



PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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Guidelines for Slope Stability in Hydro Power Projects

- The Ministry of Power (**MoP**) on October 10, 2023 issued the Guidelines for Slope Stability in Hydro Power Projects (**Guidelines**). The Guidelines aim to deal with aspects to be kept in view before and during construction of hydro projects, including mandatory aspects like building retaining wall wherever slope is interfered, reinforcement/strengthening of any identified geological fault, etc.
- Guidelines are applicable to Hydro Power Projects Developers (**Developers**) in hilly terrains.
- The Guidelines categorize projects with capacities of 400 MW and above as vulnerable, and project authorities are required to do extensive evaluations of the upper reservoir regions, identify fault locations, and execute appropriate remedial actions to maintain stability.
- The Guidelines divide stages of slope stabilization/monitoring into 3 stages in the following manner:
 - Practices to be followed prior to commencement of construction, including survey and investigation (**S&I**) at regional geological level, project geological level, mapping and satellite imaging, collection of field data and testing, etc. followed by design and engineering of slope.
 - Slope stabilization methods including restoration of failed slope, if required, during construction which includes structural as well as non-structural measures.
 - Practices to be followed post commissioning of the Project like monitoring of movement of vulnerable slopes especially in reservoir rim area and energy dissipation area.
- The Guidelines provide that for vulnerable projects, the Project Authority shall be responsible for examining the upper reaches including reservoir area, dam site and identify faults/slides and take remedial measures for stabilization.

R&D roadmap for green hydrogen ecosystem in India

- The Ministry of New and Renewable Energy (**MNRE**) on October 10, 2023 issued the R&D roadmap for green hydrogen ecosystem in India (**Roadmap**).
- The objectives of the said Roadmap are as follows:
 - Develop efficient, safe, and cost-effective hydrogen storage methods that enable high density storage, reduce leakage, and allow for easy and quick refueling.
 - Ensure long-term durability and reliability of hydrogen storage, transportation, and compression systems to promote their widespread adoption.

- Demonstrate distributed above ground storage solutions available at a capital cost lower than INR 30,000/kg by 2030.
- To undertake research activities on underground storage to validate the performance in different geologies, to identify better and more cost-effective materials and to encourage improved designs.
- Demonstrate the large-scale underground storage across various media at a capital cost lower than INR 3000/kg by 2030.
- The building of a conducive research and innovation environment for green hydrogen within India is one of the key pillars of the National Green Hydrogen Mission. The Roadmap summarizes India's current state of research and technology development and makes recommendations for a national research and innovation strategy to strengthen the green hydrogen ecosystem.

Draft Notification on Renewable Generation Obligation

- The Ministry of Power (**MoP**) on October 6, 2023 issued the Draft Notification on Renewable Generation Obligation (**Draft Notification**). By way of the said Notification, the MoP, in consultation with the Bureau of Energy Efficiency, exercised its powers conferred under sub-Section (x) of Section 14 of the Energy Conservation Act, 2001 (52 of 2001), and specified the minimum share of renewable energy by designated consumers having established coal/lignite-based generating station, in order to reduce the consumption of fossil fuels.
- **Key aspects:**
 - Renewable energy sources shall mean sources of renewable energy such as hydro, wind, solar including its integration with combined cycle, biomass, biofuel cogeneration, urban or municipal waste and such other sources as recognized or approved by the Central Government.
 - Power plants starting operations by March 31, 2023 will need to adhere to Renewable Generation Obligation (**RGO**) of 6%. Those commissioned between April 1, 2023 and March 31, 2025 will have a 10% mandate and obligations post April 1, 2025 will be determined based on their commercial operation dates.
 - Bureau of Energy Efficiency has been designated as the authority to monitor the compliance of RGO by the Generators.
 - Any designated consumer having established coal/lignite-based generating station who fails to comply with the stipulated mandatory percentage target of RGO shall be subjected to penalty under Section 26(3) of the Energy Conservation Act, 2001, as amended from time to time.

