



PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER

MARCH 2024



LEGAL & POLICY UPDATES



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Delhi Electricity Regulatory Commission (Conduct of Business for Holding Inquiry by Adjudicating Officer) Regulations, 2023 (Amendment) Rules, 2024

- Delhi Electricity Regulatory Commission (DERC) on January 19, 2024, notified the DERC (Conduct of Business for Holding Inquiry by Adjudicating Officer) Regulations, 2023 (Regulations). The objective of these Regulations is to provide provisions regarding the process of adjudication before the Adjudicating Officer appointed by DERC under section 27(A) of the Energy Conservation Act 2001 (EC Act), as amended from time to time.
- These Regulations will be applicable for holding inquiries on receiving complaints under Section 14 and or Section 15 of the EC Act by the Adjudicating Officer. The process will be carried out in the manner specified in the Regulations. Section 14 of the EC Act provides for the power of the Central Government to enforce the efficient use of energy and its conservation whereas Section 15 of the EC Act provides for the power of the State Government to enforce certain provisions for efficient use of energy and its conservation.
- The key highlights of these Regulations are as follows:
 - A person may appear himself or may authorise any of his employees to appear before the Adjudicating Officer and to act and plead on his behalf or a person may authorise an advocate or a registered consultant or a member of any statutory professional body holding a certificate of practice to act and plead on his behalf before the Adjudicating Officer.
 - At any stage of the proceedings, the Adjudicating Officer may refer such issue or issues in the matter, as he considers appropriate to persons including, but not limited to the officers of the Commission and or the Government agency/body whom the Adjudicating Officer considers as qualified to give expert or specialized advice or opinion.
 - A fee of INR 50000 shall be applicable towards the Petition fee for proceedings before the Adjudicating Officer under these Regulations.
 - The Adjudicating Officer may on its own motion or on the application of any of the person or parties concerned, within 60 days from the date of making any decision, direction, or order, review such decision, direction, or order and pass such appropriate order as the Adjudicating Officer thinks fit.
 - The Adjudicating Officer may, at any time and on such terms as to costs or otherwise, as he may think fit, amend any defect or error in any proceeding before him, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the proceedings.

MNRE issues Scheme Guidelines for Implementation of Strategic Interventions for Green Hydrogen Transition (SIGHT) Program Component – II: Incentive for Procurement of Green Hydrogen Production (Under Mode-2B) of National Green Hydrogen Mission

- Ministry of New and Renewable Energy (MNRE) through its notification dated January 16, 2024, issued Scheme Guidelines for Implementation of Strategic Interventions for Green Hydrogen Transition (SIGHT) Programme-Component-II: Incentive for Procurement of Green Hydrogen Production (Under Mode-2B) of the National Green Hydrogen Mission (Incentive Scheme under Mode - 2B).
- The main objectives of Incentive Scheme under Mode - 2B are to: (a) maximize production of Green Hydrogen in India; (b) enhance cost competitiveness vis-à-vis fossil-based alternatives; and (c) encourage large scale utilization of Green Hydrogen. The highlights of Incentive Scheme under Mode - 2B are:
 - Oil & Gas Companies and the Centre for High Technology (CHT) will collaborate to implement Incentive Scheme under Mode - 2B, pooling demand and inviting bids for the production and supply of Green Hydrogen at the competitive rates for one or more refineries, with the incentive being fixed.
 - Bidders seeking incentives must adhere to the criteria specified in the 'National Green Hydrogen Standard' notified by MNRE. The scheme offers direct incentives based on the quantity of Green Hydrogen produced and supplied, starting at INR 50/Kg in the first year, followed by INR 40/Kg in the second year, and INR 30/Kg in the third year.
 - Beneficiaries in the Incentive Scheme under Mode - 2B are chosen competitively based on price. The lowest bidder gets the first allocation, with others following suit. Bidders are required to produce the Green Hydrogen capacity quoted with no trading permitted. Tranche I of Mode 2B offers 200,000 MT/year of Green Hydrogen, with potential for more capacity in future tranches as determined by MNRE.
 - The point of delivery has been identified at the respective refinery battery limit and the supplier is responsible for the delivery of the product to the point of delivery, including storage and transportation.
 - Bidders must have a net worth (as on the last date of the previous Financial Year) of at least INR 15 crore per thousand MT per annum of quoted production and supply capacity of Green Hydrogen capacity.

