



PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER

SEPTEMBER 2023



LEGAL & POLICY UPDATES



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Electricity (Third Amendment) Rules, 2023

- The Ministry of Power (**MoP**) on September 1, 2023, notified the Electricity (Amendment) Rules, 2023 to amend the Electricity Rules, 2005 (**Amendment Rules**). The Amendment Rules aims to deal with the issue involving captive power generating plants in India.
- **Key aspects:**
 - Rule 3 of the Electricity Rules, 2005 has been amended and has undergone the following modifications:
 - By way of the Amendment Rules the definition of captive consumers has been broadened.
 - In Sub-Rule (1), in Clause (a), in Sub-Clause (i), for the words 'captive user', the words 'captive users; and' has been substituted.
 - Section 3(b) has been amended to include 'Provided further that the consumption by a subsidiary company as defined in Clause (87) of Section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in Clause (46) of Section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.';
 - The captive status of such generating plants, where captive generating plant and its captive users are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government."

Direction Issued to all GENCOs including for Timely Import of Coal for Blending Purposes and Maximizing Production in Captive Coal Mines

- The Ministry of Power (**MoP**) on September 1, 2023, issued directions to all Generating Companies (**GENCOs**), including Independent Power Producers (**IPPs**), to Import Coal in timely manner for the purpose of blending and maximizing production in captive coal mines. MoP has issued the said notification in view of the raise in demand to 200 GW practically every day in the month of August, 2023 and reached the highest ever peak demand of 236.6 GW, which is almost 21% more than the peak demand in the month of August, 2022. Since the energy demand does not match coal requirements, the necessity to continue using imported coal for blending has emerged. As a result, the required blending should be reduced to 4% for the remainder of FY 2023-2024.
- The Central, State GENCOs, and IPPs are required to take the appropriate measures to import coal for blending at a rate of 4% via competitive bidding until March 31, 2024. The deficit in domestic coal supply will be shared on a pro rata basis by all GENCOs.
- It shall be assured that each respective Pit-Head Stations get 100% of their domestic coal need when determining the share of domestic coal to be supplied to the GENCOs from CIL/SCCL. If domestic coal is readily available, GENCOs should avoid utilizing imported coal at their Pit-Head stations.

Draft Electricity Distribution (Accounting aspects of Specified Items & Additional Disclosure) Rules, 2023

- The Ministry of Power (**MoP**) has issued draft Electricity Distribution (Accounting aspects of Specified Items & Additional Disclosures), Rules, 2023 (**Rules**). These Rules shall be applicable to 'Specified Entity' or 'SE'.
- The term 'Specified Entity or SE' has been defined to mean the Distribution Licensee excluding:
 - Indian Railways
 - Military Engineering Services
 - Municipal Corporations
 - Ports
 - Captive Power Plants
 - Transport Undertakings
 - Damodar Valley Corporation
 - Entity engaged in distribution of power in Special Economic Zones
 - Any other entity exempted in this regard by the Central Government.

Regulatory deferral account balance

- SEs which are presently recognizing regulatory deferral account balances in accordance with applicable accounting standard and guidance note on accounting for rate regulated activities in its financial statements shall abide by the directions with respect to measurement and impairment of regulatory deferral account balances.
- On initial recognition and at the end of each subsequent reporting period, an entity should measure a regulatory asset or regulatory liability at the best estimate of the amount expected to be recovered or refunded or adjusted as future cash flows under the regulatory framework.
- In addition, an entity should review the estimates of the amount expected to be recovered, refunded, or adjusted at least at the end of each financial year to reflect the current best estimate. Further, SEs shall disclose the basis on which regulatory deferral account balances are measured initially and subsequently, including how regulatory deferral account balances are assessed for recoverability and how impairment loss is allocated.

Disclosure Requirements

- SEs are obligated to disclose the basis on which regulatory deferral account balances are initially measured and subsequently reevaluated. This includes how these balances are assessed for recoverability and how impairment losses are allocated. These disclosures aim to provide stakeholders with a comprehensive understanding of the financial health and operations of the entity.

Provisioning of Trade Receivables

- The regulations also introduce a graded approach to provisioning of trade receivables, outlining specific provisioning percentages based on the age of receivables. This approach, which extends

to FY 2026 and onwards, allows for more accurate provisioning and management of outstanding payments.

Additional Disclosure Statements (ADS)

- Furthermore, the regulations require SEs to prepare ADS for each financial year. These statements cover various aspects of financial reporting, including supplementary disclosures to financial statements, power purchase and energy accounting details, ACS-ARR gap, AT&C loss, and a performance summary of the SE. The ADS will form an integral part of the financial statements and will be presented under the 'Additional Disclosure Statements pursuant to Electricity Distribution (Accounting aspects of Specified Items & Additional Disclosure) Rules, 2023.'
- 'Additional Disclosure Statements pursuant to Electricity Distribution (Accounting aspects of Specified Items & Additional Disclosure) Rules, 2023.'

