

PROJECTS, ENERGY & INFRASTRUCTURE

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LEGAL & POLICY UPDATES



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Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023

- The Central Electricity Regulation Commission (**CERC**) has issued draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 (**Draft Regulation**) on March 17, 2023.
- By way of the public notification, the CERC has inviting comments/suggestions/objections from the stakeholders and interested persons on the above Draft Regulations on or before April 17, 2023.
- CERC has proposed that an Inter-State Transmission Licensee shall be paid 20% of Yearly Transmission Charges (**YTC**) of its Inter-State Transmission System (**ISTS**) for a period of 6 months from deemed Date Of Commercial Operation (**COD**) or till commencement of actual power flow, whichever is earlier.
- The Inter-State Transmission Licensee shall be paid 100% of YTC of its ISTS from 7th month till commencement of actual power flow, in case actual power flow does not commence within a period of 6 months from date of deemed COD. These charges shall be disbursed from charges collected under 3rd bill.

CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023

- CERC has notified the CERC (Sharing of Inter-State Transmission Charges and Losses) (**First Amendment**) Regulations, 2023 (First Amendment) on February 7, 2023. By way the First Amendment, the CERC has amended the CERC (Sharing of Inter- State Transmission Charges and Losses) Regulations, 2020 (**Principal Regulations**).
- **Key aspects:**
 - The words 'Long Term Access and Medium Term Open Access' shall be substituted by the word 'GNA and GNARE' in Sub-Clause (g) of Clause (1) of Regulation 25 of the Principal Regulations.
 - 'Associated Transmission System' or 'ATS' shall have the same meaning as defined in GNA Regulations. 'Drawee DIC' shall mean the DICs which draw power through ISTS but shall not include the ESS for the purpose of sharing of transmission charges under Regulations 5 to 8 of these Regulations.
 - The bills for sharing of transmission charges shall be raised on the Drawee DICs in terms of these Regulations and the settlement of the transmission charges inter se between Drawee DICs and the generating

station or the seller, wherever necessary, shall be made in terms of the PPA or as per the mutual agreement between the concerned parties. The Yearly Transmission Charges for the National Component shall be shared by all the Drawee DICs in proportion to their quantum of GNA and GNARE.

- Waiver of transmission charges for the use of ISTS shall be applicable for scheduling power under GNA, GNARE T-GNA and T-GNARE from (i) REGS or RHGS based on wind or solar sources, or (ii) ESS charged with energy sourced from REGS or RHGS, or (iii) generation based on hydro power sources.
- Late payment surcharge shall be payable by the concerned DIC as per the LPS Rules in case the payment of any bill for charges payable under these Regulations is delayed by a DIC, beyond the due date.
- Failure on the part of a DIC to make payment of transmission charges against the bills by the due date under these regulations shall make such DIC liable for action by the Central Transmission Utility, on behalf of Inter-State Transmission Licensee(s) in accordance with LPS Rules.

First Amendment of the Karnataka Electricity Regulatory Commission (Fuel and Power Purchase Cost Adjustment) Regulations, 2023

- Karnataka Electricity Regulatory Commission (**KERC**) has issued the First Amendment (**Amendment**) to the Karnataka Electricity Regulatory Commission (Fuel and Power Purchase Cost Adjustment) Regulations, 2023 (**Principal Regulation**) on February 23, 2023.
- By way of the amendment, KERC has proposed three new clauses to the Principal Regulation:
 - **Clause 4.4:** The Distribution Licensee shall pass an order for recovery/refund of FPPCA for each billing month before the commencement of billing month. The Distribution Licensee shall submit the copy of the order along with all the relevant documents and data in the formats prescribed in these Regulations to the Commission before 15th day of the respective billing month.
 - **Clause 4.5:** In case the Distribution Licensee fails to compute and charge FPPCA for any billing month, except in case of any Force Majeure conditions, its right for recovery of costs on account of FPPCA shall be forfeited and in such cases, the right to recover the FPPCA determined during true-up shall also be forfeited. Provided that the Distribution Licensee may decide, FPPCA or part thereof, to be carried forward to the subsequent month in order to avoid any tariff shock to consumers. But the carry forward of FPPCA shall not exceed a maximum duration of two months and such carry forward shall only be applicable, if the total FPPCA for a billing month, including any carry forward of FPPCA of the previous month, exceeds twenty percent of variable component of approved fuel and power purchase cost.
 - **Clause 4.6:** The State Load Dispatch Centre shall publish the reconciled energy account, Distribution Licensee-wise, for the power supplied for each of the months, within 10th day of the subsequent month.

