

# GATI - विधि

-LAW IN ACTION



## Legal Updates

**Ministry of Power amends its order regarding “waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy”**

The Ministry of Power (“**MoP**”) has, vide order dated 21.06.2021, issued an amendment to its earlier order dated 15.01.2021 regarding “*waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy*”. The said order dated 21.06.2021 has conveyed the following concerning waiver of inter-state transmission system (“**ISTS**”) charges:

- (a) Extension of waiver of ISTS charges on transmission of electricity generated from solar and wind sources for projects to be commissioned up to 30.06.2025;
- (b) Waiver of total ISTS charges will also be allowed for hydro pumped storage plant (“**PSP**”) and battery storage system (“**BESS**”) projects to be commissioned up to 30.06.2025, upon meeting of certain conditions.
- (c) ISTS charges for power generated / supplied from such hydro PSP and BESS will be levied gradually.
- (d) Waiver of transmission charges allowed for trading of electricity generated / supplied from solar, wind, PSP, BESS in green term-ahead market and green day-ahead market for two years i.e., till 30.06.2023.

It was clarified that the waiver is allowed for interstate transmission charges only and not losses. Furthermore, it was also clarified that an intra-state transmission system which is used for the conveyance of electricity across the territory of an intervening state as well as conveyance within the state which is incidental to such inter-state transmission of electricity, will be included for sharing of inter-state transmission charges. Hence, such waiver of ISTS charges will also become applicable to such parts of intra-state transmission. The transmission charges of such intra-state transmission system will be reimbursed by the Central Transmission Utility.

**APTEL rules on qualification criteria for captive generation plants and clarifies on the authority of distribution companies and regulators**

The Appellate Tribunal for Electricity (“**APTEL**”), vide judgment dated 07.06.2021 in *Tamil Nadu Power Producers Association v. Tamil Nadu Electricity Regulatory Commission and Ors.* [Appeal No. 131 of 2020], set aside the order dated 28.01.2020 (“**Impugned Order**”) passed by the Tamil Nadu Electricity Regulatory Commission (“**TNERC**”) in R.A. No. 07 of 2019 regarding verification of captive generation plant (“**CGP**”) / captive user status, to the extent of the findings and directions as mentioned hereinbelow:

- (a) The Tamil Nadu Generation and Distribution Corporation Limited (“**TANGEDCO**”) can collect and verify data for the purpose of verification of captive plant status only. However, any coercive action to be initiated against the CGP / captive users will be decided by TNERC.
- (b) Only the documents envisaged under TNERC (Grid connectivity and Intra-State Open Access) Regulations, 2014 must be provided for granting open access.
- (c) As per Rule 3 of the Electricity Rules, 2005, the ‘special purpose vehicle’ and ‘association of persons’ are two distinct entities and cannot be equated at par for computation of annual power consumption for determining the captive status.
- (d) Any verification of status of CGPs and captive users must be done on an annual basis, at the end of the financial year.
- (e) Direction in the Impugned Order to the effect that where the minimum requirements are met, however, if any captive user fails to fulfil the proportionality consumption criteria, such user is to be declared as non-captive while the other users who fulfil the above test would remain as captive, was held as unsustainable under law.
- (f) There cannot be retrospective application of the procedure formulated under the Impugned Order for verification of status of CGP / captive users. However, TANGEDCO can verify data for the purpose of determination of captive plant status.
- (g) Direction in the Impugned Order to the effect that in the event, the weightage average of shareholding of captive users changes within a financial year, then the same must be intimated within ten days to TANGEDCO, was set aside.

**TSERC issues the TSERC (Deviation Settlement Mechanism and Related Matters) Regulation, 2021**

The Telangana State Electricity Regulatory Commission (“**TSERC**”) on 16.06.2021 issued the Telangana State Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulation, 2021 (“**DSM Regulations**”) which will come into force from the effective date i.e., 01.04.2022. The DSM Regulations will be applicable to buyers and sellers involved in the transactions of conveyance of electricity facilitated through open access using intra-state transmission system and / or distribution system of electricity (including inter-state wheeling of power), subject to certain conditions. Click [here](#) to access more information regarding the DSM Regulations.