Guidelines for Tariff-Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects

- On July 26, 2023, the MoP issued the Guidelines for the Tariff Based Competitive Bidding Process in the context of Procurement of Power from Grid Connected Wind Power Projects (**Guidelines**).
- This initiative has been introduced with the dual objective of promoting the augmentation of renewable energy capacity and establishing an unequivocally transparent, equitable, and standardized framework for the procurement of power produced from wind energy sources.
- The wind power potential within the country has been evaluated by the National Institute of Wind Energy (**NIWE**) and is approximated to be 1,164 GW when measured at a height of 150 meters above the ground. The majority of this potential is concentrated in eight specific states: Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Telangana.
- The primary focus of these Guidelines lies in facilitating both inter-state and intra-state transactions involving the sale and purchase of electricity generated through wind energy.
- The Guidelines have been devised to oversee the efficient procurement of electricity specifically from two categories of grid-connected Wind Power Projects (**WPPs**): those with a capacity of 10 MW and above, closely integrated with intra-state transmission systems, and those with a larger capacity of 50 MW and above, linked to the expansive inter-state transmission system.
- Under these Guidelines, the bidder will prepare the bid documents in accordance with these Guidelines. In case there is any deviation the bidder has to take prior approval from the government for such deviations in the draft RfS, draft PPA, or draft PSA.
- The Guidelines are exhaustive and incorporate and provide uniformity in all bidding for the wind projects.
- The Guidelines stipulate that the tariff adopted through bidding should apply specifically at the point of delivery. This implies that all associated expenses and outcomes leading up to the delivery point will be the responsibility of the Wind Power Generator (**WPG**), encompassing potential costs like transmission charges or losses, as well as Demand Side Management (**DSM**) charges. As a result, any expenses beyond this delivery point will be the obligation of the entity procuring the power.

Furthermore, MoP has also covered various aspects of transmission connectivity, the role to be played by the State Nodal Agency, mechanisms for resolving disputes, charges and losses related to Inter-State Transmission System (**ISTS**), and other pertinent considerations. These measures aim to facilitate the seamless generation and distribution of power by the generator and its subsequent acquisition by the procurer.

Guidelines for Tariff-Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Solar Hybrid Project

The Ministry of New and Renewable Energy (**MNRE**) on August 21, 2023, has issued Guidelines for Tariff- Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Solar Hybrid Project (**Guidelines**) targeted at increasing the integration of wind and solar power sources in order to maximize India's renewable energy potential. The Guidelines highlight the advantages of integrating multiple renewable energy sources to minimize unpredictability, increase production, and make better use of transmission infrastructure and land resources.

- **Key Aspects:**

- These Guidelines are issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity through competitive bidding process, by Procurers, from Hybrid Power Projects having:
 - o Bid capacity of 10 MW and above for projects connected to intra-state transmission system; and
 - o Bid capacity of 50 MW and above for projects connected to inter-state transmission system, subject to the condition that the rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.
- Preparation for inviting bids, the structure of the bids and project readiness
 - o The Power Purchase Agreement (**PPA**) period shall generally be for a period of 20 years from the date of the Scheduled Commencement of Supply Date (**SCSD**) or from the rescheduled date of commencement of supply to the extent of extension given by the Procurer on the grounds which are beyond control of the Hybrid Power Generator (**HPG**).
 - o The PPA may, however, also be fixed for a longer period such as 25 years. The duration of the PPA must be mentioned upfront in the (Request for Selection (**RfS**)) document. The developers shall be free to operate their plants after the expiry of the PPA period.
- Bidding process
 - o The bidding process is a two-stage process which consists of e-bidding: a technical bid followed by a financial bid, with the option of an e-reverse auction.
- Indicative Timeline for Bidding Process
 - o A minimum of 22 days must elapse between the issuing of RfS documents and the deadline for bid submission. Evaluation of technical bids will be on the 64th day, valuation of financial bids and conduction of e-Reverse Auction will be on the 99th day, Issuance of Letter of Award (**LoA**) should be on the 110th day and Signing of PPA and the PSA should be on the 140th day from the issuance of the RfS documents.
 - o The HPG shall provide the following bank guarantees/ letters of undertaking to pay to the Procurer in terms of the RfS:
 - The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to 1 year from the SCSD, except with the prior approval of the Procurer. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 year from the SCSD, except with the prior approval of the Procurer. However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control till 1 year from the SCSD, except with the prior approval of the Procurer. In this case it shall also be essential that the successful bidder provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.
 - Delay in commencement of supply of power up to 6 months from SCSD, encashment of Performance Bank Guarantee (**PBG**), or alternate instruments, on per day basis and proportionate to the capacity that has not commenced supply of power.
 - The responsibility of getting Transmission Connectivity to ISTS network under GNA regulation will lie with the Generator and shall be at the cost of Generator.

Any dispute that arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in a change in tariff, shall be adjudicated by the appropriate Commission. All other disputes shall be resolved by arbitration Dispute Resolution Committee set up by the Government, failing which by arbitration under the Indian Arbitration and Conciliation Act, 1996

National Framework for Promoting Energy Storage Systems

The Ministry of Power on September 09, 2023, issued National Framework for Promoting Energy Storage Systems (**Framework**) in India. The objective of the Framework is to ensure round the clock (**RTC**) dispatchable RE power, reduce greenhouse gas emissions and overall energy costs, support ESS development through policy, incentives and performance-based measures, improve grid stability and reliability with Energy Storage Systems (**ESS**). The framework includes the promotion of battery storage systems as well as pumped storage systems.

