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PROJECTS, ENERGY & INFRASTRUCTURE

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RECENT JUDGMENTS

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Ramayana ISPAT Pvt. Ltd. and Anr. Vs State of Rajasthan & Ors.

Supreme Court Judgment dated April 01, 2025 in Civil Appeal No. 7964 of 2019 [Batch].

Background facts

- In a Batch of Appeal(s) preferred by Ramayana ISPAT PVT. LTD and Anr. and Mani Mahesh Ispat Pvt. Ltd. [**Batch Appeals**], two separate orders dated 06.09.2016 and 29.08.2016 passed by the Jaipur and Jodhpur Bench of the High Court of Rajasthan, respectively, ("**Impugned Orders**") were challenged. The appeals arising from the aforesaid orders relates to the validity of the Rajasthan Open Access Regulations, 2016 ("**2016 Regulations**") framed by Rajasthan Electricity Regulatory Commission ("**State Commission**") in the exercise of its powers under Section 42 read with Section 181 of the Electricity Act, 2003.
- The primary grievance of the Writ Petitioners, before the High Court, and now the Appellant(s) before the Supreme Court, relates to the restrictions and conditions imposed by the 2016 Regulations on the exercise of open access for captive power plants and other large consumers of electricity. Prior to the introduction of the 2016 Regulations, the Appellant(s) were availing open access under the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 ("**2004 Regulations**") which permitted the Appellant(s) to draw power from both, the captive generation and open access sources without any reduction in the contract demand from the Distribution Licensee. As such, the open access facility.
- The Appellant(s) challenged the validity of the 2016 Regulations, pleading before the High Court that the 2016 Regulations framed by the State Commission imposed unreasonable restrictions on Inter-state Open Access, thereby exceeding jurisdiction conferred under the Act upon the State Commission which is otherwise vested with the Central Electricity Regulatory Commission ("**CERC**").
- The 2016 Regulations imposed limitations on the simultaneous drawl of power through open access and contracted demand from the Distribution Licensee. As per the new regulation, if a consumer opted to procure power through open access, the contracted demand from the Distribution Licensee would be reduced by the quantum of power scheduled through open access.
- Challenging the jurisdiction of the State Commission with respect to regulating Inter-state Open Access, the Appellant contended that the Regulation 26(7) of 2016 Regulations essentially forecloses the Appellants from purchasing powers from other state as it imposes conditions on Inter-state open access.
- The Appellant(s) argued that the conditions imposed by the 2016 Regulations, such as requiring a 24-hour scheduling period, advance intimation of power usage, and a minimum consumption threshold of 75% of the scheduled quantum, are beyond the ambit of the jurisdiction exercised by the State Commission and infringe upon the powers vested in the CERC.
- It was also contended by the Appellant(s) that Regulation 21, which governs aspects of scheduling, penalties, and compliance for captive power generators,

creates an unreasonable distinction between captive generators and State DISCOMs, allegedly discouraging captive generation.

- To this the Respondent(s), including the State Commission and the Distribution Licensees submitted that Section 42 of the Electricity Act allows RERC to regulate open access within the State of Rajasthan, even if power comes from outside. It was further submitted that open access cannot be absolutely free, untrammelled, un-controlled or unrestricted.

Issues at Hand

- Whether the RERC had the jurisdiction to regulate inter-state open access under the Act of 2003?
- Whether the imposition of penalties for variations in drawl from contracted demand amounts to an unreasonable restriction on the right to open access under Section 42 of the Act of 2003?
- Whether Regulation 26(7) is ultra vires for requiring an advance notice of 24 hours, thereby preventing urgent procurement and creating an artificial barrier to open access as protected by the Act of 2003?
- Whether the Regulation 21 is arbitrary and discriminatory, thereby discouraging captive power generation by creating unreasonable distinction between captive generators and state distribution companies?
- Whether the appellants' right of open access is foreclosed by the Regulations of 2016?

