESO (from solar/wind energy along with/through storage) which rises from 1.5% in 2024-2025 to 4% in 2029-2030.
  - ESO shall be computed in energy terms as a percentage of total consumption of electricity, thereby treating it as 'met' when at least 85% of entire energy gathered in the on yearly basis.
  - Energy stored from RE source would be considered as part of fulfilment of total RPO.
  - ESO requirements will be reviewed periodically in order to accommodate any new commercially viable energy storage technology and/or as per change in cost of battery ESS.

## Draft Gujarat Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2023

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- Gujarat Electricity Regulatory Commission (**GERC**) on June 26, 2023, notified the Draft Gujarat Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2023 (**Draft Regulations**).
- These Regulations aim to provide Green Energy Open Access benefits to different categories of consumers, and are applicable for allowing open access to electricity generated from green sources, including the energy from non-fossil based municipal solid waste-to-energy plants for use of Intra-State Transmission System (**InSTS**) or distribution system or both, which are incidental to Inter-State Transmission of Electricity.
- **Key aspects:**
  - Green Energy Open Access is classified into long-term, medium-term, and short-term categories based on the duration of use. Long-term access lasts between 12 to 25 years, medium-term access is between 3 months to 3 years, and short-term access is up to 1 month. If a consumer wants to continue short-term access, they need to submit a new application and priority will be given based on the application date.
  - These Regulations apply to consumers with a contracted demand of up to 100 KW.
  - Applicants are prohibited from entering into a Power Purchase Agreement (**PPA**) or any bilateral agreement involving multiple parties for the applied capacity.
  - To allow long-term open access to green energy, it should comply with the transmission and distribution planning codes outlined in the State grid code. Additionally, short-term and medium-term open access can be granted if the request can be accommodated using design margins, available power flow variations, and spare capacity in the transmission or distribution systems.
  - To apply for green energy open access, applicants need to fill out a specific form and submit it to the nodal agency. They must also declare that they haven't signed any agreements with multiple parties for the same amount of power they are requesting access to.
  - Consumers, licensees, and generating companies can qualify for Green Energy Open Access to the Intra-State transmission system within the State, subject to the Regulations and system availability. The provisos are mentioned in Section 9 of the said draft.
  - Allotment priority for Green Energy Open Access is given to distribution licensees, followed by Green Energy Open Access consumers, with preference given to long-term access consumers over medium-term and short-term consumers, based on availability and on a first-come, first-serve basis.
  - The charges payable by the Green Energy Open Access consumers shall be as follows:
    - Transmission charges
    - Wheeling charges
    - Cross subsidy surcharge
    - Additional surcharge
    - Standby charges wherever applicable
    - Banking charges and other fees and charges such as SLDC fees and scheduling charges deviation settlement charges as per the relevant Regulations, Orders of the Commission.
  - All disputes and complaints related to Green Energy Open Access should be raised with the respective State Nodal Agency, such as the State Load Dispatch Centre (**SLDC**) or State Transmission Utility (**STU**), for resolution. If dissatisfied with the decision, an appeal can be made to the appropriate Commission within 30 days. The appropriate Commission will resolve the appeal within 3 months, and its decision will be binding on the parties involved.

## Electricity (Amendment) Rules, 2023

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- The Ministry of Power (**MoP**) by way of notification dated June 30, 2023 issued the Electricity (Amendment) Rules, 2023 (**Amendment Rules**).
- **Key aspects:**
  - By way of the Amendment Rules, Rule 3(a)(i) of the Electricity Rules has been amended to provide that where a captive generating plant is set up by an affiliate company at least 51% of the ownership of such affiliate company should be held by the captive user.
  - Further, there has been an amendment in the definition of 'captive user' in the explanation to Rule 3 (2), now the definition of captive user includes consumption of electricity by the captive user may be either directly or through energy storage system; and consumption by a

subsidiary company of a company which is an existing captive user shall also be treated as captive consumption by the captive user.