- Viability Gap Funding (**VGF**) of up to 40% of the project's capital cost could be granted if these projects are commissioned within 18 to 24 months.
- It also asked the governments concerned to allow exemptions in electricity duty, stamp duty, land charges and others in their jurisdiction to expedite their deployment. It also asked the governments to allow concessional Green Finance for ESS adoption.
- The norms states that '*The Central Electricity Authority (CEA) and the Central Transmission Utility (CTU) may include ESS while planning the ISTS system. The State Transmission Utilities (STUs) may also follow this while planning their intra-state transmission system.*'
- In order to ensure adequate storage capacity to supply reliable power, new RE projects 'excluding Hydro Projects' with an installed capacity of over 5 MW or as specified by the Central Government may be mandated to install ESS of at least 1 hour storage for minimum 5% of the RE capacity. Further Hydro Projects should be encouraged to have minimum pondage capacity to manage variability and peak demand.

RECENT JUDGMENTS



In this Section

Jaishree Steels Pvt Ltd & Anr v. West Bengal State Electricity Distribution Co Ltd & Ors

ACME Solar Holdings Pvt Ltd v. Power Grid Corporation of India Ltd & Ors

NTPC Ltd v. Central Electricity Regulatory Commission & Ors

Madhya Pradesh Power Management Company Ltd v. Madhya Pradesh Electricity Regulatory Commission & Ors

Southern Regional Load Despatch Centre, Power System Operation Corporation Ltd (POSOCO) v. Andhra Pradesh State Load Despatch Centre, APTRANSCO & Ors

Jaishree Steels Pvt Ltd & Anr v. West Bengal State Electricity Distribution Co Ltd & Ors

Calcutta High Court | Judgement dated August 16, 2023 | A.P.O. No. 82 of 2023

Background facts

- The Appellant i.e., Jaishree Steels Pvt Ltd filed an Intra-Court Appeal challenging the decision and order dated June 8, 2023, in WPO No. 2271 of 2022 wherein the Court directed the Appellant to pay the Delayed Payment Surcharge (DPS). The Appellant filed the said writ petition challenging the order dated May 12, 2022, passed by the Central Grievance Redressal Officer (CGRO) by which the Respondent's demand i.e., West Bengal State Electricity Distribution Co Ltd (**Distribution Company**) via supplementary bill dated August 13, 2015, was affirmed. The distribution company demanded DPS on the electricity charges due and payable by the Appellant through the demand. On June 14, 2016 the Appellant entered into an agreement with Durgapur Projects Ltd (DPL) for the supply of electricity to its mini steel plant.
- Further, the Appellant by referring to Section 56(2) of the Electricity Act, 2003 contended that in terms of Sub-Section (2) of Section 56 which commences with a non-obstante clause, the sum due from any consumer under the said section shall not be recoverable after the period of 2 years from the date when such sum became first due unless the sum has been shown continuously recoverable as arrears of charges for electricity supplied and the licensee has not cut off the supply of the electricity. It was stated by the Appellant that the period of limitation commenced from the raising of the supplementary bill on August 13, 2015, and ended on August 13, 2017, and moreover, during such period, DPS was neither levied nor charged. For the first time, DPS was levied after the expiry of 4 years from the date of issuance of the supplementary bill dated August 13, 2015. Therefore, it was the case of the Appellant that the demand for DPS is not sustainable, and the Respondents are not entitled to invoke Sub Section (2) of Section 56 by which there is a threat to disconnect the electricity supply.
- The writ petition before the single judge bench of Calcutta High Court being WPO No. 260 of 2021 was dismissed by order dated August 9, 2021, holding that the critical question would arise in calculating and arriving at any conclusion as to whether there has been any payment of any monthly bill between December, 2020 and June, 2021 within the time stipulated. Further, it was held that it must be decided as to whether late payment charges DPS have been included in the claim of the distribution company either for the period from January, 2021 to June, 2021 or for the earlier period during which electricity was being supplied by the erstwhile DPL.

Issue at hand

- Whether the Appellant paid its bills on time between December, 2020 to June, 2021 and furthermore whether the demand for DPS by the Distribution Company is sustainable and if the appellants were liable to pay the DPS?
- Whether Section 56(2) of the Electricity Act, 2003 can be invoked after the expiry of the limitation period i.e., a period of 2 years from the date when such sum became first due?

Decision of the Court

- The Court rejected the Appellant's contention and held that the obligation to pay DPS arises not from the issuance of the first bill, but from the first instance of non-payment of the concerned charges. It was noted that the calculation of DPS is a dynamic formula, levied when payment is made belatedly, and hence, the period of limitation under Section 56 (2) of the Act does not apply in the same way as for fixed liabilities.
- A combined reading of Regulation 4.1.4 with Section 56 clearly indicates the approval of the liability to pay DPS arises not from the date when the bill was first raised for payment of the original principal amount but from the first instance of non-payment of the concerned charges.
- The Court examined the relevant regulations and found that the Appellant had defaulted on payment and was liable to pay DPS.
- The Court dismissed the appeal and upheld the single-judge bench's order. The Court held that the Distribution Company has a right to levy DPS and take necessary action if payment was not made. The time stipulated for payment was extended till September 30, 2023.