Decision of the Court/Tribunal

- Supreme Court held that section 42(2) of the Electricity Act, 2003 (**the Act**) expressly empowers State Commissions to regulate open access within their respective states, ensuring fair and non-discriminatory access to transmission and distribution networks within the state.
- Supreme Court further stated that Section 42(3) of the Act of 2003 provides that whenever a consumer, with premises within the area of supply of a Distribution Licensee, requires supply of electricity from a generating company other than such distribution licensee, such transmission and supply shall be in accordance with the regulations made by the State Commission.
- Dismissing the aforesaid appeal, Supreme Court observed that while inter-state transmission falls within the domain of the CERC under Section 79(1)(c), the power of the State Commission to regulate intra-state transmission and distribution under Section 86(1)(c) is well established. And that the argument that the Regulations of 2016 have an extra-territorial effect is misplaced.
- The requirement of prior notice is a reasonable procedural safeguard that aligns with the objectives of the Act of 2003, particularly those laid out in Section 42, which envisages a structured approach to open access.
- It was further observed that the key determinant is not the source of power but its delivery, end-user, and consumption within Rajasthan's intra-state grid. The Act of 2003 provides a framework for demarcating responsibilities between CERC and State Commissions, ensuring that intra-state aspects of electricity regulation remain within the purview of State Commissions.
- The Supreme Court also observed that the penalty mechanism is not an unreasonable restriction but rather a measure to ensure that consumers adhere to their contractual obligations, preventing undue burden on the system and other stakeholders. Uncontrolled variations can lead to deviations that may cause frequency imbalances, affecting overall grid security and that the penalties imposed are a deterrent mechanism to prevent strategic gaming of the system and to ensure that all stakeholders adhere to scheduling norms.
- Regulation 26(7), which mandates a 24-hour advance notice for availing short-term inter-state open access, serves a critical function in maintaining grid stability and ensuring proper scheduling of power.
- The Supreme Court further observed that it prevents misuse by entities that may attempt to take advantage of real-time price fluctuations, thereby engaging in speculative trading rather than genuine demand based procurement. Further, the option of purchasing power from the real-time market and day-ahead market in need of urgent procurement is always available and is not prevented by the impugned regulations.
- The Supreme Court held that the distinction between captive power generators and State DISCOMs is not arbitrary but arises from the structural differences in their roles and obligations and that Regulation 21 does not impose undue

restrictions on captive generators but ensures that their operations align with grid discipline, preventing any adverse impact on the larger power ecosystem.

- The regulatory framework ensures that captive generators contribute fairly to system stability without imposing additional burdens on distribution licensees and other grid participants. Thus, Regulation 21 is neither arbitrary nor discriminatory but rather a necessary and proportionate measure to balance the interests of various stakeholders in the electricity sector.
- The Supreme Court further observed that a careful analysis of the Regulations of 2016 indicates that they primarily aim at maintaining the reliability of the electricity grid, ensuring fair pricing, and preventing speculative misuse of open access provisions. The requirement of advance notice for short-term open access, penalties for deviations from contracted demand, and specific conditions for captive power generators are all designed to create a structured and predictable electricity market.
- These provisions do not prevent eligible consumers from availing open access but instead ensure that they do so within a framework that safeguards the interests of all stakeholders, including distribution licensees and other consumers.
- The Supreme Court further held that the Act of 2003 envisages a balance between the rights of open access consumers and the operational concerns of the power sector. The 2016 Regulations, while imposing certain conditions, do not outright deny open access but ensure that its implementation is equitable and does not jeopardize grid discipline.
- The Supreme Court also upheld the Impugned Orders observing that the appellants have failed to establish that the impugned regulations are in contravention of their rights protected under Part-III or any other provision of the Constitution of India or that the regulations have been enacted without having the competence to do so or they are manifestly arbitrary or unreasonable.
- Thus Supreme Court observed that it has been rightly held by the High Court that the Regulations of 2016 are in consonance with the objects of the Act of 2003 and have been framed as per the competence available under Section 181 read with Section 42 of the Act of 2003.