- Further, there has been addition of Rules 4A, 4B and 4C to the Electricity Rules 2005 (**Principal Rules**) which inter alia provide that the Appropriate Commission shall determine the period of the license under Section 14 of the Electricity Act in accordance with terms and conditions of the license. The license period for a deemed licensee under first, second and fifth proviso to Section 14 of the Electricity Act shall be 25 years from the date of the coming into force of the Electricity Act. The said licenses shall be deemed to be renewed for a period of 25 years or less 'if requested by the licensee' unless the same are revoked.
- The Amendment Rules amend Schedule I of the Rules which provides for the methodology for the calculation of tariff for the month. Post amendment the tariff for a particular month is to be calculated based on energy scheduled to end procurer from the central pool by the intermediary procurer and the actual amount to be payable for such scheduled energy as illustrated in the Schedule.

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

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- The Ministry of Power (**MoP**) on June 09, 2023 amended its Order dated May 29, 2023 regarding the waiver of Inter-State Transmission Charges on transmission of electricity generated from solar and wind sources of energy. As per the notification, Para 3.1 (VII) has been substituted by:

*'for any solar, wind and sources mentioned in para 3.1 (i), (ii) and (iii) of the Order dated November 23, 2021, which is eligible for waiver of Inter-State transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of Inter-State transmission charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30th June 2025*

*Provided that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.*

*Provided also such extension in Date of Commissioning (CoD) of a project shall be granted for a period of six months at a time and not more than 2 times'.*

## Pooling Scheme for tariff of plants with expired PPAs

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- The Ministry of Power (**MoP**) on April 20, 2023 notified the Scheme for pooling tariffs from plants with expired Power Purchase Agreements (**PPA**). The Scheme aims to use the power generation capacity of thermal power plants older than 25 years whose PPAs have expired but are in operational conditions.
- The Scheme could reduce the formation of new long-term PPAs and does away with the need for mega investments to set these plants. These older plans often recover their upfront costs and overcome their debts.
- **Key aspects:**
  - Power generators must create a common pool of thermal generating stations comprising coal or gas-based plants that have completed their PA period. They must inform existing beneficiaries one year before power is deallocated from the generating station and added to the common pool. They will develop A Single Window System (**SWS**) to facilitate the process of seeking the willingness of States/ DISCOMS to sign PAs from the common pool.
  - The common pool will comprise generating stations that have completed their earlier PAs, and any station that completes its PA period will be automatically added to the pool. Plants that have already completed their PPA period but have signed new PAs post-expiry will be excluded. All central generating capacity that completes their PA tenures in the future will be added to the pool. The allocation of power from the common pool to the willing DISCOMS will be subject to signing a new PA with the pool and ensuring compliance with the financial terms of the PA signed with the generating company.
  - The total capacity charge of the pool will be worked out by adding the capacity charges of each station in the pool as per the tariff Regulations of CERC. The DISCOMs will be billed a

uniform capacity charge in crore/MW based on percentage allocation and total capacity charge of power from the common pool. The DISCOMs will be billed a uniform energy charge computed based on station-wise weighted average pooled monthly uniform energy charge rate and final implemented schedule. There will be no incentive for the energy charge. Further, there will be a quarterly truing up of ECR billed to the DISCOMs.

## Scheme Guidelines for implementation of Strategic Interventions for Green Hydrogen Transition Programme - Component II

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- The Ministry of New and Renewable Energy (**MNRE**) on June 28, 2023 issued the Scheme Guidelines for implementation of 'Strategic Interventions for Green Hydrogen Transition (**SIGHT**) Programme - Component II: Incentive Scheme for Electrolyzer Manufacturing' of the National Green Hydrogen Mission.
- The Union Cabinet has approved the National Green Hydrogen Mission with an outlay of INR 19,744 crore up to 2029-30. The SIGHT program is a major financial measure under the mission, with an outlay of INR 17,490 crore.
- The program proposes two distinct financial incentive mechanisms to support domestic manufacturing of electrolyzers and the production of green hydrogen. These incentives are aimed at enabling rapid scale-up, technology development and cost reduction. This scheme has been issued with the objective to:
  - Maximize production of green hydrogen and its derivatives in India.
  - Enhance cost-competitiveness of green hydrogen and its derivatives vis-a-vis fossil-based alternatives.
  - Encourage large-scale utilization of green hydrogen and its derivatives.