HSA Viewpoint

The judgment appears well-reasoned and thorough. The Court's interpretation of DPS reflects an emphasis on the legal stipulations and further promotes timely adherence to the financial obligations. This decision ensures a balanced framework safeguarding both consumers and service providers. The judgment is a testament to the importance of following the procedure, careful interpretation of regulations and the judicious use of precedents in the legal process.

ACME Solar Holdings Pvt Ltd v. Power Grid Corporation of India Ltd & Ors

Central Electricity Regulatory Commission (CERC) | Order dated September 5, 2023 | Petition No. 199/MP/2023

Background facts

- The Petition was filed by ACME Solar Holdings Pvt Ltd (**ACME Solar/Petitioner**) has been filed under Section 79(1)(c) of the Electricity Act, 2003, read with Regulation 41 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 (**GNA Regulations**), to relax certain provisions of GNA Regulations in order to obviate the hardship being caused to the Petitioner on account of operation of the said Regulations. Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) issued a Letter of Award (**LoA**) dated March 19, 2019 for development of 300 MW Solar Power Project in the state of Rajasthan, and the Petitioner incorporated ACME Heergarh Powertech Pvt Ltd (**ACME Heergarh**). as a Project SPV, which entered into a Power Purchase Agreement (**PPA**) dated August 21, 2019 with MSEDCL.
- The Petitioner commissioned the entire 300 MW capacity of its Project on May 22, 2022. The Petitioner has not been able to schedule power under Medium Term Open Access (**MTOA**) or Long-Term Access (**LTA**) as neither MTOA nor LTA has been operationalized by CTUIL as yet and has been compelled to schedule power under STOA only. As the LTA/MTOA is yet to become effective, to convert the LTA/MTOA granted under the 2009 regime to GNA Regulations, the Petitioner is required to submit Conn BG-3 @ INR 2 lakh per MW against LTA quantum as well as against MTOA quantum in accordance with Regulation 37.3(3)(d) and Regulation 37.4 of the GNA Regulations, in total amounting to INR 12 crore (INR 2 lakh per MW x 300 MW each for MTOA and LTA). Petitioner is seeking relaxation of Regulations 37.3(3)(d) and 37.4(1)(d) of the GNA

Regulations to allow transition without submission of Conn BG-3 since Petitioner declared COD before April 5, 2023.

- The Petitioner continues to schedule power under STOA, incurring substantial Deviation Settlement Mechanism (DSM) penalties due to the unavailability of schedule revisions under STOA. Additionally, two instances of non-payment by MSEDCL resulted in the Petitioner's power not being scheduled under STOA.
- The introduction of the GNA Regulations in June 2022 led to the Petitioner facing the necessity of submitting Conn BG-3 bank guarantees. The situation arises from the project's commissioning despite the LTA not being in effect, leaving ACME Solar with no further actions to undertake.
- In light of these developments, the Petitioner approached the Commission to allow the transition smoothly to the new regulations without the mandatory submission of bank guarantees, particularly Conn BG-3.

Issue at hand

- If connectivity and Long-Term Access or Medium-Term Open Access have been granted to an entity in accordance with the Connectivity Regulations, 2009, but Long-term Access or Medium-Term Open Access are yet to become effective as on the date of coming into effect of the GNA regulations, whether such entity is required to furnish Conn-BG1, Conn-BG2, and Conn-BG3, as applicable, corresponding to such LTA or MTOA or not?
- Whether the Commission can exercise its power under Regulation 41 of the GNA Regulations to relax the provisions of Regulation 37.3(3)(d) and 37.4(1)(d) and thereby transition the Petitioner to the GNA Regulations without insisting upon the submission of Bank Guarantees, particularly Conn BG-3?

Decision of the Commission

- The Tribunal observed that the Petitioner has obtained both LTA and MTOA for the same capacity. The Conn-BG to be submitted for transitioning MTOA to GNA and LTA to GNA is the same in the Petitioner's case. However, the timeline to return the Conn-BG for MTOA is after the term of MTOA expires and the timeline of return of Conn-BG towards LTA is as per Regulation 16 of the GNA Regulations.
- As per Regulation 16 of the GNA Regulations, Conn-BG3 submitted under Regulation 37.3 of the GNA Regulations shall be returned in 5 equal parts over 5 years, corresponding to the generation capacity that has been declared under commercial operation by the Connectivity grantee.
- In view thereof, the Commission it is evident from Regulation 37.3(3)(d) that the requirement to furnish Conn- BGs is linked to transition of LTA to GNA with no linkage to COD of the project. Further, Regulation 16.3 clarifies the purpose of keeping the Conn-BGs alive for the period specified in Regulation 16 i.e., in case of non-payment of transmission charges under Regulation 13 of the Sharing Regulations for more than 3 months from the due date, the transmission charges shall be recovered through encashment of BGs. Thus, the Petitioner is not only seeking relaxation of Regulation 37 but also of the provisions of Regulation 16 of the GNA Regulations.
- The Petitioner has already commissioned its complete generation capacity of 300 MW as on May 23, 2022 'as per the Commission Certificate' and has prayed that it be allowed to transition its MTOA and LTA to GNA without the requirement of submission of Conn-BG3 since it has commissioned its project and it is the transmission system that has delayed the non-operationalization of LTA and MTOA. The requirement of submission of Conn-BGs as per Regulations 37.3 and 37.4 of the GNA Regulations is linked to the effectiveness of LTA or MTOA and not COD of the generation project. In view thereof, the Commission was not inclined to consider the Petitioner's request for non-submission of Conn-BGs. As per the GNA regulations, Conn-BG2 and Conn-BG3 are to be returned in five equal parts over 5 years after COD, and subsisting Conn- BG2 or Conn-BG3 is encashed in case a generating station relinquishes its Connectivity at any point after COD. Hence, the Petitioner is also required to submit Conn-BG as per the provisions of the GNA Regulations.
- The Commission allowed the Petitioner to transition MTOA granted under the Connectivity Regulations, 2009, as GNA on furnishing the Conn- BG3 @ INR 2 lakh/MW (total amounting to INR 6 crore against 300 MW quantum). The Commission also allowed the Petitioner to transition its LTA to GNA with no additional Conn-BG 3.
- The Conn-BG3 submitted to transition MTOA to GNA shall be considered the Conn-BG3 towards transitioning LTA to GNA since it is for the same generation capacity. Hence, Conn-BG3 shall not be returned after expiry or closure of MTOA, and the treatment of such Conn-BG3 shall be in terms of Regulation 16 of the GNA Regulations since the same Conn-BG3 shall be considered Conn-BG3 towards transitioning LTA.