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Viewpoint

The decision affirms that State Electricity Regulatory Commissions (**SERCs**) can impose restrictions and regulate intra-state aspects of open access transactions, even when electricity is sourced from another state. The judgment significantly alters the conventional jurisdictional divide between CERC and SERCs by reaffirming the power of the State Commissions, to exercise jurisdiction over intra-state aspects of open access. The decision supports rigorous scheduling and drawl protocols, especially for short-term and real-time market participants. By validating Regulation 26(7) of 2016 Regulation, Supreme Court has acknowledged the risk of grid misuse and has observed that the regulation does not create any insurmountable barrier to open access but rather seeks to bring order and predictability to its implementation and prevents misuse by entities that may attempt to take advantage of real-time price fluctuations, thereby engaging in speculative trading rather than genuine demand-based procurement.

Hindustan Petroleum Corporation Limited v. Tamil Nadu Electricity Regulatory Commission & Anr.

Appellate Tribunal for Electricity's (APTEL) Judgment dated March 24, 2025 in Appeal No. 149 of 2018

Background facts

- The Appellant, Hindustan Petroleum Corporation Limited (**HPCL**), a government-owned entity under the Ministry of Petroleum and Natural Gas, operates an LPG bottling plant at Kappalur, Madurai, Tamil Nadu.
- The plant had previously been categorized under HT I (Industrial) tariff category by the Tamil Nadu Electricity Regulatory Commission (**TNERC**). However, vide tariff order dated August 11, 2017, TNERC re-categorized the plant under HT III (Commercial), grouping it with establishments like malls, multiplexes, and

hotels. HPCL challenged this reclassification, arguing that its operations qualify as an industrial activity as per the Factories Act, 1948.

Issues at hand

- Whether HPCL's LPG bottling plant qualifies as an "industrial activity" for purposes of electricity tariff categorization.
- Whether TNERC's re-categorization from HT I (Industrial) to HT III (Commercial) is arbitrary, discriminatory, or lacks legal basis.

Decision of the Court/Tribunal

APTEL upheld TNERC's decision to classify LPG bottling plants under HT III (Commercial). In this regard, the following key observations were made by APTEL:

- The Tribunal held that HPCL's bottling activities do not qualify as manufacturing. Bottling involves transferring finished LPG from bulk containers into cylinders without altering its essential nature or composition, thereby lacking transformation required for "manufacture".
- Citing the Supreme Court's decisions in Delhi Cloth Mills, Servo-Med Industries, and Satnam Overseas, APTEL emphasized that processing or repackaging without altering the essential character of a product does not amount to manufacturing.
- It was also noted that categorization of consumers lies within the discretion of State Electricity Commissions under Section 62(3) of the Electricity Act, 2003.
- The Tribunal rejected HPCL's reliance on prior TNERC orders (2008) and categorization in other states, noting that doctrine of *stare decisis* does not preclude recategorization where a re-evaluation is supported by judicial reasoning and statutory interpretation.
- Lastly, the Tribunal found that TNERC had appropriately relied on the 2016 APTEL judgment (APL No. 265 of 2014) which held LPG bottling to be commercial in nature.

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Viewpoint

APTEL's ruling reinforces the distinction between "manufacturing" and "commercial" activities within the framework of electricity tariff categorization. The decision supports the view that State Commissions possess significant autonomy to assess and classify consumers based on the functional use of electricity and market realities, even if prior classifications differ. The tribunal has upheld a reasoned and precedent-backed approach to consumer classification, especially where no value addition or transformation of goods occurs. This case also underscores the narrow application of the doctrine of stare decisis in tariff matters.

Nuclear Power Corporation of India Ltd. v. Central Electricity Regulatory Commission & Gujarat Urja Vikas Nigam Ltd.

Appellate Tribunal for Electricity (APTEL), Judgment dated March 27, 2025 in Appeal No. 134 of 2024.