## Operation and Maintenance (O&M) Guidelines and Standard Format for MoU between new and existing TSP

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- The Central Electricity Authority (**CEA**) on June 22, 2023 issued the Operation and Maintenance (**O&M**) Guidelines and Standard Format for Memorandum of Understanding (**MoU**) between New TSP and Existing TSP.
- These Guidelines shall be applicable for all the upcoming and under-bidding ISTS projects and for new contracts in case of operational/under-construction projects under the TBCB route. However, all the existing contracts signed by the various TSPs for Operation and Maintenance activities and charges will remain in force till the end of their term.
- The O&M charges to be paid by the New TSP to the existing substation owner, for the relevant year, shall be 30% of the normative O&M expenses of relevant voltage level and transformer capacity as specified for that particular year in Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations as issued from time to time.

## Guidelines on design, construction, O&M and annual certification of coal ash ponds

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- The Central Electricity Authority (**CEA**) on June 28, 2023 issued guidelines on design, construction, O&M and annual certification of coal ash ponds.
- The scope of these Guidelines shall cover the siting, location, planning, technical specifications, design and engineering standards, disposal system regulation and procedure for maintenance and annual certification to ensure that the ash storage shall be safe and ash utilization shall fulfil the requirement of the plant and comply with the Ministry of Environment, Forest and Climate Change (**MoEF&CC**) Norms.
- The factors affecting the environment i.e. land for ash disposal, pollution on groundwater and surface water bodies, fugitive dust emission and breach of ash dyke have been discussed and remedial measures have also been suggested.

# RECENT JUDGMENTS



## In this Section

Avaada MH Sustainable Pvt Ltd (ASPL) v. Maharashtra State Electricity Distribution Co Ltd (MSEDCL)

Kerala State Electricity Board Ltd (KSEBL) v. Power Grid Corporation of India Ltd (PGCIL) & Anr

Solar Energy Corporation of India Ltd v. Uttar Pradesh Electricity Regulatory Commission & Anr

Himachal Pradesh State Electricity Board v. NRSS XXXI (A) Transmission Ltd & Ors

## Avaada MH Sustainable Pvt Ltd v. Maharashtra State Electricity Distribution Co Ltd

Maharashtra Electricity Regulatory Commission (MERC) | Judgement dated May 31, 2023 | Case No. 187 of 2022

### Background facts

- Avaada Energy Pvt Ltd. (**AEPL**) participated in the bidding process pursuant to Request for Selection (RFS) dated December 27, 2019 issued for procurement of 500 MW solar power from grid connected solar PV Plants in Maharashtra. ASPL emerged as the successful bidder for setting up 250 MW capacity Solar Power Plant (**ASPL Project**).
- Tariff of INR 2.90/kWh was adopted by MERC vide its Order dated May 15, 2020 in Case No 81 of 2020 for ASPL Project. Consequently, MSEDCL issued LoA dated June 17, 2020 in favor of AEPL requiring it to execute Power Purchase Agreement (**PPA**) and submit Performance Bank Guarantee (**PBG**) of INR 35 crore within 30 days of the issuance of LoA i.e., July 17, 2020. AEPL informed MSEDCL that project shall be executed by ASPL, its 100% subsidiary company. However, on account of ongoing COVID-19 pandemic and resultant lockdown imposed by the Government, ASPL requested MSEDCL to allow extension of timelines for submitting PBG and PPA along with the assurance that effective date under the PPA shall remain unchanged from July 17, 2020.
- Thereafter, AEPL requested MSEDCL to execute the PPA. However, MSEDCL failed to respond and AEPL was constrained to file Case No. 04 of 2021 before MERC seeking directions to MSEDCL to execute PPA in a timely manner. By way of Order dated February 16, 2021, MERC issued directions for reissue of PBG and execution of PPA within 2 weeks (**MERC Order**). However, no PPA was signed even after the passage of two weeks.
- On May 5, 2021, MSEDCL challenged MERC Order before APTEL. On June 25, 2021 APTEL issued directions on basis of consensus between the parties that MSEDCL would execute PPA and during adjudication of the matter, ad-hoc tariff of INR 2.45/unit would be paid to ASPL.
- Pursuant thereto, PPA was only executed on August 10, 2021 after significant delay (about 161 days from date stipulated in MERC Order). Pertinently the original PPA, required financial closure (**FC**) and SCD of project to take place within 18 months. However, MSEDCL contended that amendment of PPA wherein such FC and SCD should have been completed within 12 months from effective date. MSEDCL alleged that inclusion of '18 months' in PPA was a 'typographical error'. Hence, MSEDCL submitted that there was delay in achieving FC and ASPL was liable to extend validity of PBG till November 11, 2022 and make advance payment of INR 12 crore plus taxes as extension charges for such delay.
- It is ASPL's case that MSEDCL could not have unilaterally amended the PPA and assume ASPL's liability on basis of the same. In this regard APTEL submitted that the PPA was signed on August 10, 2021 while as per MSEDCL's understanding PPA required FC and SCD by July 19, 2021 which is irrational as in absence of PPA, there could not have been any FC or SCD.

