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PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES

In this Section

Draft National Electricity Policy, 2026

- The Ministry of Power (MoP), Government of India, through communication No. 23/23/2018-R&R dated January 20, 2026, has issued the Draft National Electricity Policy, 2026. Invoking the mandate under Section 3 of the Electricity Act, 2003, which requires the Central Government to formulate and periodically revise the National Electricity Policy, this draft aims to replace the previous policy notified on February 12, 2005. The revision is driven by the "significant transformation of the power sector," particularly in the distribution segment and the requirements of India's energy transition.
- The policy establishes a strategic roadmap aligned with the vision of "Viksit Bharat @ 2047," targeting an increase in per capita electricity consumption to 2,000 kWh by 2030 and over 4,000 kWh by 2047. It reinforces India's updated Nationally Determined Contributions (NDCs) to achieve a 45% reduction in emission intensity by 2030 and net-zero emissions by 2070. The vision is defined as: "Providing reliable 24x7 quality power through a financially viable and environmentally sustainable power sector furthering energy security at an affordable price."
- To ensure the financial viability of the sector, the policy mandates that from FY 2026-27, State Commissions must ensure tariffs fully reflect costs "without creating regulatory assets." Landmark regulatory shifts include the mandatory separation of distribution and supply tariffs, the conclusion of regulatory proceedings within 120 days, and the requirement that power purchase cost increases "must be automatically passed through to consumers on a monthly basis."
- The draft policy proposes a paradigm shift in market competition by suggesting that the monopoly in distribution be "phased out by allowing multiple players" and promoting Public-Private Partnerships (PPP). For the industrial sector, it recommends that State Commissions "should exempt manufacturing enterprises, Railways, and Metro Railways from payment of cross-subsidies and surcharges." Furthermore, it suggests exempting distribution licensees from the Universal Service Obligation for consumers with a contracted load of 1 MW and above who are capable of self-procurement.
- Regarding resource management and renewable integration, the policy introduces a "structured mechanism for resource adequacy" at national, state, and utility levels. It mandates the enforcement of Renewable Consumption Obligations (RCO) and promotes market-based growth through mechanisms like Virtual Power Purchase Agreements. Notably, it discourages net metering beyond 5 kW and promotes peer-to-peer (P2P) energy trading and consumer-owned energy storage systems (ESS).
- In terms of grid governance and infrastructure, the policy directs State Governments to "unbundle" functions by establishing independent companies responsible for state load dispatch operations (SLDC), separate from the State Transmission Utility (STU). It also establishes the "India Energy Stack" as a

foundational framework for interoperable energy systems and mandates that all power sector entities make their operational and market-related data publicly accessible, excluding personally identifiable information.

- The policy introduces a dedicated Cybersecurity framework, requiring the establishment of a Computer Security Incident Response Team (CSIRT-Power) as the central agency for the sector. On the financial front, it projects an investment requirement of approximately ₹50 lakh crore by 2032 and proposes the development of a "Climate Finance Taxonomy" to attract concessional green financing.

Draft Second Amendment to the Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulation, 2024 (Regulation No. 3 of 2024)

- The Andhra Pradesh Electricity Regulatory Commission (APERC), through its draft notification dated February 19, 2026, has proposed the Second Amendment to the Green Energy Open Access Regulations, 2024. Exercising powers under Sections 42, 61, 62, and 86(1)(b) read with Section 181 of the Electricity Act, 2003, this amendment provides explicit regulatory clarity for Renewable Hybrid Energy Projects, specifically addressing non-colocated assets.
- The amendment introduces a new definition under Clause 2(1)(m-a), defining a Renewable Hybrid Energy Project as one that produces electricity from a combination of renewable sources connected at the same or different interconnection point(s). To qualify, the rated capacity of one resource must be at least 25% of the rated capacity of the other, and the project must achieve a minimum Capacity Utilization Factor (CUF) of 40%.
- A landmark provision is added to Clause 9(2), stipulating that Non-Colocated Renewable Hybrid Energy Projects shall be treated as a single generating project. This allows individual sources of a hybrid project to be connected “anywhere in the State,” subject to technical feasibility requirements by TRANSCO or the DISCOMs.
- Regarding energy accounting and scheduling, the amendment mandates that while the project is treated as a single entity, the schedule for each individual source must be furnished separately. The sum of these schedules must not exceed the total capacity of the RE hybrid project; any injection in excess of the project's capacity will be treated as “inadvertent energy.”
- Settlement protocols are restructured to require that energy injection be scheduled source-wise at each respective interconnection point for the purposes of energy settlement, forecasting deviations, and deviation treatment. To facilitate this, Clause 11 is amended to require the installation of interface meters for each individual source at their respective grid substations.
- The amendment modifies Clause 12(b) to address wheeling charges and loss allocation. It provides an exemption for Distribution/Wheeling charges if the injection and drawal of power occur at the same voltage level, irrespective of DISCOM boundaries. However, for hybrid projects where constituent components are connected at different voltage levels, wheeling charges and loss allocations will be applied to each component based on its specific voltage level of interconnection.
- The primary objective of these proposed changes is to remove the restrictive requirement of a single interconnection point, thereby facilitating enhanced participation in Green Energy Open Access by providing a flexible framework for definition, metering, and energy accounting for hybrid RE systems.