RECENT JUDGMENTS



In this Section

Nabha Power Ltd (NPL) v. Punjab State Power Corporation Ltd (PSPCL)

Dakshin Gujarat Vij Company Ltd v. Gayatri Shakti Paper and Board Ltd & Anr

New Delhi Municipal Council v. Tewari House Hospitality Pvt Ltd

Petition No. 15/SM/2023 (Suo Moto)

Nabha Power Ltd (NPL) v. Punjab State Power Corporation Ltd (PSPCL)

Supreme Court of India | Judgement dated October 09, 2023 | Civil Appeal No. 2425 of 2023

Background facts

- The dispute pertaining to recovery of deductions of monthly tariff by the Respondent gave rise to proceedings under the Electricity Act, 2003. The matter escalated from the Regulatory Commission to the Appellate Tribunal and reached the Supreme Court.
- The Apex Court's judgment in ***Nabha Power Limited v. Punjab State Power Corporation Ltd & Anr***¹ decreed:
 - The Appellant is held entitled to the washing cost of coal, the transportation from the mine site via washing of coal to the project site inclusive of cost of road transportation for the period where it was necessary.
 - The Gross Calorific Value (GCV) of the coal would have to be taken at the project site.
 - The amount payable to the Appellant as the consequences thereof be remitted within a period of 3 months from the date of the order, failing which it would carry interest @ 12% per annum (simple interest).
- The Respondent subsequently filed MA No. 1562/2017 in this Civil Appeal praying for a direction to the State Commission to determine the amount payable by the Respondent as per the aforesaid reported judgment of October 05, 2017 and furthermore sought reasonable time to make the payment. The Court rejected this application on December 15, 2017 and directed the Respondent to calculate and disburse the owed sum within 4 weeks.
- Subsequently, the Respondent sought a review of the main judgment via Review Petition Civil No. 165/2018. This review was dismissed on February 06, 2018 on account of no errors apparent on the face of the record.
- Despite Court's directions, Nabha Power Limited remained unpaid, prompting them to file a contempt petition, which was tagged alongside another contempt petition filed by Talwandi Sabo Power Limited. The orders passed in these contempt proceedings dated August 07, 2019 and September 03, 2019, respectively, in identical terms, once again dealt with the controversy.
- By referring to the main judgment pronounced by this Court on October 05, 2017, the bench observed that the judgment dated October 05, 2017 clarifies the formula's components and the judgment mandates adherence to this interpretation, emphasizing the elimination of unrelated figures in the formula's numerator and denominator.

¹ (2018) 11 SCC 508

- Following the Supreme Court's order on August 07, 2019, the Respondent was directed to adhere to the judgment and pay the due amount within 8 weeks. However, various attempts by the Respondent to delay or confuse the payment calculation were unsuccessful.
- In response, the Appellant highlighted contemptuous actions in a letter to the Respondent on October 07, 2019, urging for rectification in payment computations.
- The Respondent pursued directions for payment calculations through M.A. No. 2396-97/2019. In parallel, the Appellant initiated a second contempt petition.
- On November 25, 2019, the Respondent's application was dismissed, but they were given an additional 12 weeks to settle the payment as per the October 05, 2017 judgment.
- The Respondent sought Regulatory Commission's approval to recoup the paid amount by raising the retail supply tariff for consumers. They also responded to the second contempt petition.
- A Notice of Dispute against the Appellant was issued by the Respondent on October 14, 2020.
- The second contempt petition was decided on March 09, 2021, finding the Respondent guilty of contempt, and ordering payment as per the Appellant's calculations.
- In July 2021, the Respondent filed a petition before the Regulatory Commission for specific directions against the Appellant seeking due and correct accounts and details of washing of coal with a refund of INR 386.80 crore plus late payment charges.
- The Respondent's petition was found maintainable by an order dated April 06, 2022, recognizing fresh disputes as per the March 09, 2021 order.
- The order dated March 09, 2021 underscored the Respondent's repeated attempts to bypass Court orders. The Court noted that despite claiming compliance, the Respondent had unpaid arrears. Payment assurances were provided, including future charges.
- Paras 13 and 14 clarified that while previous liabilities from the judgment remained settled, the Respondent was not barred from raising fresh disputes. This discretion to approach State Electricity Regulatory Commission stemmed from the contract.
- The Respondents raised concerns about discrepancies in the GCV records for unwashed and washed coal. They believed this inconsistency was inflating their financial obligations due to an alleged diversion of good-quality coal as rejects in the washing process, leading to a GCV mismatch. They sought adjudication from the Regulatory Commission, contending they shouldn't be left without a remedy.

