

PROJECTS, ENERGY & INFRASTRUCTURE

MONTHLY NEWSLETTER
JANUARY 2024



LEGAL & POLICY UPDATES



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Electricity (Amendment) Rules, 2024

- The Ministry of Power (**MoP**) on January 10, 2024 notified the Electricity (Amendment) Rules, 2024 (**Amendment Rules**) under Section 176 of the Electricity Act, 2003 (**Act**). By way of the Amendment Rules, the MoP has amended the Electricity Rules, 2005 (**Principal Rules**).
- Rule 21 introduced by the Amendment Rules provides that a generating company or a person setting up a captive generating plant or an Energy Storage System or a consumer having load of not less than 25 MW in case of Inter-State Transmission System and 10 MW in case of Intra-State Transmission System shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line to connect to the grid, if such company or person or consumer complies with the regulations, technical standards, guidelines and procedures issued under the provisions of the Act.
- Wheeling charges shall be computed as per following formula: Annual Revenue Requirement towards wheeling /Energy wheeled during the year.
- The additional surcharge levied on any Open Access Consumer shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned. Provided that for a person availing General Network Access or Open Access, the additional surcharge shall be linearly reduced from the value in the year in which General Network Access or Open Access was granted so that, if it is continued to be availed by this person, the additional surcharge shall get eliminated within four years from the date of grant of General Network Access or Open Access.
- The tariff shall be cost reflective and there shall not be any gap between approved Annual Revenue Requirement and estimated annual revenue from approved tariff except under natural calamity conditions.

Draft Electricity (Late Payment Surcharge and Related Matters) Amendment Rules, 2023

- The Ministry of Power (**MoP**) on December 14, 2023 notified the Draft Electricity (Late Payment Surcharge and Related Matters) (Amendment) Rules, 2023 (**Draft Rules 2023**) to address circumstances of non-payment of dues by the distribution licensee or other user of the transmission system even after two and half months from the presentation of the bill by the generating company or transmission licensee or trading licensee, or in case of default in the payment of installments. Key aspects:
 - If dues are not settled within two and half months after bill presentation, or there is a default on instalment payments under Rule 5, power supply to defaulting entity will be subject to a structured regulation.

- The said proposed amendment will be applicable to all types of arrangements such as short-term, long-term, temporary GNA with the degree of restriction increasing progressively by ten percent each month for the duration of the default. This structured approach is designed to encourage entities to clear their dues promptly to avoid stringent penalties.
- Two days clear timeline for the restoration of the power supply following the settlement of outstanding dues is provided in the Draft Rules 2023.
- The National Load Despatch Centre (NLDS) has been given the authority to elaborate detailed procedures to implement these rules, ensuring uniform compliance across the sector.

Draft Electricity (Rights of Consumers) Second Amendment Rules 2023

- The Ministry of Power (**MoP**) in exercise of the powers conferred under Section 176 of the Electricity Act 2003 on December 13, 2023 notified the Draft Electricity (Rights of Consumers) Second Amendment Rules 2023 (**Draft Amendment Rules 2023**). The Draft Amendment Rules 2023 proposes to amend the Electricity (Rights of Consumer) rules, 2020 (**Principal Rules**). The aim of the Amendment Rules 2023 to bring crucial changes in the regulations governing electricity rights for consumers.
- Key changes proposed by the Draft Amendment Rules 2023 are follows:
 - The distribution licensee shall provide individual connection for supply of Electricity to owner(s) or occupier(s) of any premise in a Group Housing Society or Residential Colony or Resident Welfare Association (RWA) or similar body registered with Appropriate Government, on their request, in the manner prescribed by the Appropriate Commission.
 - The distribution licensee shall provide a separate connection for supply of Electricity for Electric Vehicle (EV) charging system, if requested by the individual consumer or Group Housing Society or residential colony or Resident Welfare Association (RWA) or similar body registered with Appropriate Government.
 - Testing of meters shall be done by the distribution licensee within a period as may be specified by the Commission, not exceeding thirty days, of receipt of the complaint from the consumer about their meter readings not being commensurate with his consumption of electricity.
 - No technical feasibility study shall be required for installation of rooftop solar up to 10 kW.
 - The consumer shall submit the installation certificate to the distribution licensee. The licensee shall complete signing of connection agreement, installation of meter and successful commissioning of the solar PV system within the timelines specified by the Commission which shall not be more than fifteen days from the date of submission of the installation certificate.

Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) (First Amendment) Regulations, 2023

- The Maharashtra Electricity Regulatory Commission (**MERC**), in exercise of the powers conferred under Section 61 and Section 86(3) read with Section 181 of the Electricity Act, 2003 (36 of 2003) and in pursuance to Clause 5.3 of the Tariff Policy, 2016 has amended the Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 (**Principal Regulations**). MERC by way of Maharashtra Electricity Regulatory Commission (Grid Interactive Rooftop Renewable Energy Generating Systems) (First Amendment) Regulations, 2023 (**Amendment Regulations, 2023**) has introduced key changes and additions such as updated definitions for terms like 'Eligible Consumer', new concepts like 'Gross Metering' and 'Group Net Metering'. The said Amendment Regulations 2023 revises existing regulations to align better with the Electricity (Rights of Consumers) Rules 2020 and its subsequent amendment in 2021.
- Key aspects:
 - **Eligible Consumer definition (Regulation 2.1(j))**: Amended to clarify that an Eligible Consumer, intending to use a Renewable Energy Generating System, is subject to a 5 MW limit in Net Metering or the consumer's Contract Demand/Sanction Load, whichever is lower. For other arrangements, the limit is the Contract Demand/Sanctioned Load.
 - **Introduction of Prosumer (Regulation 2.1(t)(a))**: A new category defined as a person who consumes and injects electricity into the grid using the same point of supply.

- **Distribution Licensee adaptation:** Emphasizes the need for Distribution Licensees to adapt to new technical requirements and billing systems while balancing consumer interests with operational efficiency.
- **Introduction of Gross Metering and Group Net Metering (Regulations 2.1(k)(a), 2.1(k)(b), 2.1(k)(c)):** Defines terms such as Gross Metering and Group Net Metering. Gross Metering involves separate accounting for total renewable energy generated and consumed, with the Distribution Licensee purchasing surplus energy. Group Net Metering allows surplus energy to be adjusted against multiple service connections of the same consumer.
- **Regulation 11(A) emphasis:** Highlights the importance of Regulation 11(A), focusing on the accounting of exported and imported electricity, meter reading processes, billing information, and conditions for accepting power over the useful life of the Renewable Energy Generating System.
- **Modification of existing regulations (Regulations 3.1(c), 3.1(d)):** Amendments to existing regulations, emphasizing gross metering arrangements and grid-connected renewable energy systems.
- **Net Metering Arrangement (Regulation 8.3):** Mandates single or three-phase Net Meters at the point of interconnection, with provisions for Gross Metering.
- **Check Meter for Gross Metering (Regulation 8.11):** Requires an additional Check Meter for Renewable Energy Generating Systems under Gross Metering Arrangement.
- **Application procedure and compensation (Regulation 9.5):** Outlines the procedure for connecting a system, with compensation provisions for delays.
- **Model Gross Metering Connection Agreement (Regulation 10.3(a)):** Introduces a model agreement for Gross Metering, subject to modification by the Distribution Licensee.
- **Group Net Metering (Regulation 11.9):** Defines energy accounting and settlement for surplus units, providing flexibility and exempting wheeling charges until rooftop solar capacity reaches 5000 MW.
- **Net Billing (Regulation 11(A)):** Specifies detailed energy accounting and settlement for exported and imported electricity, with a formula for consumer billing.
- **Useful Life and Gross Metering (Regulation 11.5(A)):** Links the acceptance of power under Gross Metering to the useful life of the Renewable Energy Generating System.
- **Renewable Purchase Obligation (RPO) (Regulation 14):** Details how electricity consumed under different arrangements contributes to RPO compliance for consumers and Distribution Licensees.
- **Connection Agreements (Annexure-1, Clause 1(h)):** Emphasizes the need for Net Metering, Net Billing, or Gross Metering Connection Agreements.