Background facts

- Nuclear Power Corporation of India Ltd. (**NPCIL**), a centrally-owned generating company, supplies electricity to Gujarat Urja Vikas Nigam Ltd. (**GUVNL**), a distribution licensee, under two Power Purchase Agreements (**PPAs**) dated September 22, 2005 and December 16, 2008. These PPAs govern the sale of electricity from NPCIL's nuclear power stations—Kakrapar Atomic Power Station (KAPS) and Tarapur Atomic Power Station (**TAPS**)—and stipulate that tariffs shall be determined by the Department of Atomic Energy (**DAE**), Government of India, under the Atomic Energy Act, 1962.
- A dispute arose when GUVNL alleged that NPCIL was over-recovering income tax, particularly Minimum Alternate Tax (MAT), for the financial years 2011–12 to 2021–22 by charging tax rates in excess of those actually paid. GUVNL contended that NPCIL's recovery of the tax component under Clauses 7.5.2 and 7.5.3 of the PPAs constituted double recovery, since DAE's tariff notifications

post-2012 already incorporated a post-tax Return on Equity (ROE) inclusive of applicable taxes.

- GUVNL filed Petition No. 98/MP/2023 before the Central Electricity Regulatory Commission (CERC), seeking a refund of INR 119.95 crore and future compliance with the DAE's tariff notifications. In its interim order dated January 13, 2024, CERC held that it had jurisdiction under Sections 79(1)(a) and 79(1)(f) of the Electricity Act, 2003, to adjudicate the matter. This interim order was challenged by NPCIL before the Appellate Tribunal for Electricity (APTEL), asserting that the dispute was governed exclusively by the Atomic Energy Act, 1962, and did not fall within the CERC's jurisdiction.

Issues at hand

- Whether the CERC has jurisdiction under Sections 79(1)(a) and 79(1)(f) of the Electricity Act, 2003 to adjudicate disputes relating to tariffs issued by the Department of Atomic Energy for nuclear power stations.

Decision of the Court/Tribunal

APTEL set aside the interim order of CERC, holding that:

- NPCIL, though a government-owned entity, is an independent legal entity registered under the Companies Act and does not fall within the exemption under Section 184 of the Electricity Act, which is limited to ministries and departments of the Central Government.
- Section 22 of the Atomic Energy Act, 1962 overrides the Electricity Act in matters of tariff fixation for nuclear power, as it contains a non-obstante clause and empowers the Central Government to fix tariffs and regulate supply from atomic power stations.
- There is no inconsistency between the Atomic Energy Act and the Electricity Act that would justify CERC exercising concurrent jurisdiction.
- The role of CERC under Section 79(1)(a) pertains to generating stations owned or controlled by the Central Government, but in this context, the authority to fix tariffs lies exclusively with the DAE under the Atomic Energy Act.
- Consequently, CERC does not have jurisdiction under Section 79(1)(f) to adjudicate disputes regarding tariff computation for nuclear power when such tariffs are statutorily fixed by another competent authority (i.e., DAE).
- APTEL directed that the dispute should instead be resolved through the mechanisms prescribed in the PPAs (i.e., arbitration or civil remedies).

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Viewpoint

APTEL's decision affirms the exclusive authority of the Department of Atomic Energy in matters relating to tariff for nuclear power, thereby limiting the jurisdiction of electricity regulators like CERC in such contexts. This ruling reinforces a clear demarcation between the regulatory frameworks under the Electricity Act and the Atomic Energy Act and upholds the primacy of the latter where specialized statutory powers are conferred. The judgment ensures clarity in jurisdictional boundaries but may prompt broader discussions on the need for harmonized regulatory oversight, especially as India continues to expand its nuclear energy capacity.

Solitaire Powertech Private Limited vs. Solar Energy Corporation of India Limited and Ors.

Central Electricity Regulatory Commission (CERC) Order dated March 24, 2025 in Petition No. 377/MP/2023.