Issues at hand

- **Discrepancy in GCV records:** The Respondents highlighted concerns about the GCV of unwashed versus washed coal. They alleged that good quality coal was being wrongly classified as rejects during the washing process, leading to inconsistencies in GCV.
- **Financial implications:** Due to the alleged GCV discrepancies, the Respondents believed that they were incurring inflated financial obligations.
- **Seeking adjudication:** The Respondents felt aggrieved and sought a resolution from the Commission, emphasizing that they should not be left without options to remedy the situation.
- **Previous Court judgments:** The Supreme Court had earlier concluded the matter in its judgment dated October 05, 2017. The Respondents' new concerns were viewed by the Court as attempts to revisit or challenge settled matters.
- **Future disputes:** While the Court didn't bar the Respondents from raising future disputes, it clarified that this doesn't mean reopening topics covered by the October 05, 2017 judgment.
- **Changed coal handling policies:** From 2021, changes in coal handling policies meant that coal was now directly delivered and washed at the project site, making some of the prior issues and concerns redundant.
- **Impugned order:** The Court viewed the challenged order as an endeavor by the Respondent to avoid its obligations as determined by the October 05, 2017, judgment.
- **Legal costs:** Both parties had incurred significant legal fees due to the prolonged litigation. The Court decided it was necessary to impose costs on the Respondent, given their continued attempts to circumvent their obligations.

Decision of the Court

- The Supreme Court, in its prior judgment dated October 05, 2017, had finalized the matter, with any fresh concerns to be considered as new disputes. While Respondents were not barred from raising future disputes, this didn't permit revisiting matters concluded by the October 05, 2017 judgment. The Court believed the Respondent, cornered by the second contempt and potential consequences, was trying to sidestep obligations by raising issues already settled.

- Considering changed coal handling policies from 2021, coal is now directly delivered and washed at the project site, making prior concerns redundant. The Court determined that the impugned order, aimed at reviving settled issues, was unsustainable.
- The continual efforts by the Respondent to dodge their obligations under the October 05, 2017 judgment were criticized. The judgment's primary focus was the interpretation of the commercial contract, especially coal pricing.
- Given the nature of the repeated evasions, the Court held it was necessary to set a precedent. Hence, the appeals were allowed, the impugned order was set aside, and the Respondents were ordered to pay costs. The actual bills of costs submitted by both parties revealed significant legal fees. The Court, considering the fee nature, determined costs in favor of Nabha Power Ltd and Talwandi Sabo Power Ltd at INR 40.00 lakh and INR 25.00 lakh, respectively, to be paid within 4 weeks.



HSA Viewpoint

The judgment reinforces the principle that parties must adhere to settled matters as determined by the Apex Court. By emphasizing the importance of respecting contractual interpretations set out in previous judgments, it promotes stability in commercial transactions. The judgment further strengthens the credibility of the regulatory system by emphasizing adherence to settled matters. Moreover, by considering the changed coal handling policies from 2021, the Court demonstrated adaptability and relevance in its decisions. It signifies that judgments shouldn't operate in a vacuum and should account for evolving ground realities.