Sixth Amendment to Madhya Pradesh Electricity Regulatory Commission (Terms And Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations, 2021

- The Madhya Pradesh Electricity Regulatory Commission (MPERC), through its notification dated January 20, 2026 (published in the Gazette on January 23,

2026), has issued the Sixth Amendment to the Intra-State Open Access Regulations, 2021. Exercising powers under Sections 39, 40, 42, and 86 read with Section 181 of the Electricity Act, 2003, this amendment restructures the framework for consumers availing open access relative to their contract demand.

- The amendment substitutes Regulation 13.2 of the Principal Regulations to introduce specific classifications for open access applications. Consumers must now explicitly specify their requirement under one of three categories: (i) up to the contract demand, (ii) over and above the contract demand, or (iii) a combination of both. This requirement applies to both new applicants and existing open-access customers.
- For consumers opting for open access within the contract demand (Case 1), Annexure-II clarifies that no separate technical feasibility study is required at the drawl end. Crucially, while energy adjustments are made in 15-minute time blocks, no adjustment of open access demand is permitted in the billing demand. Under this category, no additional surcharge is leviable on the open access energy drawn.
- For arrangements involving open access over and above the contract demand (Case 2), technical feasibility is mandatory, considering the total load (contract demand plus open access demand) on the feeder/system. In this scenario, additional surcharge is applicable on the open access energy drawn and consumed, except in cases of captive power plants where such surcharge is not applicable.
- The amendment introduces a hybrid model (Case 3) where consumers avail open access partially within and partially above their contract demand. Here, a clear financial distinction is drawn: Additional surcharge is leviable only on energy corresponding to the open access demand over and above the contract demand. The portion of energy corresponding to open access within the contract demand remains exempt from additional surcharge.
- To ensure strict grid discipline, the Provisos to Regulation 13.2 mandate that open access customers injecting power must ensure their actual sent-out capacity does not exceed the inter-connection limits. Furthermore, all balancing and settlement must strictly adhere to the Madhya Pradesh Electricity Balancing and Settlement Code 2023, and the Grid Code, 2024.
- To enhance transparency in renewable energy accounting, the amendment mandates Distribution Licensees to provide details of actual energy credited to consumers in 15-minute time blocks for Intra-State Renewables (Wind, Solar, Hybrid) to the MP State Load Despatch Centre (SLDC) on a weekly basis, and monthly by the 3rd of every month.

RECENT JUDGEMENTS

In this Section

M/s Saisudhir Energy Limited Vs. M/S NTPC Vidyut Vyapar Nigam Limited

SC order dated January 30, 2026, in 2026 INSC 103

Background facts

- In 2010, the Ministry of Power launched the Jawaharlal Nehru National Solar Mission (JNNSM) to deploy grid-connected solar power. NTPC Vidyut Vyapar Nigam Ltd. (NVVNL) was designated as the nodal agency to enter into Power Purchase Agreements (PPA) with developers.
- On January 24, 2012, NVVNL entered into a PPA with M/s Saisudhir Energy Ltd. (SEL) for the supply of 20 MW solar power. The scheduled commissioning date was February 26, 2013.
- SEL failed to meet the deadline. It commissioned 10 MW after a delay of two months and the remaining 10 MW after a delay of five months.
- NVVNL sought liquidated damages (LD) under Clause 4.6 of the PPA. A three-member Arbitral Tribunal passed a split award: the majority awarded a "paltry" ₹1.2 crores, while the minority held that the LD mentioned in the PPA (approx. ₹49.92 crores) was a genuine pre-estimate of loss and should be paid in full.
- Both parties challenged the award under Section 34. A Single Judge of the Delhi High Court set aside the majority award and, exercising discretion to balance equities, modified the award to grant NVVNL 50% of the stipulated LD (calculated at ₹27.06 crores).
- In Section 37 appeals, the Division Bench further modified the amount, re-calculating the damages based on its own reading of the PPA to reduce the amount to ₹20.70 crores. Both parties appealed to the Supreme Court..

Issues at Hand

- Whether NVVNL was required to prove "actual loss" to claim liquidated damages under Section 74 of the Indian Contract Act, 1872, given that the project was of public utility.
- Whether the Court, while exercising jurisdiction under Section 34 of the Arbitration Act, has the power to modify an arbitral award.
- Whether the Division Bench, under Section 37, was justified in re-calculating and further reducing the compensation determined by the Single Judge.

Decision of the Court

- The Supreme Court set aside the Division Bench's judgement and restored the Single Judge's order.
- The Court held that the project (JNNSM) was definitely in the "public interest" to promote green energy. Relying on Construction and Design Services vs. DDA, the Court affirmed that in public utility projects, delay itself can be taken to result in loss (e.g., environmental degradation or deprivation of social

objectives). In such cases, the burden shifts to the defaulting party to prove that no loss was caused. SEL failed to discharge this burden.

- Following the Constitution Bench decision in Gayatri Balasamy vs. ISG Novasoft Technologies Ltd., the Court held that Section 34 courts possess a limited, nuanced power to modify an award (using the doctrine of severability) to prevent "extra rounds of arbitration" and avoid hardships. The Single Judge's modification to 50% LD was a permissible exercise of this limited jurisdiction.
- The Court ruled that the Division Bench exceeded its jurisdiction under Section 37. It held that a Section 37 court should only determine if the Section 34 court exercised its jurisdiction properly. Since the Single Judge's view was "plausible" and not arbitrary, the Division Bench was not justified in substituting its own view or re-calculating the figures.