Ministry of Power issues the Electricity (Second Amendment) Rules, 2024 to amend the Electricity Rules, 2005

- The Ministry of Power (MOP) by way of a notification dated January 17, 2024, issued the Electricity (Second Amendment) Rules, 2024 (Second Amendment Rules) to amend the Electricity Rules, 2005 (Electricity Rules). These rules bring about changes to the existing Electricity Rules, 2005.
- One of the key modifications introduced by the Second Amendment Rules is the amendment to Rule 22 of the Electricity Rules, 2005 which was inserted by way of Electricity (Amendment) Rules, 2024 notified on January 11, 2024.
- Rule 22(1) of the Electricity Rules lays down the method for calculating Wheeling Charges. The Second Amendment Rules have added a proviso, serving as a clarification, empowering the Appropriate Commissions to set distinct Wheeling Charges for various voltage levels. This adjustment aligns with the formula outlined in Rule 22(1) of the Electricity Rules.

MNRE clarification regarding Component C (FLS) of Pradhan Mantri Kisan Urja Suraksha evam Utthaan Mahabhiyaan (PM KUSUM)

- Pradhan Mantri Kisan Urja Suraksha Evam Utthaan Mahabhiyaan Yojana (PM KUSUM Scheme) was launched by MNRE on March 8, 2019 with following components:
 - Component A: Setting up of 10,000 MW of decentralized ground/stilt mounted grid connected solar or other renewable energy based power plants by the farmers on their land.
 - Component B: Installation of 14 lakh stand-alone solar agriculture pumps.
 - Component C: Solarization of 35 lakh grid connected agriculture pumps including feeder level solarization.

- The PM KUSUM Guidelines vide order dated January 17, 2024, issued by MNRE states that projects under PM KUSUM component C should be complying with the requirement to utilize solar panels manufactured domestically, incorporating indigenous solar cells and modules. As such, it became imperative for the Solar PV Project to procure Solar PV Modules from the Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019 (ALMM Order).
- ALMM was introduced by the MNRE order dated January 2, 2019, (MNRE January Order) with the aim of ensuring the quality of solar modules and solar cells. Paragraph 3 of this order specifies that all entities participating in government schemes must adhere to ALMM requirements.
- However, vide MNRE order dated March 10, 2023, the implementation of MNRE January Order was kept in abeyance for the Financial Year 2023-24. This implied that any project commissioned before March 31, 2024, will not be required to adhere to the provisions outlined in the order dated January 2, 2019. Now, vide order dated February 09, 2024, MNRE has reinstated the applicability of the MNRE January Order, effective from April 1, 2024. Consequently, any project commissioned after March 31, 2024, will be required to comply with the provisions outlined in the MNRE January Order. However, relaxations have been granted to projects meeting the following conditions subject to verification:
 - Projects that are in an advanced stage of construction; and
 - Where orders for solar components have been placed with the manufacturers before March 31, 2024.

Ministry of Power issues Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2024 to amend the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022

- The Ministry of Power (MOP) by way of a notification dated February 28, 2024, issued the Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2024. These rules bring about changes to the existing Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (Existing Rules). The Amendment Rules would be effective immediately upon publication in the Official Gazette on the same day, the amendments will enhance the reliability of power supply for all consumers.
- Significant changes have been made to Rule 7 of the Existing Rules as under:
 - Under Rule 7 (1) the term ‘Short term access’ has been supplanted with ‘access’ which is defined under explanation as ‘open access to Inter-State Transmission System.’
 - In the event the dues remain unpaid, under Rule 7(2) and 7(3) the reduction or withdrawal of access for sale and purchase of electricity through the contracts other than the short-term contracts has been provisioned to increase progressively by ten per cent, in addition to the regulation of access already in place.
 - Under Rule 7(4) ‘2 days’ has now been reduced to 1 day for restoration of access upon payment of outstanding dues. The regulation of access under this rule shall end, and it shall be restored at the earliest, but not later than 1 day, excluding the day on which payment is made.
- A key amendment which has been made under Rule 9 of the Existing Rules is related to un-requisitioned surplus power to the extent not offered in power exchange up to the declared generation capacity which will not be considered available for payment of fixed charges.
- Additionally, this surplus power can be offered for sale in the power exchange, at a tariff not more than 120% of energy charge, as determined or adopted by the appropriate commission or calculated under the directions, issued by central government under Section 11 of the Electricity Act, if applicable, plus applicable transmission charges.

