



# PROJECTS, ENERGY & INFRASTRUCTURE

## MONTHLY NEWSLETTER

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# LEGAL & POLICY UPDATES



## In this Section

Ministry of Power issues directions to Gas Based Generating Stations (GBGs) under Section 11 of the Electricity Act, 2003

Ministry of New & Renewable Energy issued Amendments in the New Solar Power Scheme (for PVTG Habitations/Villages) under PM JANMAN

## Ministry of Power issues directions to Gas Based Generating Stations (GBGs) under Section 11 of the Electricity Act, 2003

- The Ministry of Power, Government of India (MOP) by way of a notification dated April 12, 2024, issued directions to ensure that the operational capacity of the Gas-Based Generating Stations (GBGs) is utilized during the crunch period to optimize the availability of power during ensuing high demand period.
- The said directions were issued under Section 11 of the Electricity Act, 2003 (Act) to imported Coal-based Generating Stations (ICBs) to ensure that they are running, and their capacity is on bar, vide Order dated February 20, 2023, which has been extended till June 30, 2024 vide Order dated October 23, 2023 ensuring continuous supply of electricity in the public interest while maintaining the grid security, Central Government to ensure maximum generation from GBGs. The MOP has directed all gas-based power generating stations to operationalize their plants from May 1, 2024, to June 30, 2024 in view of rise in electricity demand due to a likely prolonged heat wave in the summer. A significant portion of GBGs is currently unutilized, primarily due to commercial considerations.
- As per the arrangement, Grid Controller of India Limited (GRID-INDIA) will inform the GBGs in advance, of the number of days for which Gas-based power is required. GBGs holding Power Purchase Agreements (PPAs) with Distribution Licensees shall first offer their power to PPA holders. If the power offered is not utilized by any PPA holder, then it shall be offered in the power market. GBGs not tied to PPAs must offer their generation in the power market.
- Other measures taken by the MOP to meet the summer demand, apart from the decision on gas-based generating stations, include planned Maintenance of power plants to be shifted to monsoon Season; new capacity additions to be fast-tracked; partial outages of thermal power plants being brought down; surplus power with captive generating stations to be utilized; surplus power to be offered for sale in energy exchange; Section 11 directions for imported-coal-based power plants to make full capacity available for generation; shifting of hydro power generation to peak hours; and advance planning by all stakeholders to ensure coal availability.

## Ministry of New & Renewable Energy issued amendments in the New Solar Power Scheme (for PVTG Habitations/Villages) under PM JANMAN

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- Ministry of New & Renewable Energy (MNRE) by way of Notification dated March 26, 2024, issued Amendments in the New Solar Power Scheme (for PVTG Habitations/Villages) under PM JANMAN and revised the guidelines of the New Solar Power Scheme (for PVTG Habitations/Villages) under PM JANMAN, which was issued vide order dated January 4, 2024 based on requests from state implementing agencies to include the electrification of Households (HHs) under the scheme by installation of solar mini-grids through CAPEX mode, the scheme Implementation Guidelines.
- The updated guidelines now support the installation of solar mini grids for cluster electrification, providing a comprehensive power solution for entire communities. These mini-grids, complete with battery banks, distribution lines, and metering equipment, will receive up to INR50,000 per household in financial backing from the MNRE.
- Furthermore, the amendments introduce flexibility in the project implementation process. While previously restricted to the Renewable Energy Service Company (RESCO) model, the revised guidelines now permit both Capital Expenditure (CAPEX) and RESCO modes for setting up mini grids. This change offers implementing agencies the liberty to choose the most appropriate model based on local dynamics and availability of resources. Additionally, agencies opting for the CAPEX mode may seek extra funding from state governments, ensuring broader access to subsidized solar power solutions and marking a significant step towards sustainable energy access for India's most underserved communities.



