PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES

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MNRE issues draft amendment to procedure for inclusion/updating wind turbine model in revised list of models and manufacturers of wind turbines

- The Ministry of New and Renewable Energy (MNRE), through its circular dated April 17, 2025, has issued a draft amendment to the procedure for inclusion/updating of wind turbine models in the revised list of models and Manufacturers (RLMM) of wind turbines (Draft Amendment) for stakeholder consultation.

The key proposed amendments are as follows:

Para 4(g): The uploaded details for RLMM inclusion will now mandatorily include not only the wind turbine model name along with the details of the wind turbine manufacturer, technical details and certifications but also the domestic vendor/source details for blade, tower, gearbox and generator.

Para 4(h): It is proposed that the type certificate for a wind turbine model must mandatorily include blade, tower, gearbox and generator manufacturing facilities located in India. Furthermore, a. An exemption shall be applicable for importing the aforementioned components for up to 50 turbines or 200 MW, whichever is lower, by any new manufacturer and/or new model for a period of one year from the date of inclusion in RLMM. b. The requirements for the gearbox and generator manufacturing facility will be applicable after six months from the issuance of the Draft Amendment.

Para 4(i): Certain new cybersecurity norms have been prescribed:

Data centres and/or servers must be mandatorily located within India. Further, all data in relation to the wind turbine must be stored and maintained in India.

Real-time operational data transfer outside India shall be prohibited and operational control of wind turbines must be conducted exclusively from a facility in India.

A R&D centre will be mandatorily established in India within six months from the date of issuance of the Draft Amendment.

Para 4): The application along with all required documents shall be submitted in soft copy to the designated officers.

All stakeholders have been invited to submit comments on the Draft Amendment within three weeks from the date of issuance, i.e., April 17, 2025, to the designated MINRE officer.

Ministry of Power has amended the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022

The Ministry of Power (MoP) issued notification dated May 2, 2025, amending the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

The latest amendment brought a single substitution: the words "inter-state transmission licensees" in Rule 1(3) have now been replaced with "transmission licensees". In effect, this brings intra-state transmission utilities under the same Late Payment Surcharge (LPS) regime that already applies to generating companies and inter-state licensees.

State Discoms can no longer claim exemption from surcharge rules on intrastate dues.

Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025

- The Karnataka Electricity Regulatory Commission **(KERC)** has issued the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025.
- The Regulations have been introduced after the Karnataka High Court's decision to strike down the previous Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules 2022 and the KERC (Terms and Conditions for Green Energy Open Access) Regulations, 2022.
- The Karnataka High Court directed KERC to frame new regulations aligning with the National Electricity Policy and the tariff policy and to consider the interests of all stakeholders.
- KERC has introduced a new framework that applies to all consumers who use the state's transmission and distribution systems for accessing renewable energy. The Karnataka State Load Despatch Centre **(SLDC)** has been appointed as the authority to process and manage open access applications under this framework.
- One of the important features of the new regulations is the classification of consumers based on how long they intend to use open access. Consumers are grouped into long-term, medium-term, and short-term categories. This classification is aimed at helping authorities manage power flow and distribution more smoothly and efficiently.
- A key feature of the new regulations is the provision for electricity banking, which allows consumers using wind, solar, or hydropower to store their excess energy in the grid and retrieve it later when needed. This system will benefit renewable energy producers by improving energy management and promoting clean power usage.
- The regulations are designed to simplify and strengthen the process of accessing renewable energy in Karnataka. They aim to create a more transparent, efficient, and system that benefits industries, green energy producers, and electric vehicle infrastructure. By encouraging the use of clean power, the updated framework supports the state's move toward a more sustainable energy future.

Draft Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2024

The Uttar Pradesh Electricity Regulatory Commission (UPERC) has issued Draft UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2024.

The regulations aimed at promoting renewable energy development and enhancing the regulatory framework for captive power generation. The draft regulations are aligned with the provisions of the Electricity Act, 2003, and are designed to streamline policies, encourage investment, and support sustainable energy initiatives across the state.

The Regulations introduce several key reforms particularly in the areas of energy banking, tariff determination, and fuel pricing. Notably, the draft proposes differentiated banking provisions for renewable energy (RE) and non-RE captive generating plants, aligning these with the Green Energy Open Access Rules issued by the Ministry of Power.

With respect to the generating projects commissioned on or after April 1, 2009, will retain 100% of the clean development mechanism (CDM) proceeds during their first year of commercial operation. From the second year onwards, the procurer's share of CDM benefits will increase by 10% each year, eventually reaching 50%.

The electricity supply tariff from generating projects having more than one unit commissioned in different years will be based on the weighted average of the tariff of contracted capacities of the units commissioned in different years.

In the case of bagasse, biomass, and other renewable energy projects, the tariff between the date of synchronization and commercial operation date (COD) will be equivalent to the variable cost. Additionally, a plant load factor of at least 50% will be necessary to recover full capacity charges for biomass and bagasse-based projects.

Distribution licensees will be required to seek approval for Power Purchase Agreements (PPAs) with generating projects, and it will be required to furnish the data on the energy received from various captive and renewable sources. The regulations also allow any entity setting up and operating a generating project to meet its electricity needs through open access or by purchasing power from the local distribution licensee.

All generating projects must maintain grid discipline and will not be entitled to compensation in case of grid failures. Provisions of the deviation settlement mechanism will apply to all projects, except small hydro and municipal solar waste plants.

Regarding energy banking, captive projects meeting the criteria set in UPERC (Verification of Generating Plants and Captive Consumers) Regulations, 2022 may bank energy for self-use during the control period, subject to entering into wheeling and banking agreements with distribution licensees.

For bagasse-based projects, banking is capped at 49% of the energy injected in a quarter, while other renewable sources are limited to 25% of energy injected monthly or 30% of the total monthly consumption. Energy banking will be allowed at 100% on a 15-minute time block basis, with withdrawals made on a first-in, first-out basis. Energy banked during off-peak hours can only be withdrawn during off-peak periods.

RECENT JUDGMENTS

In this Section:

Jaipur Vidyut Vitaran Nigam Ltd. v. Rajasthan Textile Mills Assn. & Ors.

Powergrid Corporation of India Limited v. Central Electricity Regulatory Commission and Others.

M/s Kundlas Loh Udyog v. State of Himachal Pradesh & Ors.

Metsil Exports (P) Ltd. v. West Bengal Electricity Regulatory Commission & Ors.

Power Grid Corporation of India Limited Vs Madhya Pradesh Power Transmission Company Limited & Ors.

Suryataap Energies and Infrastructure Private Limited v. Assam Electricity Regulatory Commission & Anr.

Mumbai Urja Marg Limited v. Maharashtra State Electricity Distribution Company Limited & Ors.

M/s K.M. Sugar Mills Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors.

Directions by the Commission to the Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2021

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) v. Braithwaite Nacof Solar Project Ltd.

Jaipur Vidyut Vitaran Nigam Ltd. v. Rajasthan Textile Mills Assn. & Ors.

Supreme Court Judgment dated April 29, 2025 in Civil Appeal Nos. 8862-8868 of 2022

Background facts

The case pertains to the statutory appeals under Section 125 of the Electricity Act, 2003 ('the Act') against a common judgment ('Impugned Judgement') delivered by the Appellate Tribunal for Electricity ('the APTEL') in a group of appeals. The issue involved in these appeals relates to the determination of the Cross-Subsidy Surcharges ('CSS') by the Rajasthan Electricity Regulatory Commission ('RERC'). The determination was made under Section 42 (2) of the Act.