HSA
Viewpoint

This Supreme Court judgement reinforces robust enforcement of liquidated damages in public utility solar projects under JNNSM, prioritizing PPA timelines for green energy goals over strict proof of actual loss per Section 74. It limits Section 37 appellate modifications to jurisdictional errors, curbing merit re-appraisals while affirming limited Section 34 modification powers post Gayatri Balasamy. The ruling erects a clear barrier against diluting pre-estimated damages in infrastructure delays, upholding public interest without arbitrary reductions.

Gujarat Urja Vikas Nigam Limited vs Central Electricity Regulatory Commission & Ors.

SC order dated January 16, 2026, in CIVIL APPEAL NO(S). 15195/2025.

Background facts

- In response to energy crises, the Ministry of Power (MoP) issued "2023 Directions" under Section 11(1) of the Electricity Act, 2003, requiring imported coal-based (ICB) power plants, including Tata Power Company Limited (TPCL), to operate at full capacity.
- Section 11(2) mandates that the CERC "off-set the adverse financial impact" of such directions. While a MoP-appointed Committee set a provisional "benchmark" Energy Charge Rate (ECR), TPCL claimed this rate was insufficient to cover actual prudent costs of imported coal.
- TPCL filed Petition No. 179/MP/2023 before the CERC seeking final compensation and sought interim relief. On March 10, 2025, the CERC granted interim relief, allowing TPCL to recover 50% of the difference between its claimed ECR and the Committee's benchmark rate.
- The Appellant-Procurers (GUVNL, PSPCL, and Rajasthan Discoms) challenged this interim order before APTEL, arguing that the CERC lacked power to grant interim money payments in Section 11 proceedings and that the ECR calculations were fallacious.

Issues at hand

- Whether the CERC's power to grant interim relief under Section 94(2) extends to proceedings for offsetting financial impact under Section 11(2).
- Whether the CERC correctly applied the "triple test" (prima facie case, balance of convenience, and irreparable injury) for granting an interim mandatory injunction for payment of money.
- Whether the CERC's ECR computation suffered from patent errors (e.g., treating Cost & Freight (CFR) shipments as Free on Board (FOB) shipments).

Decision of the Court

- The Supreme Court of India issued an order on January 16, 2026, in Civil Appeal No(s). 15195/2025 (Gujarat Urja Vikas Nigam Limited vs. Central Electricity Regulatory Commission & Ors.), dismissing the appeals by procurers (including GUVNL and others) and declining to interfere with the Appellate Tribunal for Electricity (APTEL) judgement. This upheld the framework for interim relief.

- APTEL affirmed CERC's "extremely wide" power under Section 94(2) to grant interim relief in Section 11(2) proceedings, ensuring that generators need not await a final order to mitigate the financial impact of coercive government directions.
- It was clarified that while financial loss generally does not constitute "irreparable injury" (as it is compensable by money) and future procurement issues are extraneous to Section 11(2), substantive justice may override such technicalities if the outcome remains equitable.
- Identified mathematical errors in CERC's energy charge computation regarding shipping costs (CFR vs. FOB), but declined to set aside the order because the effective price granted was actually lower than the Appellants' own internal calculations.
- A limited remand directing CERC to recalculate the exact entitlement based on verified data for the period of April 16, 2023, to March 10, 2025, to ensure mathematical precision in the final recovery was issued.
- Imposed strict safeguards to protect procurers, requiring the generator (TPCL) to furnish an unconditional Bank Guarantee for the full interim amount and an undertaking to pay "carrying costs" should the main petition eventually be dismissed.
- Requested the Commission to adjudicate the substantive dispute on its merits with utmost expedition, targeting a final disposal within a six-month timeline.

HSA
Viewpoint

This judgement is a crucial precedent for the implementation of Section 11 of the Electricity Act. It balances the "Public Interest" in ensuring power plants remain financially viable during national emergencies with "Procurer Protection" while ensuring interim payments are backed by bank guarantees and undertakings. APTEL has rightly prioritized substantive equity over procedural perfection by refusing to quash an order despite technical errors, provided the final dollar value was reasonable. This limited remand approach prevents the litigation from entering a perpetual loop while ensuring that the final ECR is based on verified mathematical data rather than approximate samples.

The West Bengal State Electricity Distribution Company Limited & Ors. vs Jyotish Chandra Rice Mill & Ors.

Kolkata HC order dated February 04, 2026, in F.M.A. 179 of 2023

Background facts

- The Respondent, a rice mill owner in Jamalpur, Purba Bardhaman, had a transformer replaced by the Appellant-Licensee (WBSEDCL) on July 12, 2019.
- For the subsequent four months, energy consumption was recorded by the existing meter, and bills were raised based on actual readings. The Respondent discharged these liabilities via RTGS, which the Licensee accepted without demur.
- In November 2019, the Licensee unilaterally refunded the Respondent's payments and issued "Revised Bills" totalling Rs. 55,80,653/-. This demand was based on a technical inspection dated November 29, 2019, which allegedly detected a "polarity reversal" at the Potential Transformer (PT).
- The Licensee contended that this defect caused the meter to under-record consumption for 140 days and invoked Regulation 3.6.1 of the WBERC Regulations to "regenerate" bills on an average basis.
- The Electricity Ombudsman, in an order dated April 26, 2022, recorded a finding that the Forum was "not satisfied" with the Licensee's evidence regarding the rectification of the defect, yet proceeded to affirm the demand for average billing.
- The Learned Single Judge, in a judgement dated June 7, 2022 (W.P.A. No. 8916 of 2022), set aside the demand, terming the Ombudsman's order a case of "patent perversity" for holding the consumer liable while finding the rectification unproven.