- Further the delay in execution of PPA was on account of MSEDCL itself. Hence, it was ASPL's submission that both the parties have consciously agreed to keep the date for achieving financial closure as 18 months from the effective date i.e., by January, 17, 2022. As ASPL achieved FC and SCD by Dec 27, 2021 there was no delay on its part.
- ASPL also claimed delay on account of Force Majeure events as under:
  - Delay by Maharashtra State Electricity Transmission Company (**MSETCL**) in granting necessary statutory approvals essential for construction of transmission infrastructure for injection of power from the project to the grid
  - Delay due to third and fourth surge of COVID-19 during the period December 2021 – January 2022 & March 2022 – April 2022
  - Delay on account of heavy rainfall leading to flood like situation near the project site
  - Delay on the part of MSEDCL in executing PPA necessary for the development of the project

### Issues at hand

- What is the implication of delay in signing the PPA?
- Whether PPA terms can be amended unilaterally for considering FC period to be 12 or 18 months?
- Whether date of SCoD needs to be extended in view of alleged force majeure events?

### Decision of the Commission

- ASPL cannot be faulted for delay in signing of the PPA as it had submitted the draft PPA duly signed by it to MSEDCL within stipulated time. Accordingly delay caused in signing of the PPA was solely on account of MSEDCL.
- By way of MERC Order, MSEDCL had been directed to sign PPA within two weeks, yet PPA was only actually signed after delay of 161 days. Therefore, ASPL is not responsible for the delay caused in achieving SCD and the MERC Order shall be considered towards the extended time for meeting milestones in the PPA.
- MSETCL failed to comply with the timeline of 30 days period stipulated in Regulation 6.9 of MERC (Transmission Open Access) Regulations, 2016, therefore, the delay on account of the same needs to be considered for extending SCD. Extension of SCD was granted to ASPL till the date of commissioning of the Project on account of (i) the extension granted on account of delay on the part of MSEDCL in signing the PPA (ii) delay by MSETCL in granting required approvals for transmission of power and directed MSEDCL to not levy any penalty on this account. Further, the issue of FCC was stated to be irrelevant in both scenarios (12 months or 18 months) since actual date of financial closure was within the extended timeline. Hence, there was no delay in achieving financial closure in the present case and hence no justification for any penal action against ASPL.
- Notably, despite ruling in favor of ASPL on issue of extension of timelines for FC and SCD and any consequent liability for the same, MERC decided in favor of MSEDCL on the issue of achieving financial closure on the basis that the RFS clearly provided for 12 months for achieving financial closure and, therefore, the period for achieving financial closure to be considered in the PPA ought to also be 12 months and not 18 months.
- Lastly, MERC directed MSEDCL to return PBG to Avaada MH within 30 days from date of this Order, since the project has already commissioned within extended period of SCD.



#### HSA Viewpoint

MERC's findings have relied on the well settled principle that no one can be allowed to make good of its own default and accordingly stated that no penalty can be levied on ASPL due to delay on part of MSEDCL.