The present Appellants were the Respondents before the APTEL. The Respondents (Appellants before the APTEL) are the industries/industrial units located in various parts of the State of Rajasthan, running their operations by availing their supply of electricity from connectivity through the State grid at EHT levels of 132/33/11 KV voltage. These industrial units were granted open access within the contract demand for drawing electricity through such open access, including from power exchanges.

In exercise of the powers under Section 61 read with Section 181 of the Act, RERC notified the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 ('RERC Tariff Regulations').

The RERC determined the tariff for the FY 2015-2016 by the tariff order dated 22.09.2016. On 20.08.2016, the distribution licensees approached the State Commission by a petition praying for determination of the CSS under Section 42 (2) read with Sections 39 and 40 of the Act. While dealing with the said petition, RERC identified the issues for its consideration, including the issue as to whether distribution licensees were entitled to claim the CSS, and if so entitled to, what the appropriate formula for its determination is. RERC noted that the distribution licensees had not applied for fixation of tariff for the F.Y. 2016-2017, and the tariff petition for F.Y. 2015-2016 had been decided by the commission in September 2016 by holding that the tariff will be in force till the next tariff order.

The commission observed that mere absence of tariff petition for F.Y. 2016-2017 will not restrict or prevent the State Commission from determining the CSS for F.Y. 2015-2016 and apply the same for F.Y. 2016-2017 till new tariff petition for F.Y. 2016-2017 is filed and the CSS is revised based on the same. After hearing the Respondents-consumers, the State Commission, by order dated 01.12.2016, determined the CSS payable entirely based on the tariff determined for F.Y. 2015-2016 by order dated 22.09.2016.

These industrial units (Appellants before the APTEL) were aggrieved by the determination of the CSS made applicable from 01.12.2016 by the order passed on 01.12.2016 by RERC. Being aggrieved by the said order of the State Commission, the industrial units preferred statutory appeals before the APTEL. By the impugned judgment, the order of the RERC was set aside. However, the APTEL clarified that the RERC will be within its jurisdiction to undertake the process of revisiting the subject of the CSS vis-à-vis distribution licensees operating in the State of Rajasthan as and when it takes up the exercise of tariff determination in future in accordance with law.

The Act introduced the concept of open access, enabling the consumers/end users to procure electricity from sources other than the distribution licensees of the area where the premises of such end use are situated. Earlier, electricity was generally procured only from distribution licensees.

There was a significant amount of cross-subsidisation of certain categories of consumers by other categories of consumers. The consumers benefitting from the subsidy include agricultural consumers, low-end domestic consumers and public works. They are known as subsidised consumers. The consumers paying for the subsidy include industrial consumers, commercial consumers, and high-end domestic consumers, and they are known as subsidising consumers. Allowing open access users to source electricity from sources other than distribution licensees benefited such subsidising consumers and would become a burden on the distribution licensee. The reason is that such customers stopped taking electricity from the distribution licensees, thereby reducing the distribution licensees' funds to subsidise the subsidised consumers.

By order dated 01.12.2016, RERC determined the CSS based on the FY 2015-2016 tariff, fixing rates at Rs. 1.63 per unit for 132 KV and above, Rs. 1.39 per unit for 33 KV, and Rs. 0.83 per unit for 11 KV large industrial service open access consumers.

The APTEL, relying on prior decisions, held that RERC erred by determining the CSS without a tariff petition for FY 2016-2017 and without authenticated data, and that the CSS increase was against the policy of progressively reducing CSS rates.

Issues at Hand

Whether the CSS can be determined independently and based on the previous tariff order if no fresh tariff order exists for the relevant financial year?

Whether the RERC erred in determining CSS for FY 2016-17 in absence of a separate tariff order for that year?

Decision of the Court/Tribunal

- The Commission analysed the Petitioner’s financial restructuring plan and determined that the requested security creation was necessary for project viability.
- The Supreme Court relied upon its judgement of ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission* 2015 SCC OnLine APTEL 75** wherein it has laid down the rationale and purpose of levying the CSS stating that *“27. The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge — one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts — one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.”*
- The Supreme Court stated the determination of CSS is not necessarily a part of the tariff determination process. The CSS can be determined along with the tariff and it can be determined separately in accordance with Regulation 90 of the RERC Tariff Regulations based on the prevailing rate of tariff. Further the Hon’ble Supreme Court held that the APTEL committed an error by holding that the determination of the tariff and the determination of the CSS should always coincide and set the Impugned Judgement and restored the RERC order dated 01.12.2016.
- The Court clarified that this order remained in force until 02.11.2017, when a new tariff order was passed.

- The Supreme Court further held that RERC correctly determined the CSS using the tariff fixed on 22.09.2016 for the FY 2015-2016. The Court further noted that the Respondents did not challenge the tariff order dated 22.09.2016, and the CSS determination was consistent with the applicable legal framework. The Commission emphasized that any transfer of assets or ownership changes must ensure uninterrupted transmission services and compliance with regulatory requirements.

HSA
Viewpoint

The Supreme Court, reversing the APTEL judgment, upheld RERC order dated 01.12.2016, which determined the CSS based on the prevailing tariff fixed for FY 2015-2016 under the order dated 22.09.2016. The Court clarified that neither the Act nor the RERC Tariff Regulations mandate simultaneous determination of CSS with tariff, rejecting APTEL's view that such coincidence is necessary. The CSS, as a statutory charge to compensate distribution licensees for the loss of cross-subsidisation due to open access consumers sourcing electricity from alternative suppliers, was correctly computed using the formula under Regulation 90 of the RERC Tariff Regulations.

Powergrid Corporation of India Limited v. Central Electricity Regulatory Commission and Others.

Supreme Court Judgment dated May 5, 2025 in Civil Appeal Nos. 5857-5858 of 2011

Background facts

Two civil appeals filed by the Appellant under Section 125 of the Electricity Act, 2003 (‘the Act’) arise out of the common order dated 23.03.2011 (‘Impugned Judgement’) passed by the Appellate Tribunal for Electricity (‘APTEL’) in Appeal Nos. 91-92 of 2009 with the issue being inter-related and between the same parties. Appellant in the present case is Powergrid Corporation of India Limited.

In Appeal No. 91 of 2009, the challenge made was to the order dated 03.02.2009 passed by the Central Electricity Regulatory Commission (‘CERC’) in Petition No. 68 of 2008, and in Appeal No. 92 of 2009 challenge made was to the order dated 03.02.2009 passed by the CERC in Petition No. 80/2008. Both the Appeals were dismissed vide the order dated 23.03.2011

The Appellant a central transmission utility responsible for establishing transmission assets of Inter-State Transmission Systems ('ISTS') dealing with planning and transmission of electricity owned and operated two transmission systems in the northern region: Rihand I and Rihand II.

Between 28.04.2006 and 09.05.2006, all the three transformers in the Rihand I transmission system failed and broke down and burnt due to internal faults.

Considering that it was peak summer season with high anticipated load demand in the National Capital Territory of Delhi, the transformers were required to be replaced immediately. According to the Appellant, the procurement of new transformers would have taken a long time. Therefore, it was decided to temporarily take out one transformer each from Mainpuri and Kaithal sub-stations and to divert the same to Ballabgarh and Mandola. It was also decided to divert one transformer which was procured for Bahadurgarh sub-station to Mandola.