Ministry of Power (MoP) letter on fair distribution of available domestic coal

- The MOP on March 24, 2023 issued a letter to Chief Secretaries of all States/UTs regarding fair distribution of available domestic coal. A meeting dated March 07, 2023, was held regarding preparations for uninterrupted power supply during high demand period in April-May 2023 wherein it was decided that the available coal supply shall be distributed amongst GENCOs (Central, State & IPPs) in a fair and transparent manner by using the following principles of fair distribution:
 - Allocation of domestic coal shall be in the ratio of fortnightly average generation of generating stations.
 - While implementing the above, the coal required by all pithead stations of respective GENCOs would be excluded as it does not use the railway network.
 - Usage of 'Road Only' for taking off coal by all the plants would be excluded as per their requirement.
 - Availability of coal through captive mines would be excluded for allocation of rail rakes from CIL/SCCL.
 - The coal availability from captive mines will be taken at the level of availability in March , 2023 plus five percent.

- Rakes of States found selling power generated from domestic coal at notified price in power exchange will be reduced accordingly. It is advised that surplus power shall be made available to other DISCOM's through PuShP portal by the CEA.
- The allocation shall be operationalized from April 01, 2023.

Renewable Generation Obligation as per the Revised Tariff policy, 2016

- The Central Government notified the Revised Tariff Policy, 2016 vide Resolution No. 23/2/2005-R&R in exercise of powers conferred under Section 3(3) of the Electricity Act, 2003 on January 28, 2016.
- Under Clause 6.4(5) of the Tariff Policy, 2016, it has been decided that any generating company establishing a coal/lignite based thermal generating station having Commercial Operation Date (COD) on or after April 01, 2023 shall be required to establish renewable energy generating capacity as per Renewable Generation Obligation (RGO) of a minimum 40% of the capacity of coal/lignite based thermal stations or procure and supply to such capacity.
- Coal/lignite based thermal generating station with COD between April 01, 2023 and March 31, 2025 shall be required to comply with RGO by April 01, 2025 and projects with COD after April 01, 2025 shall be required to comply by the COD.
- Exemption shall be provided to captive coal/lignite based thermal generating stations from requirement of RGO subject to its fulfilment of the Renewable Purchase Obligation as notified by the Central Government.

MOP directions to all imported coal based generating companies under Section 11 of the Electricity Act, 2003

- The Ministry of Power, Government of India (**MoP**) issued the Section 11 direction to all the imported coal based generating companies to operate at full capacity. If any imported coal-based plant is under the jurisdiction of the National Company Law Tribunal (**NCLT**), the resolution professional must take steps to ensure it becomes functional.

Extension for installation of grid-connected solar power plants under Component -A of PM-KUSUM Scheme

- The Ministry of New and Renewable Energy (**MNRE**) issued an office memorandum for the extension of the installation of grid-connected solar power plants under Component -A of PM-KUSUM Scheme.
- The extension is till September 30, 2023, to complete the projects sanctioned under the said component during FY 2019-20.
- The extension will be available only to the projects where the financial closure is reported by the beneficiary to the State Implementation Agencies on or before March 31, 2023. The balance capacity which does not meet these deadlines will be withdrawn and re-allocated to the states based on fresh proposals.

CERC order in Petition No. 01/SM/2023

- The CERC has notified certain directions in the interest of grid security in pursuance of the provisions of the Electricity Act, 2003 and the provisions of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (**Suo Moto Directions**).
 - The CERC has relaxed Regulation 7 of the DSM Regulations, 2022 to provide that the Normal Rate of Charges for Deviations for a time block as specified in Regulation 7 of the DSM Regulations, 2022 shall be equal to the higher of the weighted average ACP of the Day Ahead Market segments of all the Power Exchanges; and the weighted average ACP of the Real Time Market segments of all the Power Exchanges, for that time block, subject to a ceiling of INR 12 per kWh, until further order.
 - The Charges for Deviations for drawal of start-up power before COD of a generating unit or for drawal of power to run the auxiliaries during shut-down of a generating station shall be payable at the reference charge rate or contract rate or in the absence of reference charge rate or contract rate, the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block, as the case may be.
 - The charges for inter-regional deviation caused by way of over drawal or under drawal or over injection or under-injection shall be payable or receivable, as the case may be, at the normal rate of charges for deviation.