## Kerala State Electricity Board Ltd (KSEBL) v. Power Grid Corporation of India Ltd (PGCIL) & Anr

Central Electricity Regulatory Commission (CERC) | Order dated July 3, 2023 | Petition No 428/MP/2019

### Background facts

- KSEBL requested CERC to quash the demand for Relinquishment Charges by Central Transmission Utility (CTU) against the conditional grant of Medium Term Open Access (MTOA) on April 14, 2015 and August 19, 2015 to avail power under Long Term Power Purchase Agreements entered with Maithon Power Ltd on December 30, 2013 (PPA 1) and June 29, 2015 (PPA 2).
- **Re Relinquishment Charges levied against PPA 1:**
  - KSEBL applied for Long Term Access (LTA) to CTU on December 31, 2013 for supply of 140.5 MW under PPA 1 from January 01, 2014 to December 31, 2038. However, due to non-



availability of transmission system, the LTA was granted on pro-rata basis, wherein, LTA of 32 MW was granted on August 01, 2014 LTA for 59 MW was granted on December 01, 2015 LTA of 83 MW was granted on January 01, 2016, LTA of 96 MW was granted on January 01, 2016 and LTA of 140.5 MW was granted on June 16, 2016.

- KSEBL challenged the same before CERC through Petition<sup>1</sup> for issuing necessary direction to CTU to strictly follow the Regulations and procedures for granting MTOA and LTA.
  - CERC passed its Order on February 16, 2015 while holding that part LTA shall not be granted when the available capacity is inadequate to accommodate all LTA applications. Accordingly, the part LTA granted to KSEBL under PPA 1 was declared invalid and CTU was directed to reprocess the applications. Further, it was held that MTOA applications and LTA applications against the same PPA can be considered by CTU for different time horizons, if the operationalization of LTA is getting delayed.
  - Accordingly, KSEBL applied for MTOA of 140.5 MW for PPA 1 from August 01, 2015 to May 31, 2018 or till grant of LTA. MTOA was granted by CTU on April 14, 2015 applicable from January 01, 2016 to May 31, 2018 subject to the availability of Gooty-Madhugiri-Yelhanka 400 KV D/C lines; Salem- Somanhally 400KV D/C line; and Mysore-Kozhikode 400KV D/C line.
  - In the meanwhile, CTU also granted notional LTA approval for KSEBL under PPA 1 from April 01, 2015 onwards, subsequent to which, KSEBL requested for relinquishment of MTOA.
  - CTU confirmed the relinquishment of MTOA with immediate effect, however, it also levied Relinquishment Charges for 140.5 MW (under PPA 1) for a period of 30 days.
- **Re Relinquishment Charges levied against PPA 2:**
- KSEBL applied for LTA approval at CTU on June 30, 2015 for drawing power under PPA 2.
  - KSEBL, in order to avail the corridor of 542 MW getting freed from June 01, 2016 upon expiry of ongoing MTOA of other developers, applied for MTOA for drawing power under PPA 2. The start date from which MTOA was requested coincided with the start date of LTA.
  - On August 19, 2015, CTU granted MTOA for 122 MW to KSEBL from June 01, 2016 onwards and KSEBL started availing 122 MW RTC power from June 01, 2016 onwards.
  - In the meanwhile, CTU granted LTA for 140.5 MW from April 01, 2017 onwards subject to KSEBL relinquishing its MTOA.
  - Accordingly, KSEBL relinquished into MTOA against PPA 2. CTU thereafter levied Relinquishment Charges on KSEBL for relinquishing its MTOA granted against PPA 2.

### Issue at hand

- Whether the Relinquishment Charges as imposed by CTU are applicable to KSEBL for relinquishment of MTOA granted against PPA 1 & PPA 2 signed with Maithon Power Ltd?

### Decision of the Commission

- Regarding PPA 1, CERC noted that the MTOA granted by CTU was subject to commissioning of certain transmission lines. Since, the MTOA granted by CTU was till May 31, 2018 and the transmission line got commissioned on March 03, 2019, therefore, MTOA could never had been operationalized even if the same was not relinquished. Hence, no charges towards relinquishment of MTOA against PPA 1 could be levied on KSEBL as the MTOA granted to KSEBL could never had been operationalized during the term of MTOA.
- As regards PPA 2, CERC referred to Regulation 15B of CERC (Grant of Connectivity, Long-Term Access and Medium-Term open access in Inter-State transmission and related matters) Regulations, 2009, which provided that an LTA Customer who is availing MTOA on account of non-operationalization of LTA granted to it, shall not be required to pay Relinquishment Charges towards relinquishment of MTOA if the LTA is operationalized during the subsistence of MTOA. In the present case LTA for PPA 2 was operationalized on May 01, 2017 when MTOA was subsisting and the same was granted subject to relinquishment of MTOA, the CERC held that KSEBL is not required to pay Relinquishment Charges for the relinquishment of MTOA under PPA 2.
- Accordingly, the CERC set-aside the invoices raised by CTU for relinquishment of MTOA against both PPA 1 & PPA 2, and the present Petition was disposed of by CERC accordingly.