Accordingly, Appellant restored the transformers at Ballabgarh and Mandola during the period from 29.05.2006 to 19.06.2006. The ICTs that were taken out from Mainpuri and Kaithal were restored by January and February, 2007 by new / repaired transformers.

Thereafter, Appellant filed a petition before the CERC for approval of the transmission charges for the three replaced ICTs in Rihand I based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (‘CERC Tariff Regulations’). The said petition was registered as Petition No. 68 of 2008 through which the Appellants claimed de-capitalization for the transformers taken out from Mainpuri and Kaithal and additional capitalization for the new/repaired transformer originally procured for Bahadurgarh sub-station and installed at the two sub-stations of mandola and Ballabgargh.

On 04.09.2008, Appellant filed a petition before the CERC for revision of tariff in respect of the Rihand transmission system for the period upto 02.04.2009 considering the net additional capitalization on account of replacement of the three burnt ICTs at Mandola and Ballabgarh. It was registered as Petition No. 80 of 2008.

CERC vide the order dated 03.02.2009 disallowed the claim of the Appellant for decapitalization of the damaged transformers and additional capitalization of the installed transformers as replacement for the damaged transformers. CERC further held that the net cost for such replacement must be met out from the insurance fund reserve maintained by the Appellant under the internal insurance policy.

This led to filing of Appeal No. 91 and Appeal No. 92 of 2009 by the Appellant before the APTEL. Both the appeals were heard together by the APTEL, and vide the Impugned Judgment dated 23.03.2011 dismissed the two appeals as being devoid of merit.

Issues at hand

Whether the Appellate Tribunal and Respondent No. 1 justified in rejecting the claim made by the Appellant of additional capitalization due to the replacement of the damaged ICTs?

Whether the self-insurance policy of the Appellant covered the cost of replacement of the damaged ICTs?

Whether the Member Secretary of NRPC should have been directed by the Appellate Tribunal to issue revised availability certificate for the transmission assets?

Decision of the Court/Tribunal

- The Supreme Court held that Regulation 53 of the CERC Tariff Regulations provides for additional capital expenditure incurred after the commercial operation date upto the cut off date and such expenditure may be admitted by CERC if such expenditure relates to deferred liabilities, deferred works, procurement of initial spares (within specified norms), compliance with arbitral award or court order or change in law subject to submission of necessary documents and a prudent check.
- The Supreme Court held that it is evident that Regulation 53 does not include within its scope replacement of ICTs due to damage or failure. Regulation 53(2)(iv) says that any additional work/services which have become necessary for the efficient and successful operation of the project but not included in the original project cost may be admitted by the CERC as additional capital expenditure and the contention that Regulation 53(2)(iv) applies to the Appellant's diversion and replacement of ICTs was rejected, as this cannot be construed as doing any additional services. The Hon'ble Supreme Court further held that it was the duty of the Appellant to maintain a healthy transmission system; replacement of damaged equipment(s) is part of operation and maintenance.
- The Supreme Court deciding the first issue in favour of the Respondents held that the transmission systems were in normal operational condition since those were commissioned. Both Rihand I and Rihand II cannot be considered as old assets as these were fairly new. There is nothing on record to show that prior to the breakdown of ICTs, the transmission systems were in bad shape or had started wearing out.
- On the question of whether the self-insurance policy of the Appellant covered the cost of replacement of the damaged ICTs, the Hon'ble Supreme Court held that the loss caused to the Appellant by fire, whether by way of implosion or by way of explosion, would be covered by the policy as it covered all fires which caused loss without any exception and as all the three ICTs were operating until those got burnt. Therefore, the loss was caused due to fire because of which the ICTs became damaged beyond immediate repair. Therefore, the APTEL was justified in directing the Appellant to finance the net cost from the self-insurance fund reserve as part of the operation and maintenance charges.
- Supreme Court held that the fire was the efficient and active cause of the damage. Had the fire not occurred, the damage also would not have occurred. There was no intervening agency which was an independent source of the damage.
- The Supreme Court further held that since question nos. 1 and 2 have been decided against the Appellant, the question of issuing direction to the Member-Secretary, NRPC for issuance of revised availability certificate for the

transmission assets does not arise, as decapitalization and additional capitalization of the replaced ICTs have not been allowed.

- Thus, both the appeals being devoid of any merit were accordingly dismissed.

HSA
Viewpoint

The Supreme Court's decision in the present case upholds the rejection of Powergrid's claim for additional capitalization and decapitalization due to the replacement of damaged ICTs in the Rihand I and II transmission systems, affirming the CERC and APTEL's findings. The Court reasoned that Regulation 53 of the CERC Tariff Regulations does not cover replacement of damaged ICTs as additional work or services necessary for efficient operation, as such replacements fall under the Appellant's duty to maintain a healthy transmission system. Furthermore, the Court found that the self-insurance policy covered the loss caused by fire resulting from machinery breakdown, applying the principle of proximate cause from ***New India Assurance Company Limited v. Zuari Industries Limited* (2009) 9 SCC 70**, wherein it was held that the proximate cause is not the cause which is nearest in point of time or place but the active and efficient cause that sets in motion a train or chain of event which brings about the ultimate result without the intervention of any other force working from an independent source.

M/s Kundlas Loh Udyog v. State of Himachal Pradesh & Ors.

The High Court of Himachal Pradesh judgement dated 26.05.2025 in CWP No. 1667 of 2021

Background facts

- The petitioner, M/s Kundlas Loh Udyog, an industrial enterprise operating in the State of Himachal Pradesh, approached the Hon'ble High Court seeking issuance of a writ of mandamus directing the Respondents to implement the benefits assured under the Himachal Pradesh Industrial Investment Policy, 2019 ("**Industrial Policy**"), particularly the benefit of concessional energy charges.
- The State of Himachal Pradesh notified the Industrial Policy on 16.08.2019, providing various incentives to promote investment in the State. One of the incentives under Clause 16(a) of the Policy included a benefit of 15% lower energy charges for enterprises undertaking substantial expansion, for a period of three years from the date of commencement of commercial production.
- In furtherance of the same, the State also framed "Rules regarding Grant of Incentives, Concessions and Facilities for Investment Promotion in Himachal Pradesh, 2019" ("**Incentive Rules**").
- The petitioner acted as per the policy and did substantial expansion to the tune of 88.69% in the plant and machinery and the eligibility though was only 25% increase.
- The petitioner applied for and obtained necessary approvals for substantial expansion of its unit from the State Level Single Window Clearance & Monitoring Authority in its meeting held on 24.07.2020. Subsequently, the Director of Industries issued a certificate dated 12.02.2021 certifying that the petitioner had increased its investment in plant and machinery by 88.69%, thereby fulfilling the requirement under the Policy.
- Relying upon the Policy and the said certification, the petitioner submitted that it became entitled to the benefit of concessional energy charges. However, the Himachal Pradesh Electricity Regulatory Commission ('**HPERC**'), in its Tariff Orders for FY 2020–21, 2021–22, and 2022–23, failed to reflect the concessional rate promised under the Policy.
- The petitioner addressed representations, including a letter to the Hon'ble Chief Minister on 11.06.2020 and another to the Chief Secretary on 17.02.2021, seeking implementation of the Policy benefit. The Department of Industries, vide communication dated 03.07.2020, confirmed that the enabling notification by the Department of MPP & Power (Respondent no. 2) was in progress.
- Despite such assurances and completion of all formalities by the petitioner, the said enabling notification was never issued. As a result, the benefit under Clause 16(a) of the Policy could not be availed.