- The contract rate or the reference rate referred to in Regulation 8 of the DSM Regulations, 2022 shall be the weighted average of the contract rates of all such contracts.

CERC order in Suo Moto Petition No. 2/SM/2023

- The CERC has issued the order dated February 14, 2023, in Suo Moto Petition No. 2/SM/2023 with the aim to ensure smooth and uninterrupted generation in thermal power plants and to help distribution companies meet their universal supply obligation towards the consumers (**Suo Moto Order**).
- The CERC, by way of the Suo Moto Order, has held that there is no need for prior permission from beneficiaries for blending, subject to technical feasibility and unless otherwise agreed specifically in the Power Purchase Agreement. The operation of second and third provisos of Sub Regulation 3 of Regulation 43 of 2019 Tariff Regulations has been kept in abeyance till September 30, 2023 or until further orders, whichever is earlier.

RECENT JUDGMENTS



In this Section

Maharashtra State Electricity Distribution Company Ltd v. Adani Power Maharashtra Ltd & Ors

Fixation of Threshold Limit for development of Intra-State Transmission Projects under Tariff-based Competitive Bidding in accordance with the Clause 5.3 of the Tariff Policy

Petition under Section 86 r/w Section 63 of the Electricity Act, 2003 concerning certain aspects for procurement of power from project to be set up in proposed Khavda Solar Park

RNS Power Ltd v. Hubli Electricity Supply Company Ltd

Maharashtra State Electricity Distribution Company Ltd v. Adani Power Maharashtra Ltd & Ors

Supreme Court of India | Order dated March 03, 2023 in Civil Appeal No. 684 of 2021 with Civil Appeal No. 6927 of 2021

Background facts

- The Civil Appeal was filed by Maharashtra State Electricity Distribution Company Ltd (**MSEDCL**), who had entered into long-term Power Purchase Agreements (**PPAs**) with Adani Power Maharashtra Ltd (**Adani Power**). The first PPA was entered on September 8, 2008 for 1320 MW, the second PPA was entered on March 31, 2010 for 1200 MW, the third PPA was entered on August 9, 2010 for 125 MW and the fourth PPA was entered on February 16, 2013 for 440 MW. These PPAs were entered into in pursuance of the competitive bidding processes conducted by the Appellant-MSEDCL under Section 63 of the Electricity Act, 2003 (**Act**) read with the Standard Bidding Guidelines issued by the Ministry of Power (**MoP**).
- On October 18, 2007, Government of India, through the Ministry of Coal (**MoC**), issued the New Coal Distributional Policy, 2007 (**NCDP**). As per the NCDP, 100% of the quantity as per the normative requirement of the consumers was to be considered for supply of coal through Fuel Supply Agreement (**FSA**) by Coal India Ltd (**CIL**) at fixed prices to be declared/notified by CIL.
- On July 31, 2013, the MoP issued a letter to the CERC and State Electricity Regulatory Commissions to consider as pass-through in tariff for the cost of alternate coal procured to meet the shortfall in supply of domestic linkage coal on a case-to-case basis.
- Adani Power filed a Petition before the Maharashtra Electricity Regulatory Commission (**MERC**) claiming compensation for Change in Law which had approved a framework for determination of compensatory fuel change.
- Adani Power filed another Petition before MERC for approving a framework for determination of compensatory tariff which was provided by MERC and the Review Petition challenging the same was accordingly dismissed by MERC.
- On January 28, 2016, the MoP issued the revised Tariff Policy. As per Clause 6.1 of the revised Tariff Policy, the Appropriate Commission was required to consider the cost of imported/market-based e-auction coal procured for making up the shortfall in the domestic coal for pass-through in tariff of competitively bid projects.
- Adani challenged the order passed by the MERC before the APTEL which had held that it was entitled to compensation on the ground of Change in Law based on the Station Heat Rate (**SHR**) specified in the Multi Year Tariff Regulations, 2011 of actual SHR achieved by APML, whichever is lower and the compensation approved by MERC would be computed based on the actual Gross Calorific Value (**GCV**) of coal received.
- Aggrieved by the same, MSEDCL approached Supreme Court by way of the present Petition.