- The Licensee preferred the instant intra-court appeal against the Single Judge's order.

Issues at hand

- Whether the "establishment of a defect" constitutes a jurisdictional condition precedent for invoking the power of bill regeneration.
- Whether the Licensee met the mandatory burden of proof under Regulation 3.3.1 to displace the statutory presumption of a "correct meter."
- Whether the Ombudsman's order survives the doctrine of perversity as articulated in State of U.P. v. Johri Mal.
- Whether an accessory liability, such as Late Payment Surcharge (LPSC), can survive once the principal demand is quashed as a "legal corpse."

Decision of the Court

- The High Court dismissed the appeal and upheld the Single Judge's decree in its entirety. The Court held that under Regulation 3.3.1, there is a bedrock presumption of a "correct meter." Regulation 3.6.1 provides a narrow window for bill regeneration only "after the defect is established." The Court ruled that the Potential Transformer (PT) is an inseparable component of the metering circuit and falls under the protection of a "correct meter."
- The Court applied the doctrine of onus probandi, stating the Licensee must establish the terminus a quo (birth of defect) and terminus ad quem (rectification) with "clinical precision."
- The Licensee's demand was built upon a foundation of sand. The on-site Meter Reading Card contained no contemporaneous entry of defect, the Technical Inspection Report (TIR) lacked the requisite consumer verification, and the Licensee failed to produce any verified documentation regarding the "rectification" of the alleged polarity reversal.
- In the absence of a proven terminus ad quem (the point of return to normalcy), the calculation of an "average" becomes a mathematical fiction like an anchor cast into mid-air.
- The Court affirmed that the Ombudsman's order was perverse. A quasi-judicial authority cannot find the factual basis (rectification) "unproven" yet hold the citizen liable.
- Reliance on subsequent affidavits to bolster the administrative order was rejected, citing Mohinder Singh Gill v. Chief Election Commissioner. The order was deemed a jurisdictional nullity and a "legal corpse" that cannot be resuscitated by supplemental grounds.
- Regarding the Late Payment Surcharge (LPSC) of Rs. 32.72 Lakhs, the principle of accessorium non ducit sed sequitur suum principale applies with full force. Interest and surcharges cannot breathe life into a void debt. Since the supplemental demand is a jurisdictional nullity, void ab initio, the LPSC has no host upon which to subsist.
- Directions issued:
  - The principal supplemental demand (crystallized at Rs. 47,06,213/-) is declared null and void.
  - The Licensee shall delete and waive the entire LPSC of Rs. 32.72 Lakhs and associated interest.
  - The sum of Rs. 11,70,855/- deposited under protest shall be adjusted against future bills.
  - All disconnection notices are quashed.

HSA
Viewpoint

This judgement represents a watershed moment in consumer protection within the electricity distribution sector. As it reinforces the "Public Trust Doctrine," emphasizing that the power to provide a public utility is a fiduciary trust, not a charter for administrative high-handedness. The Court has prioritized substantive justice over procedural formalism, sending an unambiguous signal that the "Rule of Law does not permit Taxation by Inference." By striking down the "average billing" mechanism in the absence of contemporaneous, verified proof of both the onset and cure of a defect, the High Court has forcefully articulated that the presumption of meter accuracy is a statutory bedrock that cannot be displaced by speculative technical reports lacking contemporaneous verification. By requiring clinical proof of both the onset and cure of a metering defect, the Court has erected a formidable barrier against arbitrary billing practices.

Amplus Sun Solutions Private Limited vs Haryana Electricity Regulatory Commission.

APTEL order dated February 13, 2026, in APPEAL No. 362 of 2025 & IA No. 1464 of 2025

Background facts

- The Appellant, a Generating Company, established a 50 MW solar power project in Bhiwani, Haryana, commissioned on January 12, 2021, supplying power to Haryana Discoms (HPPC).
- Originally planned as an open access project, delays in connection agreement led to a Power Purchase Agreement (PPA) with Haryana Power Purchase Centre (HPPC) on September 28, 2020, for project-specific tariff determination under Section 62 of the Electricity Act, 2003.
- Following a previous remand by the Tribunal on October 25, 2024, the Haryana Electricity Regulatory Commission (HERC) passed the Impugned Order on August 12, 2025, re-determining the project-specific tariff at Rs. 2.58 per kWh.
- In the Impugned Order, HERC restricted the allowable DC capacity to 70 MW (against the Appellant's actual installation of 75 MW) for achieving the declared Capacity Utilization Factor (CUF) of 25.91%. This restriction was based on a comparison with a single other project in the same district, M/s LR Energy, which operated at a lower DC:AC ratio.
- HERC further disallowed capital costs amounting to Rs. 11.29 Crores incurred on transmission and evacuation infrastructure, relying on Articles 6.1.3 and 7.1 of the Power Purchase Agreement (PPA) which stipulated that such costs be borne by the developer.
- The Appellant contended that the reduced tariff caused severe revenue loss and cash-flow constraints, leading its lender (NIIF) to cancel a remaining loan facility of Rs. 81 Crores, and sought a pro-tem tariff of Rs. 2.78 per kWh pending final adjudication.

Issues at hand

- Whether the Commission's methodology of "benchmarking" the Appellant's project parameters (DC:AC ratio) against a single other project (LR Energy) satisfies the requirement of a prudence check for project specific tariff determination under Section 62 of the Electricity Act, 2003.
- Whether the Commission erred in excluding transmission and evacuation infrastructure costs from the Capital Cost by relying on PPA terms, despite Regulation 11 of the HERC RE Regulations, 2017 explicitly including such costs.
- Whether the Appellant is entitled to an enhanced pro-tem tariff and Project Management Expenses pending the final redetermination of tariff on remand.