- Aggrieved by the inaction, the petitioner sought a writ of mandamus directing Respondent No. 2 to issue the enabling notification with retrospective effect from the date of commercial production and quashing of Clause 5B of the Industrial Policy and Rules 4B(b) and 4F of the Incentive Rules to the extent they made issuance of such notification a precondition to availing benefits, which the petitioner argued was inconsistent with the express promises in the Industrial Policy.
- The State opposed the petition arguing that averred that Rule 4-F of the Incentives Rules 2019 specifically provides that incentives, concession and facilities under these Rules are provided under the discretionary powers of the State Government and do not create any claim/right against the Government and are not enforceable in any court of law. The Government in its wisdom may decide to amend, alter, delete or revise any or all of the incentives notified under these Rules and no claim on account of such a decision will be entertained. Therefore, the petitioner cannot claim incentive of concessional rate of electricity charges under Rule 16(i)(a) as a matter of right. Therefore, the present petition is not maintainable.
- However, the petitioner contended that it had altered its position relying on the Policy and government assurances, thereby invoking the doctrine of promissory estoppel.

Issues at hand

Whether the petitioner is entitled to the benefit of concessional energy charges under Clause 16(a) of the Himachal Pradesh Industrial Investment Policy, 2019?

Whether Clause 5B of the Industrial Policy, 2019 and Rules 4B(b) and 4F of the Incentive Rules, 2019 are valid insofar as they delay or deny the promised incentives?

Whether the doctrine of promissory estoppel applies to prevent the State from denying benefits after inducing the petitioner to invest in substantial expansion?

Decision of the Court/Tribunal

- The High Court of Himachal Pradesh, per the Division Bench, allowed the writ petition, holding that the petitioner was entitled to the benefits promised under the Himachal Pradesh Industrial Investment Policy, 2019 and corresponding Rules.
- The Court observed that Clause 5 of the Industrial Policy clearly outlines which enterprises are eligible for incentives, including both new units and those undertaking significant expansions, provided they employ at least 80% Bonafide Himachali workers.
- In this case, the petitioner had expanded operations by 88.69% and employed 21 individuals, 17 of whom were Himachalis, thus meeting the eligibility criteria under Clause 5.
- The Court found that the petitioner had fulfilled all eligibility criteria under the Industrial Policy, including undertaking substantial expansion, which was duly approved by the State Level Single Window Clearance & Monitoring Authority and certified by the Director of Industries through a certificate dated 12.02.2021. As such, the petitioner's right to avail incentives had crystallised**,** and the benefit could not be denied merely due to the inaction of the concerned department in issuing an enabling notification.
- The Court noted that various communications, including those from the Department of Industries, confirmed that the issuance of the enabling notification by the Department of MPP & Power was under process. Yet, despite repeated follow-ups and clear representations, the notification was not issued. The Court held this to be a clear lapse and administrative inaction, which could not defeat the petitioner's rightful entitlement.
- Applying the doctrine of promissory estoppel, the Court held that once the State made a categorical promise in its Industrial Policy and the petitioner altered its position and made substantial investment in reliance thereof, the State was bound to honour such promise, irrespective of internal administrative delays or procedural omissions.
- The Court further held that the issuance of the enabling notification was a ministerial act and could not be used as a defence to deny benefits to an otherwise eligible and certified enterprise. It emphasised that the Policy was already notified, and the petitioner had acted upon it in good faith. The State

could not now rely on its own failure to issue a clarificatory or operational notification to defeat the legitimate expectations of the petitioner.

- In view of this, the Court held that Clause 5B of the Industrial Policy, 2019 and Rules 4B(b) and 4F of the Incentive Rules, 2019, which made the issuance of a further notification a precondition to the grant of benefits, were inconsistent with the purpose and intent of the Policy, and set them aside to that extent.
- The Court accordingly issued the following directions that **Respondent** No. 2 (Department of MPP & Power) is directed to issue the enabling notification as contemplated under Rule 16(i)(a) of the Incentive Rules, 2019, for the grant of 15% lower energy charges to eligible enterprises, including the petitioner, with effect from the date of commencement of commercial production, i.e., 12.02.2021. Such notification shall be issued within a period of four weeks from the date of the judgment.
- The Court concluded that the Respondents cannot be permitted to go back on the assurance once the petitioner had complied with all statutory and policy requirements. The writ petition was therefore allowed, and all pending miscellaneous applications were disposed of accordingly.

HSA
Viewpoint

The High Court of Himachal Pradesh has upheld the principle of promissory estoppel against the State Government for its failure to issue the enabling notification under Clause 16(A) of the Industrial Policy, 2019. Despite the petitioner fulfilling all the eligibility conditions, including undertaking substantial expansion and providing significant local employment, the benefits promised under the policy were withheld merely due to administrative inaction. The Court found this to be arbitrary and legally unsustainable, holding that the issuance of an enabling notification was a ministerial act and could not defeat the crystallized right of the petitioner. The Hon'ble High Court clarified that government policy promises cannot be nullified by bureaucratic delay. In a significant declaration, it also struck down Clause 5B of the Policy and related Rules to the extent they were inconsistent with the primary promise held out under the Policy.

Metsil Exports (P) Ltd. v. West Bengal Electricity Regulatory Commission & Ors.

The High Court of Calcutta Judgement dated 02.05.2025 in W.P.A. No. 4669 of 2023

Background facts

- The petitioners, Metsil Exports Private Limited, a consumer of Damodar Valley Corporation (DVC), filed a writ petition challenging the vires of Regulation 4.4 ("Impugned Regulation") of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 ("Tariff Regulations 2011") and the charges levied by DVC for overdrawal of electricity beyond restricted limits imposed during certain periods.
- The petitioners argued that although the West Bengal Electricity Regulatory Commission ("WBERC") is empowered under Sections 61 and 181 of the Electricity Act, 2003, ("the Act") is empowered to frame Regulations regarding electricity tariff. However, by way of Regulation 4.4, WBERC has improperly sub-delegated to the licensee i.e. DVC, the power to restrict electricity drawal and impose penal charges such as double rates for excess consumption. Such excess delegation is not permit within the Act.
- The petitioner further contended that Regulation 4.4 grants the licensee unfettered discretion to impose drawal limits arbitrarily without any guidelines, rendering the Regulation unworkable and ultra vires. They highlight that the WBERC itself previously declared such restrictions by DVC illegal and irrational, and further in writ petitions bearing WPA No. 609 of 2021 and WPA No. 3077 of 2011, the courts has ordered refund of the amount paid by the consumer on account of restricted drawal. The petitioner insists that any discretion must be governed by clear statutory principles.
- The petitioner argued that imposing additional energy charges, as penalty charges carry civil consequences without affording consumers any opportunity for a hearing, violates natural justice principles.

- Lastly, the petitioner argued that DVC supplies electricity across Jharkhand and West Bengal, where tariff-setting for inter-State supply falls under the Central Electricity Regulatory Commission ('CERC'), limiting the WBERC's authority to impose additional energy charges.
- WBERC defended the Regulation 4.4 as constitutional, citing Sections 61 and 181 of the Act, which empower the State Commission to set tariffs and frame regulations including penalties. The regulation is necessary to maintain grid stability because electricity cannot be stored economically on a large scale and excess drawal risks failures or blackouts.
- DVC argued that the petitioner has agreed to accept the liabilities which might accrue due to execution of the agreement for supply of power between petitioner and DVC and are in accordance with the Electricity Act and the Regulations. Hence, the petitioner is liable to pay the charges imposed under the Impugned Regulation
- It was further agued by DVC that drawal restrictions were imposed with prior notice of maintenance work carried out by DVC during relevant period and the restriction of drawal so necessitated was intimated in advance (10 to 24 hours prior to the imposition thereof) to the petitioner.
- The charges for overdrawal are preventive and not punitive, and necessary to protect technical failures and broader public interest.
- DVC argued that the Regulation 4.4 meets tests of proportionality and necessity, balancing rights and state aims. Judicial review should not question technical policies of specialized regulators. The Regulation is a safety measure protecting the grid and does not violate Articles 14 or 19(1)(g). Potential misuse does not invalidate the law.
- The DVC argued that the mere possibility of misuse or abuse of a statutory provision does not, by itself, render the provision invalid in law.

