



PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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MoRTH issues the Central Motor Vehicles (Eighth Amendment) Rules, 2023

- The Ministry of Road Transport and Highways (**MoRTH**), in exercise of the powers conferred by Section 110 of the Motor Vehicles Act, 1988 (59 of 1988), has issued the Central Motor Vehicles (Eighth Amendment) Rules, 2023 (**Rules 2023**) on October 16, 2023, by way of which the Central Motor Vehicles Rules, 1989 (Principal Rules) have been amended to promote the growth of hydrogen-based vehicles in India.
- By way of Rules 2023 a new rule i.e., Rule 125M, has been inserted to the Principal Rules which provides for the safety and procedural requirements for type approval of internal combustion engine vehicles in the M and N categories powered by liquid or compressed gaseous hydrogen.
- Rules 2023 mandate that the vehicles of M and N categories shall be in accordance with AIS 195:2023, till corresponding BIS specification is notified under the Bureau of Indian Standard Act, 1986 (63 of 1986) and the hydrogen fuel specifications for internal combustion engine vehicles shall be in accordance with IS 16061: 2021.

MoP issues the procedure for implementation of Uniform Renewable Energy Tariff

- The Ministry of Power (**MoP**) on October 25, 2023 issued the procedure for implementation of Uniform Renewable Energy Tariff (**URET**) in compliance to the Proviso 19(n) of the Electricity (Amendment) Rules, 2022 (**Rules 2022**) for implementation of URET.
- Under these Rules, an Implementing Agency is liable to compute URET on a monthly basis for each category of central pool like the solar power central pool, wind power central pool, etc. at which the intermediary procurer shall sell power from renewable energy from that central pool to all the end procurers. As per Proviso 2(ac) of the Rules 2022, 'Implementing Agency' has been defined as the central agency as notified by the Central Government from time to time, for the implementation of URET for central pool.
- URET will be applicable only to power procured by the end procurer and will not in any manner have any implication on the renewable energy tariff discovered under the respective tariff based competitive bidding process and payable to renewable energy generators by the intermediary procurer as per the PPA.

- The start date of each category of central pool will be separately notified by Central Government. The duration of the central pool will be for 5 years. All the capacity for which Power Supply Agreement (PSA) is signed within this duration of 5 years will be part of the central pool, provided, other eligibility conditions are fulfilled. After the end of the duration of 5 years from the start date of the pool, no new capacity will be added to the pool. All such capacity will remain part of the pool till the expiry of their respective agreement.
- All the contractual obligations between power generators and intermediary procurer and intermediary procurer and end procurer including but not limited to liquidated damages, penalties, extension charges, dispute resolutions will be governed by respective bidding document including PPAs, PSAs and will have no bearing on uniform renewable energy tariff.
- The functions and role of implementing agency includes:
 - Compute the uniform renewable energy tariff on a monthly basis, based on information submitted by the intermediary procurer.
 - Issue the monthly account statements for adjustment of any surplus or deficit tariff among the intermediary procurers, based on information submitted by the intermediary procurer.
 - Publish the relevant details including the monthly accounts statements on its website and will have no liability except for computing tariff on a monthly basis for sale of power from the central pool as per these procedures and will be kept indemnified.
- The URET will be calculated by the Implementing Agency every month, and intermediate procurers will generate invoices appropriately. Furthermore, the Implementing Agency will provide monthly account statements to facilitate the adjustment of surplus or deficit tariffs among intermediate procurers. If payment is not made within the specified timeframe, carrying fees will be incurred.

MoP circular on imposition of charges by State Governments on various forms of generation of electricity

- The Ministry of Power (**MoP**) by way of a circular dated October 25, 2023 has termed the imposition of additional charges by the some of the State Governments on generation of electricity from various sources (including thermal, hydro, wind, solar, nuclear, etc) under the guise of development fee/charges/fundas illegal and unconstitutional.