- Since the Petitioner has already achieved COD in 2022, and as per Regulation 16, Conn-BG3 is to be returned in 5 equal parts in 5 years after COD, out of which 1 year has already elapsed, the Commission directed that the Petitioner shall be required to deposit Conn-BG3 taking into account the period after COD that has already elapsed, which in the instant case is 1 year. For example, if 1 year after COD has elapsed, an entity shall furnish Conn-BG3 equivalent to 4/5th of the required amount, considering that 1/5th of such an amount of Conn-BG would have been returned after 1 year of COD, and so on.



HSA Viewpoint

The commission's view is pivotal in addressing the operational hardships faced by ASHPL and ensuring a seamless transition to the latest regulatory framework. The decision of the Commission in this matter is anticipated to have significant implications for the renewable energy sector and its regulatory landscape.

NTPC Ltd v. Central Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity (APTEL) | Judgement dated August 28, 2023 | Appeal No. 304 of 2016

Background facts

- The present has been filed by NTPC Ltd (**Appellant/NTPC**) for challenging the Order passed by the Central Electricity Regulatory Commission (**CERC/Respondent No. 1**) in the Petition No. 291/GT/2014 on August 23, 2016 which was concerned with the Rihand Super Thermal Power Station (Rihand STPS), Stage-1 for the period of 2014-2019, of the Appellant.
- The narrow issue arising in the present appeal is whether 'Additional Capital Expenditure' incurred by the Appellant in compliance of 'Change in Law' that occurred in the recent past & works related to raising of Ash Dyke all in relation to Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (**2014 Tariff Regulations**) can be compensated by the Special Allowance granted to the Appellant under Regulation 16 of the 2014 Regulations.
- Rihand STPS, Stage-I, one of the Appellant's generating stations, has a total capacity of 1000 MW and is composed of up of two 500 MW units. Unit I's COD was January 1, 1990, whilst Unit II's was January 1, 1991. The CERC on the above premise has disallowed the following expenditures, which according to the Appellant, fall within various sub-regulations of Regulation 14: -
 - Fire Detection & Protection System St-1 (CHP Area) - **Regulation 14(3)(iii)**
 - Modification of Electrostatic Precipitator, Stage-1 - **Regulation 14(3)(ii)**
 - Works related to Ash Slurry Pump House - **Regulation 14(3)(iv)**
 - 1st and 2nd Raising of Mithai Ash Dyke Lagoon-1 - **Regulation 14(3)(iv)**
 - 2nd Raising of Central Ash Dyke Lagoon-2 - **Regulation 14(3)(iv)**
 - 1st Raising of Mithai Ash Dyke Lagoon-2 - **Regulation 14(3)(iv)**
 - 3rd Raising of Central Ash Dyke Lagoon-2 - **Regulation 14(3)(iv)**
- The CERC denied NTPC's additional capital expenditure and held that the Appellant had already been reimbursed by the special allowance stipulated under Regulation 16 of the CERC 2014 Tariff Regulations.
- According to the Ld. CERC 'as held in the Impugned Order', such expenditure can be compensated by the special allowance granted to the Appellant under Regulation 16 of the 2014 Tariff Regulations. Whereas it is the case of the Appellant that special allowance is limited to expenditure incurred to increase the useful life of the plant beyond 25 years and cannot compensate the Appellant for additional capital expenditure incurred in compliance of 'Change in Law' or Ash related works as they squarely fall within the scope and ambit of Regulation 14 which is separate and distinct in its application. It is also the case of the Appellant that the special allowance granted to the Appellant under Regulation 16 even otherwise is not adequate to compensate the Appellant on the expenditure incurred in compliance of Ash related works and Change in Law.