MNRE sets up a dispute resolution mechanism for unforeseen disputes

- The Ministry of New & Renewable Energy, Government of India (**MNRE**) on January 12, 2024 notified the process of Dispute Resolution between the Renewable Energy Power Developers/EPC Contractors and SECI/NTPC/NHPC/SJVN/ any other Renewable Energy Implementing Agency (**REIA**).
- By way of the said order the RE Power Developers/ EPC Contractors having disputes with REIA shall make an application to the REIA, within the time specified in the Contractual Agreement. REIA shall give the final decision to RE Power Developers/EPC Contractors within 21 days from the date of application.
- If the RE Power Developers/EPC Contractors is not satisfied with the decision of the REIA, then it may appeal to the Dispute Resolution Committee (DRC) by giving an application to the Secretary (**DRC**) of the concerned REIA with a copy to MNRE, within 21 days of REIA's Order.

Draft Uttar Pradesh Electricity Regulatory Commission (Grant of Connectivity to intra-State Transmission System) (First Amendment) Regulations, 2023

- The Uttar Pradesh Electricity Regulatory Commission (**UPERC**) in exercise of the powers conferred under the Electricity Act 2003 on December 8, 2023 has notified the UPERC (Grant of Connectivity to intra-State Transmission System) (First Amendment) Regulations, 2023 (**Draft Amendment Regulations 2023**).
- The Draft Amendment Regulations 2023 proposes to amend the UPERC (Grant of Connectivity to intra-State Transmission System) Regulations, 2010 (**Principal Rules**).

- The aim of the Draft Amendment Regulations 2023 is to encourage hybridization of renewable energy plants and for the integration of renewable energy generations into the grid through single inter-connection point at 33 kV & above and for coupling it with energy storage system which can help ensuring availability of firm power from the renewable project.

National Repowering & Life Extension Policy for Wind Power Projects, 2023

- The Ministry of New & Renewable Energy (**MNRE**) on December 7, 2023, has issued a circular notifying the National Repowering & Life Extension Policy for Wind Power Projects, 2023 (**Policy 2023**).
- By way of the Policy 2023 the MNRE has revised the New & Renewable Energy had issued 'Policy for Repowering of the Wind Power Projects', 2016 (**Principal Policy**). The objective of the repowering & life extension policy is optimum utilization of Wind energy resource by maximizing energy (kWh) yield per sq.km of the project area and utilizing the latest state-of-the art onshore wind turbine technologies.
- Policy 2023 permits the replacement of older turbines with more efficient ones, even prior to reaching the conclusion of their design life, by making modifications to parts like gearbox, blades, generator, and controller.

RECENT JUDGMENTS



In this Section

Jaipur Vidyut Vitran Nigam Ltd & Ors v. MB Power (Madhya Pradesh) Ltd & Ors

Hetero Wind Power (Pennar) Pvt Ltd v. Southern Power Distribution Company of AP Ltd & Andhra Pradesh Power Coordination Committee

Eden Renewable Cite Pvt Ltd v. Solar Energy Corporation of India Ltd & Ors, BSES Rajdhani Power Ltd, BSES Yamuna Power Ltd

MB Power (Madhya Pradesh) Ltd v. Haryana Power Purchase Centre & Anr

Ultra Tech Cement Ltd and Anr v. Ajmer Vidhyut Vitran Nigam Ltd

Jaipur Vidyut Vitran Nigam Ltd & Ors v. MB Power (Madhya Pradesh) Ltd & Ors

Supreme Court of India | Judgment dated January 8, 2024 | Civil Appeal No. 6503 of 2022 [Batch]