#### HSA Viewpoint

The CERC has given a well-reasoned Order by holding that no Relinquishment Charges can be imposed by CTU in a scenario where the Open Access granted by CTU is not operationalized; or if the MTOA is applied due to non-operationalization of LTA and the customer relinquishes its MTOA after the operationalization of LTA.

<sup>1</sup> 92/MP/2014

# Solar Energy Corporation of India Ltd v. Uttar Pradesh Electricity Regulatory Commission & Anr

Appellate Tribunal for Electricity (APTEL) | Judgement dated July 28, 2023 | Appeal No. 199 of 2023

## Background facts

- The Appeal was filed by Solar Energy Corporation of India Ltd (**SECI**) assailing the Order dated March 19, 2021 passed by the Uttar Pradesh Electricity Regulatory Commission (**UPERC**) in Petition No. 1593 of 2020 whereby UPERC provided its approval for procurement of power subject to protection of pooled tariff by making adjustment in the trading margin of SECI.
- Subsequent to the issuance of the LoAs, SECI and UPPCL entered into the PSA dated October 01, 2019 for resale of 380 MW wind power, out of 480 MW bid capacity. Additionally, on October 25, 2019 and November 19, 2019, SECI entered into PPAs with Ostro Energy Pvt Ltd for procurement of 50 MW wind power at a tariff of INR 2.81/kWh and Adani Renewable Energy Park Gujarat Pvt Ltd for procurement of 130 MW wind power at tariff of INR 2.83/kWh.
- Separately, SECI, on October 04, 2019 filed a Petition being No. 382/AT/2019 before the CERC under Section 63 of the Electricity Act, 2003 (**Act**) for adoption of tariff for 480 MW Wind Power Projects. The said adoption petition was disposed of by the CERC on February 28, 2020 thereby adopting the tariff of each WPP selected and the Trading Margin as applicable to SECI.
- On June 22, 2020 UPPCL filed a Petition being No 1593 of 2020 before the Respondent Commission seeking approval of the PSA dated October 01, 2019.
- The Respondent Commission vide its Order dated March 19, 2021 disposed of the said Petition inter-alia approving the procurement of 380 MW Wind Power as well as the PSA dated October 01, 2020 executed between SECI and UPPCL subject to the condition, being, that the pooled tariff as per Schedule-I to the PSA dated October 01, 2019 should be protected by making suitable adjustment to the trading margin by SECI.
- Being aggrieved by the Order dated March 19, 2021 SECI filed a Review Petition being No 1734 of 2021 before the Respondent Commission seeking review and recall of the said Order. The said Review Petition was disposed of on June 10, 2022 by the Respondent Commission.

## Issue at hand

- Whether the State Commission has the jurisdiction to decide the tariff vis-à-vis the trading margin, while approving the procurement of power by UPPCL in light of Rule 8 of the Electricity Rules, 2005 and the procurement by a trading licensee for further sale of power qualifies as composite scheme within the scope of Section 79(1)(b) of the Act?