Dakshin Gujarat Vij Company Ltd v. Gayatri Shakti Paper and Board Ltd & Anr

Supreme Court of India | Judgment dated October 09, 2023 | Civil Appeal Nos. 8527-8529 of 2009

Background facts

- In the present judgment, the interpretation revolves around the provisions of the Electricity Act, 2003 (Act) and Rule 3 of the Electricity Rules, 2005 (Rules), concerning the classification of Captive Generating Plants (CGP) and Captive Users.
- The Analysis is based upon three key decisions of the Appellate Tribunal for Electricity (APTEL) which have helped the Apex Court to reach to its conclusions. The judgment in **Kadodara Power Pvt Ltd and Ors v. Gujarat Electricity Regulatory Commission & Anr**² dated September 22, 2009, was subsequently deemed *per incuriam* in aspects by the ruling in **Tamil Nadu Power Producers Association v. Tamil Nadu Electricity Regulatory Commission**³ dated June 07, 2021. The latter's viewpoint found concurrence in **Sai Wardha Power Generation Ltd & Ors v. Maharashtra Electricity Regulatory Commission**⁴ dated November 26, 2021. The Apex Court has referred to the reasons given in the afore-mentioned cases and has subsequently reached to its conclusion and legal finding.

Issues at hand

- The Eligibility criteria for a CGP/Captive User as per Rule 3(1)(a) of the Rules.
- The interpretation of the second proviso under Rule 3(1)(a) of the Rules, and specifically in '*association of persons*.'
- Whether a company set up as a Special Purpose Vehicle (SPV) for generating electricity is an '*association of persons*', in terms of the second proviso to Rule 3(1)(a) of the Rules.

Decision of the Court

- In **Maharashtra State Electricity**, the Court addressed the liability of Captive Consumers regarding payment of an additional surcharge under the Act. The Court determined that levying such a surcharge would contradict Section 42(2) when juxtaposed with the definition of 'consumer' under Section 2(15) of the Act. Noting that Captive Consumers significantly invest in the establishment and maintenance of Captive Generating Plants (CGP) and sometimes dedicated transmission lines, the Court underscored their distinct classification from the general 'consumers' outlined in Section 2(15). Therefore, they shouldn't bear the additional surcharge.