Background facts

- Government of India vide Notification issued on January 19, 2005 notified the Competitive Bidding Guidelines (**Bidding Guidelines**) under Section 63 of the Electricity Act, 2003. The objective of the Notification was to introduce competition and protect consumer interest.
- On September 21, 2009, Rajasthan Rajya Vidyut Prasaran Nigam Ltd (**RVPN**) filed petition before Rajasthan Electricity Regulatory Commission (**RERC/State Commission**) seeking approval for procurement of 1000 MW of power by competitive bidding process. Accordingly, an RFP was issued on May 28, 2012, inviting sellers to participate in the bidding process under the Bidding Guidelines. Pursuant to the bidding process, negotiations were held with the qualified bidders to reduce the tariff keeping in view the long-term impact. In terms of the aforesaid negotiation and based on the Letter of Intent (**LOI**) issued to successful bidders for the quoted tariff and additional capacity offered, RVPN executed Power Purchase Agreements (**PPAs**) with PTC India through developer Maruti Clean Coal and Power Ltd (L-1); PTC India through developer DB Power Ltd (L-2) and Lanco Power Ltd (L-3) on November 01, 2013.
- Pursuant thereto, RVPN filed a petition before the State Commission for adoption of tariff for purchase of long-term base load power of 1000 MW ($\pm 10\%$) as quoted by L-1, L-2 and L-3 bidders, under Case-I bidding process. The Energy Assessment Committee (**EAC**), constituted by the Government of Rajasthan, however suggested a demand of only 600 MW of power on account of availability of power from various sources and to meet future contingencies.
- On recommendation of EAC, Govt. of Rajasthan approved purchase of a quantum of only 500 MW power on long-term basis as against the quantum of 1000 MW for which PPAs had already been executed. Considering the demand in the State and based on the recommendation of EAC, the State Commission approved procurement of only 500 MW power and approved the tariff quoted by L1, L2 and L3 bidders. Aggrieved by the State Commission's decision to reduce the quantum, the L-2 and L-3 bidders preferred appeal(s) before Appellate Tribunal for Electricity (**APTEL**). APTEL allowed the appeal(s), stating that the reduction from 1000 MW to 500 MW was incorrect and therefore directed the State Commission to pass consequential orders for approving the PPAs for the L-2 and L-3 bidders for the higher quantum which was negotiated.
- Jaipur Vidyut Vitaran Nigam Ltd (**JVVNL**) filed a Civil Appeal before the Supreme Court on ground that the RFP quantum cannot be restored from 500MW to 1000MW. Another civil appeal was preferred by SKS Power Generation (L-5 bidder) on the ground that the State Commission could not have permitted the procurement of higher quantum by the L-2 and L-3 bidders.

- The Supreme Court vide order dated April 25, 2018 set aside the reduction in procurement quantum from 1000 MW to 500 MW after the bidding process was over and further held that the quantum original offered by the bidders in the bidding process has to be taken into consideration and increase in quantum by means of negotiation was not permissible.
- Supreme Court further directed the State Commission to consider approval for tariff adoption with regards to L-4 and L-5 bidders.
- The State Commission vide order dated February 26, 2019 held that the tariffs offered by L-4 and L-5 bidders were not aligned to the prevailing market price.
- Being aggrieved by the order dated February 26, 2019, passed by the State Commission, SKS Power (L-5 bidder) challenged the aforesaid order before APTEL by way of Appeal No. 224 of 2019.
- Vide the judgment and order dated February 03, 2020 APTEL allowed the appeal of SKS Power and held that the State Commission had to necessarily adopt the tariff and had no power to consider whether the tariff was aligned to market prices.
- On an interlocutory application by SKS Power in Civil Appeal No. 2721 of 2020, an interim order dated September 28, 2020 was passed by the Supreme Court wherein SKS Power was held entitled to supply power to the Appellants (**DISCOMs**) at the tariff of INR 2.88 per unit.
- Subsequently, MB Power (**Respondent No. 1**) filed a writ petition before the High Court of Rajasthan vide WP (C) No. 14815 of 2020, for issuance of appropriate writ or order or direction in the nature of mandamus to the DISCOMs for issuance of LOI in favour of MB Power and execution of PPA. It was contended that Clause 5.15 of the Bidding Guidelines permit BEC to reject 'all' price bids and not 'any' of them.
- Vide order dated September 20, 2021 (**Impugned Judgment**), the High Court allowed the writ petition of MB Power and directed the DISCOMs to execute PPA with MB Power for supply of 200 MW of power at levelized tariff of INR 5.517/kWh in terms of the bid qualified by BEC.