Ministry of Power issues Operational Guidelines for Scheme for Viability Gap Funding for development of Battery Energy Storage Systems

- Ministry of Power (MoP) has released Operational Guidelines for implementation of Scheme for Viability Gap Funding (VGF) for development of Battery Energy Storage Systems (BESS) for development of 4,000 MWh of BESS capacity.
- Post notification, SECI shared first standalone BESS NIT of 250 MW/500 MWh under the scheme.
- The salient points of the guideline are given below:
 - The scheme period shall be 3 years i.e. from FY 2023-24 to 2025-26. Projects under the scheme will be approved during this period and fund will be disbursed till 2031-32. The

projects are required to be commissioned within a period of 24 months from the date of signing of the Battery Energy Storage Purchase Agreement (BESPA).

- Proposed Outlay of INR 9,400 crore including budgetary support of INR 3,760 crore
- Viability Gap Funding of upto 40% of CAPEX for BESS, provided by Central Government. It will be a non-recurring expenditure and shall be fully funded from central grant.
- The capacity will be bid out in tranches. Max bidding capacity in a single tranche by a bidder will be 50% of bid capacity. Only projects with a minimum capacity of 100 MWh shall be eligible for award and the project shall be on a standalone basis.
- A single developer will not be allowed to bid more than 1000 MWh across tranches.
- Both public and private sectors will participate in bids. In each bid at least 1 private sector participation is mandatory or else the bid will be cancelled.
- The project contract period will range from 10-12 years which shall be specified in the bid document.
- The contract shall be awarded on Build Own Operation basis.
- BESS projects under the scheme will fulfil system requirements during periods of high demand and high stress. This requirement has been assessed to be 572 cycles per year. The same can be increased by National Load Despatch Center (NLDC), if required.
- NLDC will declare such stress hours involving morning and evening peaks on a quarter ahead basis and update on weekly basis.
- Bidding to be conducted through tariff based competitive bidding process by BESS Implementing Agency (BIA) as selected by MoP for implementation of scheme.
- The BIA will be responsible for bidding process, bid award, act as purchaser of energy storage services, and enter into BESPA with developer. It shall also provide charging current to developer and secure discharge as per requirement.
- A committee shall be designated by MoP to determine VGF based on realistic assessment. The VGF will be stated in the RfS document and will not exceed INR 96 lakh/MWh. The amount shall be guided by tariff discoveries in previous BESS bids.
- An upper cap on tariff will be specified. The committee will also indicate locations of ISTS solar pooling stations for connecting the BESS under each tranche.
- The VGF amount to the eligible projects shall be disbursed in 5 tranches in following manner (i) 10% on Financial Closure subject to submission of Bank Guarantee and possession of 90% of the total land required for the project by the developer (ii) 45% on COD (iii) 15% on completion of first year from COD (iv) 15% on completion of second year from COD (v) 15% on completion of third year from COD
- BIA shall secure charging power for BESS project through fixed term contracts with solar, wind or hybrid energy sources and meet remaining through market purchases.
- BIA shall arrange discharge of BESS through various avenues to optimize grid stability and revenue generation. These avenues include power exchange sales, bilateral tie-ups, ancillary services.
- BIA trading margin: 4 paisa/kWh
- A BESS Balancing Pool (BBP) will address revenue shortfalls and surpluses arising from BESS operations

RECENT JUDGMENTS



In this Section

[MK Ranjit Singh v. Union of India](#)

[NHPC Ltd & Ors v. State of Himachal Pradesh & Ors](#)

[Attilium Energie Pvt Ltd & Others v. Union of India & Ors](#)

[Jindal India Thermal Power Ltd v. Odisha Electricity Regulatory Commission & Ors](#)

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[Eden Renewable Bercy Pvt Ltd v. Central Transmission Utility of India Ltd & Ors](#)

MK Ranjit Singh v. Union of India

Supreme Court of India | Judgment dated March 18, 2024 | Civil Writ Petition No. 838 of 2019