² 2009 SCC OnLine APTEL 119

³ 2021 SCC OnLine APTEL 19

⁴ 2021 SCC OnLine APTEL 78

- In Chhattisgarh State Power, the Court referenced the National Electricity Policy, 2005, which emphasizes the facilitation of employment via industrial growth, and the policy's intent to support small and medium industries in setting up cost-effective power plants. The Court observed that Captive Generators can offer continuous or periodic electricity supply and, when interpreting ambiguities, the statutory aim of the policy and Act should be prioritized.
- The Court emphasizes the need to distinguish from its prior judgment in SESA Sterilite Ltd v. Orissa Electricity Regulatory Commission & Ors⁵ where the Appellant, operating within a Special Economic Zone (SEZ), contended it wasn't liable for cross-subsidy surcharge since it didn't draw electricity from the distribution licensee. While the Court rejected this, referencing the rationale behind cross-subsidy surcharges aimed at compensating distribution licensees for losses incurred from high-rate consumers switching away, it highlighted that this case wasn't about Captive users.
- The current legal issue revolves around the definition and usage by CGP users. Additionally, citing Chhattisgarh State Power and Maharashtra State Electricity, the Court references Section 38 of the Act, which enables the Central Government to designate a government company as the Central Transmission Utility (CTU). The CTU's role is planning, coordination, and efficient transmission of electricity, ensuring non-discriminatory access to its system for relevant stakeholders. Thus, the Act prohibits levy of surcharge, cross or additional surcharge, even when open access is provided to a person who has established a CGP for carrying the electricity to the destination of their own use.
- The term 'set up' in Section 2(8) of the Act shouldn't be construed narrowly to only pertain to initial establishment. Rather, the provision doesn't implicitly bar transfer of ownership post-establishment of a CGP. Section 9(1) underlines the ability to 'construct, maintain, or operate' a CGP, indicating that these functions can be separate and executed by different entities. This is corroborated by Rule 3, which outlines the criteria for Captive users, emphasizing ownership in relation to equity capital and proprietary interest. Section 9(2) speaks to the concept that an entity may operate and maintain a CGP without having constructed it. Given ambiguities, the purposeful interpretation is favored, presuming the legislature's awareness of practicalities and its intent to facilitate business operations. The term 'person' in Section 2(49) encompasses various entities, recognizing that transfer of ownership is a standard business procedure.
- In Kadodara Power, the Court addressed the issue of whether the transfer of ownership of a CGP post its establishment affected its Captive status. The judgment opined that such a CGP does not lose its Captive character post-transfer, as long as the new owner (or Captive user) meets the eligibility outlined in Rule 3. This aligns with the purview of Section 9 of the Act, which differentiates between constructing, maintaining, and operating a CGP. In Tamil Nadu Power, the APTEL postulated that the criteria for Captive users, specifically the minimum ownership and consumption, need only be assessed at the financial year's end. However, the Court disagreed, emphasizing that the 26% ownership threshold must be sustained throughout the year, intricately connected to minimum electricity consumption, as elucidated in Rule 3. The consistent maintenance of both criteria during the financial year is integral to the Rules' compliance.
- The Court evaluated the second proviso's clarity concerning 'association of persons' as Captive users. Finding the proviso ambiguous, the Court referenced the stipulation that such Captive users should hold a minimum 26% ownership of the CGP and consume at least 51% of the generated electricity. In Kadodara Power, a proportionality requirement was discussed, suggesting that ownership and consumption need to align. The Court affirmed this view, explaining that for each 1% of CGP ownership, there should be a corresponding consumption of 1.96% of generated electricity, allowing a 10% variation. This ensures that no owner disproportionately benefits from electricity consumption without adequate shareholding, preventing misuse of Rule 3(1)(a). In instances of ownership change or share transfer within a CGP, the Court favored applying the 'weighted average' method to ascertain compliance with consumption requirements. This method considers the average shareholding across the year, accommodating fluctuations in ownership, ensuring fairness and adherence to the Act.
- The Court assessed if a company formed as a SPV under Rule 3(1)(b) of the Rules is exempt from the eligibility criteria delineated in Rule 3(1)(a). Tamil Nadu Power upheld the notion that SPVs aren't bound by the eligibility requirements. However, the APTEL in Kadodara Power argued that an SPV should be treated as an 'association of persons' and should meet the proportional consumption criteria. The Court concurred with Kadodara Power, reasoning that had the Central Government intended to exempt SPVs, it would've explicitly done so. Rule 3(1)(b) addresses SPVs with multiple electricity-generating units. It allows SPVs to designate specific units for Captive use, excluding others from the proportional consumption requirement. The units earmarked for Captive use must fulfil the conditions set in Rule 3(1)(a). Rule 3(2) further clarifies that equity

⁵ Civil Appeal No. 5479 of 2013

shares held by the Captive user in the designated generating station should not be less than 26% of the proportionate equity related to the identified CGP units.

- The Court examined whether a SPV, being an incorporated company, could be treated as an 'association of persons'. An argument was advanced that since an SPV is incorporated, it shouldn't be equated to an 'association of persons', a term understood in contexts like the Income Tax Act, 1961. The Court disagreed with this view.
- In ***Ramanlal Bhailal Patel v. State of Gujarat***⁶, the Court defined an 'association of persons' as a collaboration where two or more individuals unite for a common purpose to achieve mutual benefits. The nature and extent of this common purpose can differ according to the specific statute being referenced.
- Moreover, the Court clarified that mere co-ownership doesn't automatically label co-owners as an 'association of persons'. Co-owners who haven't voluntarily united with a mutual aim, and haven't actively chosen to be co-owners, are viewed as distinct entities. For instance, children inheriting a property from their parents become co-owners, but not by their own choice, and hence can't be termed an 'association of persons'.
- However, in the context of the Act and Rules, when multiple companies come together to form another company (SPV) with the common objective of availing benefits as Captive users, they are effectively pursuing mutual advantages. This constitutes them as an 'association of persons' under the Act and Rules.
- The Court addressed the categorization and definition of SPVs and their status as an 'association of persons' in relation to CGPs.
 - **Definition of SPV:** As per explanation 1(d) to Rule 3 of the Rules, an SPV is a legal entity with the sole purpose of owning, operating, and maintaining a generating station.
 - **Objective of SPVs:** An SPV doesn't consume electricity generated by the CGP itself. Its primary function is to enable other entities, like corporates or companies, to enjoy the benefits of being Captive Users under the Act and Rules.
 - **CGP Categories:** Section 2(8) of the Act defines CGPs in two main categories: Single User CGPs (individual entities generating electricity primarily for their own consumption) and Group User CGPs (entities like cooperative societies or associations generating electricity primarily for their members' consumption).
 - **Definition of 'Person' and 'Association of Persons':** Section 2(49) of the Act broadly defines 'person' to include both juridical and non-juridical entities. The term 'association of persons' isn't distinctly defined in the Act. However, the term is inclusive, covering both juridical and non-juridical entities.
 - **Purpose of provisos:** The Court cited the *S. Sundaram Pillai case*, which outlined four purposes of a proviso. The second proviso to Rule 3(1)(a) was identified as essential for making the enactment under Section 2(8) of the Act operational for Group Captive Users not registered as cooperative societies.
 - **Rule 3(1)(b) vs Rule 3(1)(a):** The Court clarified that Rule 3(1)(b) doesn't override Rule 3(1)(a). Accepting such an interpretation might allow potential misuse, where a company can be disguised as a CGP by manipulating share distributions, contravening the primary intent behind the provision.
- The Court held that SPVs, which own, operate, and maintain CGPs, fall under the category of 'association of persons' per the second proviso to Rule 3(1)(a) of the Rules. Such entities must adhere to the requirements laid out in Rule 3(1)(a), including the second proviso.