Issues at hand

- Whether the State Commission has the power to consider consumers' interest and reject the bid if it is not aligned to market prices?
- Whether the High Courts can exercise power of judicial review in the absence of extraordinary and exceptional circumstances while there exists an alternate efficacious remedy?
- Whether the High Court can issue a writ of mandamus to the instrumentalities of the State to enter into a contract in disregard to the public interest?

Decision of the Court

- Supreme Court while referring to its earlier decision in the case of *Energy Watchdog v. Central Electricity Regulatory Commission & Ors*¹, observed that the general regulatory power of the State Commission is the source of the power to regulate, which includes, the power to determine or adopt tariff. It was also noted that that the Electricity Act gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.
- The Supreme Court further observed that the State Commission was justified to reject all price bids if the rates quoted are not aligned to the prevailing market prices on the pretext that the evaluation committee is empowered to consider, as to whether the rates quoted are aligned to the market price or not, and that the evaluation committee shall have the right to reject all the price bids if it finds that the rates quoted are not aligned to the prevailing market price.
- It was also observed that the powers have been vested with the State Commission to regulate the prices at which electricity shall be procured from the generating companies, etc., moreover the Bidding Guidelines empower the BEC to reject all price bids if the rates quoted are not aligned to the prevailing market prices.
- The argument of MB Power that the procurer is bound to accept all the bids emerged in a competitive bidding process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines, was rejected by the Supreme Court.
- The Supreme Court while referring to the Constitution Bench Judgment passed in *Vivek Narayan Sharma & Ors v. Union of India & Ors*² observed that the words 'all' or 'any' will have to be construed in their context taking into consideration the scheme and purpose of the enactment, and thus held that the word 'all' used in Clause 5.15 of the Bidding Guidelines, read with the legislative policy for which the Electricity Act was enacted and read with Section 86(1)(b) of the Electricity Act, will have to be construed to be the one including 'any'.

¹ (2017) 14 SCC 80

² (2023) 3 SCC 1

- In view of the above, the Supreme Court observed that inasmuch as, if the power/electricity is to be procured by the procurers at the rates quoted by the Respondent No. 1, which is even higher than the rates quoted by the L-5 bidder, then the State would have been required to bear financial burden in thousands of crore rupees, which would have, in turn, passed on to the consumers.
- Thus, the Supreme Court set-aside the Impugned Judgement and order passed by the High Court in a writ of mandamus being unsustainable in law since the same failed to taking into consideration the larger consumer interest and consequential public interest.



HSA
Viewpoint

The decision by the Supreme Court highlights the commercial considerations which are of paramount importance in a commercial transaction. While the State and its instrumentalities are free to award contract on its own terms, regard must be had to the norms and standards failing which the Courts can examine and interfere with such decision-making process. While the decision settles the issue qua jurisdiction of the State Commission to question the bid tariff under Section 63 of the Act if the same is not in conformity with the bidding guidelines, it is the consumer interest and consequential public interest in the realm of a commercial transaction where State is a party to the contract, which warrants interference by Courts. The decision sets a precedent for exercise of judicial power in order to safeguard public interest.

Hetero Wind Power (Pennar) Pvt Ltd v. Southern Power Distribution Company of AP Ltd & Andhra Pradesh Power Coordination Committee

Andhra Pradesh Electricity Regulatory Commission (APERC) | Order dated November 16,2023 | O.P. Nos. 29 and 30 of 2023

Background facts

- The Petitioner - Hetero Wind Power (Pennar) Pvt Ltd - filed the Petition under Section 86(1)(f) & (e) of the Electricity Act, 2003, read with Clause-8 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (as amended) and also read with Clause-5.2 Article 5 of the Power Purchase Agreement (PPA).
- Seeking directions to the APSPDCL for expeditiously releasing the payments of the amounts due and payable to the Petitioner under the PPA towards Late Payment Surcharge.
- Petitioner contends Respondent No. 1 hasn't fully repaid principal; Petitioner's claims before March 2020 not time-barred; 1st Respondent's deduction of GBI amounts, citing High Court suspension, deemed invalid; Respondent No. 1, under 'must-run status,' cannot limit green power generation; denial of payment for power injected into the grid challenged.
- Respondent argues financial strain, disputes Petitioner's claims, asserts principal amounts cleared; cites 3-year limitation period for money claims; denies agreement to procure power beyond 23.5%, offers INR 0.50 Paise per unit for excess power to promote RE.