Background facts

- A Writ Petition, driven by public interest was filed before the Supreme Court in 2019 with an aim to protect the Great Indian Bustard (GIB) from extinction. It highlighted the threat posed by overhead power lines, causing fatalities to the bird species. The Petitioner sought directions to the states of Rajasthan and Gujarat to ensure predator-proof fencing, controlled grazing, and to prohibit the installation of overhead power lines, windmills, and solar infrastructure in critical habitats identified by the Wildlife Institute of India. Additionally, the Petitioner requested the installation of divertors for power lines.
- On April 19, 2021, the Supreme Court directed that in all cases where the overhead powerlines exist in the priority and potential GIB area, the government shall take steps to install divertors pending consideration of the conversion of the overhead cables into underground powerlines. In all such cases where it was feasible to convert the overhead cables into underground power lines the same was to be undertaken and completed within a period of 1 year and till such time the divertors shall be hung from the existing powerlines.
- Subsequently, in the year 2021, the Union Government by way of an Interim Application submitted that laying high voltage or low voltage lines underground is practically impossible to implement and a blanket direction for undergrounding of such lines should be modulated.

Issue at Hand

- Whether its legally possible to protect the Great Indian Bustard while advancing solar power and meeting international obligations regarding transmission line setup for solar energy?

Decision of the Court

- Supreme Court modulated its judgment dated April 19, 2021 and has constituted an expert committee to determine the scope, feasibility and extent of overhead and underground electric lines in the area identified as priority area in the reports of the Wild Life Institute of India in the states of Rajasthan and Gujarat. The committee will also identify measures to be adopted in the priority areas to ensure the long time survival of the GIB and suitable alternatives for sustainable development in laying long power lines in the future. The aim is to balance the protection of the conservation and protection of the GIB together with the arrangement of power lines in a manner that would facilitate the fulfillment of the international commitments made by India for developing renewable sources of energy.



HSA Viewpoint

The court's decision highlights the importance of saving the endangered Great Indian Bustard while balancing environmental concerns with renewable energy goals. The court relaxed its previous orders and has directed the committee to submit a report before the court by July 31, 2024, with a follow-up scheduled for August 2024.

NHPC Ltd & Ors v. State of Himachal Pradesh & Ors

High Court of Himachal Pradesh | Order dated March 5, 2024 | 2024 SCC Online HP 533

Background facts

- The Petitioners-power generation companies engaged in the production of the electricity by using river water. The Petitioner sought to assail the legislative competence, the constitutional validity and vires of the Himachal Pradesh Water Cess on Hydropower Generation Act, 2023 (Act).

Issues at hand

- Whether the State Legislature is competent to legislate the Act?

Decision of the Court

- The court, in determining the essence of taxation discerned that the Act's taxation primarily targets the generation of electricity rather than mere water usage. It underscored the significance of the height from which water falls onto turbines in generating electromagnetic fields and, consequently, electricity. This led the court to conclude that the taxable event is the act of hydropower generation itself, with water usage being incidental to this process.
- Regarding the State's authority to levy such a tax, the court found that neither Entry 49 nor Entry 50 of List-II could justify taxing water drawn for hydropower generation. The State's reliance on Entries 17 and 18 of List-II was deemed inappropriate, as they pertain to regulatory rather than taxing entries. Thus, the Court declared the provisions of the Himachal Pradesh Water Cess on Hydropower Electricity Generation Act, 2023, to be beyond the State Government's legislative competence as per Articles 246 and 265 of the Constitution of India, thereby rendering them ultra vires.



HSA Viewpoint

The court's decision simply points out the absence of a specific entry in List-II empowering the State to levy a tax on electricity generation, rendering the impugned enactment void ab initio. Additionally, the court rightly highlights the repugnancy of the Act with Section 62 read with Section 79 of the Electricity Act, 2003, which vests the authority for fixing electricity tariffs with the Central Electricity Regulatory Commission. Since, most of the rivers and their tributaries over which the Hydro Power Projects have been constructed, are inter-State, therefore, the State Govt is not competent to make any law regarding inter-state rivers.

