



PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



In this Section

MNRE has approved the "Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme - Component II: Incentive Scheme for Green Hydrogen Production (under Mode 1) - Tranche-II" of the National Green Hydrogen Mission

MNRE has issued an amendment to the 'Guidelines for Development of Onshore Wind Power Projects'

Delhi Electricity Regulatory Commission (Peer to Peer Energy Transaction) Guidelines, 2024

Maharashtra Electricity Regulatory Commission (Framework for Resource Adequacy) Regulations, 2024

Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) (First Amendment) Regulations, 2024

Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) (First Amendment) Regulations, 2024

MNRE has approved the "Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme - Component II: Incentive Scheme for Green Hydrogen Production (under Mode 1) - Tranche-II" of the National Green Hydrogen Mission

- Ministry of New & Renewable Energy (MNRE) on July 3, 2024, issued the Scheme Guidelines for the implementation of "Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme - Component II: Incentive Scheme for Green Hydrogen Production (under Mode 1) - Tranche-II" of the National Green Hydrogen Mission. The scheme will run from FY 2025-26 to FY 2029-30 with a total budget allocation of INR 13,050 crores across all modes under this component.
- The scheme, allocated **INR 13,050** crores for **FY 2025-26 to FY 2029-30**, aims to enhance the production and cost-competitiveness of Green Hydrogen and its derivatives, while promoting their widespread adoption.
- Implementation will be overseen by Solar Energy Corporation of India (SECI), following detailed guidelines outlined in the Scheme Guidelines document attached to the notification.

MNRE has issued an amendment to the 'Guidelines for Development of Onshore Wind Power Projects'

- Ministry of New & Renewable Energy (MNRE) on July 4, 2024, issued an office memorandum and amended the '**Guidelines for Development of Onshore Wind Power Projects**' to enhance micro-siting practices. Effective from July 4, 2024, developers must optimize turbine locations using advanced wind flow modelling and tools to maximize energy production.
- Distance Requirements:** Developers are now mandated to maintain specific distances between turbines (5D perpendicular and 7D in wind direction) and from public infrastructure (HH+0.5*RD+ 5m from roads, railways, buildings, etc.) to ensure safety and noise mitigation.
- Facilitating Repowering:** The revised guidelines support repowering and intercropping initiatives, promoting efficient land use and optimized utilization of wind resources.

Delhi Electricity Regulatory Commission (Peer to Peer Energy Transaction) Guidelines, 2024

- The Delhi Electricity Regulatory Commission (**DERC**) on June 24, 2024, notified the Delhi Electricity Regulatory Commission (Peer to Peer Energy Transaction) Guidelines, 2024.
- The guidelines defined **Prosumer** as a consumer of the Distribution Licensee who consumes Electricity from the Grid and can also inject Renewable Energy into the Grid using the same network.
- The purpose of said guidelines is to promote the use of Renewable Energy, the promotion of embedded generation within the distribution network, the generation of additional avenues of income for prosumer through innovation.
- These Guidelines shall apply to the prosumers, except ground mounted projects, and the consumers who opt to transact energy among themselves through an online Platform of Service Provider(s) or a Distribution Licensee within its area of supply.
- Under the guidelines, the **P2P** Participant shall clear all the dues for the energy transacted on the P2P platform as per the due date. If the dues are not paid, the P2P participants shall be deactivated from the P2P platform.

Maharashtra Electricity Regulatory Commission (Framework for Resource Adequacy) Regulations, 2024

- The Maharashtra Electricity Regulatory Commission (**MERC**) on June 21, 2024, issued the Maharashtra Electricity Regulatory Commission (Framework for Resource Adequacy) Regulations, 2024.
- The purpose of the said Regulation is to enable the implementation of the Resource Adequacy Framework (**RAF**) by designing a system for planning generation and transmission resources to reliably meet forecasted demand by complying with specified reliability standards to supply electricity loads with an optimum generation mix. Provided that the planning of transmission resources shall be consistent with **MERC (State Grid Code)**, Regulations, 2020, and amendments thereto.
- Under the said Regulation, the **Planning Reserve Margin (PRM)** as a percentage of peak load indicates excess generation resources or planning reserves required to be considered for the purpose of generation resource planning.

Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) (First Amendment) Regulations, 2024

- The Maharashtra Electricity Regulatory Commission (**MERC**) on July 5, 2024, issued the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) (First Amendment) Regulations, 2024.
- The said amendment has introduced two new indices namely “Customer Average Interruption Frequency Index (**CAIFI**)” and “Momentary Average Interruption Frequency Index (**MAIFI**)” along with their specified calculations.
- The said amendment has also notified time period for testing of meters done by Distribution Licensee on receipt of complaint i.e. thirty days.

Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) (First Amendment) Regulations, 2024

- The Maharashtra Electricity Regulatory Commission (**MERC**) on July 3, 2024, issued the Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) (First Amendment) Regulations, 2024.
- The said amendment has defined new terms namely Area Clearing Price (**ACP**) and Contract Rate.
- The Amendment has substituted technical arrangements in relation to forecasting and scheduling code, by specifying the purpose of appointment of Qualified Coordinating Agency (**QCA**).
- The said Amendment has also altered the Principal Regulations in terms of commercial arrangements by specifying Deviation Charge for under or over injection, for sale or self-consumption of Solar generation or Wind-Solar Hybrid Generation within Maharashtra.

RECENT JUDGMENTS



In this Section

BSES Yamuna Power Ltd.

RattanIndia Power Ltd v. Maharashtra State Electricity Distribution Co. Ltd.

Timarpur Okhla Waste Management Company Ltd. v. BSES Yamuna Power Ltd. and Ors.

Adani Power Maharashtra Limited v. Maharashtra Electricity Regulatory Commission & Ors

Orange Bercha Wind Power Pvt. Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Ors.

BSES Yamuna Power Ltd.

Delhi Electricity Regulatory Commission | Order dated June 20, 2024 | Petition No. 09/2024 and Petition No. 35/2024

Background facts

- BSES Yamuna Power Ltd. (**BYPL**) filed two petitions for differential Power Purchase Cost Adjustment Changes (**PPAC**) for the quarters October-December 2023 and January - March 2024, respectively.
- The petitions were filed under Section 62(4) of the Electricity Act, 2003, and Regulation 134 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017.
- For October - December 2023, BYPL requested an additional PPAC of 10.09% (DERC methodology) or 11.30% (Ministry of Power's methodology). For January – March 2024, requested for 34.09% (DERC methodology) or 35.4% (MoP methodology).
- BYPL experienced significant financial pressure due to arrears from Central Electricity Regulatory Commission (**CERC**) orders.
- These arrears required BYPL to pay approximately INR 69 crores to generating plants and transmission utilities, contributing to the need for higher PPAC to recover these costs.
- DERC performed a detailed prudence check on the PPAC computations provided by BYPL.
- After the review, DERC adjusted the PPAC figures to ensure they were justified and issued orders to implement these adjusted PPAC rates for the specified quarters.

Issue at Hand

- Levy of Power Purchase Adjustment Cost (PPAC) to cover the cost of power procurement.

Decision of the Tribunal

- DERC allowed BYPL to levy a PPAC of 8.75% for the period October 2023 to December 2023 on bills of consumers from 1st February, 2024 for next three months.
- Furthermore, BYPL was permitted to levy an additional PPAC of 10.09% or 11.30% as per the Ministry of Power's (**MoP**) methodology for same period.
- Lastly, for the period January 2024 to March 2024, BYPL was allowed to levy PPAC of 6.15% and an additional PPAC of 34.09% or 35.45% as per the MoP's methodology.



HSA
Viewpoint

- In our opinion, the said order passed by the DERC reflects a fair and balanced approach for addressing the PPAC. By allowing BYPL to levy the PPAC over two quarters instead of one, DERC has ensured that the company can recover its costs without placing an undue burden on consumers at once.
- This approach also acknowledges the reality of fluctuating power procurement costs and provides a more manageable way for consumers to absorb these costs. Overall, the decision demonstrates the role of the Regulatory Commission in balancing the financial health of the power distribution companies with the interests of the consumers, ensuring that the necessary costs are covered while trying to mitigate the impact on consumer bills.