Issues at hand

- Whether GBI is deductible from the monthly bills?
- Whether the Petitioner is entitled to be paid for the power generated beyond 23.5 CUF and injected into the Grid. If so, at what rate?
- Whether the Respondents are liable to pay LPS as per PPAs?
- Whether the Claims are barred by limitation?

Decision of the Commission

- Relying on **ZR Renewable Energy Pvt Ltd v. APSPDCL & APTRANSCO**³, the Commission is not inclined to intervene at this stage in respect of the GBI incentive when the deduction is being continued from back as January, 2017.
- The Petitioner is entitled to payment of @ INR 0.50 per unit for the energy injected in excess of 23.5% CUF.
- Since, payment of this amount is beyond the due date, LPS as per Article-5.2 (as discussed supra) is payable. Accordingly, Respondent No. 1 is directed to pay the LPS on the amounts payable along with the payment due under the said Point.

³ RP No. 6 of 2021 in OP No. 37 of 2020

- Relying on ***AP Power Coordination Committee v. Lanco Kondapalli Power Ltd***⁴, the Petitioner has claimed bills from February, 2017 till February, 2023. Since the Petitioner has approached this Commission on April 25, 2023, bills, which are payable for three years preceding the said date, are within the period of limitation and the Petitioner is entitled to payment for the said period.
- Hence, the petition was disposed



HSA Viewpoint

The Commission's Order provides a comprehensive and well-reasoned explanation for abstaining from intervention in a particular matter. Simultaneously, it renders a decision on the issue of limitation, elucidating the circumstances under which the limitation period is applicable and effectively precludes any party from asserting a claim.

Eden Renewable Cite Pvt Ltd v. Solar Energy Corporation of India Ltd & Ors, BSES Rajdhani Power Ltd, BSES Yamuna Power Ltd

Central Electricity Regulatory Commission (CERC) | Order dated December 15, 2023 | Petition No. 207/MP/2021 along with I.A. No. 47 of 2022

Background facts

- The Petition was filed by Eden Renewable Cite Pvt Ltd, Under Section 79(1)(b), Section 79(1)(f), and Section 79(1)(k) of the Electricity Act, 2003, read with Article 12 of the Power Purchase Agreement(s) dated June 25, 2019.
- The Petitioner sought a declaration from the CERC that the imposition of safeguard duty on the import of solar cells, as per Notification No. 2/2020-Customs (SG) dated July 29, 2020, constitutes a Change in Law event.
- The Petitioner also sought approval for the quantum and mechanism of compensation, along with interest, in line with the methodology settled by the CERC in a previous order.
- The case involves detailed discussions on the imposition of safeguard duty, the impact on the Petitioner's business, the entitlement to compensation, and the calculation of annuity for payment of compensation.
- The factual matrix includes the sequence of events, submissions by the parties, and the CERC findings and decisions on the issues raised.

Issues at hand

- Whether the introduction of Notification No.02/2020- Custom (SG) dated July 29, 2020, amounts to a Change in Law event under Article 12 of the Power Purchase Agreement dated June 25, 2019?
- Whether the Petitioner entitled to compensation towards additional expenditure on account of the Change in Law event in terms of Article 12.2 of the PPA dated June 25, 2019?
- What should be the discount rate for the calculation of Annuity for payment of compensation on account of a Change in Law?
- Whether the Petitioner is entitled to carrying cost towards compensation for Change in Law?