Issues at hand

- Whether CERC made an error in denying the Appellant additional capitalization for the following: (i) Ash Slurry Pump House; (ii) 1st raising of Mithini Ash Dyke Lagoon-I; (iii) 2nd raising of Central Ash Dyke Lagoon-I; (iv) 2nd raising of Central Ash Dyke Lagoon-2; (v) 1st raising of Mithini Ash Dyke Lagoon-2; (vi) 3rd raising of Central Ash Dyke Lagoon-2; (vii) Modification of Electro Static Precipitator, Stage-I; and (viii) Fire Detection & Protection System, Stage-I. ?

- Whether the Impugned Order passed by the CERC in Petition No. 291/GT/2014 on August 23, 2016 is valid with relation to Rihand STPS Stage-1?
- Whether CERC erred in considering the fact that the projected additional capital expenditure requested was based on recent 'Change in Law' events, as foreseen by Regulation 14 of the 2014 Regulations, including works connected to the lifting of Ash Dyke?
- Whether the Impugned Order is in compliance with the Tariff Policy and other notifications issued by the Government of India regarding the promotion of generation from power plants which have attained the age of 25 years?

Decision of the Tribunal

- The APTEL in the present Appeal has held that it is not convinced with the decision of CERC in denying the advantage of further capitalization under Regulation 14(3) to the Appellant solely for the reason that the Appellant had chosen for, and were granted, Special Allowance under Regulation 16(1).
- The APTEL also held that even after claiming and receiving Special Allowance under Regulation 16(1), the Appellant would still be entitled to claim additional capitalization under Regulation 14(3), subject to one condition that they did not claim the benefit of both Regulations 14(3) and 16(1) for the same items of capital expenditure.
- Furthermore, the APTEL reversed the orders under the said Appeal and directed that CERC shall re-examine the entitlement of the Appellant towards additional capitalization under Clauses (ii), (iii), and (iv) of Regulation 14(3) of the 2014 Regulations, after determining whether the useful life of the Appellant's generating stations should be extended and, if so, for what period.
- This Tribunal remanded the case back to CERC for further review and dismissed the appeal.



HSA Viewpoint

The APTEL critically analyzed the issues at hand and rightfully gave a decision that does not prejudice the interest of the Appellant. Further, the CERC should have been more careful while determining the concern of additional capitalization as per the 2014 Regulations. The Tribunal has issued a well-reasoned decision that while the Appellant continues to remain in possession of the land and the assets installed thereat, the Appellant shall cease and desist from operating or marketing CNG from the subject CNG station as the same was built on the GA allotted to Respondent No. 1.

Madhya Pradesh Power Management Company Ltd v. Madhya Pradesh Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity (APTEL) | Judgment dated September 15, 2023 | Appeal No. 357 of 2023

Background facts

- The present Appeal has been filed by Madhya Pradesh Power Management Company Ltd (**MPPMC/Appellant**) seeking stay on the Orders passed by the Madhya Pradesh Electricity Regulatory Commission (**MPERC/Respondent Commission**), dated December 07, 2021 and July 14, 2022 (**Impugned Orders**), in the Petition No. 64 of 2015 and in the Review Petition No. 25 of 2022 respectively. whereby MERC directed the Appellant to make the requisite payment with respect to late payment surcharge @ 1.25% per month in accordance with the PPA.
- The Impugned Orders were passed consequent to the Remand Order dated August 24, 2021 passed by this Tribunal in Appeal 232 of 2016, the State Commission while disposing of the Petition No. 64 of 2015, directed that the Appellant is liable to pay LPS @ 1.25% per month as per the terms of the Power Purchase Agreement. The Remand Order passed by this Tribunal has been previously challenged by the Appellant and is still under adjudication.
- MPPMCL entered into a PPA with JPVL (**Respondent No. 2**) on January 05, 2011, as per which, the Appellant will be supplied 30% of the installed capacity of the Power Project at a tariff determined by the State Commission. Consequently, the Government of Madhya Pradesh (**GoMP**) entered into a PPA with JPVL on September 06, 2011 for supply of 7.5% of the net power to GoMP or its nominated agency (i.e., MPPMCL) at variable charges.
- The dispute between the parties arose when Respondent No. 2 scheduled contracted capacity was from one of the units to avoid operations under the minimum technical level while backing down the other unit, which would have otherwise been operational after commissioning of the second unit. The same was dissented by MPLSDC on the ground that as per the PPA, the supply of 30% of installed capacity from each of the units.