Issues at hand

- Whether Regulation 4.4 of the WBERC Regulations is ultra vires the Electricity Act, 2003 due to excessive delegation of power and violates principles of natural justice?
- Whether the overdrawal charges imposed by DVC during the relevant period are legally and factually justified?

Decision of the Tribunal

The High Court of Calcutta held that Regulation 4.4 of the 2011 Tariff Regulations is ultra vires the Constitution of India as well as the Electricity Act, 2003.

The High Court observed that Regulation 4.4 permits arbitrary imposition of restricted drawal limits by the licensee without laying down any guidelines, reasons, or procedural safeguards. It confers unbridled discretion upon the licensee to determine its own tariff by merely restricting drawal at its whims and charging double the applicable energy rate in case of overdrawal, which amounts to manifest arbitrariness and violates Article 14 of the Constitution.

The Regulation was also found to be in contravention of the principles of natural justice, as it allows the imposition of a penal charge with civil consequences without issuance of prior notice or affording an opportunity of hearing to the affected consumer. The Regulation provides no mechanism for challenge or redress, making it procedurally unfair.

The High Court further held that Regulation 4.4 amounts to unauthorised sub-delegation. Under Sections 61 and 181 of the Electricity Act, the WBERC is empowered to frame regulations; however, it cannot delegate its core function of tariff determination to a licensee. The Regulation, by empowering the licensee to impose penalties and fix drawal limits, transgresses the limits of lawful delegation.

It was also observed that the Regulation 4.4 undermines the concept of contracted demand, provided the Supply Code 2013. The Regulation allows the licensee to restrict drawal even below the contracted demand without any liability, while enabling it to penalise the consumer for overdrawal. This creates an imbalance, placing the consumer at a perpetual disadvantage and offending contractual as well as statutory rights.

The High Court rejected the WBERC's justification that Regulation 4.4 serves as a preventive measure for grid stability. It noted that the Regulation does not prohibit excess drawal but rather permits it upon payment of a flat penalty, thereby failing to achieve the intended objective of grid protection.

In view of the above findings, the Court held that Regulation 4.4 is ultra vires Articles 14 and 19(1)(g) of the Constitution and also contrary to the provisions of the Electricity Act, 2003, particularly Sections 61 and 181.

Accordingly, the High Court allowed the writ petition in part and struck down Regulation 4.4 prospectively from the date of judgment.

The High Court also declared that any ongoing restricted drawal limits imposed under Regulation 4.4 shall stand rescinded with immediate effect. It further directed WBERC to frame fresh regulation(s) governing restricted drawal and excess consumption, subject to specific safeguards as directed by the Court. Further it was clarified that any billing disputes already arisen under the existing Regulation shall be adjudicated before the Grievance Redressal Officer, in accordance with law and held that charges levied for periods prior to the date of judgment shall not be disturbed.

HSA
Viewpoint

The prospective striking down of Regulation 4.4 protects past transactions from disruption, ensuring regulatory certainty and financial stability. It opens the door for the WBERC to now frame more balanced provisions with defined safeguards, proportional penalties, and respect for contracted demand. This judgment encourages a more transparent and equitable framework that aligns with constitutional principles.

Power Grid Corporation of India Limited Vs Madhya Pradesh Power Transmission Company Limited & Ors.

Supreme Court Judgement dated May 15, 2025 in Civil Appeal No. 6847 of 2025 and Civil Appeal 6848 of 2025

Background facts

- Captioned appeals arise from the judgment dated 25.02.2021 (‘**Impugned Judgment**’) passed by the High Court of Madhya Pradesh, Indore Bench, wherein the High Court admitted writ petitions filed by Madhya Pradesh Power Transmission Company Limited (‘**MPPTCL**’), challenging the orders of the Central Electricity Regulatory Commission (‘**CERC**’) dated 21.01.2020 and 27.01.2020 passed in Petition Nos. 311/TT/2018 and 266/TT/2018, respectively, on the ground that CERC had exercised powers beyond those vested in it as per the regulations under the Electricity Act, 2003 (‘**the Act**’).
- The dispute between the Appellant and Respondent No. 1 concerns the implementation of two electricity schemes “Western Region System Strengthening Scheme XIV (‘**WRSS-XIV**’) and Western Region Strengthening Scheme XVI (‘**WRSS-XVI**’)”, respectively, by the Appellant which were approved during the 37th and 38th Standing Committee Meetings on Power System Planning held on 05.09.2014 and 17.07.2015, respectively.
- According to the agreement between the parties, the Respondent No. 1 was required to construct and commission the intra-state transmission line from Indore sub-station coinciding with the timeline of completion of works which were within the scope of the Appellant. However, the construction and commissioning of the intra-state transmission line by Respondent No. 1 was delayed.
- Due to the delay, the Appellant filed Petition No. 311/TT/2018 and Petition No. 266/TT/2018 corresponding to WRSS-XIV and WRSS-XVI respectively, before the CERC, for approval of the Commercial Operation Date (the “**COD**”) of its transmission system, under Regulation 4(3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (the “**2014 Tariff Regulations**”), and determination of transmission charges and billing of the tariff for the transmission facilities established by it at the Indore sub-station.
- CERC vide its order dated 21.01.2020, observed, that as per the investment approval accorded to the transmission scheme on 27.01.2016, the assets were scheduled to be commissioned within 30 months from the date of investment approval. Accordingly, the scheduled COD came to be 27.07.2018. However, the commissioning of such assets was delayed thereby compelling the Appellant to

file a petition for approval of COD under Regulation 4(3) of the 2014 Tariff Regulations.

- CERC approved the COD proposed by the Appellant under Regulation 4(3)(ii) of the 2014 Tariff Regulations, yet it did not condone the time-overrun on account of matching the commissioning of the inter-state transmission assets in question with the downstream network of Respondent No. 1, on the ground that it was the decision of the Appellant to coordinate and match the commissioning dates of both categories of assets.
- However, the CERC allowed the Appellant to claim compensation for the period prior to the COD as determined under Regulation 4(3)(ii), by way of liquidated damages, interest during construction and incidental expenses incurred during construction.
- Aggrieved by the order of CERC, MPPTCL filed a writ petition before the High Court of Madhya Pradesh challenging the CERC's orders, arguing that the CERC had exceeded its jurisdiction as there is no provision in 2014 Tariff Regulations under which compensatory transmission charges could be levied on the Respondent No. 1 nor there are any such terms and conditions in the agreement between the parties and CERC by way of its order dated 20.10.2020 has effectively re-written the agreement between the parties. MPPTCL also challenged a bill for Rs. 6.18 crore raised by the Appellant that such bill is not in consonance with the 2014 Tariff Regulations or the agreement between the parties.
- The Appellant claimed before the High Court that the issue raised by the Respondent No. 1 by way of the writ petition was not that the CERC did not have jurisdiction at all. The challenge was to the exercise of jurisdiction by the CERC which was not permissible in light of the alternative remedy available to the Respondent No. 1 in terms of Section 111 of the Act, 2003.
- The High Court affirmed that despite the availability of an alternative remedy, a writ petition can be entertained if any of the factors mentioned in ***Whirlpool Corporation v. Registrar of Trademarks*** **(1998) 8 SCC 1**) are satisfied. Since the Respondent No. 1 had challenged the constitutionality of the orders of the CERC dated 21.01.2020 and 27.01.2020 respectively, on the grounds that the power exercised by the CERC was beyond the powers vested in it as per the relevant regulation and that the relief granted to the Appellant was beyond the reliefs prayed for, the High Court was of the opinion that the principles of natural justice were breached. Therefore, despite the availability of an alternative remedy, the writ petition was maintainable.