HSA Viewpoint

By detailing the definition and objective of SPVs, the Court has provided much-needed clarity. This elucidation ensures that there's a common understanding of the framework within which SPVs operate, particularly regarding their role in relation to CGPs. Further, the Court's stance on the distinction between Single User CGPs and Group User CGPs reinforces the importance of transparency and clear demarcation in the regulatory structure. Such clarity can deter potential misuse and makes compliance and monitoring more straightforward. The distinction made between the terms 'person' and 'association of persons' offers a refined perspective, ensuring that entities cannot exploit ambiguous terminologies to bypass regulatory stipulations.

⁶ Appeal (civil) 4420 of 2004

New Delhi Municipal Council v. Tewari House Hospitality Pvt Ltd

Delhi High Court | Judgement dated September 14, 2023 | Writ petition No. 9513 of 2023

Background facts

- This petition at the instance of the Writ Petitioner New Delhi Municipal Council (**NDMC**) is directed against an order dated May 02, 2017 passed by the Electricity Consumer Grievances Redressal Forum, New Delhi (**the forum**).
- The Respondent, Tewari House Hospitality Pvt Ltd, was granted a sanctioned load of 74.960 KW. However, during an inspection conducted on July 15, 2015, it was found that the Respondent was using electricity to the extent of 112.537 KW, which exceeded the sanctioned load.
- NDMC issued a show cause notice to the Respondent, contending that the unauthorized overloading of the electric connection amounted to 'unauthorized use of electricity' under Section 126(6) of the Electricity Act, 2003 (**Act**). Further NDMC levied misuse charges on the Respondent for the period of 6 months prior to the date of inspection.
- The Respondent challenged this demand before the Electricity Consumer Grievances Redressal Forum, which adjudicated the complaint in favor of the Respondent, stating that overloading does not come under the definition of unauthorized use of electricity. NDMC has filed a writ petition challenging the said order.

Issues at hand

- Whether the interpretation of Section 126(6) of the Electricity Act, 2003 by Electricity Consumer Grievances Redressal Forum New Delhi is legally acceptable?
- Can the Petitioner invoke Section 126 even without following the procedure given therein?

Decision of the Court

- Placing reliance on *Southern Electricity Supply Co. of Orissa Ltd v. Sri Seetaram Rice Mill*⁷, the Court observed that contrasting the provisions of Sections 126 and 135 of the Act which deals with the theft of electricity, the Court adopted a wider meaning of the term 'unauthorised use of electricity' under Section 126 of the Act and held that this would include excessive use of electricity by the consumer, beyond the sanctioned load.
- The High Court set aside the decision of the forum and directed NDMC to issue a provisional assessment order under Section 126(1) of the Act.
- The High Court also noted that NDMC should follow the procedure under Section 126 of the Electricity Act, 2003 to determine the liability of the Respondent.