- The Appellant failed to accept the fact; Respondent No. 2 had achieved Plant Availability Factor for the Month (**PAFM**). The Appellant countered that PAFM has to be worked out on the basis of the operating unit and not for the backed down unit.
- JPVL claimed that it declared its availability in accordance with the Indian Electricity Grid Code, 2010 (**IEGC**) at all relevant times for both of its units, but that the same were not certified by the WRDLC in accordance with the requirements of law and the PPA. In absence of such clarification of availability, the Appellant did not accept JPVL's claim for capacity charges for the unit under Reserve Shut Down (**RSD**). JPVL was aggrieved by the same filed Petition 64 of 2015 before the State Commission in relation to operational concerns between 'Declared Capacity' and 'Contracted Capacity' of its 2x660 MW coal-based Super Critical Thermal Power Project w.r.t. the PPA dated January 05, 2011.
- The commission disposed of the above-mentioned Petition filed by the Respondent No. 2 vide its order on July 08, 2016 and directed the Appellant and Respondent No. 2 to address the dispute raised in the petition before the competent authority in accordance with the terms of appropriate Laws and guarantee billing and payment as per the PPA and relevant Regulations issued by the Commission.
- JPVL challenged the above stated order of the commission before APTEL, and this tribunal allowed the said appeal and remanded the subject matter to the State Commission. The State Commission, after complying with the remand order of the APTEL again disposed of the petition in its order dated December 12, 2021. Further, the Appellant filed a Review Petition and the same was held as not maintainable by the State Commission as per the MPERC (Conduct of Business) (Revision-I) Regulations, 2016 as well as the Code of Civil Procedure.
- The Appellant submits that the Impugned Orders are in violation of the MPERC Tariff Regulations, 2015 with reference to the provisions that bind the generating station in issues related to tariff determination, including the Late Payment Surcharge (**LPS**) that may be payable, and thus it has a prima facie case in its favor; additionally, the State Commission has failed to consider that the Appellant was not provided with complete information.

Issues at hand

- Whether the Impugned Orders passed by the State Commission are in compliance with the Remand Order passed by this Tribunal? And whether the same impugned orders are maintainable or not?
- Whether interim relief shall be granted to the Appellant?

Decision of the Tribunal

- The APTEL has held that the Impugned Orders are in compliance with the Remand Order and in accordance with the observations and directions issued by the said Remand Order.
- The Tribunal further observed that the Applicant does not have any substantive ground to support the prayer. The only relevant ground for seeking a stay is that the Impugned Orders are in violation of the MPERC Tariff Regulations, 2015 with reference to the provisions that bind the generating station in issues related to determination of tariff including the LPS that may be payable. However, the Applicant has failed to bring out any details which support the claim of the Applicant. This has led to the failure in satisfying the test for grant of stay. 'Prima Facie case does not exist'.
- The Tribunal also refused to accept the fact the Appellant will suffer irreparable loss if the stay is not granted because the additional amount to be paid on account of LPS is an additional burden on the Appellant. Because there exists a long-term contract between the Appellant and Respondent, in case of success, the Appellant can set off the same against future bills.
- The Appellant argued that the balance of convenience is in their favor because they have already paid the principal amount, and only the interest amount is disputed. They pledged to pay the determined amount if they lose the appeal, emphasizing their responsible status as a regulated entity with a long history of operations in Madhya Pradesh. They also note that Respondent No. 2, engaged in generation business nationwide for several years as a public limited company, will similarly fulfil its obligations. However, upon examination, the Appellant failed to provide factual evidence or submissions supporting the three required tests for an interim injunction.
- This Tribunal therefore held that there is no apparent reason to grant an interim injunction in this case. The IBC provides a unified legal framework for commercial insolvency. It outlines the process for initiating insolvency resolution, which can be triggered by the Corporate Debtor itself or by Financial or Operational Creditors.



HSA Viewpoint

The Tribunal has rightfully decided against granting the interim injunction to the Appellant because the Appellant was unable to satisfy the basic tests for grant of Interim Relief. Furthermore, the evidence produced by the Appellant was not sufficient to prove that if the interim relief is not granted the same will lead to irreparable loss to the Appellant.

Southern Regional Load Despatch Centre, Power System Operation Corporation Ltd (POSOCO) v. Andhra Pradesh State Load Despatch Centre, APTRANSCO & Ors

Centre Electricity Regulatory Commission (CERC) | Order dated September 11, 2023 | Petition No. 132/MP/2022

Background facts

- The present petition has been filed by Southern Regional Load Despatch Centre (**SRLDC/Petitioner**) under Sections 28(1), 28(3) and 29 of the Electricity Act, 2003 read with Regulations 1.5(i), 2.3, 5.2(m) and 5.4.2 of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 in the matter of dealing with over drawl from the grid by regional entities leading to insecure operation of the grid and other associated matters.
- The Petitioner primarily claims that due to over-drawl by certain of the state control regions, the frequency fell below the lower limit (49.90 Hz) during the period between February 1, 2022 and April 20, 2022. During the specified time, the frequency remained below 49.90 Hz and below 49.7 Hz on 103342 occasions for a total length of 290 hours and on 9613 occasions for a total duration of 27 hours, respectively. The grid frequency fell to extremely low levels, during a certain period, ranging from 49.4 to 49.7 Hz.
- There were several factors contributing to a sharp rise in electricity demand. Subsequently due to the supply side constraints the load generation balance was stressed. During the stressed period there existed massive over-drawl from the grid by several states which further aggravated the situation leading to a prolonged period of low frequency operation.
- The impact of Automatic Demand Management Scheme (**ADMS**) was rendered ineffective. During the said period, the ADMS was effective up to 59% with an average relief of 43 MW.
- SRLDC was left with no other option to take emergency physical regulatory measures during the said period to restore grid frequency within safe operating limits.
- The petitioner directed Andhra Pradesh State Load Despatch Centre (**APTRANSCO/Respondent 1**), Karnataka State Load Despatch Centre (**KPTCL/Respondent 2**) and Tamil Nadu State Load Despatch Centre (**TRANTRANSCO/Respondent 3**) to maintain actual drawl from the grid as per the drawl schedule and to implement an action plan for making the revised ADMS effective and operational. Further the Petitioner also directed the respondents to ensure augmentation of intra state transmission system.
- TANTRANSCO took several steps to reduce overdraw in the real time grid operation and to comply with the Grid Code. The revised ADMS has been in force in Tamil Nadu from April 17, 2022, and the same has been implemented by TNSLDC. Further TNSLDC has been utilizing the Kadamparai Hydro Pumped storage station for providing peaking reserve and for ramping reserve for managing imbalances.
- KPTCL that Karnataka is a RE rich state and 50% of the demand is met by the RE sources. The main challenge before the system operators is to them is the expected variances for RE to satisfy demand. During the irrigation time, hydel generation is uncontrolled, exacerbating the existing condition of excessive under-drawl and not assisting in managing the changes of variable renewable generation and demand. The state has made efforts to manage the deviation, including monitoring the health and proper operation of the ADMS, AUFR, and df/dt relays for fast load relief under critical grid situations.
- APSLDC has also been taking several steps to ensure grid security and to prevent the low grid frequency alongside over/under drawl. Further, it has also continued maintenance of TTC/ATC and ensured the implementation of ADMS schemes as per the relevant provisions of the Grid Code (Clause 5.4.2(d))