Issues at hand

- Whether the CERC, while exercising its functions under Section 79(1) of the Act, 2003, is circumscribed by statutory regulations enacted under Section 178 of the Act, 2003?
- Whether the CERC exercises regulatory or adjudicatory functions under Section 79 of the Act, 2003? In other words, what is the scope of the CERC's power to regulate inter-state transmission of electricity and determine tariff for the same under clauses (c) and (d) of Section 79(1)?
- Whether the grant of compensation by the CERC for the delay vide the orders dated 21.01.2020 and 27.01.2020 respectively, is a regulatory or adjudicatory function and to what extent are the principles of natural justice applicable to the exercise of such functions?
- Whether the High Court was justified in admitting the writ petition filed by the Respondent No. 1 herein challenging the order dated 21.01.2020 of the CERC when there existed an alternative remedy under Section 111 of the Act, 2003?

Decision of the Court/Tribunal

- Supreme Court observed that the CERC functions as both, decision-making and regulation-making authority under Sections 79 and 178 respectively. However, while the authority exercising both these functions is one and the same, it is a settled position of law that the functions by themselves are separate and distinct. The functions under Section 79 are administrative or adjudicatory whereas those under Section 178 are legislative.
- Supreme court referred to its judgement of ***PTC India Limited v. Central Electricity Regulatory Commission*** **(2010) 4 SCC 603** observing that that the powers under Section 79 of the Act, 2003 are supposed to be exercised in conformity with the statutory regulations under Section 178 wherever such

regulations are applicable. However, there is no bar on the exercise of powers under Section 79 in a situation where a regulation under Section 178 has not been enacted in respect of a particular subject matter.

- The Supreme Court further observed that making of a regulation under Section 178 has the effect of interfering with and overriding existing contractual relationships between the regulated entities. On the other hand, the orders under Section 79 have to be confined to the existing statutory regulations and do not have the effect of altering the terms of contract between the specific parties before the CERC.
- The Supreme Court further observed that the observations made in ***PTC (supra)*** and ***Energy Watchdog v. CERC***, **(2017) 14 SCC 80**, respectively settles the law in this regard and the absence of a regulation under Section 178 does not preclude the CERC from exercising its powers under Section 79(1) to make specific regulations or pass orders between the parties before it. As such, Supreme Court held that CERC has the jurisdiction to impose a charge on the Respondent No. 1, for the reason that Section 79 of the Act, 2003 envisages dual function of regulation and adjudication to be performed by the CERC. The expressions "to regulate", "to determine" and "to adjudicate" are used for different purposes in the list of matters enumerated under Section 79(1) and cannot be incorporated within the umbrella term of "adjudication".
- The Supreme Court while answering that whether the grant of compensation by the CERC was a decision taken by the authority in its regulatory or adjudicatory capacity and whether it goes a step beyond the function of determination of tariff referred to its judgement of ***Airports Economic Regulatory Authority of India v. Delhi International Airport Ltd***., **2024 SCC OnLine SC 2923** ("**AERA**") wherein it was observed that while the distinction between 'general' or 'specific' as laid down in ***Sitaram Sugar Co. Ltd. v. Union of India*** **[(1990) 3 SCC 223]** is a crucial test consistently applied by this Court for identifying adjudicatory functions, it cannot be the sole litmus test for distinguishing between regulatory and adjudicatory functions, especially where the statute in question does not draw a clear distinction between the adjudication and regulatory functions. A function, however specific, cannot be considered de hors the context in which it is being exercised.
- The Supreme Court further observed that a reading of the Act would indicate that it makes no distinction between the regulatory and adjudicatory functions vested in and conferred upon the CERC, which is a quasi-judicial body enjoined to regulate and administer the subject of electricity generation, transmission and distribution.
- The Supreme Court further opined that in a situation where transmission charges accrue before the assets are operationalized due to a non-condonable delay on part of one of the utilities in charge of putting the transmission element into use, the cost of transmission cannot be put on the beneficiaries or consumers through the Point of Connection (POC) mechanism.
- The Supreme Court for the present case held that, there is no contractual clause between the parties for establishing the risks of delay in commissioning of a transmission asset. There is also no uniform settled position as regards the liability of transmission charges payable before a particular transmission element is put in operation, in the form of regulations under Section 178. These circumstances, considered together with the prohibition on imposing liability of delayed payments on beneficiaries, leave a regulatory gap.
- The Supreme Court held that aforesaid contention is recognized by APTEL in ***Nuclear Power Corporation (supra)*** wherein it was held that in the absence of any specific provisions dealing with the situation in the 2014 Tariff Regulations or any other concurrent regulations under Section 178, the CERC has prescribed a principle that the party to which the delay is attributable would be responsible for payment of the transmission charges for the period of delay not condoned.
- The Supreme Court held that there is no doubt that though the CERC's orders dated 21.01.2020 and 27.01.2020, respectively, were for determination of tariff, yet the order granting liberty to the aggrieved Appellant to claim compensation from the defaulting party is a consequence of a regulatory lacuna in the 2014 Tariff Regulations and therefore, is an instance of regulation of tariff between the parties.
- The Supreme Court further held that while they are in agreement with the submission of the Respondent No. 1 that the vires of a regulation under Section 178 cannot be challenged before an authority that is the creation of the parent

statute, the same cannot be said so for a specific regulation effected under Section 79(1).

- The Supreme Court, while allowing the appeals filed before it, stated that the High Court committed an egregious error in passing the Impugned Judgment and set aside the Impugned Judgment dated 25.02.2021 passed by the High Court and dismissed both the writ petitions.

HSA
Viewpoint

The Supreme Court has reaffirmed and clarified the dual regulatory and adjudicatory roles of the CERC under the Act. In upholding the CERC's authority to impose liability for transmission charges due to delays caused by state entities the Supreme Court emphasized that Section 79 of the Act empowers the CERC to pass appropriate orders in regulatory gaps, provided they are not inconsistent with existing regulations. This decision strengthens the scope of regulatory discretion available to the CERC and limits judicial intervention via writ petitions when an efficacious statutory remedy before APTEL is available, thereby reinforcing the sanctity of sector specific appellate mechanisms under the Act.

Suryataap Energies and Infrastructure Private Limited v. Assam Electricity Regulatory Commission & Anr.