Issues at hand

- Whether the MERC was correct in holding that the net SHR submitted by the Appellant in its bid or SHR and Auxiliary Consumption norms specified for new generating stations under the MYT Regulations, 2011, whichever is superior, shall form the basis for computing Change in Law compensation under the PPAs?
- Whether the MERC was correct in holding that the reference GCV of domestic coal supplied by CIL shall be the middle value of GCV range of assured coal grade in LoA/FSA/MoU and not the GCV as received?
- Whether the MERC was correct in holding that for the purpose of Change in Law compensation for 1180 MW capacity, shortfall in domestic linkage coal shall be assessed by considering the coal supply as the maximum of actual quantum of coal offered for offtake by CIL under the LoA/FSA and the minimum assured quantum in NCDP 2013 for the respective year?

Decision of the Court

- The Court noted that APTEL found that the SHR specified in the Tariff Regulations were a reference point and cannot be used as the basis for computing the coal shortfall requirement or the computing Change in Law compensation to the SHR mentioned in the bid documents. APTEL held that the linkage of Change in Law compensation to SHR as mentioned in the bid documents would not be able to reconstitute the affected parties to the same economic condition prior to the Change in Law.
- APTEL held that 'GCV as received' and not 'the middle value of GCV' shall be the basis to assess the quantum of shortfall in domestic supply of coal. SHR and GCV shall be taken as per actual or the tariff regulations whichever is lower into consideration to balance the interest of generators as well as the consumers. The Court noted that there should be less interference with the decisions of the experts in the field unless the decisions are found to be arbitrary and illegal.
- The Court stated on the issue of MERC's method of assessing shortfall in domestic linkage coal that the generating companies are entitled to compensation on account of Change in Law while referring to the decision in *Energy Watchdog v. CERC & Ors (2017)* and *Jaipur Vidyut Vitaran Nigam Ltd & Ors v. Adani Power Rajasthan Ltd & Anr (2020)*. If there had been no occurrence of Change in Law, the generating companies would have been entitled to the supply of coal as per the FSA assured by Change in Law.
- Referring to *Central Warehousing Corporation v. Adani Ports Special Economic Zone Ltd & Ors (2022)*, the Court observed that the practice of different instrumentalities of the State taking contrary stand on number of matters wherein concurrent orders passed by Appellate and regulatory body are assailed and such assailment would eradicate the existing purpose of the Electricity Act.
- Supreme Court in view of all the findings of the matter dismisses the Petition filed by MSEDCL challenging the Change in Law compensation granted by APTEL to APML and GMR Energy Ltd.



HSA Viewpoint

Supreme Court's findings set an important precedent for compensation for Change in Law clause in PPA. The findings are in line with the settled position of law regarding compliance with the specific mandate under the Electricity Act, 2003. Further, there cannot be any differential treatment given to MSEDCL as the claim is based on change of NDCP 2007 by NDCP 2013 which covers the term Change in Law.

Fixation of Threshold Limit for development of Intra-State Transmission Projects under Tariff-based Competitive Bidding in accordance with the Clause 5.3 of the Tariff Policy

Gujarat Electricity Regulatory Commission (GERC) | Order dated January 28, 2016 in Suo Moto Petition No. 2171 of 2023

Background facts

- The Commission initiated Suo-Motu proceedings under Regulations 23 and 24 of the GERC (Conduct of Business) Regulations, 2004 for fixation of Threshold Limit for development of Intra-State Transmission Projects under Tariff-based Competitive Bidding in accordance with the Clause 5.3 of the Tariff Policy dated January 28, 2016 by inviting comments/suggestions/views from the stakeholders.
- The Commission has invited comments/views from the stakeholders in response to the Public Notice, and received comments/suggestions from Gujarat Energy Transmission Corporation Ltd (GETCO) and Energy Power Transmission Association (EPTA).

- On March 30, 2021 the State Transmission Utility GETCO were directed by the Commission to submit the proposal for adoption of Tariff-based Competitive Bidding for Intra-State Transmission Projects and its latest compliance report.
- For the same GETCO submitted report based on insights from various stakeholders which proposed that the project costs of INR 250 crore can be considered as threshold limit and Intra-State Transmission Projects above this cost shall be developed through Tariff-based Competitive Bidding. For preparation of necessary procedures, mechanisms and documents, engagement of several government entities including Government of Gujarat, GETCO requested the Commission that it requires at least 6 months for finalization of necessary guidelines.
- EPTA in its suggestions submitted that Intra-state Transmission Systems above the threshold limit should include strong and well-defined Payment Security Mechanisms (PSM).