Background facts

- Solitaire Powertech Private Limited **("SPPL / Petitioner")** filed a petition under section 79(1)(b) & 79(1)(f) of the Electricity Act, 2003 seeking application of Discounting Factor to the computation of its Change-in-Law claim starting from the date of commercial operation of the project for the annuity period of thirteen years, on account of introduction of Central Goods and Services Act, 2017, the Integrated Goods and Services Tax Act, 2017 & State Goods and Services Act, 2017 (**"GST Laws")** on 01.07.2017.

- Solar Energy Corporation of India ("**SECI / Respondent**") had submitted that any liability *qua* monthly annuity payment shall kick-in only from the 60th day from the date of Order or from the date of submission of claims.
- As per the methodology settled by the CERC, *vide* its order dated 20.08.2021 in Petition No. 536/MP/2020, the Petitioner was entitled to receive a monthly annuity of Rs. 8,16,880/- per month (which also included carrying cost/interest/discounting factor at 10.41% per annum) for the period of 13 years from the date of COD. However, the monthly annuity paid by SECI (after removing the benefit of carrying cost/interest/ discounting factor from the date of COD till the date of first payment by SECI) is Rs. 6,77,474/- per month. Such conduct of SECI was contrary to the directions passed in Petition No. 536/MP/2020 to the extent that CERC allowed the developers to claim compensation through annuity payments spread throughout the period of 13 years, i.e., tenure of annuity payments.
- SECI contended that it has taken action as per the Order in Petition No. 536/MP/2020, wherein it has been categorically held that the liability of SECI/Discoms for 'Monthly Annuity Payments' starts only from the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later and that Petitioner is not entitled to carrying cost/interest/discounting factor on the principal amount for a period of 13 years starting from the COD of the Project i.e., 07.04.2018.
- SECI also stated that it has been making payments to the Petitioner in terms of the directives of CERC in Petition No. 52/MP/2019 dated 22.08.2022 and that the Petitioner had approached CERC one year after its COD for the change in law claims.
- SECI also claimed that the Petition is barred by the principles of *res judicata* as the Petitioner had not challenged the findings of CERC in Petition Nos. 52/MP/2019 and 536/MP/2020 and therefore, it is not open to the Petitioner to now claim carrying cost from the COD of the Project.

Issues at hand

- Whether the Petitioner is entitled to receive carrying cost/interest / discounting factor at the rate of 10.41% for the entire tenure of annuity payments starting from COD of the Project on the principal amount of GST on both capital cost and O&M cost?
- Whether the Petitioner is entitled to payment of interest/LPSC on delayed payment by SECI as claimed in the present Petition, keeping in view the principles of time value of money and restitutive nature of change in law claims?
- Whether the Petitioner is entitled to payment of interest/LPSC on delayed payment by SECI as claimed in the present Petition, keeping in view the principles of time value of money and restitutive nature of change in law claims?
- Whether SECI should be directed to pay future monthly annuities at Rs. 8,16,880/- per month, taking into account the carrying cost / discounting factor payable at 10.41% per annum from the COD of the Project?

Decision of the Tribunal

- CERC rejected the contentions of SECI and allowed the claims of SPPL holding that the monthly annuity payment shall be calculated on the entire principal sum staring from the COD of the Petitioner's project.
- It was further held that the Late Payment Surcharge shall be payable for delayed period corresponding to each delayed monthly annuity payment as per the provisions under the Power Purchase Agreement ("**PPA**"). CERC has also held that the Petitioner shall be eligible for carrying cost starting from the date when the actual payments were made by the Petitioner to the authorities.
- CERC also stated that the discount rate of annuity payments shall be 10.41% towards the expenditure incurred on GST on account of "Change in Law" and the tenure of annuity payment shall be 13 years.
- Award of interest is an integral part of the implementing concepts of time value of money. As such, in addition to the entitlement to Discounting Factor on the principal amount of GST claim, starting from the COD of the project, the Petitioner shall also be entitled to carrying cost starting from the date when the payments were made to the authorities.
- The provisions for Late Payment Surcharge under the respective agreement shall be equally applicable and the liability to discharge the same would kick in in the event SECI fails to make payment within the due date of the supplementary bills raised by the Petitioner.