RattanIndia Power Ltd v. Maharashtra State Electricity Distribution Co. Ltd.

Maharashtra Electricity Regulatory Commission (MERC) | Order dated June 18, 2024 | Case No. 86 of 2023

Background facts

- The Petition has been filed by RattanIndia Power Limited (**RIPL**), seeking relief from Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) on account of Change in Law due to South Eastern Coalfields Ltd (**SECL**) notification for Supply of coal in excess of 5% of Annual Contracted Quantity (**ACQ**) through Rail cum Road mode and Levy of Forest Cess at Rs. 57/ tonnes with effect from January 1, 2023 by SECL in terms of the Power Purchase Agreement (PPA) dated August 21, 2019.
- RIPL also sought directions to receive compensation claiming these events as Change in Law.

Issues at hand

- Whether SECL notice dated January 31, 2022 mandating supply of coal in excess of 5% of ACQ through RCR mode is Change in Law event?
- Whether SECL notice dated January 3, 2023 levying Forest Cess of Rs. 57/ tonnes is Change in Law Event?
- Is Carrying Cost applicable on account of Compensation for Change in Law Event?

Decision of the Tribunal

- The **MERC** observed that SECL notice dated January 31, 2022 does not change the existing arrangement of coal supply and hence cannot be considered as cause for increased expenses and consequently rejected RIPL's request to consider SECL notice as Change in Law event.
- The Commission also ruled that SECL's notice dated January, 3, 2023 complies with criteria stipulated in the PPA for considering any event as Change in Law. It was thus the responsibility of RIPL to demonstrate with documents whether Forest Fees/cess was being recovered prior to SECL notice dated January 3, 2023 and claim compensation under Change in Law limited to differential amount.
- The **MERC** ruled that RIPL shall be eligible to claim carrying cost on increased expenses on account of Forest Fees/cess at a rate stipulated in the PPA on compounding basis, by deducting a period of 3 months (Delay in Filing the Petition).
- The Supreme Court's judgment dated April 20, 2023 (Civil Appeal 4089 of 2022 titled MSEDCL v. RattanIndia) had decided the issue of granting carrying cost in respect of PPAs under the present case. Supreme Court in that judgment has upheld APTEL's judgment granting carrying cost at rate of LPS stipulated in the PPA on compounding basis and the same was followed in the present case.



HSA
Viewpoint

MERC's findings have set an important precedent for matters covering aspect of carrying cost on compensation. These findings are in line with the settled position of law that compensation for the Change in Law has to be such that party is restored to the same economic position had such a Change in Law event not occurred.

Timarpur Okhla Waste Management Company Ltd. v. BSES Yamuna Power Ltd. and Ors.

Delhi Electricity Regulatory Commission (DERC) | Order dated July 09, 2024 | Petition No. 15/2023

Background facts

- The present petition has been filed by Timarpur Okhla Waste Management Company Ltd. herein referred to as (TOWMCL) to sought approval for a project-specific tariff of the enhanced capacity of 17 MW in already existing establishment of 23 MW Waste to Energy (hereinafter referred to as WtE) power plant (bringing the total capacity of the power plant to 40 MW).
- TOWMCL further requested the DERC the *in-principle* approval capital cost of INR 399 Crore for establishing the project and to determine the financial parameters in accordance with the RE Tariff Regulations and also asked the commission to allocate the generated power among the distribution licensees in Delhi and direct licensees to enter into PPAs with TOWMCL.
- The Petitioner highlighted that the National Tariff Policy 2016 mandates distribution licensees to procure 100% of the power produced from WtE plants at tariffs determined by the appropriate commission.
- TOWMCL further engaged in generating electricity from Refuse Derived Fuel (RDF), and plans to set up a 1000 Ton Per Day Municipal Solid Waste (MSW) processing plant at Okhla, New Delhi.
- The company emphasized the significance of this project in line with the Supreme Court's directive to the Ministry of New and Renewable Energy to develop pilot projects towards energy security from MSW.

Issues at hand

- Whether the capital cost of INR 399 Crore for the 17 MW waste-to-energy project reasonable?
- Whether there should be specific tariff for the electricity generated from the additional 17 MW Waste to Energy power plant?
- Whether the power generated from this project be allocated among the distribution licensees in Delhi, and should these licensees be directed to enter into PPA with the petitioner?