Issue at hand

- Fixation of Threshold Limit for development of Intra-State Transmission Projects under Tariff-based Competitive Bidding in accordance with the Clause 5.3 of the National Tariff Policy, 2016.

Decision of the Commission

- GERC noted that Tariff Policy as under the Section 3 of the Electricity Act, 2003 states that the development of Intra-State Transmission System shall be executed through Competitive Bidding route provided for the projects costing above a Threshold Limit, which shall be decided by the State Commission. The Commission also noted that the National Electricity Policy encourages private investment and their partnership in transmission sector to meet the capital needs of the rapidly growing sector.
- GERC observed that States such as Haryana, Uttarakhand, Assam and Bihar have specified Threshold Limit as INR 100 crore or below, and decided that an amount of INR 100 crore, excluding land cost, be kept as Threshold Limit and all Intra-State Transmission Projects (new and augmentation of existing projects) costing above this Threshold Limit shall be developed through Tariff-based Competitive Bidding.
- The Commission, after considering that Gujarat is implementing TBCB for Intra-State Projects for the first time and all the processes (such as Guidelines for implementation of TBCB, constitution of the Committee, Appointment of Bid Process Coordinator, preparation of Standard Bid Documents, Standard Transmission Service Agreement, Formation of Bid Evaluation Committee, mechanism for monitoring of the Projects under TBCB, creation of PSM) are to be evolved appropriately. GERC directed GETCO to frame guidelines in this regard within 4 months from the issue of final order on these Suo Motu proceedings after approval of the Commission.
- GERC also stated that the STU, while framing guidelines for all new and augmentation of Intra-State Transmission Projects, which are to be developed through Tariff-based Competitive Bidding, will take into consideration the below points as submitted by EPTA:
 - TBCB beyond a threshold to be default with executional cases
 - Packing of Transmission Projects/Scheme
 - Strong and well-defined Payment Security Mechanism



HSA Viewpoint

The decision of GERC will encourage competition amongst the stakeholders and bring more project in the TBCB ambit, in addition to enabling increased private investment in power and transmission sectors.

Petition under Section 86 r/w Section 63 of the Electricity Act, 2003 concerning certain aspects for procurement of power from project to be set up in proposed Khavda Solar Park

Gujarat Electricity Regulatory Commission (GERC) | Petition No. 2139 of 2022.

Background facts

- Petitioner filed the Petition seeking approval of deviations from the Guidelines dated August 03, 2017 issued by Central Government, as amended from time to time, for procurement of power through Tariff-based Competitive Bidding Process from Grid Connected Solar PV Projects and for approval of provisions regarding Greenshoe Option to be incorporated in the bid documents for procurement of power from project to be set up in proposed Khavda Solar Park.
- The Petitioner is in the process of issuing a tender for procurement of power from 600 MW solar projects to be set up in a solar park being developed at Khavda, Kutchh with Greenshoe Option of additional up to 600 MW.

- Petitioner is seeking approval of deviations in the Force Majeure clause from the Guidelines issued by Central Government for procurement of power through Tariff-based Competitive Bidding Process from Grid Connected Solar PV Projects.

Issue at hand

- Approval of deviations from the Competitive Bidding Guidelines issued by the Central Government.