RECENT JUDGMENTS



In this Section

Maharashtra State Electricity Distribution Company Ltd v. Ratnagiri Gas and Power Pvt Ltd & Ors

Juniper Hotels Pvt Ltd v. Delhi Electricity Regulatory Commission & Anr

Indian Oil Corporation Ltd v. Rajasthan Urja Vikas Nigam Ltd & Ors

Maharashtra State Electricity Distribution Company Ltd v. Ratnagiri Gas and Power Pvt Ltd & Ors

Supreme Court of India | Judgement dated November 09, 2023 | Civil Appeal No. 1922 of 2023

Background facts

- A Power Purchase Agreement (PPA) was executed between Maharashtra State Electricity Distribution Company (MSEDCL /Appellant) and Ratnagiri Gas and Power Pvt Ltd (RGPL/Respondent) for a duration of 25 years. However, due to progressive decline in gas supply from September 2011, a dispute arose between the parties. To compensate for the shortfall, RGPL entered into a Gas Supply Agreement (GSA) with GAIL for Recycled Liquid Natural Gas (RLNG), notifying the Appellant after the execution of the GSA i.e., December 16, 2011.
- On account of the above, the Appellant refused to pay fixed capacity charges citing a violation of Clause 5.9 of the PPA which required prior approval for contracting terms and prices.

Issue at hand

- Whether the Central Electricity Regulatory Commission (CERC) and the Appellate Tribunal for Electricity (APTEL) were justified in affixing liability to pay fixed charges on the Appellant?

Decision of the Court

- The Court observed that the Respondent was compelled to make alternate arrangements in view of the country-wide shortage of domestic gas, making RLNG a viable and contractually permissible alternative and in the present case, CERC and the APTEL have correctly held that the GSA with GAIL is permissible by the terms of the contract and the consent or approval of the Appellant is irrelevant. Clause 5.9 and Clause 4.3 of the PPA operate in different spheres and the requirements of the former cannot be foisted on an arrangement permissible by the latter.
- It has been observed that a commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document. A deviation from the plain terms of the contract is warranted only when it serves business efficacy better.
- The Supreme Court dismissed the Appeal in this case and the execution proceedings pursuant to the execution petition before the APTEL are to be continued bearing in mind the background of the establishment of the RGPL, and the shortfall of domestic gas for reasons beyond the control of the RGPL.



HSA Viewpoint

The Supreme Court has correctly held that commercial contracts should be read in a manner that serves business efficacy better and serves the true intent of the contracting parties.

Juniper Hotels Pvt Ltd v. Delhi Electricity Regulatory Commission & Anr

Delhi High Court | Judgment dated November 03, 2023 | WP (C) 12345/2023

Background facts

- The Petitioner, Juniper Hotels Pvt Ltd, through this writ petition challenged the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 (**2021 Regulations**) and the Open Access Charges and Related Matters (Fourth Amendment) Order, 2021 (**Order**), which increased the renewable purchase obligations and imposed additional surcharges.
- The Petitioner was an open access consumer which procured electricity through short term contracts in bilateral transactions with the generating companies and the power exchange, in terms of the Delhi Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2005 (**2005 Regulations**).
- On April, 2021 Delhi Electricity Regulatory Commission (**DERC**) promulgated the 2021 Regulations which increased the Renewable Purchase Obligations (**RPO**) when compared to the previous regulation from (a maximum of) 9% to (a maximum of) 21.35% of total annual consumption. RPO was the requirement of certain entities as stipulated under the 2021 Regulations to source a minimum percentage of their total annual consumption of electricity from renewable sources.
- Petitioner was an 'obligated entity' as per Regulation 2(16), and hence was required to observe the minimum thresholds prescribed in the 2021 Regulations. It was submitted that under the earlier regime, Open Access Consumers enjoyed full exemption from these charges but the Order, now partly removed the exemption from wheeling charges, transmission charges, cross subsidy surcharge and additional surcharge benefits.
- The Petitioner contended that the impugned Regulations and Order impact competition and fairness in a manner that would create an oligopoly. Additionally, it was averred that no transparent bidding process in terms of Section 63 of the Electricity Act was adopted.

Issue at hand

- Whether the changes introduced by the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 and the Open Access Charges and Related Matters (Fourth Amendment) Order, 2021 are anti-consumer and render procurement of green energy unviable?

Decision of the Court

- The Delhi High Court dismissed the challenge brought against increase in RPO of Open Access Consumers and imposition of additional surcharges by DERC. The Court opined that the fixation of tariffs through subordinate legislation is within the commission's purview, and no manifest arbitrariness has been demonstrated to call this decision into question.
- The Court referred to State of Rajasthan v. J.K. Udaipur Udyog Ltd, where the Supreme Court has held that exemptions and concessions granted by government are privileges, which do not confer upon the beneficiary any legally enforceable right for grant of a concession and rejected the Petitioner's allegation of DERC's failure to observe due process on the basis that the allegation was unsubstantiated, and that bidding was not the only mechanism for determination of tariff under Section 63 of the Electricity Act.
- The power to review policy decisions rests inherently within the prerogative of governing bodies, allowing them to adapt and evolve in response to changing circumstances. While concessions might be granted, they can be retracted/modified if deemed to be in the best interests of public.
- It was observed that the scope of judicial review over tariff rate determinations was narrow and Judicial intervention becomes justifiable only when the contested action is found to be illegal, arbitrary, or beyond the powers conferred by the governing statute.