Appellate Tribunal for Electricity Order dated April 28, 2025 in Review Petition No. 3 of 2025

Background facts

- Suryataap Energies and Infrastructure Private Limited, a solar power producer, commissioned a 5 MW solar PV project in Sonitpur, Assam. The Assam Electricity Regulatory Commission **(AERC)** had, on November 29th, 2017, determined a project-specific tariff of Rs. 8.78 per KWH for 25 years for this project.
- Assam Power Distribution Company Limited **(APDCL)**, the distribution company, challenged this tariff order before the Appellate Tribunal for Electricity **(APTEL).** In its judgment dated December 19th, 2024 **(December 2024 Judgment)**, APTEL allowed the appeal, set aside the AERC's tariff order, and remanded the matter to the Commission for fresh tariff determination based on market benchmark norms prevailing during the year of commissioning (2016-17).
- Suryataap Energies, dissatisfied with this outcome, filed a Review Petition (RP No. 3 of 2025) before APTEL, seeking reconsideration of the December 2024 judgment

Issues at hand

- Whether APTEL's December 2024 judgment was based on a factual error regarding the adoption of CERC norms for the financial year 2015-16 instead of the relevant year 2016-17.
- Whether AERC, while determining the tariff, merely referred to CERC benchmark costs for guidance or actually adopted outdated norms.
- Whether reliance on the Commission's review order dated May 2nd, 2018 (which dismissed APDCL's Review Petition) was appropriate, given the "Doctrine of Merger" and its applicability.
- Whether the Review Petition was maintainable under Order 47 Rule 1 of the CPC, i.e., whether there was an "error apparent on the face of the record" or "sufficient reason" for review.

Decision of the Court/Tribunal

- APTEL while deciding the Review Petition clarified that AERC did not blindly adopt Central Electricity Regulatory Commission (CERC) benchmarks for FY 2015-16. Instead, AERC used CERC figures as a reference point and applied a 15% escalation to account for Assam-specific conditions, arriving at a capital cost of ₹57.5 lakh/MW.
- For several cost components (mounting structure, power conditioning unit, evacuation infrastructure), AERC considered CERC benchmarks but allowed

additional escalation or approved costs as per actuals, demonstrating an independent assessment rather than wholesale adoption of CERC norms.

- Only for the "module cost" did AERC directly consider the CERC benchmark for FY 2015-16, but even here, it exercised discretion.
- APTEL acknowledged that AERC's reference to Regulations 9.2(a) and 9.2(b) of its 2012 Tariff Regulations (which allow use of previous year's benchmarks for generic tariffs) was not strictly applicable to project-specific tariff determination. However, AERC's methodology was not found to be arbitrary, as it relied on actuals and local factors.
- Therefore, APTEL recognized that its earlier judgment was based on a misconception that AERC had mechanically applied outdated CERC norms and failed to justify using FY 2015-16 benchmarks for a project commissioned in FY 2016-17.
- Further APTEL observed that AERC had, exercised regulatory discretion and provided reasoned justification for its approach, including escalation for local factors and reliance on actual cost data where available. Therefore, APTEL set aside its earlier order dated 19.12.2024 and restored the original AERC tariff order and dismissed the appeal by APDCL.

HSA

Viewpoint

This judgment clarifies that Regulatory commissions must clearly differentiate between methodologies used for generic and project-specific tariff determination, ensuring that norms meant for one are not misapplied to the other. While benchmark norms, such as those issued by CERC, can offer useful guidance, they should not be applied mechanically, particularly when they relate to a different time period than the project's commissioning as doing so may overlook key project-specific factors and lead to inaccurate tariff determination.

Mumbai Urja Marg Limited v. Maharashtra State Electricity Distribution Company Limited & Ors

Central Electricity Regulatory Commission Order dated April 20, 2025, in Petition No. 131/MP/2024

Background facts

- Mumbai Urja Marg Limited (MUML), formerly Vapi-II North Lakhimpur Transmission Limited, was set up to implement the Western Region Strengthening Scheme-XIX (WRSS-XIX) and North-Eastern Region Strengthening Scheme–IX (NERSS-IX) transmission projects. The project was awarded through tariff-based competitive bidding, with Sterlite Grid 13 Limited as the successful bidder. The transmission elements were divided into Parts A, B, C (WRSS-XIX), and Part D (NERSS-IX).
- Part D, the focus of this petition, involved constructing a 132 kV double circuit line in Arunachal Pradesh, which was commissioned on 5 August 2023. The Transmission Service Agreement (TSA) was executed on 7 December 2018, with the cut-off date for "Change in Law" events set as 20 May 2019 (seven days prior to the bid deadline). During project execution, MUML faced two key changes: (i) the Ministry of Environment, Forest and Climate Change (MoEFCC) revised the Net Present Value (NPV) rates for forest land diversion in January 2022, increasing the cost per hectare from Rs. 9.39 lakh to Rs. 14.37 lakh; and (ii) local authorities in Arunachal Pradesh imposed additional compensation for land and surface damage to forest dwellers, totaling nearly Rs. 38 crore, after the project had already received forest clearances and paid other statutory charges. MUML filed a petition under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, seeking adjustment of these additional costs in its monthly transmission charges.

Issues at hand

- Whether the revised NPV rates for forest land diversion and the additional compensation for land and surface damage constituted "Change in Law" events under the TSA and the 2021 Rules;

- Whether MUML was entitled to recover the additional expenditure (Rs. 39.86 crore) through tariff adjustments;
- Whether carrying costs (interest on delayed recovery) should be allowed; and
- Whether these claims were substantiated and fell within the scope of the regulatory framework and contractual provisions.

Decision of the Court/Tribunal

- The Central Electricity Regulatory Commission (CERC) held that both the increase in NPV rates (post-cut-off date) and the imposition of compensation for land and surface damage by Arunachal Pradesh authorities qualified as "Change in Law" events under the TSA and the 2021 Rules. The Commission verified the calculations and allowed MUML to recover the additional expenditure of Rs. 2.05 crore (NPV revision) and Rs. 37.8 crore (compensation) through adjustments in its monthly transmission charges. CERC also allowed carrying costs at 1.5% above the SBI MCLR from the date of actual expenditure until recovery, ensuring that the petitioner was not financially disadvantaged by delays in cost recovery. The Commission directed the respondents (distribution companies and state entities) to pay the adjusted charges as determined.

HSA
Viewpoint

This judgment clarifies that regulatory changes and new financial obligations imposed after the cut-off date, even if not foreseen at the time of bidding, are compensable under the "Change in Law" framework. It reinforces the principle that transmission licensees are entitled to recover legitimate additional costs arising from statutory or regulatory changes, thereby protecting the financial viability of infrastructure projects. The decision streamlines the process for addressing unforeseen land, forest, and local compensation issues, which are common in transmission projects, especially in sensitive regions like the North East. By upholding the right to carrying costs, the order further ensures timely compensation and liquidity for developers. Overall, the judgment boosts investor confidence, encourages private participation in transmission projects, and sets a strong precedent for the timely and predictable resolution of "Change in Law" claims, which is crucial for the sector's stability and growth.

M/s K.M. Sugar Mills Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity Order dated April 28, 2025 in Appeal No. 224 of 2016

Background facts

- The appellant, M/s. K.M. Sugar Mills Ltd, operates a sugar mill in Faizabad, Uttar Pradesh, with a sanctioned load of 2 MW and existing captive generating plants totaling 7 MW, used exclusively for its own operations and not connected to the grid.
- In 2006, the appellant entered into a Power Purchase Agreement (PPA) with Madhyanchal Vidyut Vitran Nigam Ltd (MVVNL) to supply 20 MW of surplus electricity from a newly established bagasse-based 25 MW co-generation plant (with units of 10 MW and 15 MW commissioned in March and April 2007, respectively).
- To facilitate power evacuation, a 132 KV transmission line was constructed at the appellant's cost, and power supply to the grid commenced upon commissioning of the new units.
- The first bill for supplied power was raised in April 2007. However, payment was withheld by the respondent (UPPCL), which directed that the bill be revised using a "weighted average tariff" methodology, based on the assumption that an existing 18.56 MW plant was already supplying power to the grid prior to the new plant, as per a recital in the PPA.