Decision of the Commission

- The Court held that the imposition of safeguard duty on the import of solar cells, as per Notification No. 2/2020-Customs (SG) dated July 29, 2020, constitutes a Change in Law event under Article 12 of the Power Purchase Agreement (PPA) dated June 25, 2019.
- The Petitioner, Eden Renewable Cite Pvt Ltd, is entitled to compensation towards additional expenditure on account of the Change in Law event in terms of Article 12.2 of the PPA dated June 25, 2019.
- The Court determined that the discount rate for the calculation of annuity for payment of compensation should be in line with the prevailing normative cost of debt, which would be the rate of interest as stipulated by CERC in the RE Tariff Order for the financial year in which the project has achieved Commercial Operation Date (COD).
- The Petitioner is entitled to carrying cost towards compensation for the Change in Law event, starting from the date when the actual payments were made to the Authorities till the date of issuance of the Court's order, at the actual rate of interest paid by the Petitioner for arranging funds.

⁴ Civil Appeal No.6036 of 2012

- In summary, the Court's decision upheld the Petitioner's entitlement to compensation for the Change in Law event and provided specific directives regarding the calculation of annuity, carrying costs, and enforcement of the compensation claims.



HSA
Viewpoint

CERC while holding 2020 SGD to be a change in law event, CERC upheld the Petitioner's entitlement towards compensation on account of the same and provided specific directives regarding the calculation of annuity, carrying costs, and enforcement of the compensation claims. This decision of CERC has appreciated the fact SGD previous notification were a declared a change in law event and in light of the same it is imperative that 2020 SGD notification is also declared as a change in law event to maintain certainty in the sector.

MB Power (Madhya Pradesh) Ltd v. Haryana Power Purchase Centre & Anr

Central Electricity Regulatory Commission (CERC) | Petition No. 356/MP/2022 along with IA No.64/2023 | Order dated December 31, 2023

Background facts

- The Petitioner, MB Power (Madhya Pradesh) Ltd sought compensation for increased power generation costs due to the mandatory blending of domestic and imported coal, following directives issued by the Ministry of Power (**MoP**), Government of India under Section 11(1) of the Electricity Act, 2003.
- The CERC permitted the Petitioner to amend the Petition to align with Section 11 and address procedural concerns.
- The amended Petition requested compensation, the calculation methodology, recognition of Change in Law events, and specific directives for payment. The Respondent, Haryana Power Purchase Centre, opposed this, citing timing issues and changes in the Petitioner's stance.

Issues at hand

- Whether the Respondent HPPC is liable to pay any compensation to the Petitioner on account of mandatory blending of domestic coal with imported coal in compliance with the directives issued by the Ministry of Power, Government of India, under Section 11 of the Electricity Act, 2003 in terms of Change in Law provision of the APP & CIL Rules and/ or Under Section 11(2) of the Electricity Act, 2003?
- What mechanism needs to be adopted for granting compensation to the Petitioner?
- Whether the Petitioner is entitled to any Carrying Cost on the compensation?

Decision of the Commission

- The CERC held that in terms of Section 11(2) of the Act, the Respondent HPPC is liable to pay compensation to the Petitioner on account of mandatory blending of domestic coal with imported coal to the extent of 10% in compliance with the directives issued by the Ministry of Power, Government of India, under Section 11 of the Act.
- The Petitioner had complied with Section 11 directions issued by MoP on May 26, 2022, and August 11, 2022, and has only utilized the imported coal purchased before August 11, 2022, for the blending with domestic coal and is entitled to be compensated for the entire imported coal for which it had placed the order before August 11, 2022.
- In terms of the principles of restitution and time value of money as upheld by the Supreme Court in its various Judgments, the Respondent HPPC is liable to pay an adequate carrying cost/interest on the compensation claim.
- Further, the interest on each monthly compensation amounts payable by the Respondent, HPPC, to the Petitioner in terms of our above directions shall be computed for the period from its respective Due Date till the date of making the final payments by the Respondent HPPC in terms of the above-quoted provisions of the APP dated May 18, 2022.



HSA
Viewpoint

By holding that the Petitioner is entitled to compensation for complying with Ministry of Power directives under Section 11, involving mandatory blending of domestic and imported coal. The claim covers the entire quantity of imported coal ordered before August 11, 2022 along with carrying costs/interest highlights the importance of the principles of restitution and time value of money.