HSA Viewpoint

The present case is about whether overloading of an electric connection can be considered as 'unauthorized use of electricity' under Section 126(6) of the Act. The decision in this case will have implications for the determination of liability for misuse charges in cases of overloading of electric connections. It also clarifies the scope and application of Section 126 of the Electricity Act, 2003 and provide for a wider interpretation.

Petition No. 15/SM/2023 (Suo Moto)

Central Electricity Regulatory Commission's (CERC) | Order dated October 1, 2023 | Petition No. 15/SM/2023

Background facts

- CERC (Connectivity and General Network Access (**GNA**) to the inter-State Transmission System) Regulations, 2022 (**GNA Regulations**) was notified on June 07, 2022 and the first amendment to the GNA Regulations 2022 was notified on April 01, 2023.
- The provisions of the GNA Regulations were made effective from April 05, 2023, barring a few provisions. The remaining provisions of the GNA Regulations have been notified to come into effect from October 01, 2023.
- Subsequently, the Central Electricity Regulatory Commission (**CERC**) vide its order dated September 22, 2023 and September 29, 2023 in Petition No. 11/SM/2023 issued certain clarifications and the practice directions for removal of difficulties raised by Central Transmission Utility of India Ltd (**CTUIL**) in the implementation of the GNA Regulations.

⁷ (2012) 2 SCC 108

- CTUIL vide letters dated September 22, 2023 and September 29, 2023 highlighted certain difficulties faced in the implementation of the GNA Regulations and also sought clarification on a few aspects.
- In light of the said issues raised by the CTUIL and other stakeholders through letters to CERC, CERC has issued present Suo moto order.

Issues at hand

- What will be the treatment of land Bank Guarantees (BG) in case of failure to furnish Conn-BG1, Conn-BG2 & Conn- BG3, as applicable, subsequent to in-principle grant of connectivity?
- What is the timeline for payment of transmission charges for T-GNA under advance and exigency application category?
- What will be the period of extension of timeline for application for grant of GNA by State Transmission Utilities (STUs) under Regulation 19.1 of GNA Regulations?

Decision of the Commission

- CERC is of the view that the Applicant is required to submit Conn-BG1, ConnBG2 and Conn-BG3, as applicable, subsequent to in principle grant of connectivity. In case of failure to furnish the applicable Conn-BGs within the stipulated timelines, the Application for connectivity must be closed and in case the Application of an entity is closed due to non-submission of Conn-BG1, Conn-BG2 or Conn-BG3, the Bank Guarantee of Rs. 10 lakh/ MW submitted in lieu of land documents, shall be returned within 1 month from the closing of the connectivity Application.
- Further, it was observed that under the CERC (Open Access in inter-state transmission charges) Regulations, 2008, the transmission charges are to be paid within 3 days of approval of Application. CERC observed that the GNA Regulations were notified in June 2022 leaving ample time for alignment of software accordingly. However, in the interest of and effective implementation of the GNA Regulations and keeping in view the request of Grid-India to carry out software changes, payment of transmission charges under T-GNA advance application category (for T-GNA up to 1 month), CERC considered it necessary to allow a special dispensation for a transition period and hold that where T-GNA is starting within the next 3 working days and for the exigency application category, payment shall be made within 3 working days of approval of application as per the existing practice in vogue. Grid-India is advised to carry out software changes within this period (of two months from October 01, 2023) post which the transmission charges shall be paid as per timeline provided in the GNA Regulations.
- CERC held that STU is allowed to apply for additional GNA quantum within 3 months of coming into force of the GNA Regulations and after that only once a year by September. Considering the transition from the 2009 Connectivity Regulations to the GNA Regulations, CERC held that it would be appropriate to allow STUs to apply for additional GNA for any quantum till March 31, 2024, which shall be considered for grant by CTUIL in terms of the GNA Regulations.



HSA
Viewpoint

CERC by issuing this Suo Moto has rightly removed difficulties and ambiguities in the implementation of certain provisions of Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022.

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