# RECENT JUDGMENTS



## In this Section

**Mahindra Renewables Pvt Ltd v. Central Electricity Regulatory Commission**

**Tata Power Renewable Energy Ltd v. Uttar Pradesh Power Corporation Ltd & Anr.**

**Adani Power Rajasthan Ltd v. Rajasthan Electricity Regulatory Commission & Others**

**Timarpur Okhla Waste Management Co Ltd v. BSES Rajdhani Power Ltd & Ors**

## Mahindra Renewables Pvt Ltd v. Central Electricity Regulatory Commission

Appellate Tribunal for Electricity (APTEL) | Judgment dated April 08, 2024 | Appeal No. 242 Of 2022

### Background facts

- The Government of Madhya Pradesh initiated a project of 750 MW as a part of the solar park scheme of government of India in Rewa district in the state of Madhya Pradesh namely the Rewa Ultra Mega Solar (RUMS) Project.
- RUMS issued a Request for Proposal, inviting bids for the development of grid-connected solar photovoltaic power plants totaling 750MW (3x250MW) as part of the Rewa Solar Project, the Appellant(s) successfully secured a bid to develop a 250MW capacity.
- On July 18, 2018, MPPMCL sent a letter to RUMS, with a copy to WRLDC, proposing to bill the Appellant for energy drawn from the ISTS Grid at the HT Industrial rate, per Clause 10 of the 7th Amendment to the MPERC Regulations 2010. Later, these regulations were superseded by the MPERC RE Regulations 2021, effective from November 02, 2021.
- WRLDC responded to MPPMCL's letter dated July 18, 2018, stating that the Rewa Solar Project falls under their jurisdiction. They clarified that power drawn by the Appellant is billed according to the 2nd amendment of CERC Regulations 2014, and no additional charges can be imposed for power drawn during non-generation hours.
- The Appellant argued that complying with CERC's order was impossible due to current regulations. They cannot procure power during night/non-generation hours through open access/GNA, as their total procurement falls short of the required 50 MW capacity. Additionally, the Appellant contended that only renewable generators connected to the state transmission or distribution system can draw power from the Distribution Licensee for their own use as per MPERC RE Regulations 2021. Since the State Regulatory Commission lacks jurisdiction over generators connected to the ISTS Grid as part of the CTU network, these regulations are deemed inapplicable.
- Respondent No. 2 / MPPMCL highlighted that Petition No. 345/MP/2022 addressed treatment of power drawn during non-generation hours. They noted the Central Commission's notification of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, which covers regulatory gaps. They requested directions for the interim period until the new regulations take effect, seeking resolution of the appeal.

### Issue at Hand

- Whether the drawl of power during the interregnum period i.e. May 26, 2022 to December 05, 2022 shall be charged as per DSM Regulations or the IEGC Regulations 2023.

## Decision of the Court

- APTEL in its judgment has accepted the contention made by the Appellant and found that the direction of the commission is in violation of its own Regulation, which is binding on the Central Commission also, or otherwise.
- APTEL also directed that State regulations cited are not applicable to their power project as their SPP is not connected to the State transmission or distribution grid.
- APTEL deciding the issue of the case arrived at the conclusion that During the interregnum period from May 26, 2022, until the notification of IEGC 2023 Regulations, power drawl shall be charged according to DSM Regulations. Following the enforcement of IEGC 2023 Regulations, charges will align with those regulations in conjunction with DSM Regulations.



### HSA Viewpoint

HSA Advocates played a pivotal role in representing the Appellant(s) and aiding APTEL in arriving at the correct decision. The erroneous ruling of the Commission, which adversely affected the Appellants, was strongly criticized and overturned by APTEL, providing much-needed relief to solar power developers. This decision by APTEL not only resolves regulatory ambiguity but also fosters an environment conducive to the smooth operation of businesses in the solar power sector.

## Tata Power Renewable Energy Ltd v. Uttar Pradesh Power Corporation Ltd & Anr.

Uttar Pradesh Electricity Regulatory Commission | Order dated April 09, 2024 | Petition Nos. 1941 and 1942 of 2022