**MERC directs distribution licensees to provide online facility for eligible consumer to submit their applications for revision in contract demand**

The Maharashtra Electricity Regulatory Commission (“**MERC**”) had, vide order dated 26.05.2021 in Case No. 25 of 2021, allowed two revisions in contract demand per billing month for HT industrial and commercial consumers, and one revision per billing month for LT industrial and commercial consumers (“**MERC Order**”). The MERC has now, vide order dated 11.06.2021, clarified that to comply with mandate of revising contract demand within 3 days as stipulated in the MERC Order, distribution licensees will provide online facility wherein eligible consumer can submit its application for revision in contract demand and such online module should automatically approve such request if the technical arrangement for the change in contract demand is within permissible limits. Further, in case, request for revision in contract demand is within the level of approved contract demand in the month of March 2020 (before imposition of lock down due to COVID-19 pandemic) or any higher contract demand approved subsequently, then such request needs to be effected without undertaking fresh technical feasibility as load drawn will be within existing infrastructural limits.

The Ministry of Petroleum and Natural Gas (“**MoPNG**”) has, vide notice dated 15.06.2021, invited comments / suggestions from the general public, State Governments and oil and gas industry stakeholders on the Draft Oilfields (Regulation and Development) Amendment Bill, 2021 (“**Bill**”) by 30.06.2021. The Bill proposes to make amendments to the Oilfields (Regulation and Development) Act, 1948 (“**Act**”). The salient features of the Bill are as follows:

- (a) Provision for distinction between mining activities and petroleum operations: The Bill seeks to define the term ‘mineral oil resources’ since it is often confused with ‘mineral resources.’ In order to extract ‘mineral resources’, mining activities are required to be carried out, whereas, to explore, develop and produce ‘mineral oil resources’, ‘petroleum operations’ are required to be carried out.

**MoPNG invites comments on Draft Oilfields (Regulation and Development) Amendment Bill, 2021**

The Bill seeks to distinguish between 'petroleum operations' and 'mining activities' by substituting 'mining lease' with 'mineral oil resource lease' and substituting references to 'mine', 'quarry' or 'excavate' with 'produced' in order to assist in expeditious development and production of 'mineral oil resources.'

- (b) Definition of 'mineral oils': The definition of 'mineral oils' is proposed to be expanded to include modern and cleaner sources of energy such as hydrogen.
- (c) Compensation in case of suspension / revocation of lease: The Bill seeks to foster investment in the industry by offering lease on stable terms and enabling the Government to prescribe a compensation mechanism to protect the investment. The compensation will be payable in case of suspension, revocation or cancellation of the lease or any part thereof or in case of restriction of access in respect of the leased area as per the rules laid down by the Central Government.
- (d) Rule-making power: The Bill seeks to amend the Act to explicitly enumerate the power of the Government to prescribe rules for extension of the period of lease; the maximum or minimum area of lease; mechanism for determination of the economic life of the oilfield; terms for merger or combination of leases; resolution of disputes arising out of, or in relation to, such leases including through arbitration, conciliation, and mediation; mechanism for determination and payment of compensation in case of suspension, revocation or cancellation of any lease; restriction of access to any leased area; sharing of facilities and infrastructure; safety in mineral oil operations; sound management of mineral oil resources in accordance with good international petroleum industry practices; unitization of leases; and collection, aggregation, dissemination, use or sharing of relevant data and samples for the purposes of economic development, academic research and public welfare.
- (e) Imposition of fine: The Bill seeks to impose fines for contravention of the provisions of any rules framed under the Act to the tune of Rs. 1 crore for the first instance. If the contravention continues after imposition of fine, fine extending up to Rs. 10 lakh per day may be imposed for the entire duration during which the contravention continues commencing from the date of imposition of the first fine.
- (f) Recovery of payment due to Government as arrears of land revenue: The Bill seeks to empower the Government to recover payment of royalty, cess, lease or license fee, penalty payable under the Act or the rules framed thereunder, or any other contractual payment or sum due to the Government relating to mineral oil resource operations or the interest thereon as an arrear of land revenue.