Decision of the Tribunal

- On the issue of benchmarking, the Tribunal held that fixing technical parameters by comparing the Appellant's project with just one other project (LR Energy) does not constitute valid regulatory benchmarking. True benchmarking requires a systematic comparison across a set of comparable entities to estimate efficient cost functions, whereas relying on a single data point risks arbitrary parameters that do not reflect industry norms.
- The Tribunal remanded the matter to HERC to determine the appropriate DC:AC ratio, granting liberty to use alternate approaches such as simulation studies (e.g., PVsyst) through an independent expert, rather than lazy comparisons.
- Regarding transmission costs, the Tribunal ruled that Regulation 11 of the RE Regulations, 2017, which includes evacuation infrastructure up to the inter-connection point in Capital Cost, overrides the terms of the PPA. The Tribunal interpreted the PPA and Regulations harmoniously to mean that while the developer must construct the line, the cost is recoverable through tariff.
- The Tribunal rejected the Respondent's argument that the PPA placed the financial burden solely on the developer, citing the Supreme Court's ruling in PTC India Ltd. vs. CERC regarding the supremacy of Regulations over contracts.
- Recognizing the Appellant's financial hardship, the Tribunal granted immediate relief by provisionally factoring in 75% of the disputed transmission expenditure (Rs. 8.47 Crores) into capital cost calculation.
- Consequently, the Tribunal enhanced the pro-tem tariff from Rs. 2.58 per kWh to Rs. 2.68 per kWh, payable from the date of the judgement until the final

decision by HERC, along with applicable carrying costs on the differential amount.

- The Tribunal also clarified that Project Management Expenses, fixed at 2% of the Capital Cost, must automatically increase commensurate with any upward revision in the approved Capital Cost regarding transmission or DC capacity.

HSA
Viewpoint

This judgement establishes a significant precedent regarding the methodology of prudence checks in project specific tariff determinations under Section 62. The Tribunal has effectively proscribed "lazy benchmarking," ruling that a regulator cannot arbitrarily slash capital costs by comparing a project to a single external entity; instead, a robust, statistical, or technical simulation approach is required to reflect the project's unique economic realities. Furthermore, the decision reinforces the hierarchy of legal instruments in the power sector, affirming that statutory regulations defining Capital Cost supersede restrictive PPA clauses that attempt to prevent the pass-through of legitimate infrastructure expenses. The grant of a mathematically calculated enhanced pro-tem tariff also signals the Tribunal's proactive approach in mitigating the cash-flow constraints of renewable energy developers caused by prolonged regulatory litigation.

India Energy Exchange Limited vs Central Electricity Regulatory Commission & Ors.

APTEL order dated February 13, 2026, in APPEAL NO. 298 OF 2025

Background facts

- The Appellant (IEX) challenged the CERC's proceedings dated 23.07.2025 in Petition No. 8/SM/2025, wherein the Commission decided to implement Market Coupling for the Day-Ahead Market (DAM) in a round-robin mode by January 2026.
- The Appellant contended that the impugned order was arbitrary, violated Regulation 39 of the Power Market Regulations (PMR) 2021, and would reduce power exchanges to mere bid aggregators, thereby expropriating their business.
- During the pendency of the appeal, the CERC issued a Corrigendum on 08.01.2026 changing the nomenclature of the proceedings from Order to Directions and argued that the proceedings were merely administrative/inquisitorial precursors to a legislative regulation making exercise, rendering them immune from appeal under Section 111 of the Electricity Act, 2003.
- The Appellant further alleged that the decision-making process was tainted, relying on an ex-parte interim order passed by SEBI on 15.10.2025, which prima facie found certain CERC officials involved in insider trading based on Unpublished Price Sensitive Information (UPSI) related to the market coupling order.
- The CERC maintained that Regulation 39 is an enabling provision and the impugned order was a necessary step toward market reform, consistent with the National Electricity Policy.

Issues at hand

- Whether CERC's directions qualify as appealable order under S.111(1) Electricity Act despite Reg 39 requiring separate regs for coupling.
- Whether Appellant (IEX) is person aggrieved suffering civil consequences, or merely anticipatory against non-self-executing policy roadmap.
- Whether directions violate natural justice (non-disclosure of Grid-India reports, ignoring 127 stakeholder comments/staff paper queries), are reasoned, or pre-judge regs.
- Whether minimal pilot benefits (0.3% surplus) justify disrupting competitive exchanges; if round-robin/DAM coupling by Jan 2026 expropriates business/anti-competitive.
- If SEBI's prima facie insider trading findings (CERC staff involvement) vitiate process.