- Late payment surcharge for the delayed period corresponding to each such delayed Monthly Annuity Payment(s) shall be payable as per respective PPAs/PSAs beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later.

HSA
Viewpoint

This order reinforces the interpretation that Change in Law relief includes financial restitution, including carrying costs and accurate annuity compensation, in line with the *Parampujya Solar* and *Gujarat Urja Vikas Nigam Ltd.* decisions. By allowing carrying cost from the date of incidence (payment of GST), the order solidifies the time value of money as a cornerstone of compensation under Change in Law—a position recognized by both APTEL and the Hon'ble Supreme Court. CERC again emphasized that SECI's liability under the PPA cannot be conditional upon payment from state DISCOMs under the PSA, creating legal clarity and financial certainty for solar developers. Power producers are likely to revisit and assert carrying cost claims, especially for pre-COD tax liabilities. Additionally, PPAs may now incorporate more express provisions on restitution and carrying cost, avoiding ambiguity. The Commission's nuanced treatment of estoppel and the withdrawal of earlier undertakings "without prejudice" sets a precedent that regulatory bodies will examine substantive fairness, even if commercial acceptances were earlier signed under pressure or uncertainty.

M/s Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) v. M/s Pace Digitek Private Limited (PDPL)

Maharashtra Electricity Regulatory Commission's (MERC) Order dated March 20, 2025, in Case No. 173 of 2024.

Background facts

- The Petition was filed by M/s Maharashtra State Electricity Distribution Co. Ltd. **(MSEDCL / Petitioner)** seeking the adoption of the tariff for procuring up to 500 MW / 1000 MWh of standalone Battery Energy Storage System **(BESS)** capacity through a competitive bidding process. The BESS is to be installed at MSEDCL substations.
- The primary objective of this procurement is to manage peak and off-peak energy demands efficiently through a reliable energy storage solution.
- The Petition highlights the critical role of battery storage in integrating renewable energy sources, especially the excess solar generation from decentralized projects under MSKVY 2.0. The Petitioner highlighted that while MSEDCL has already secured 4,074 MW of pumped storage capacity, a gap remains, which can be bridged through battery storage systems. The total estimated storage requirement for FY 2029-30 is 4,600 MW, and this procurement is a key component of the strategy to meet that demand.
- The competitive bidding process commenced in August 2024, attracting participation from 14 bidders. Following multiple bidding rounds, Pace Digitek Private Limited **(PDPL)** emerged as the lowest bidder, offering a monthly tariff of ₹219,001/MW—substantially lower than tariffs recently discovered for similar projects across India.
- MSEDCL justified the selected tariff by benchmarking it against those discovered in comparable projects, asserting that it reflects prevailing market conditions and provides a significant cost advantage.

Issues at hand

- Whether the tariff proposed for adoption is aligned with prevailing market conditions and offers a significant cost advantage?
- Whether the tariff determination process was conducted transparently through a two-stage competitive bidding system?

Decision of the Court/Tribunal

- MERC has approved MSEDCL's Petition to procure 250 MW / 500 MWh of battery storage capacity, along with an additional 500 MW / 1000 MWh greenshoe option, at a tariff of ₹219,001 per MW per month for a period of 12 years.
- The energy procured under this arrangement will contribute toward fulfilling MSEDCL's Energy Storage Obligation. MSEDCL has been directed to execute the Battery Energy Storage Purchase Agreement with the successful bidder within 30 days.
- MERC observed that the bidding process complied with the guidelines issued by the Ministry of Power and was conducted transparently through a two-stage competitive bidding system. The process ensured fair competition among participants, and the lowest discovered tariff was duly considered.
- With regard to the quantum of energy storage capacity, the Commission acknowledged MSEDCL's requirement to effectively integrate renewable energy sources. The procurement was deemed justified based on projected storage needs and in line with the state's Energy Storage Obligation.
- The proposed battery storage will enable the capture of excess solar energy generated during the day, which can then be discharged during peak demand hours, thereby reducing reliance on expensive power purchases.
- MERC compared the discovered tariff with those from similar tenders conducted across the country. It found the rate to be highly competitive and reasonable, especially considering the cost-saving potential during peak hours. Furthermore, the projects under this procurement are eligible for viability gap funding of up to 30% of the capital cost, or ₹2.7 million per MWh, from the Ministry of Power, further supporting the approval.