The MoPNG has, vide notification dated 22.06.2021, invited comments from stakeholders on the Draft Petroleum and Natural Gas Regulatory Board (Matters Related to Natural Gas Sector Development) Rules, 2021 ("**Draft Rules**") by 22.07.2021. The salient features of the Draft Rules are as follows:

- (a) Categorization of pipelines transporting natural gas: (a) Natural gas pipelines which may fall under the sub-categories of: (i) trunk pipelines; (ii) spur-lines; and (iii) tie-in connectivity pipelines; (b) City or local natural gas distribution networks ("**CGD Network**") pipelines which may fall under the sub-categories of: (i) primary network pipelines; (ii) secondary network pipelines; and (iii) tertiary network pipelines; (c) Dedicated pipelines which are laid to supply natural gas to a specific customer to meet his own requirement and not for resale; (d) Exploration and production ("**E&P**") entity pipelines which will be owned and operated by an E&P entity for transportation of natural gas by such entity from the outlet point of its gas gathering station or from the outlet point of its gas separation / processing plant to another regulated pipeline, or to another E&P entity's pipeline, or to one or more industrial consumers of the natural gas produced by such E&P entity.
- (b) Open access and transportation tariff for natural gas pipelines: Authorized or declared common carrier capacity in natural gas pipelines will be available on a non-discriminatory open access basis. Such open access capacity shall be contracted by any entity also through the transport system operator ("**TSO**").

**MoPNG invites comments from stakeholders on the Draft Petroleum and Natural Gas Regulatory Board (Matters Related to Natural Gas Sector Development) Rules, 2021**

- (c) Transport system operator: The TSO will be a body corporate and, for the purpose of the Draft Rules, function to facilitation and coordination of booking of common carrier capacity in all natural gas pipelines on a non-discriminatory open access basis. The TSO will frame suitable procedure which may provide for: (i) registration of users of TSO services, including gas traders, for booking open access capacity through the TSO; (ii) receipt of necessary pipeline data from all authorized pipeline entities that may be required for providing the TSO services; (iii) collection and scheduling of nominations for transportation of gas in open access capacity; (iv) management of imbalances in open access capacity. The TSO will also set up a gas management control centre and establish a suitable database management system, and provide information to gas exchange(s) in respect of available common carrier capacity. The TSO may collect charges from the registered users of TSO services for meeting its own expenditure in performing its functions. The TSO entity will not engage in the activity of marketing and sale of natural gas.

The Ministry of Information and Broadcasting (“MIB”) has, vide notification dated 17.06.2021, issued the Cable Television Networks (Amendment) Rules, 2021 (“**Amendment Rules**”). The salient features of the Amendment Rules are as follows:

- (a) Where the Central Government is satisfied that the programme / advertisement of any channel is not in conformity with the Programme Code / Advertising Code, respectively, it may, after giving an opportunity of hearing to the cable operator, and by an order in writing, prohibit the transmission or re-transmission of any such channel or programme in accordance with Section 20 of the Cable Television Networks (Regulation) Act, 1995.
- (b) Filing and processing of grievance or complaint: Any person aggrieved by the content of a programme of a channel as being not in conformity with the Programme Code or the Advertising Code may file his complaint in writing to the broadcaster. The broadcaster will dispose of the complaint and inform the complainant of its decision within 15 days of receipt of such complaint. If the decision of the broadcaster is not communicated to the complainant within 15 days, or if the complainant is not satisfied with the decision of the broadcaster, he may prefer an appeal to the self-regulating body of which such broadcaster is a member, within 15 days therefrom. The self-regulating body will dispose of the appeal within 60 days of receipt of appeal and convey its decision in the form of a guidance or advisory to the broadcaster, and inform the complainant of such decision within a period of 15 days. Where the complainant is not satisfied with the decision of the self-regulating body, he may, within 15 days of such decision, prefer an appeal to the Central Government for its consideration under the oversight mechanism.
- (c) Self-regulation by broadcasters: A broadcaster will: (i) establish a grievance or complaint redressal mechanism and appoint an officer to deal with the complaints received by it; (ii) ensure that such officer takes a decision on every grievance or complaint received by it within 15 days and communicate the same to the complainant within the stipulated time; and (iii) be a member of a self-regulating body and abide by its terms and conditions.
- (d) Self-regulation by the self-regulating body of broadcasters: There may be one or more self-regulatory body of broadcasters, being an independent body constituted by the broadcasters or its association. Every such self-regulating body will be constituted by a minimum of 40 broadcasters. Such self-regulating body will be headed by a retired judge of the Supreme Court or of a High Court or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights or such other relevant fields, and shall have other members, preferably not exceeding 6, being independent experts in such fields. The self-regulating body, while disposing off a complaint or an appeal, may issue the following guidance or advisories to the broadcaster, viz.: (i) advisory, warning, censure, admonish or reprimand; or (ii) an apology to be telecast by the broadcaster; or (iii) include a warning card or a disclaimer; or (iv) in case of any content where it is satisfied that there is a need for taking action to delete or modify content, refer it to the Central Government for the consideration of the oversight mechanism for appropriate action. Where the broadcaster fails to comply with such guidance or advisory within the time specified, the self-regulating body will refer the matter to the oversight mechanism within 15 days of expiry of the stipulated period.