### Background facts

- The present petition was brought forth by Tata Power Renewable Energy Ltd(TPREL/Petitioner), seeking the additional cost allegedly incurred on account of imposition of Safeguard Duty (SGD) vide Notification No. 02/2020- Customs (SG) dated July 29, 2020 issued by the Ministry of Finance for the period of July 30, 2020 to July 29, 2021 on the import of solar cells (2020 SGD Notification) along with the carrying cost, and direction to the Uttar Pradesh Power Corporation Ltd (UPPCL/Respondent No. 1) to pay increased tariff in terms of the Power Purchase Agreement (PPA).
- Uttar Pradesh Electricity Regulatory Commission ( UPERC) declared the 2020 SGD Notification as a 'Change in Law' event vide Order dated April 5, 2023 issued in petition No. 1666 of 2021. The said petition No. 1666 of 2021 was filed by TPREL seeking declaration of the 2020 SGD Notification as a 'Change in Law' event effective from July 30, 2020.
- TPREL was selected by Uttar Pradesh New and Renewable Energy Development Agency (Respondent No. 2 / UPNEDA) for the construction, operation, and maintenance of the 50 MW Solar PV projects in the State of Uttar Pradesh. At the time of submission of bid, Ministry of Finance Notification dated July 30, 2018 (Old Notification) on SGD was applicable, and according to the terms of the Old Notification No SGD was payable for any import of solar cells into India from July 30, 2020, onwards. Therefore, as per the original schedule, the petitioner planned to import the solar modules to India after July 29, 2020, with 0% SGD. The original SCOD was November 12, 2020, therefore TPREL had 106 days after the sunset date of the Old Notification to import and install the modules.
- However, the Ministry of Finance vide the 2020 SGD Notification extended the applicability of the SGD for the period between July 30, 2020 to July 29, 2021, also the rate of SGD was changed from 0% to 14.9% as on July 30, 2020. As a result, the Petitioner was bound to pay the SGD in order to import the solar modules even after July 30, 2020, which was not earlier considered at the time of the bid.
- TPREL submitted that they got various extensions on original SCOD on account of Covid 19 Pandemic, lockdown, and land related issues. And the extended SCOD was September 12, 2021, and therefore keeping in mind the extended SCOD as September 12, 2021, TPREL placed order for Solar modules on November 27, 2020 for which the delivery date was in March and April. But due to various difficulties faced by TPREL, the project was only commissioned on January 03, 2022.
- However, UPPCL contended that TPREL had already filed Petition No. 1709 of 2021 before UPERC in April 2021 seeking extension in the SCOD of the Project and was well aware that the

construction of the transmission line was not started until April 09, 2021; and even the location of bays was not finalized by TPREL until June 15, 2021. Despite the fact, TPREL had placed order for Solar modules on November 27, 2020, which was contrary to its obligation to mitigate unnecessary costs and act prudently. TPREL as a prudent developer could have deferred the delivery of the Solar modules as under the Module Supply Agreements, Clause 12 of such agreements specifically provides the same and could have easily avoided the imposition of 2020 SGD Notification.

### Issues at hand

- Whether TPREL is entitled to the additional cost allegedly incurred on the account of imposition of SGD vide 2020 SGD Notification by Ministry of Finance for the period of July 30, 2020 to July 29, 2021 on import of Solar cells along with the carrying cost?
- Whether TPREL is entitled to claim increased tariff of Rs. 0.19/kWh on account of Change in Law?

### Decision of the Court

- UPERC observed that TPREL has failed to act in accordance with the terms of Article 1.1 of the PPA i.e., Prudent Utility Practices to optimize resource/financial planning to avoid the unwarranted cost of SGD deferring the import of Solar Modules after the sunset date of the 2020 SGD notification. TPREL placed Purchase orders of solar modules even before the finalization of the land and were aware that the transmission line was not ready as they themselves were seeking SCOD extension for finalization of the project.
- TPREL could have conveniently rescheduled the procurement of Solar Modules after sunset date of 2020 SGD Notification as TPREL had the option for changing/modifying the delivery date of solar Modules in terms of Clause 12 of the Module Supply Agreement.
- TPREL has also failed to be efficacious in count of being economical in setting up the project. In light of the same UPERC did not grant consequential relief to TPREL for SGD impact even though 2020 SGD notification has already been declared as a Change in Law event.



#### HSA Viewpoint

The UPERC's refusal to grant consequential relief to TPREL is due to the TPREL's failure of being efficacious in setting up the project. Also, TPREL was not being able to act efficiently and economically to avoid the burden of the SGD. Ld. UPERC observed that the Consequential Relief for Change in Law event can only be provided if the Generator has acted Prudently, not in case where the Change in law event could have been avoided at the Generator's end.

## Adani Power Rajasthan Ltd v. Rajasthan Electricity Regulatory Commission & Others

Appellate Tribunal for Electricity (APTEL) | Order dated April 18, 2024 | Appeal No. 237 of 2023

### Background facts

- The dispute primarily centers around the imposition of Evacuation Facility Charges (EFC) and the payment of carrying cost.
- Adani Power Rajasthan Ltd. (APRL) contended that the imposition of EFC should be considered a change in law event, entitling them to compensation as per the Power Purchase Agreement (PPA) signed between the parties. It was argued that the circular issued by Coal India Ltd., which imposed the EFC, constituted as a change in law event and therefore, in terms of the principles of restitution, APRL is entitled to carrying cost at the rate of Late Payment Surcharge as per the PPA.
- The Respondents disputed APRL's claim for carrying cost at LPS rates. They argued that the Appellant was not entitled to carrying cost as per the terms of the PPA and that the imposition of evacuation facility charges did not qualify as a change in law event.