Decision of the Tribunal

- The Tribunal held that the proceedings dated 23.07.2025 constitute an Order within the meaning of Section 111(1) because they contain a specific decision to implement market coupling by January 2026. The Tribunal rejected the CERC's contention that the proceedings were merely pre-legislative or inquisitorial, noting that even quasi-legislative orders are appealable.
- However, the Tribunal concluded that the Appellant is not a person aggrieved at this stage. It is reasoned that under Regulation 39 of PMR 2021, market coupling can only come into effect "in accordance with regulations to be specified separately. Since no such regulations have been framed yet, the impugned order does not legally deprive the Appellant of any right or fasten any liability. The Appellant continues to operate as before.
- The Tribunal clarified that it cannot direct the Commission to make or refrain from making regulations, nor dictate the manner of such regulations (e.g., the round-robin mode), as this falls within the CERC's exclusive legislative domain under Section 178.
- Regarding the SEBI order, the Tribunal observed that while the impugned order was passed by the Chairperson and Members not the implicated officials, the CERC must, like Caesar's wife, remain above suspicion. Consequently, the Tribunal directed the CERC to ensure that the officers named in the SEBI interim order are kept away from the regulation making exercise regarding market coupling until investigations are concluded.
- The Appeal was disposed of with the observation that the Appellant's rights are preserved to challenge the validity of the actual Regulations via judicial review or the implementation aspects if and when such Regulations are notified.

HSA
Viewpoint

This judgement draws a critical line between administrative intent and actionable legal injury. While the Tribunal affirmed its jurisdiction to scrutinize regulatory Orders regardless of nomenclature, it emphasized that a policy roadmap does not create a justiciable grievance until it is legally enforceable through notified Regulations. The decision protects the legislative independence of the regulator while simultaneously issuing a stern admonition regarding institutional integrity. By invoking the Caesar's wife principle, the Tribunal has set a precedent that while regulatory policy cannot be stalled by premature litigation, the process of framing such policy must be insulated from officials facing credible allegations of market manipulation.

M/S JK Minerals vs Madhya Pradesh Electricity Regulatory Commission

APTEL order dated January 19, 2026, in APL No. 375 OF 2019

Background facts

- The Appellant, a renewable energy generator with a 1 MW Solar Power Plant in Shajapur, Madhya Pradesh, sought LongTerm Open Access (LTOA) to sell 100% of its power to a thirdparty consumer M/s Indore Treasure Island Pvt. Ltd.
- Despite the Appellant and the consumer confirming that no additional contract demand was sought, the LTOA was denied by the nodal agency (MPPTCL) and the Discom (MPPKVVCL) citing system congestion.
- Pending the grant of Open Access, the Appellant commissioned its plant on 20.09.2016 and began injecting power into the grid. This injection was based on a permission letter from the holding company (MPPMCL) dated 14.09.2016, which stipulated that power injection would be "free of cost" until Open Access was granted.
- The State Commission (MPERC), in an earlier order dated 15.09.2017, rejected the LTOA petition. This order was subsequently set aside by the Tribunal on 19.03.2019, remanding the matter for fresh consideration. During the remand proceedings, the Appellant secured a new buyer and was granted LTOA effective from 11.05.2018.

- In the Impugned Order dated 16.08.2019, the State Commission retrospectively acknowledged that LTOA should have been granted subject to certain conditions but denied any compensation to the Appellant for the power injected into the grid between 22.08.2016 and 10.05.2018, relying on the "free of cost" undertaking/condition.

Issues at hand

- Whether Appellant entitled to compensation/unit adjustment for grid injection Aug 22, 2016-May 10, 2018 despite free-injection undertaking till LTOA, wrongful denial.
- Whether MPERC's initial rejection (Sep 15, 2017) erroneous given remand, later prospective grant on same undertaking; if actus curiae neminem gravabit/nullus commodum capere applies.
- Whether quasi-contract (S.70 Contract Act)/unjust enrichment mandates payment at APPC despite no PPA, as Discom benefited without demur.
- If abandonment of LTOA claim post-new PPA precludes retrospective relief.

Decision of the Tribunal

- The Tribunal allowed the appeal and set aside the Impugned Order to the extent that it denied compensation. The Tribunal held that the Respondent Discom cannot be allowed to retain the benefit of power injected by the Appellant while denying compensation based on technical objections or undertakings given under compelling circumstances.
- Applying the maxim actus curiae neminem gravabit, the Tribunal ruled that had the State Commission correctly granted LTOA in its first order dated 15.09.2017, the Appellant would have earned revenue from that date. The Appellant cannot be made to suffer due to the Commission's error.
- The Tribunal distinguished this case from prior judgements where generators gave voluntary undertakings to avail fiscal benefits. Here, the Appellant had no option but to inject power while waiting for LTOA permissions.
- Consequently, the Tribunal directed the Respondent Discom to pay compensation for the energy injected from 15.09.2017 (the date of the erroneous first order) up to 10.05.2018.
- The compensation is to be calculated at the Average Power Purchase Cost (APPC) rate of the Discom. Furthermore, recognizing the time value of money and the principles of restitution, the Tribunal awarded carrying cost (interest) at the rate of SBI PLR + 2%.

HSA
Viewpoint

This judgement serves as a significant precedent in enforcing the doctrine of Unjust Enrichment and Quasi-Contract under Section 70 of the Indian Contract Act within the power sector. It establishes that Discoms cannot hide behind procedural delays or conditional undertakings obtained during the pendency of approvals to utilize power free of cost. By invoking the principle that no man can take advantage of his own wrong, the Tribunal has ensured that regulatory errors do not result in financial prejudice to generators. The ruling reinforces that when a generator lawfully injects power and the Discom consumes it without demur, a liability to pay arises, irrespective of the absence of a formal Power Purchase Agreement (PPA). The award of carrying costs further emphasizes that restitution must be complete, compensating the deprived party not just for the principal amount but for the loss of its use over time.