Attilium Energie Pvt Ltd & Others v. Union of India & Ors

Karnataka High Court | Order dated March 11, 2024 | Writ Petition No. 24239 of 2023 [Batch]

Background facts

- Certain Captive Generating Companies and a Licensed Trader filed petitions challenging the State Government's Order dated October 16, 2023, issued under Section 11 of the Electricity Act, 2003 (Act). This Order mandated all electricity generators in the State of Karnataka to operate and maintain their generating stations at Maximum Exportable Capacity, supplying all generated electricity to the State Grid under specific conditions. One such condition included the payment of Rs. 4.86 per unit by the ESCOMs to the Generating Companies, provisionally subject to proceedings before the Karnataka Electricity Regulatory Commission (KERC) under Section 11(2) of the Electricity Act.

Issues at hand

- Whether the Court adhere to the Division Bench's decision in *M/s GMR Energy* regarding the Central Government's jurisdiction for inter-state power transmission under Section 11 of the Electricity Act?

- Whether the Court can assess the State Government's authority for inter-state power transmission under Section 11 of the Electricity Act, given the Supreme Court's ruling in *M/s Energy Watchdog*?
- Whether the State Government's Order dated October 16, 2023 constitutes a colorable exercise of power, violating the Open Access Scheme and associated rights under the Electricity Act?

Decision of the Court

- The court in responding to the first legal issue held it was bound by the decision in *M/s GMR* because of the principle that a decision not overturned by the Supreme Court serves as a binding precedent unless explicitly nullified by either the Supreme Court or an appropriate Bench of the relevant High Court. On addressing the second legal issue which is based on the binding precedent set by *M/s Energy Watchdog*.
- The State government lacked the authority to exercise jurisdiction under Section 11 of the Electricity Act concerning inter-state transmission of electricity. This implies that the State Government overstepped its jurisdiction by directing even inter-state electricity providers to supply electricity exclusively to the state grid.
- Despite the State government's issuance of the impugned order under Section 11 of the Electricity Act, the court intervened based on jurisdictional grounds, as per the Supreme Court's ruling in *M/s Energy Watchdog*. The subsequent action taken by *M/s KPTCL*, by approaching the Karnataka Electricity Regulatory Commission instead of the appropriate Central Regulatory Commission is the misapplication of regulatory jurisdiction. Therefore, the State government's impugned order compelling even inter-state electricity providers to supply solely to the state grid was deemed invalid.



HSA Viewpoint

The court's decision highlights the significance of adhering to binding precedent, which maintains consistency and trust in the judicial process. It shows that unless there are specific differences in a case, precedents must be followed. Notably, landmark Supreme Court cases such as *GMR Energy Limited v. Government of Karnataka* and *Energy Watchdog v. Central Electricity Regulatory Commission and Others* hold substantial authority as binding precedents.

Jindal India Thermal Power Ltd v. Odisha Electricity Regulatory Commission & Ors

Appellate Tribunal for Electricity (APTEL) | Order dated February 07, 2024 | Appeal No. 297 Of 2019

Background facts

- Jindal India Thermal Power Ltd, challenged the order dated June 4, 2019 passed by the Odisha Electricity Regulatory Commission (OERC) in cases 1/2017 and 64/2017. The Commission, while approving the Power Purchase Agreement (PPA) dated January 5, 2011 and the supplementary PPA dated July 23, 2013 introduced new clauses which were never accepted or agreed upon by the Appellant at any stage, including the proceedings before OERC.
- It was the case of the Appellant that Bench comprising of 3 members, including the Chairperson, heard the cases of the Appellant. However, the order was signed by only 2 members of the Commission, since when the matter was reserved on April 24, 2018 for the orders, one of the member of the Commission had already retired before it could be prepared and signed on June 04, 2019, which is much later than a year.
- The Appellant contended that the impugned order, signed by only 2 original bench members, is unsustainable and prayed for a fresh hearing before the Commission, asserting the challenged order is void ab initio due to a violation of the legal principle 'one who hears must decide'. The Appellant further referred to Regulation 20(1) of OERC Regulations dated May 21, 2004, and argued that the use of 'shall' indicates that Commission orders must be signed by all members who participated in the matter.
- The counsel appearing on behalf of Respondent no. 1 contended that according to Regulation 8(1) of the OERC (Conduct of Business) Regulations 2004, the order can be signed by 2 members, despite the case being heard by 3 members of the Commission and thus there is no infirmity. Additionally, it emphasis was placed on Section 93 of the Act, 2003 and it was submitted that the Commission's acts or proceedings cannot be challenged based solely on vacancies or defects in its constitution.
- Respondent No.2 adopted the arguments made by Respondent No. 1 and further submitted that the order was signed by the majority of members who heard the matter, therefore, the same is not void or unsustainable.