Decision of the Tribunal

- The Commission approved the project-specific tariff for the additional 17 MW Waste-to-Energy (WtE) enhanced capacity of the project. The approval was based on the National Tariff Policy, 2016, which mandates that Distribution Licensees procure power from WtE plants at the tariff determined under Section 62 of the Electricity Act, 2003. This decision was made in light of the lack of alternative land for new WtE projects in Delhi, as confirmed by the Municipal Corporation of Delhi (MCD).
- The Commission granted *in-principle* approval for the capital cost of INR 361.69 crores for establishing the 17 MW WtE project. This decision took into account the additional expenditures necessary for the project's expansion and the escalated prices of raw materials and equipment.
- The financial parameters submitted by the petitioner, aligned with the Renewable Energy (RE) Tariff Regulations notified by the Central Electricity Regulatory Commission (CERC) and adopted by the DERC. This ensures that the tariff determination is in line with regulatory frameworks governing renewable energy sources.
- The power generated from the enhanced 17 MW of the WtE project ought to be allocated among the Distribution Licensees in the National Capital Territory of Delhi. The Commission directed these Distribution Licensees to enter into Power Purchase Agreements (PPAs) with the petitioner, ensuring a consistent and regulated supply of power generated from the project.



HSA Viewpoint

The DERC has adopted a one-of-a-kind approach as they have approved the determination of tariff for the enhanced capacity under Section 62 route in an establishment wherein the existing capacity was already determined under Section 63 route. This Order provides an alternative to Waste to Energy projects to establish and enhance the WtE projects under both Section 62 and Section 63 route within the same establishment. The underlying objective of this Order is to facilitate renewable energy projects, balancing environmental objectives with energy security goals in urban settings like Delhi.

Adani Power Maharashtra Limited v. Maharashtra Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity (APTEL) | Order dated July 09, 2024 | Appeal Nos. 261 of 2021 & 265 of 2022 & IA No. 86 of 2024

Background facts

- Adani Power Maharashtra Limited (**APML/Appellant**) has established a thermal power station with a capacity of 3300 MW in District Tiroda, Maharashtra. APML entered into four power purchase agreements with the Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL/Respondent No.2**). Meanwhile, APML has set up a 4620 MW thermal power station in Mundra, Gujarat, and has signed power purchase agreements with utilities in Haryana.
- On June 19, 2013, Coal India Limited's 298th Board meeting approved the Interplant Transfer of Coal (IPT) between power plants owned by the same company or its wholly owned subsidiaries. The IPT scheme required that the coal supply for all commercial purposes under the Fuel Supply Agreement (FSA) remain unchanged and be accounted for at the original plant. As a result, coal used at the Tiroda Power Plant was recorded in the Mundra Power Plant's books, and imported coal used at the Mundra Power Plant was recorded in the Tiroda Power Plant's books.
- On January 04, 2019, APML informed MSEDCL that the impact of the New Coal Distribution Policy (**NCDP**) 2013 needed to be recalculated. APML also sent an email on the same date, revising its claim to INR 3094 crores. This claim was based on calculating the price of IPT coal at the same level as imported coal for all previous years. MSEDCL disagreed with APML's revised claim, which included the in-land transportation cost in the landed cost of imported coal accounted for at the Tiroda Power Station.
- MSEDCL submitted that APML's claim for in-land transportation costs is deemed fictional since there was no actual transportation of imported coal from the port to the Tiroda Power Plant. Therefore, no payment for transportation charges, even on a normative basis, is justified.
- APML argued that the company is seeking restitution under the Change in Law relief due to a domestic coal shortfall. APML claims that the entire landed cost of alternative (imported) coal, including inland transportation costs, should be compensated. They contend that since imported coal is deemed to have been used as an alternative at the Tiroda Power Plant, all associated costs, including in-land transportation, should be included in the landed cost.

Issue at hand

- Whether normative transportation costs from nearest seaport Dahej up to Tiroda has to be included in the cost of imported coal for arriving at landed cost for alternate coal at Tiroda plant?