**MIB issues Cable  
Television Networks  
(Amendment)  
Rules, 2021**

- (e) **Oversight mechanism:** The Central Government will develop an oversight mechanism, and perform the following functions, viz.: (i) publish a charter for self-regulating bodies, including Codes of Practices for such bodies; (ii) establish an inter-departmental committee for hearing grievances or complaints; and (iii) issue appropriate guidance and advisories to broadcasters.

The Telecom Regulatory Authority of India (“**TRAI**”) has issued the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Third Amendment) Regulations, 2021 vide notification dated 11.06.2021 (“**Amendment Regulations**”). The salient features of the Amendment Regulations are as follows:

1. **Insertion of new Regulation 4A providing for compliance to requirements of addressable system by distribution platform operators (“DPOs”):**
  - (a) Every DPO will be required to (from such date and after such testing and certification as may be specified by TRAI by order) deploy such conditional access system (“**CAS**”) and subscriber management system (“**SMS**”) which conform to the requirements specified in Schedule IX to the Amendment Regulations.
  - (b) For the CAS and SMS systems already deployed before the date of issue of above order TRAI will specify a separate timeline within which such systems will have to get tested and certified to meet the requirements as specified in Schedule IX.
  - (c) If a DPO fails to obtain the certification of the CAS and / or SMS deployed in its network within the stipulated timelines specified by TRAI, it will be liable to pay, by way of financial disincentive, an amount of Rs. 1,000/- per day for default up to 30 days beyond the due date and an additional amount of Rs. 2,000/- per day in case the default continues beyond 30 days from the due date. Such financial disincentive can in no case exceed Rs. 2,00,000/-. No order for payment of any amount by way of financial disincentive will be made by TRAI unless the DPO has been given a reasonable opportunity of representation against the contravention of the regulations.
  - (d) TRAI may direct broadcasters to disconnect the signals of its TV channel after giving written notice of 3 weeks to the DPO in case the default continues beyond 60 days from the due date.
2. **Insertion of new Schedule IX providing for framework for technical compliance of CAS and SMS:** Schedule IX provides for: (i) mandatory requirements for CAS; (ii) mandatory requirements for SMS; (iii) desirable requirements for CAS; and (iv) desirable requirements for SMS.

The Ministry of Corporate Affairs (“**MCA**”) has, vide notification dated 15.06.2021, notified the Companies (Meeting of Board and its Powers) Amendment Rules, 2021. Vide such amendment, Rule 4 has been omitted from the Companies (Meeting of Board and its Powers) Rules, 2014 (“**MCA Rules**”). With the omission of Rule 4 from the MCA Rules, the following matters can also now be dealt within any meeting held through video conferencing or other audio-visual means: (i) the approval of the annual financial statements; (b) the approval of the board’s report; (c) the approval of the prospectus; (d) the audit committee meetings for consideration of financial statements including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013 (“**CA 2013**”); and (e) the approval of the matter relating to amalgamation, merger, demerger, acquisition, and takeover.

The MCA has, vide notification dated 18.06.2021, notified the Companies (Creation and Maintenance of databank of Independent directors) Amendment Rules, 2021. The said amendment provides that in case of delay on the part of an individual in applying to the Indian Institute of Corporate Affairs for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal under Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 after charging a further fees of Rs. 1,000 on account of such delay.

**TRAI issues the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Third Amendment) Regulations, 2021**

**MCA issues the Companies (Meeting of Board and its Powers) Amendment Rules, 2021**

**MCA notifies the Companies (Creation and Maintenance of databank of Independent directors) Amendment Rules, 2021**

**MCA provides  
clarification on  
passing of ordinary  
and special  
resolutions by  
companies under  
the CA 2013**

The MCA has, vide general circular dated 23.06.2021, allowed companies to continue to conduct their extraordinary general meetings through video conferencing or other audio-visual means or transact items through postal ballot up to 31.12.2021 in accordance with the framework provided in previous circulars issued by the MCA.

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