Issues at hand

- Whether the impugned order signed by 2 members upon the retirement of the third member, when the Petition was heard by all 3 members, is legally valid.

Decision of the Tribunal

- APTEL in its Order has held that Section 92(3) of the Act establishes that the final order of the Commission is determined by the majority of members who heard the matter, with the Chairperson having a casting vote in case of a tie. However, in the present case, the order signed by only 2 members, instead of 3 who heard the matter, goes against the fundamental principle that those who hear must decide. The ruling clarifies that when a Commission member demits office before passing the final order, it is impermissible for the remaining member/members to sign the order. In such instances, a de novo hearing must be conducted, and the final order passed and signed accordingly.



HSA

Viewpoint

The present Order of the APTEL is a well-reasoned Order and clarifies the legal principle that where 1 of the members of the Commission who hear a matter, demits office by reason of superannuation, death etc. before passing of the final order, it is not permissible for the remaining member/members of the Commission to sign the order. In such a situation, the matter shall be heard de novo and final order be passed/signed accordingly.

West Bengal State Electricity Distribution Company Ltd v. Central Electricity Regulatory Commission & Ors.

Appellate Tribunal for Electricity (APTEL) | Order dated February 12, 2024 | Appeal No. 276 Of 2015 [Batch]

Background facts

- The Indian Railways (Respondent No.2) sought to be recognized as a Deemed Distribution Licensee under the Electricity Act 2003 (Act), to avoid the imposition of additional or cross-subsidy surcharges under Section 42 of the Act. The Indian Railways by claiming the status of a Deemed Distribution Licensee aimed to procure electricity from sources other than designated distribution licensees within their supply area without incurring additional/cross subsidy surcharges as specified in Section 42 of the Act.

Issues at hand

- Whether Indian Railways falls within the term 'Appropriate Government' under Section 14 of the Act?
- Whether activities of Indian Railways constitute distribution of electricity?
- Whether Indian Railways by virtue of being an Appropriate Government qualifies as a Deemed Distribution Licensee?
- Whether Indian Railways is entitled to seek Open Access?
- Whether Indian Railways would be liable to pay cross subsidy surcharge or additional surcharge?

Decision of the Tribunal

- On the issue of whether Indian Railways falls within the term 'Appropriate Government' the APTEL while taking into account the unique operational and organizational structure of the railways and that it operates as a department under the Central Government, held that Indian Railways does indeed fall within the definition of 'Appropriate Government' under the context of Section 14 of the Electricity Act, 2003.
- APTEL in consideration of the electric traction equipment and the power supply and distribution installation referred to in Section 11(g) and Section 2(31)(c) of the Railways Act, 1989 held that the Railways do not constitute the 'Distribution System' defined in, and falling within the scope of, Section 2(19) of the Electricity Act, 2003. Additionally, the establishment of a 'distribution installation' contemplated under the Railways Act, 1989 does not qualify as the establishment of a 'distribution system' as, through the former, electricity is not supplied to consumers, as stipulated under the Electricity Act, 2003.
- The APTEL on whether the Indian Railways qualifies to be a Deemed Licensee held that despite the Indian Railways operating under the ambit of the Central Government it cannot be qualified to be a Deemed Distribution Licensee under the Act and Indian Railways' entitlement to source electricity under open access provisions is strictly as a consumer in accordance with Sections 38, 39 and 40 of the Act.



HSA
Viewpoint

APTEL's observations are crucial in providing clarity on the role and status of Indian Railways within the framework of the Act. The judgment provides for a much-needed interplay of the provisions regarding distribution licensees and their function within the framework of the Act.