## Decision of the Tribunal

- The CERC adopted the tariff for each WPP individually as quoted by the respective WPD and therefore, the Respondent Commission, in accordance with Rule 8 of the Electricity Rules, 2005, ought to adopt the same without any change. The Respondent Commission though accepted the said order passed by the CERC, but directed that the pooled tariff should be protected by suitably adjusting the trading margin.
- It cannot be disputed that the Central Commission is the Appropriate Commission for determining the trading margin for Inter-State trading licensees and SECI in the present case is an Inter-State trading licensee, thus, governed by the relevant Regulations notified by the Central Commission, further, any dispute regarding the trading margin for SECI shall be resolved by the Central Commission.
- The relevant Regulations CERC (Procedure, Terms and Conditions for grant of trading licence and other regulated matters), Regulations, 2020 provides that the trading margin shall be decided mutually by SECI, the trading licensee and the WPPs and in turn, by the distribution licensees.
- Therefore, the mutually agreed trading margin between SECI and UPPCL is INR 0.07/kWh and thus is the trading margin in accordance with the Guidelines and the relevant Regulations notified by the Appropriate Commission being CERC in the present case.
- In view thereof, APTEL set aside the Order dated March 19, 2021 passed by the Respondent Commission to the limited extent that the Trading margin of INR 0.07/kWh as mutually agreed by SECI and UPPCL through the PSA, shall be final and the decision of the Respondent Commission in directing UPPCL to suitably adjust the Trading margin cannot be agreed to.



### HSA **Viewpoint**

The Commission has given a well-reasoned Order and has set a precedent for future cases involving the issue regarding the jurisdiction of the State Commissions in deciding the tariff and trading margin where the tariff has been adopted under Section 63 of the Act.

# Himachal Pradesh State Electricity Board v. NRSS XXXI (A) Transmission Ltd & Ors

Central Electricity Regulatory Commission (CERC) | Order dated June 30, 2023 | Petition No. 104/MP/2018 with IA No. 20/2018

## Background facts

- This Petition was filed by HPSEB seeking directions regarding a declaration that NRSSTL is not entitled to recovery of the entire Yearly Transmission Charges (YTC) from the scheduled date of commissioning of its transmission system which should be recovered through the PoC mechanism under the Sharing Regulations in terms of the Transmission Service Agreement.
- PGCIL was selected as the Transmission Service Provider based on the international tariff based competitive bidding to execute transmission System for 'Northern Region System Strengthening Scheme, NRSS-XXXI (Part A)' on BOOM basis and to provide transmission service to the Long-Term Transmission Customers.
- In the first round of litigation the CERC took the view that since the LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation could not be put to use till the establishment of downstream system by Himachal Pradesh, the transmission charges for the said element are payable by HPSEB.
- As regards the 40% FSC (series compensation) on Karcham-Wangtoo-Abdullapur line, it was held that since the system was planned as a system strengthening scheme and was in use since its commercial operation, the transmission charges for the said element would be included in PoC. HPSEB assailed the Order of the CERC and approached the APTEL.
- The APTEL set aside the Order of the CERC and remanded back the present matter for fresh consideration.

## Issue at hand

- Whether the HPSEB is responsible for the payment of transmission charges until the downstream system is commissioned, or the charges should be recovered through the POC mechanism.

## Decision of the Commission

- The CERC while considering the provisions of the Sharing Regulations, TSA and Minutes of the 37th Meeting of the Technical Evaluation Committee (TCC) and 40th meeting of the Northern Regional Power Committee, the APTEL has concluded that the transmission charges of (a) 7 X 105 MVA (1-ph.0, 400/220 kV GIS sub-station at Kala Amb; and (b) LILO of both circuits of Karcham-Wangtoo-Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers) constituting 84.5% of the transmission charges of NRSS-XXXI (Part-A) shall not be borne by the Petitioner (HPSEB) but by all DICs through the PoC mechanism.
- The CERC directed that the transmission charges of (i) LILO of both circuits of Karcham-Wangtoo-Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers); (ii) Establishment of a 7 x 105 MVA (1-ph.), 400/220 kV GIS substation at Kala Amb and (iii) FSC (40% Series Compensation-n 400 kV Karcham- Kala Amb quad D/C line at Kala Amb ends) shall be serviced with effect from the date of their commercial operation through the PoC mechanism of the Sharing Regulations, 2010 and in terms of Regulations 5 to 8 of the Sharing Regulations, 2020 with effect from November 01, 2020.
- Therefore, the Petition has been disposed in the terms of above.



### HSA Viewpoint

The Commission has given a well-reasoned Order by following the directions issued by the Tribunal and by implementing the true intent of the Sharing Regulations, TSA and Minutes of the 37th Meeting of the Technical Evaluation Committee (TCC) and 40th meeting of the Northern Regional Power Committee. It is apposite to highlight that the said findings will be beneficial for the market players and the same will have significant impact in the power sector.

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