MB Power (Madhya Pradesh) Limited vs PTC India Limited

CERC order dated January 17, 2026, in Petition No: 71/MP/2023

Background facts

- The Petitioner MB Power owns a 1200 MW thermal power project in Madhya Pradesh. In December 2021, pursuant to a tender floated by Torrent Power Limited (TPL), MB Power entered into a Power Purchase Agreement (PPA) with

PTC India Limited (PTC) for the supply of 50 MW power, which PTC in turn supplied to TPL under a back-to-back arrangement for the period 01.04.2022 to 30.09.2022.

- The Petitioner filed a petition under Section 79(1)(f) of the Electricity Act, 2003 seeking discharge from the PPA on grounds of frustration of contract due to Force Majeure (coal shortage due to CIL circulars) and Change in Law events. The Petitioner also sought to quash invoices/debit notes issued by PTC claiming liquidated damages and open access charges.
- During the proceedings, citing the APTEL judgement in Madhya Pradesh Power Management Co. Ltd. v. DVC (Appeal No. 309 of 2019) and the Supreme Court's order in Civil Appeal No. 10480/2023, the Petitioner argued that the primary issue pertained to the validity/termination of the PPA, which is a non-tariff dispute and therefore must be referred to arbitration.
- The Respondents TPL and PTC vehemently opposed the reference to arbitration, arguing that there was no arbitration agreement between MB Power and TPL, the pleadings were already complete before the Commission, and the disputes regarding Change in Law and Force Majeure are essentially tariff disputes that fall within the exclusive jurisdiction of the CERC.

Issues at hand

- Whether the disputes raised in the petition (Change in Law, Force Majeure, validity of PPA) constitute "tariff disputes" under Section 79(1) of the Electricity Act, 2003, or non-tariff disputes such as termination simpliciter that must be referred to arbitration in light of the DVC judgement.
- Whether the Commission is bound to refer the matter to arbitration when one party the Petitioner claims the dispute is about the validity of the contract, while the Respondents contend it relates to regulatory functions like tariff and compensation.

Decision of the Commission

- The Central Electricity Regulatory Commission (CERC) rejected the Petitioner's prayer to refer the matter to arbitration.
- Relying on the DVC judgement (APTEL Appeal No. 309 of 2019), the Commission reiterated the distinction between tariff disputes and non-tariff disputes. It held that disputes having a bearing on tariff, such as Change in Law, delayed completion, and invocation of Force Majeure, fall solely within the CERC's jurisdiction under Section 79(1). Only disputes related to termination or breach that do not impact tariff directly or indirectly are preferable to arbitration.
- The Commission analyzed the prayers in the petition and found that the core issues involved the impact of CCEA decisions and Coal India Limited circulars on coal procurement costs. The Petitioner had specifically prayed for declarations that these constituted Change in Law and Force Majeure events affecting tariff.
- Even the prayer regarding the PPA's non-conformity with MoP Guidelines was held not to be a dispute regarding the validity of the contract simpliciter but rather a regulatory issue concerning deviations from Guidelines, which the Commission has the power to examine.
- Consequently, the Commission held that the primary disputes were "tariff disputes" or concerned its regulatory function, and therefore, were not required to be referred to arbitration. The matter was listed for hearing on merits.

HSA
Viewpoint

This order provides crucial clarity on the jurisdictional boundaries between regulatory adjudication and arbitration in the power sector. By strictly interpreting the DVC judgement, the CERC has reaffirmed that the mere framing of a relief as a declaration of invalidity or frustration of contract does not strip the Commission of its jurisdiction if the underlying cause of action, such as Change in Law or Force Majeure, has financial implications on the tariff. This decision prevents parties from forum shopping or bypassing regulatory scrutiny by artificially labelling regulatory disputes as contractual termination disputes. It reinforces the principle that specialized regulatory bodies retain exclusive jurisdiction over issues affecting the regulated tariff structure, ensuring consistency in the application of Change in Law and Force Majeure clauses across the sector.

In the matter of RERC (Electricity Supply Code and Connected Matters) (Third Amendment) Regulations, 2026

RERC order dated January 21, 2026, in Suo-motu petition No. 2374/2025

Background facts

- Rajasthan Discoms filed petitions (No. RERC/2365/2025) seeking approval for dual source supply to High Tension (HT) and Extra High Tension (EHT) consumers, including the Public Health Engineering Department (PHED) and other essential service categories.
- The Commission observed that the proposal necessitated amendments to the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 ("Principal Regulations"), and also involved changes to the tariff structure regarding fixed costs.
- In exercise of powers under Sections 43 to 48, 50, 55, and 56 read with Section 181 of the Electricity Act, 2003, the Commission initiated Suo-motu proceedings to frame the Third Amendment.
- Draft Regulations were placed for public comments on December 4, 2025, and a final hearing was conducted on January 5, 2026, to consider the Discoms' submissions regarding the need for enhanced reliability and operational continuity for critical infrastructure.

Issues at hand

- Whether the regulatory framework should be modified to explicitly permit HT/EHT consumers to obtain electricity supply from two independent sources.
- The determination of a cost-recovery mechanism for the extension of electric lines and plants for redundant infrastructure.
- Whether consumers should be charged additional plant costs (double charges) for the privilege of simultaneous or standby dual-source connectivity.
- Assessment of the technical feasibility of dual source supply based on implementation models in other jurisdictions like Mumbai and Noida.