### Issues at hand

- Whether the imposition of EFC constitutes as a Change in Law event for APRL?
- Whether APRL is entitled to carrying cost at LPS rates?
- Whether APRL is entitled to payment of carrying cost for the period of delay in filing and re-filing of the appeal?

### Decision of the Court

- The APTEL has held in favor of APRL in its judgment and has recognized its entitlement to the benefit on account of the change in law event i.e., imposition of EFC.

- APTEL has also granted carrying cost at LPS rates to the APRL for the period of delay in re-filing the appeal since the same was not attributable to APRL, however, carrying cost has not been granted to APRL for the delay of 332 days in filing the appeal before APTEL.
- In addition to the above, APTEL has directed the Respondent(s) to pay INR 5 lakhs to APRL which sum was paid by APRL as a condition for condoning the delay of 332 days in filing the Appeal, since APRL are now being denied carrying cost for the said period of delay.
- Lastly, the Tribunal remanded the matter to RERC, to compute the amounts owed to APRL in terms of its findings.



HSA  
**Viewpoint**

APTEL's judgment is in line with the law settled by the Supreme Court. The decision of APTEL is important since while it emphasizes on the restitutionary principles, it also highlights that a party cannot be benefitted for its own fault in so far as the carrying cost for the period of delay in filing the appeal has been disallowed to APRL.

## Timarpur Okhla Waste Management Co Ltd v. BSES Rajdhani Power Ltd & Ors

Delhi Electricity Regulatory Commission | Order dated March 14, 2024 | Petition No. 25 of 2022

### Background facts

- A petition under Section 142 of the Electricity Act 2003 was filed by the Petitioner i.e., Timarpur Okhla Waste Management Co. Ltd (TOWMCL) seeking directions and action against Respondent No. 1 i.e, BSES Rajdhani Power Ltd. (BRPL) for not complying of the specific and express direction(s)/order passed by Ld. DERC by way of order dated April 13, 2021 in Petition No. 25 of 2015 wherein DERC held that TOWMCL is entitled for captive generation as provided in the Energy Purchase Agreement (EPA) dated January 20, 2010, while making alternate arrangements for connectivity.

### Issues at hand

- Whether TOWMCL would be allowed to sell power through open access after 50% of power allocated to BRPL after supply of 60 MUs in terms of EPA?

### Decision of the Tribunal

- DERC observed that in its previous Order dated April 13, 2021, it has quantified the maximum generation capacity of the plant after auxiliary consumption and the quantum of energy to be supplied to the BRPL under EPA.
- DERC's order on April 4, 2021, reaffirmed the directions of DERC in the Order dated January 20, 2011 regarding daily energy supply. Both parties acknowledged and amended the EPA accordingly. The Petitioner is bound to provide 50% of the daily generation to BRPL, totaling 56.94 MUs annually capped at 60 MUs. Adherence to this schedule is crucial for meeting the contractual obligations.
- BRPL's case before the DERC was that as per the meeting held in the office of State Load Dispatch Centre, Delhi (SLDC) on July 8, 2021, it was discussed that the w.r.t the implementation of the Ld. DERC's order dated April 13, 2021, only after supplying 60 MUs to BRPL, TOWMCL would be permitted to apply for open access.
- TOWMCL's case before the DERC was that the EPA does not mandate supplying 60 MUs as a pre-requisite in order to proceed for sale of surplus power under open access.
- By way of its Order dated March 14, 2024, DERC while accepting the submissions of TOWMCL, directed TOWMCL to schedule energy to BRPL, minimum 50% of generation of 13 MW ex-bus capacity and also provided liberty to TOWMCL to use the surplus generation for its captive use or sell through open access, while holding that there is no requirement to obtain any NOC by TOWMCL from BRPL for sale of excess generation under open access to a third party.



HSA  
**Viewpoint**

The view taken by DERC is an important one since it clarifies that a generator is not required to obtain any NOC from the DISCOM for sale of power under open access or for captive consumption. The HSA Team represented TOWMCL before the DERC and was actively involved in advising, strategizing, drafting the Petition, and contesting the matter. The team at HSA successfully convinced the DERC in favor of TOWMCL.

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