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Viewpoint

The Commission's approval of MSEDCL's battery storage procurement marks a pivotal shift in Maharashtra's energy infrastructure, enabling more effective integration of renewable sources like solar power. By supporting peak demand management and reducing dependency on costly power during critical hours, this initiative enhances grid stability and energy efficiency. With viability gap funding, the financial burden is eased, making the transition to clean energy more economically viable. This decision plays a transformative role in advancing India's energy storage roadmap.

TP Solapur Saurya Ltd. & Ors. v. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) & Ors.

Maharashtra Electricity Regulatory Commission's (MERC) Order dated March 20, 2025, in Case No. 100 of 2024

Background facts

- The Petition was filed by TP Solapur Saurya Ltd., TP Arya Saurya Ltd., and TP Ekadash Ltd. **(Petitioners),** operating solar power projects under Tata Power Renewable Energy Ltd. **(TPREL)**, supplying electricity to high-voltage open access consumers.
- The solar power projects are directly connected to the Maharashtra State Electricity Transmission Company Ltd. **(MSETCL)** transmission network at the 132 kV level, thereby ensuring that electricity is transmitted without utilizing the distribution infrastructure of the Maharashtra State Electricity Distribution Company Ltd. **(MSEDCL)**.
- Despite this arrangement, MSEDCL imposed wheeling charges and deducted 2.10 MUs as wheeling losses from the energy supplied between May 2023 and March 2024. Additionally, MSEDCL deducted energy units from the accounts of open access consumers under the pretext of transmission losses.
- The Petitioners contended that MSEDCL's actions were in violation of Regulation 14.6(b) of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019, which clearly state that such charges are not applicable when both the generator and the consumer are connected to the transmission network.

Issues at hand

- Whether the imposition of wheeling charges and deduction of wheeling losses by MSEDCL was justified in light of the prevailing regulatory framework and prior rulings issued by MERC?

Decision of the Court/Tribunal

- MERC held that the wheeling charges are applicable only when electricity is transmitted through a distribution network. It noted that the solar projects in question were directly connected to the MSETCL transmission system at the 132 kV level via dedicated 33/132 kV lines owned by the Petitioners.
- MERC held the imposition of wheeling charges to be unlawful, as the power was never routed through MSEDCL's distribution system. It also dismissed MSEDCL's contention that the drawing of auxiliary or start-up power from its network by the petitioners justified the imposition of wheeling charges.
- The Commission clarified that auxiliary power consumption constitutes a separate and independent transaction, unrelated to the open access supply of electricity. It ruled that the mere usage of MSEDCL's network for auxiliary power does not amount to usage of the distribution system for wheeling purposes.
- MERC further rejected MSEDCL's argument that the solar generators indirectly utilized its infrastructure through pooling substations. It held that, in the absence of a physical interconnection with MSEDCL's distribution network, the levy of wheeling charges was without legal basis.
- Accordingly, MERC directed MSEDCL to refund the unlawfully imposed wheeling charges and reverse the deduction of 2.10 MUs from the open access consumers' accounts, along with applicable interest. It also instructed MSEDCL to refrain from levying such charges in future invoices unless the electricity is physically wheeled through its distribution system.

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Viewpoint

The Commission's decision marks a significant step towards regulatory clarity and fairness for renewable energy developers and Open Access consumers across the state. By reiterating that the imposition of wheeling charges and wheeling losses—despite previous rulings on the matters—was unjustified, the Commission has not only upheld the principles of regulatory consistency but also provided much-needed certainty for stakeholders in the renewable energy sector.

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