Decision of the Commission

- The Commission formally issued the Third Amendment, introducing a new Sub-Regulation 6.14 to the Principal Regulations.
- Regulation 6.14 (Dual Source Supply) Explicitly permits HT/EHT applicants to obtain electricity supply from two sources for simultaneous use or as a standby source, subject to technical feasibility and compliance with Safety Regulations.
- Consumers are granted the "liberty to use contracted demand either of the sources from zero to contracted demand," providing total flexibility within their sanctioned limits.
- Applicants must deposit all expenses towards the extension of electric lines or electric plants for both sources, in addition to standard charges prescribed in the schedule.
- The Commission amended Schedule-I, Clause 2.2(b), adding a proviso that if a consumer applies for dual source supply (simultaneous or standby), “double the plant cost will be charged.”
- The Commission validated the technical feasibility of this arrangement (summation metering and synchronization) by citing successful implementations at the NTT Data Centre (Mumbai) and STT Global Data Centre (Noida).

HSA
Viewpoint

This amendment constitutes a landmark shift in Rajasthan’s supply code by moving away from the traditional "single-point" connectivity mandate for HT/EHT consumers. By legally recognizing and facilitating dual-source supply, the RERC has created a "premium reliability" tier essential for the growth of high-tech industries such as data centres and for the resilience of public utilities like PHED. The decision to charge "double the plant cost" acts as a critical financial safeguard, ensuring that the cost of redundant infrastructure is borne solely by the beneficiary and not cross-subsidized by the general consumer base. This regulatory update effectively aligns Rajasthan’s grid infrastructure with global standards for critical infrastructure power security.

Gujarat Energy Transmission Corp. Limited vs Madhya Gujarat Vij Company Limited

GERC order dated January 21, 2026, in Petition No. 2564 of 2025

Background facts

- The Petitioner, Gujarat Energy Transmission Corp. Limited (GETCO), filed under Sections 61(h), 62, 86(1)(c) & (e), and 181 of the Electricity Act, 2003, a petition seeking an amendment to the GERC Order No. 06 of 2024 (Tariff Framework for Solar Energy Projects). GETCO submitted that the 2024 Order had significantly reduced the timelines for completing evacuation systems (ranging from 12 to 18 months) compared to the previous 2020 Order (1.5 to 3.5 years).
- GETCO highlighted that developers were facing genuine difficulties in meeting these compressed timelines due to factors like Right of Way (RoW) issues and supply chain constraints, leading to potential cancellations of connectivity and encashment of Bank Guarantees. GETCO sought to restore longer timelines and remove ambiguity regarding commissioning deadlines.
- During the consultative process, various Renewable Energy (RE) developers and associations supported the petition. They argued for voltage-based timelines, protection for projects delayed by Force Majeure, and requested that any relief granted be applied retrospectively to ongoing projects.
- One Objector raised a preliminary objection regarding the Commission's jurisdiction. They argued that in the absence of a Judicial Member, the Commission could not hear the petition, and further, that the Commission was functus officio and could not amend its own previous Order.

Issues at hand

- Whether the prayer for seeking an amendment to the Tariff Order No. 06 of 2024 constitutes a review or falls under the Commission's regulatory jurisdiction to amend legislative orders, and if the doctrine of functus officio applies.
- Whether the Commission is competent to adjudicate the present matter involving the amendment of a Tariff Order in the absence of a Judicial Member.
- Whether the timelines prescribed in Order No. 06 of 2024 for the completion of evacuation systems warrant modification or relaxation based on the practical difficulties faced by developers.
- Whether the amendments should be applied prospectively or retrospectively to projects currently under implementation ("pipeline projects").

Decision of the Commission

- The Gujarat Electricity Regulatory Commission (GERC) rejected the objection regarding the absence of a Judicial Member. Citing the Supreme Court judgement in PTC India Ltd. v. CERC (2010), the Commission held that tariff determination and the formulation of regulatory frameworks are legislative or subordinate legislative functions, not adjudicatory. Therefore, the requirement for a Judicial Member does not apply, nor does the doctrine of functus officio.
- The Commission acknowledged the systemic challenges faced by developers. It decided to substitute the timelines in Para 3.9 of Order No. 06 of 2024. The revised timelines for commissioning the entire evacuation line are now:
  - Up to 100 MW: 1.5 years from the date of allotment.
  - >100 MW to 200 MW: 2 years.
  - >200 MW to 400 MW: 2.5 years.
  - >400 MW to 1000 MW: 3.5 years.
- The Commission removed the phrase "or as per timeframe stipulated above, whichever is earlier" regarding project commissioning. It clarified that 10% of capacity must be commissioned within one month of charging the evacuation line, and the balance 90% within one year of charging, effectively decoupling the strict linkage that made timelines co-terminus.
- The Commission ruled that these amendments are remedial and clarificatory. To ensure equality and prevent arbitrariness, the Order applies retrospectively to RE projects granted connectivity prior to this Order that are still under various stages of implementation. However, the Commission clarified that cases already concluded, where GETCO/DISCOMs have already cancelled connectivity or encashed Bank Guarantees, shall not be reopened.

HSA
Viewpoint

This order is significant as it reinforces the distinction between the Commission's legislative and adjudicatory functions, clarifying that regulatory amendments to Tariff Orders do not require a Judicial Member. Substantively, the Commission adopted a pragmatic approach by aligning regulatory timelines with ground realities (RoW and infrastructure delays), thereby preventing the mass stranding of renewable energy projects. By applying the relief to "pipeline projects" while refusing to reopen closed cases, the Commission struck a balance between providing regulatory relief to struggling developers and maintaining the finality of administrative actions already taken. This decision aids in the "ease of doing business" for RE developers in Gujarat by removing unintended ambiguities in the commissioning schedule.

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