Decision of the Tribunal

- APTEL agreed with the arguments presented by APML that once imported coal is considered to have been used at the Tiroda Power Plant, all associated costs, including inland transportation from the nearest seaport, should be factored into the landed cost.
- APTEL Further observed that when the MSEDCL is willing to pay the cost of imported coal which is notionally deemed to have been utilized at Tiroda Power Plant, there is no reason as to why MSEDCL must not pay the notional transportation cost of such coal from nearest seaport upto the Tiroda plant.
- APML has actually paid such transportation charges for imported coal to APML and hence, its claim regarding the same cannot be said to be without any basis or without having incurred such expenditure.
- APTEL hold that landed cost of imported coal would include the normative in land transportation cost of such coal from nearest seaport Dahej upto the Tiroda Power Plant of APML.



HSA **Viewpoint**

APTEL's confirmation that normative transportation costs should be included in the cost of imported coal when calculating the landed cost for alternate coal underscores the importance of acknowledging all relevant expenses. This approach is crucial for maintaining equity and accuracy in financial settlements between the parties involved. It ensures a fair and comprehensive assessment of the costs associated with coal procurement under the Change in Law provisions.

Orange Bercha Wind Power Pvt. Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Ors.

Appellate Tribunal for Electricity (APTEL) | Order dated July 09, 2024 | Appeal No. 55 of 2021 & Batch

Background facts

- The issue involves M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. (**DISCOM**) billing the wind power generators (**Appellants**) for power drawn from the grid. The Appellant in Madhya Pradesh, with an 18 MW capacity, needs continuous power from the grid when the wind is insufficient.
- The Appellant filed an appeal before the APTEL challenging an Madhya Pradesh Electricity Regulatory Commission (**MPERC**) order from December 08, 2020, which allowed the DISCOM to retrospectively bill additional charges at a temporary connection rate for a Wind Power Generator.
- Regulation 10 of MPERC RE Regulations, 2010, allows billing for synchronization, shutdown, and emergency power. Synchronization follows the HV-7 tariff, while shutdown and emergency power follow temporary tariffs. The Appellant submitted that the 2 hour limit on synchronization in HV-7 contradicts Regulation 10. The Appellant also opposed the retrospective tariff changes.
- The MPERC's order supported DISCOM's billing method which created a new enforcement of the 2 hour synchronization limit. The DISCOM submitted that the Appellant's contention to bill under HV-7 irrespective of the duration conflicts with regulations and the 2-hour limit is reasonable and necessary.
- Malwa Solar Power Generation Private Limited judgment was cited, and it was clarified that renewable generators are not temporary consumers but should be billed at the temporary connection rate during shutdowns or emergencies. This appeal questioned the 2 hour synchronization limit's feasibility, as Regulation 10 does not recognize power drawn for more than 2 hours for synchronization.
- The Appellants requested the Tribunal to set aside the order and cancel all related invoices.

Issues at hand

- Whether the State Discoms are now raising the defense by citing inadvertent error as against earlier submission before the State Commission that it is difficult to determine power supply cost in the light of 2 hours restriction?
- Whether the State Commission is right in allowing retrospective billing, even when the Discoms has raised the issue of difficulty in raising bills in accordance with Regulations and tariff orders?
- Is the condition of 2 hours imposed by tariff order is in consonance to the Regulations *inter-alia* is deemed to be sub-ordinate legislation?

Decision of the Tribunal

- Appellants needed to draw power from the grid to remain energized for synchronization, but it was hard to distinguish when power is drawn for synchronization versus other purposes.
- DISCOMs found it difficult to implement the billing methodology due to this indistinction, leading to the assumption that power drawn in the first 2 hours is for synchronization.
- The State Discoms were aware of the regulations but failed to bill correctly, later issuing supplementary bills claiming inadvertent error.
- APTEL ruled that billing should not be based on assumptions but on actual power drawn and its purpose and thus, decided in favour of the Appellants, setting aside the impugned orders and supplementary bills.



HSA
Viewpoint

This decision highlights the importance of clear regulatory guidelines and fair billing practices, ensuring that wind power generators are not unfairly charged for power drawn from the grid.

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