Issues at hand

- Whether the appellant was entitled to payment for power supplied from April 2007 onwards as per the tariff stipulated in the PPA dated 4th January 2006, or whether the bills should be revised using a weighted average tariff that included the capacity of an alleged pre-existing 18.56 MW plant.

- Whether the recital in the PPA mentioning an 18.56 MW plant was a factual error, given that only a 7 MW captive plant (not grid-connected) existed.
- Whether the Uttar Pradesh Electricity Regulatory Commission (UPERC) erred in focusing solely on the appellant's incidental prayer for correction/amendment of the PPA, rather than addressing the main issue of the correctness of the bills and the applicable tariff.

Decision of the Court/Tribunal

- The Appellate Tribunal for Electricity found that the UPERC misdirected itself by only considering the incidental prayer for PPA correction and failing to address the primary relief sought: payment of bills as per the PPA tariff from April 2007.
- The Tribunal clarified that, under Regulation 30 of the CNCE Regulations, 2005, and related Commission clarifications, only the capacity of generating units covered by a PPA and actually supplying power to the grid should be considered for tariff determination. Units not connected to the grid or not supplying power under a PPA (such as the appellant's 7 MW captive plant) cannot be included in the weighted average calculation.
- The Tribunal referred to a previous Commission order (M/s Mawana Sugar Mills Vs. UPPCL) supporting this interpretation: only the capacity agreed to be supplied under a PPA is relevant for tariff purposes.
- The Tribunal concluded that the Commission was duty-bound to examine the correctness of the bills and the validity of the respondent's objections, which it failed to do.

HSA
Viewpoint

The judgment reinforces that only generating units actually supplying power under a PPA are to be considered for weighted average tariff calculations. Captive plants not connected to the grid are excluded, even if mentioned in the PPA due to typographical or factual errors. Regulatory bodies must address the substantive reliefs sought in petitions and cannot dispose of matters by focusing solely on incidental or secondary prayers. The decision provides clear guidance for future disputes involving tariff calculations and the inclusion/exclusion of generating capacities, ensuring that only grid-connected, PPA-covered units are considered. By upholding the sanctity of executed PPAs and clarifying regulatory methodology, the judgment boosts confidence for independent power producers and co-generation units, particularly in the renewable and sugar co-generation sector. Further, the judgment is likely to streamline billing and payment disputes between generators and distribution licensees, reducing ambiguity and litigation regarding tariff applicability for multi-unit co-generation plants.

Directions by the Commission to the Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2021

Central Electricity Regulatory Commission Order dated April 28, 2025 in Petition No. 8/SM/2024

Background facts

- The Central Electricity Regulatory Commission (CERC) initiated *suo motu* proceedings (Petition No. 8/SM/2024) to address concerns about price discovery anomalies and operational inefficiencies in Power Exchange contracts, including Day-Ahead Contingency (DAC), Term-Ahead Market (TAM), and Any-Day Single-Sided Contracts (ADSS) 1.
- Power Exchanges (IEX, PXIL, HPX) initially offered only Day-Ahead Market (DAM) contracts in 2008. Over time, additional contracts like Real-Time Market (RTM), Intraday, DAC, and TAM were introduced to enhance market flexibility and accommodate renewable energy integration.

- Recent issues included consistently high prices in DAC contracts (post-October 2023), fragmented liquidity in TAM due to excessive granularity of time slots, and ambiguities in ADSS contract timelines.

Decision of the Court/Tribunal

- Directed Power Exchanges to transition from continuous matching to uniform price auctions for DAC to ensure price parity and reduce manipulation risks
- Limited pre-specified slots to standardized categories: Base/RTC, Peak, Off-Peak, and Night (aligned with NLDC definitions). Renewable-specific slots (G-TAM) must align with generation profiles.
- Exchanges must seek CERC approval for new slots to prevent fragmentation.
- Mandated fixed timelines for bid submission, validity, and acceptance to ensure transparency and seriousness in participation.

HSA
Viewpoint

The adoption of standardized TAM slots and a uniform pricing mechanism in the Day-Ahead Contract (DAC) is expected to improve market liquidity and reduce price volatility, facilitating greater integration of renewable energy. Clear guidelines for contract design and approval aim to reduce ambiguities, enhancing investor confidence.

The shift to uniform price auctions addresses concerns over non-transparent pricing and potential market abuse, promoting fairness and efficiency. Streamlined contract structures will enable DISCOMs and generators to better manage risks, supporting India's transition to a flexible, renewable-driven power system.

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) v. Braithwaite Nacof Solar Project Ltd.

Order dated April 22, 2025 in Case No. 52 of 2025

Background facts

- Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Braithwaite Nacof Solar Project Ltd. (Braithwaite) entered into a Power Purchase Agreement (PPA) on 30 March 2023 for the development of 500 MW of solar power capacity in Maharashtra.
- The PPA stipulated that the Scheduled Commercial Operation Date **(SCOD)** was August 17, 2023, which was later extended to March 31, 2024, due to Braithwaite's failure to commission the Project.
- Braithwaite failed to commission the project by the extended SCOD, leading MSEDCL to issue a Default-cum-Termination Notice on July 2, 2024, under Article 10.4.1 of the PPA.
- Braithwaite challenged the termination by approaching the Bombay High Court, seeking a stay on the Bank Guarantee and the termination notice, and subsequently sought the appointment of an arbitrator under the PPA.
- The High Court directed both parties to approach the Maharashtra Electricity Regulatory Commission **(MERC)** to decide on adjudication or appointment of an arbitrator.

Issues at hand

- Whether MERC has jurisdiction to adjudicate the dispute or refer the matter to Arbitration under of the Electricity Act, 2003.

Decision of the Court/Tribunal

- MERC has observed that by entering into the PPA and acting as a prospective generator, Braithwaite effectively took on the role and responsibilities of a generating company. As a result, all rights, obligations, and liabilities that had accrued under the PPA as entered into while acting in that capacity, would continue to remain applicable even after the termination of the agreement. MERC emphasized that termination of the PPA does not negate the legal and contractual commitments undertaken by Braithwaite during the course of the agreement.

- The interpretation was later upheld by the Bombay High Court, which supported MERC's stance. The Court also resolved the related arbitration petitions by directing that the arbitration process be allowed to proceed. Specifically, it instructed MERC to facilitate the selection of a presiding arbitrator by the nominee arbitrators chosen by the disputing parties. This step was crucial to ensuring that the arbitration mechanism agreed upon under the PPA could be properly activated for the resolution of disputes.
- Following the High Court's directions, MERC issued its final order, thereby officially allowing the arbitration proceedings to move forward. This marked a significant step toward resolving the dispute in accordance with the agreed-upon arbitration framework, reinforcing the binding nature of the commitments made under the PPA.

HSA
Viewpoint

The judgment promotes discipline by holding developers accountable for project delays and failures, while also ensuring that resolution mechanisms remain effective and enforceable. It also affirms that Commission's have the power to direct the disputes for arbitration. This marked a significant step toward resolving the dispute in accordance with the agreed-upon arbitration framework, reinforcing the binding nature of the commitments made under the PPA.

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