Eden Renewable Bercy Pvt Ltd v. Central Transmission Utility of India Ltd & Ors

Central Electricity Regulatory Commission (CERC) | Order dated January 19, 2024 | Petition No. 268/MP/2023 and 269/MP/2023

Background facts

- The Petitioner is a generating company for renewable projects, developing a 300 MW Solar Power Project in Jaisalmer District, Rajasthan. Post grant of connectivity for Fatehgarh-II sub-station, the Supreme Court vide Great Indian Bustard (GIB) Order mandated undergrounding of powerlines in GIB habitats. On account of the challenges faced by the Petitioner, the Petitioner proposed an alternative route to Central Transmission Utility of India Ltd (CTUIL) and sought approval from CTUIL for change of sub-station to Fatehgarh-III. The primary contention of the Petitioner was that it is facing force majeure issues i.e., it was beyond the reasonable control of the Petitioners to lay overhead lines to connect the Project with Fatehgarh-II, and there are severe feasibility issues with respect to undergrounding the transmission line. Therefore, the Petitioner sought indulgence of the Commission to exercise its regulatory powers and allow the Petitioner to shift its connectivity from Fatehgarh-II to Fatehgarh-III or Bhadla-II.
- Petitioner further submitted that the Commission may direct CTUIL to explore the option of shifting of the existing bays at Fatehgarh-II to some other prospective substations as the bays at Fatehgarh-II are unlikely to be utilized.
- CTUIL submitted that the request of developer to shift its connectivity from Fatehgarh-II to Fatehgarh-III maintaining its original priority would not be in line with the existing connectivity regulations/procedures, since there are no prevailing regulations to entertain such exercise.

Issues at hand

- What are the provisions of shifting of Connectivity from one substation to another under the Connectivity Regulations 2009 and the GNA Regulations and the detailed procedures thereof?
- What is the process ordinarily being followed by CTUIL while shifting connectivity from one substation to another?

Decision of the Commission

- CERC held that the re-arrangement of the connectivity is allowed across different terminal bay(s) of the same ISTS sub-station. There is no provision to shift the connectivity from one ISTS sub-station to another sub-station. Further, CERC has directed CTUIL to establish a transparent procedure for allocating and reallocating bays in substations.
- CERC further held that if the exercise of reallocation is the need of the hour, the principles of such reallocation and the associated commercial liabilities are required to be included in the transparent procedure/regulations following due process of law after due stakeholder consultation. Since the current regulations are silent on this aspect, CERC has directed CTUIL to carry out the exercise in the transparent manner only and as per the principles enshrined in the Order until the appropriate provisions are included in the Regulations.
- The CERC Order underscores the need for transparency in bay allocation and has unequivocally directed CTUIL to propose regulatory amendments for shifting or reallocating connectivity after consulting stakeholders within one month of issuing the Order.
- CERC's decision serves as a linchpin for upholding a fair and competitive market, fostering investor confidence, and ensuring the sustainability and growth of the energy sector. Thus, the CERC's adjudication is not just a resolution of a specific issue but a vital element in the machinery of sectoral evolution and progress.



HSA
Viewpoint

The Order passed by CERC is a well-reasoned order and has been passed while exercising the regulatory powers to provide adequate transparency in the approach to be adopted by CTUIL for future purposes. CERC's decision, extending beyond the immediate issue, is seen as pivotal for maintaining a fair market, boosting investor confidence, and ensuring sectoral sustainability and

Recent Developments

MERC notified the draft suo-moto order notifying Generic Tariff rates for Rooftop PV Projects and undertaking the process of determining the variable charge for biomass and non-fossil fuel-based co-generation projects for FY 2024-25

- The Maharashtra Electricity Regulatory Commission (MERC) by its suo-moto draft order dated February 2, 2024 in Case No. 3/SM/2024 (Draft Order) has invited comments, objections, and suggestions from stakeholders.
- Generic Tariff rates for Rooftop PV Projects for FY 2024-25: MERC notified INR 3.30/kWh as the Generic Tariff rates for procurement of surplus power from Rooftop PV Projects under net-metering or net-billing arrangement.
- Average Power Purchase Cost (APPC) for Distribution Licensee for FY 2024-25: MERC has held that the APPC for each distribution licensee in the State of Maharashtra will depend upon the Tariff Order of their respective distribution licensees.
- Variable Charges of Biomass and Non-fossil fuel-based co-generation projects for FY 2024-25: MERC has determined the provisional variable charge for Biomass Project and Non-fossil fuel-based co-generation projects as INR 6.23/kWh and INR 4.80/kWh respectively, which shall be effective from April 1, 2024.

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DISPUTE RESOLUTION



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