Ultra Tech Cement Ltd and Anr v. Ajmer Vidhyut Vitran Nigam Ltd

Rajasthan Regulatory Electricity Commission, Jaipur | Order dated December 14, 2023 | Petition No. RERC 2047/2022 & IA No. 01 in 2047/2022

Background facts

- UltraTech Cement Ltd (**UTCL**) owns and operates a unit of Aditya Cement Works and to meet its industrial requirements, entered into an agreement with Amplus Dakshin Pvt Ltd (**ADPL**) and Amplus Energy Solutions Pvt Ltd (**AESPL**) to set up an 8 MW Solar Captive Generating Plant (**CGP**).
- It is noteworthy that UTCL holds 26% equity stake in ADPL and AESPL owns 74%, which installed the Solar CGP. Further, the Solar CGP was commissioned on May 7, 2022 under the aegis of Rajasthan Solar Policy, 2019. Post commissioning, UTCL consumes 100% of its power generated from the solar CGP.
- On August 3, 2022, AVVNL imposed Cross Subsidy Surcharge (**CSS**), Additional Surcharge (**AS**), and Water Cess (**WS**), claiming UTCL isn't a Captive User.
- UTCL responded on August 16, 2022, citing agreements executed between UTCL and ADPL and demonstrating compliance with Electricity Act, 2003 and Electricity Rules, 2005.

Issues at hand

- Whether UTCL qualifies as a captive user for the 8 MW Solar CGP based on its equity stake, consumption agreement, and compliance with Electricity Act and Rules?
- Whether UTCL adhered to the requirements outlined in Rule 3 of the Electricity Rules 2005, specifically regarding ownership percentage, consumption for captive use, and the SPV's role in establishing the CGP?
- Examine the validity of AVVNL's imposition of CSS, AS and WC on UTCL's power consumption from the Solar CGP, considering UTCL's contention of being a captive user.

Decision of the Commission

- In this order, the Commission addresses the dispute arising from different interpretations of Rule 3 of the Electricity Rules 2005 regarding UTCL's status as a captive consumer.
- The Commission observes that UTCL, with 26% shareholding, consumes 100% of the energy from the Solar Captive Power Plant (**CPP**) owned by ADPL.
- With regard to the primary question of whether UTCL qualifies as a captive consumer based on Rule 3's ownership and consumption criteria, the Commission emphasized that the minimum ownership threshold is 26%, with no maximum specified. The Commission relies upon the Dakshin Gujarat Judgment dated 09.10.2023 pronounced by the Supreme Court and states that a captive user owning 26% and consuming 51% or more qualifies, regardless of other shareholders. It was further stated that Rule 3 mandates a captive user to have at least 26% ownership and consume 51% or more of the generated electricity.
- The Commission rejected the proportionality test's applicability in the present case, emphasizing that UTCL's sole consumption meets the Rule 3 conditions. The order holds that UTCL qualifies as a captive consumer, exempted UTCL from CSS and AS on captive consumption.
- The Commission directed the Discom to refund any collected CSS and AS amounts, and the matter was disposed of with no cost orders.



HSA Viewpoint

The Commission's order in this case is pragmatic and aligned with the legislative framework, particularly Rule 3 of the Electricity Rules 2005. The Commission emphasizes the minimalistic interpretation of ownership and consumption criteria for a captive user, rejecting the application of a proportionality test in cases where a single user fulfils the conditions. By referring to the recent judgment of Dakshin Gujarat, the Commission provides clarity on the qualifying thresholds, highlighting that 26% ownership and 51% or more consumption are minimum requirements. The Commission's use of examples enhances clarity, demonstrating that non-consuming shareholders do not impact the qualification of consuming shareholders. The decision to exempt UTCL from CSS and AS, along with the directive for a refund, reflects a practical application of rules to the specific circumstances of the case. Overall, the judgment is well-founded, providing a clear and actionable interpretation of the regulatory framework in the context of captive power plants.

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