HSA **Viewpoint**

Delhi High Court while dismissing the challenge brought against increase in RPO of open access consumers and imposition of additional surcharges by DERC has opined that the exemption from wheeling, transmission and additional surcharge for the open access consumer could not be claimed as a matter of right and has upheld the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021.

Indian Oil Corporation Ltd v. Rajasthan Urja Vikas Nigam Ltd & Ors

Rajasthan Regulatory Electricity Commission (RERC) | Order dated November 01, 2023 | Petition No. RERC/2102/2023, 2103/2023, 2104/2023

Background facts

- Indian Oil Corporation Ltd (**IOCL**) entered into three tri-partite PPAs with Jodhpur Vidhyut Vitran Nigam Ltd (**JdVVNL**) for wind power plants in Jodhpur and Jaisalmer. The PPAs, initially valid until March 31, 2019, were extended due to a Court order pending the outcome of a writ petition filed by the Petitioner.
- The present dispute arose due to the differences between IOCL, JdVVNL and Rajasthan Renewable Energy Corporation Ltd (**RRECL**) with respect to the payment of invoices towards the energy sold for a duration of 8 months (i.e., August 2018 to March 2019). The dispute further includes invoices and supplementary invoices, reflecting changes in the Average Pooled Power Purchase Cost (**APPC**) tariff rate as per the Rajasthan Electricity Regulatory Commission's (**RERC**) order dated February 22, 2019.
- As per the PPAs, IOCL was required to raise its invoices within a period of 45 days. In case of delay in payments, a Late Payment Surcharge (**LPS**) at 1.25% per month was to be levied daily for a delay beyond 45 days. There was a delay in payment on behalf of JdVVNL towards the invoices raised between August 2018 to March 2019. Pursuant to the entire amount being paid towards the principal sum, discrepancies in LPS calculation were noted.
- Subsequently, IOCL sought reconciliation, held joint meetings, and communicated its grievances. Thereafter, JdVVNL, Rajasthan Urja Vikas Nigam Ltd (RUVNL) and RRECL clarified the said discrepancies by applying a reduced LPS rate of 12.55% post-March 2019 based on RERC (Terms & Conditions for Tariff) Regulations 2019.
- IOCL, through continuous representation, sought the release of legitimate dues, highlighting the non-applicability of certain schemes and regulations. Despite meetings, JdVVNL allegedly denied the rightful payments, thus prompting IOCL to seek the intervention of the RERC.

Issues at hand

- Whether the Respondent's application of varied LPS rates for invoices, including those predating the relevant regulatory amendments, is consistent with the terms of the PPAs and governing regulations?
- Whether the Respondent correctly applied the Liquidity Infusion Scheme and RERC Regulations to determine LPS rates for delayed payments?
- Whether the Respondent's payment actions align with the contractual obligations stipulated in the PPAs, specifically regarding billing frequency, payment timelines, and the accrual of LPS?

Decision of the Commission

- The RERC relying upon the order dated June 23, 2023 passed in the case of Sun n Sand Hotels v. RUVNL & Others, held that in a scenario where the LPS in the PPA differs from the rate specified in the prevailing regulations, such rates specified in the prevailing regulations shall be taken into consideration for computation of the LPS.
- The RERC observed that a higher rate of LPS would amount to a deterrence qua the Dicoms in delaying the payment of the generators.
- In terms of the said observations of the RERC directed the Dicoms to pay the balance LPS amount to the generators.



HSA Viewpoint

It is a settled position of law that the LPS rate stipulated in the prevailing regulations for the respective control period takes precedence over the charge elucidated in the PPA. Any disruption in the supply chain or increase in cost could adversely impact the consumers' welfare in the long term. Consequently, ensuring timely payments to the source from which electricity is procured would eventually be counter-productive for the interest of consumers. In our view the present order serves as a precedence stating that in case of a discrepancy regarding LPS under the PPA vis-a-vis the prevailing regulations, the said regulations shall prevail over the rate of LPS under the PPA.

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