Issues at hand

- Whether over/under drawing from the grid by regional entities in compliance with Regulation 5.4.2 of the Grid Code and DSM Regulations permissible? If yes, then up to what extent.
- Whether the Respondents 1 to 3 are subject to any penalty for the non-compliances of SRLDC directions mentioned in Paragraph 20.1?

- Whether the Respondents 1 to 3 are bound to declare and monitor intra-state ATC/TTC in real-time & take corrective action as per the CERC (Measures to relieve congestion in real-time operation) Regulations 2009 & the CERC approved Detailed Procedure under the said Regulations?
- Whether it is mandatory for the Respondents 1 to 3 to ensure generation adequacy and adequate reserves for the state at all times to satisfy the demand during the adverse situations?
- How should the comprehensive action plan be implemented by the Respondents 1 to 3?

Decision of the Commission

- The CERC held RLDC responsible for optimum scheduling and dispatch of electricity, supervision, and control over the inter-State transmission system, monitoring of grid operation and carrying out real time operations in accordance with Grid Standards and the Grid Code. Further, CERC observed that if any licensee, generating company or any other persona who fails to comply with the directions issued by RLDC under Sub-Section (2) or Sub-Section (3) of Section 29 of the Electricity Act, 2003 shall be liable to penalty which shall not exceed INR 15 lakh.
- CERC after referring the IEGC, 2010 observed that RLDC is to be held responsible for optimum scheduling and dispatch of electricity, supervision and control over the interstate transmission system, monitoring grid operation, and carrying out real-time operations in accordance with Grid Standards and the Grid Code, and every licensee, generating company, generating station, substation, and any other person connected to the power system is required to comply with the directions issued by the RLDC. All users, including SEBs, SLDCs, RLDCs, and NLDCs, are required to adopt the IEGC-mandated procedures and operate in such a way that the grid frequency always remains within the 49.9-50.05 Hz band.
- The responsible SLDC and other regional organization must ensure rapid compliance with the orders given by the RLDC in order to reduce departure from schedule in the event of contingencies and threats to system security and must provide a compliance report to the concerned RLDC.
- CERC held that when the grid frequency is between 49.85 Hz and 50.05 Hz, renewable-rich states can vary up to 250 MW. Over-drawl and under-drawl of power by any buyer are not permitted when the grid frequency is less than 49.85 Hz or greater than 50.05 Hz, respectively.
- The CERC expressed concern that this continuous over-drawl had the potential to harm the security and reliability of the grid. They emphasized that such actions were undesirable and could jeopardize the safe operation of the grid.
- CERC also observed that the over-drawl by the states puts the grid under stress and to avoid such a catastrophe, states must have reserves on hand on a daily basis so that overdrafts are kept to a minimum. States should plan for appropriate resources to fulfil demand in such severe scenarios and follow RLDC recommendations since the Grid cannot be left in a vulnerable state.
- After taking into account the action plan which was submitted by the Petitioner after deliberating on the same with the Respondent, the CERC issued directions for the implementation of the same. The CERC directed SLDCs to directly submit the quarterly reports to SRLDC on the status of implementation of the action plan. Before amending the action plan due to any issues arising while implementing the same shall be discussed and finalized at the RPC forum.
- The format provided under the Operating Procedure for Southern Region 2021 does not provide for any format for grid frequency which is necessary to understand the gravity of situation. The CERC advised that the existing Grid Frequency shall also be mentioned in the messages to ensure that that severity of the message is clear to the overdrawing entity.



HSA Viewpoint

The Commission has significantly issued directions for the implementation of the action plan which can serve as a precedent in future cases. Further, the Commission has also deliberated upon the fact that the communications sent by the SRLDC should be explicit enough to give a clear understanding of the emergency stage, breach of the clause and the RLDC's directions. The Commission rightly stated that the act of continuous overdraw from the grid for all the respective states is undesirable as it affects the safe and secure operation of the grid.

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ENVIRONMENT, HEALTH & SAFETY



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