Decision of the Commission

- GERC noted that the Petitioner had filed compliance affidavit dated September 30, 2022 before the Commission stating that tender for procurement of power from 600 MW grid connected solar photovoltaic power projects to be developed in the Solar Park of GSECL located at Khavda through Tariff-based Competitive Bidding Process followed by E-Reverse Auction with Greenshoe Option for additional 600 MW.
- GERC further noted that the deviations proposed by the Petitioner in order to provide clarity to bidders as to what constitutes Force Majeure or not are incorporated with regard to instances where there is delay in CTU or STU network or sub-station at Delivery Point or delay in setting up the project due to non-fulfilment of obligations under Land Lease Agreement/park issues when evacuation facility is ready, etc. Article 8.1 (a) (xi) is added by the Petitioner to consider the situation whereby if there is delay in commissioning of the project on account of nonfulfillment of obligations under Land Lease Agreement and Implementation & Support Agreement that are attributable to Solar Power Project Developer, the same shall be considered as a Force Majeure event. Similarly, Article 8.1 (a) (xii) deals with delay in grant of connectivity/LTA by the CTU/STU ,as the case may be, if same is applicable and/or delay in readiness of the ISTS/ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/ISTS network which will be considered as a factor attributable to the CTU/STU/Transmission Licensee and beyond the control of the parties. These will be subject to the different conditions specified thereunder. Further, the Petitioner has stated the available relief in para added in Article 8.2 whereby for the event specified at Article 8.1(a)(xii) and consequent delay to be treated as delay beyond the control of the parties and both parties shall be eligible for suitable time extension in the SCOD.
- GERC, while observing that the provisions pertaining to Greenshoe Option have been earlier approved by this Commission, decided to approve the aforesaid further deviation sought by the Petitioner, considering the specific nature of present tender wherein there may be certain events inter-se between the parties for which clarity is desirable.
- GERC noted that the Applicant/Petitioner in sub-Clause (ii) of Clause 3.3.5 of RfS has specified to allow Greenshoe Option to eligible organization owned or controlled by Government of Gujarat referred to in sub-Clause (i) with or without participating in the tender. GERC was of the view that allowing any eligible organization owned or controlled by Government of Gujarat without participating in the tendering/bidding process is not appropriate and decided that the Petitioner needs to delete the word 'without' in said sub-Clause.
- GERC approved the modification relating to the Commissioning Schedule timeline up to 21 months from the date of execution of the PPA instead of 15 months.



HSA Viewpoint

The deviations proposed in regard to Force Majeure clause are necessary to provide clarity on the specific events that can be classified as Force Majeure events.

RNS Power Ltd v. Hubli Electricity Supply Company Ltd

Karnataka Electricity Regulatory Commission (KERC) | Order dated March 3, 2023 in OP No. 07/2020

Background facts

- The Petitioner is a Public Limited Company involved in the business of generating electricity from its 7.2 MW wind power project. The said power plant supplies electricity to its captive users and remaining power to the state grid. Naveen Hotels Ltd and Murudeshwar Ceramics are the captive users holding 26.28% and 6.14% of the capital ownership.
- Respondent No. 4 (**HESCOM**) issued a demand notice directing the Petitioner to pay an amount of INR 1,17,85,542 towards Cross Subsidy Charges (CSS) and Electricity Tax.
- As per the Electricity Rules, 2005, a power plant will qualify as a captive generating plant if the conditions laid down under Rule 3 are satisfied. Respondent No. 4 has imposed CSS and Electricity Tax on the ground that as per second proviso to Rule 3 of the Electricity Rules, 2005, the captive users have to consume electricity in proportion to their shareholding and it was held that that

Naveen Hotel Ltd had consumed energy more than the maximum permissible limit and that Murudeshwar Ceramics consumed less than the minimum permissible limit.

- HESCOM is of the opinion that the term 'Association of Persons' is described with respect to captive users and that Murudeshwar Ceramics and Naveen Hotels Ltd are captive users and are treated as Association of Persons. Therefore, the captive users have not complied with the requirements of second proviso to Rule 3 (1).
- Petitioner in its reply clarified that it is a Public Limited Company and not Association of Persons. Hence proportionality requirement is not applicable to the Petitioner.

Issue at hand

- Whether the Petitioner is a company and whether Rule of Proportionality as per the Rule 3 of the Electricity Rules, 2005 applies to the Petitioner or not?

Decision of the Commission

- The Commission, on perusal of the Certificate of Incorporation of the Petitioner's company, noted that RNS Power Ltd was incorporated under the Companies Act, 1956 and is a recognized tax entity, incorporated as a company.
- KERC observed that Rule 3 (1)(b) of the Electricity Rules, 2005 specifies that in case of a company, electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use. Hence, the Rule of Proportionality is not applicable to the consumers of a captive generating plant established as a company.
- KERC, in reference to the Tamil Nadu Power Producers Association v. Tamil Nadu Electricity Regulatory Commission & Ors, concluded that that companies which are operating as SPVs cannot be equated to AoPs and the proportionality cannot be made applicable on SPVs. Thus, the proportionality criteria cannot be made applicable in case a company is functioning as a SPV i.e., as a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.
- The Commission also held that there is no requirement of payment of CSS by any defaulting captive users, if the rest of the captive users in a captive generating plant fulfil the minimum requirements of 26% shareholding and 51% of consumption in terms of Rule 3 of the Electricity Rules, 2005.



HSA **Viewpoint**

KERC has clarified that the proportionality criteria cannot be made applicable in case a company is functioning as an SPV i.e., as a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.

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