

GATI - विधि

-LAW IN ACTION



Legal Updates

The Ministry of Power (“**MoP**”), vide its letter dated 22.03.2021, issued the following guidelines for enabling distribution companies (“**Discoms**”) to either continue or exit from a power purchase agreement (“**PPA**”) after completion of the term of the PPA and allow flexibility to the generators to sell power in any mode after State / Discom exit from PPA:

1. First right to avail power from Central Generating Stations (“**CGSs**”) developed under Section 62 of the Electricity Act, 2003 (eligible CGSs), even beyond the term of PPA, will continue to be with the States / Discoms with whom the PPA was signed.
2. The States / Discoms having long-term PPAs with the CGSs, which are due to expire soon, can opt to relinquish the entire allocated power (firm and unallocated share) from such eligible CGSs post completion of the PPA by giving six months’ advance notice for their intention to relinquish. For CGSs which have already completed 25 years, States may exit from the PPA after giving six months’ notice of relinquishment of such power.
3. Willing State / Discoms may relinquish their share from eligible CGSs after expiry of the term of the PPA. The request for relinquishment from CGSs may be submitted only after the approval of the State Commission. Relinquishment will be considered only after State / Discom has cleared all past dues. The State / Discoms shall continue to be liable to make all the eligible payments / dues as per the prevailing rules / regulations to the generators whose share of power has been relinquished till final settlement. In all such cases, the power allocation, if any, made by the Central Government to the State from that power station would be treated as withdrawn. Intimation to this effect will be required to be given by either the generating company or the State to the MoP. States may also relinquish the entire unallocated power from the CGSs (except some specific allocations e.g. power which has been bundled with solar). Part relinquishment of share from unallocated pool of power shall not be feasible and accordingly shall not be allowed. Any share for CGSs, once relinquished by the state will not be allowed to be taken back by the State under the same PPA conditions.

MoP issues guidelines on continuance or exit from a power purchase agreement after completion of term of the agreement

4. In case of bulk power supply agreement also, the State / Discoms may relinquish the entire allocated power from such projects which have completed 25 years since commissioning of the project. Power supply from other projects shall continue as per the terms of the PPA.
5. For nuclear power generating stations, the mechanism of relinquishment of power after completion of term of PPA shall be as decided by the Department of Atomic Energy as the tariff of nuclear power generating stations is determined by the Department of Atomic Energy on the recommendation of the Central Electricity Authority.
6. The CGSs whose power gets relinquished by the States would be free to sell such relinquished power under various avenues such as:
 - a) Tie up with any other buyers desiring to go for long-term PPAs or medium-term PPAs (up to 5 years) or short-term PPAs through competitive bidding route;
 - b) Sell power in the power exchanges including day-ahead, real-time market and term ahead markets, etc.; and
 - c) Get the power reallocated to the willing buyers, if any, as per the extant provisions of reallocation of power from CGSs

The MoP, pursuant to O.M. dated 12.11.2020 issued by the Ministry of Finance stipulating reduction in Performance Security in all kinds of government for all existing tender/contracts as well as tenders/contracts to be issued/concluded till 31.12.2021, has decided to reduce Contract Performance Guarantee (“CPG”) for Tariff Based Competitive Bidding (“TBCB”) for the following transmission projects:

- (a) projects under construction where CPG is valid;
- (b) projects where Letter of Award has been issued but CPG is yet to be submitted;
- (c) projects where Request for Proposal (“RfP”) has been issued but bids are yet to be submitted, and;
- (d) projects where RfP is not yet issued, but to be issued till 31.12.2021.

Revision in reduction would be as follows:

	Existing	Proposed
CPG Value	@ Rs. 13.5 lakh per km for the total Transmission Line length and @ Rs. 1.125 lakh per MVA for sub stations	@ Rs. 5.25 lakh per km for the total Transmission Line length and @ Rs. 0.45 lakh per MVA for substations

The above reduction in CPG is subject to following conditions:

- (i) not to be given in contracts under dispute wherein arbitration/ court proceeding have already been started or are contemplated.
- (ii) the reduced Performance Security shall continue for the entire duration of the contract and there would not be subsequent increase of Performance Security even beyond 31.12.2021.
- (iii) whenever, there are compelling circumstances to ask for CPG in excess of reduced value, the same should be done only with the approval of the next higher authority to the authority competent to finalise the tender, or the Secretary to the Ministry/ Department, whichever is lower.

The Central Electricity Regulatory Commission (“CERC”) in *Petition No. 01/SM/2021*, after addressing the stakeholders’ comments and based on the tariff orders issued by the State Electricity Regulatory Commissions (“SERCs”)/ Joint Electricity Regulatory Commission (“JERCs”) for FY 2020-21, notified the Average Power Purchase Cost (“APPC”) at the national level which has been worked out at Rs. 3.85/kWh. The APPC at the national level for FY 2021-22 was determined by computing the average of APPC of all States and Union Territories, weighted by volume of conventional power purchased by the respective State/UT from the respective Tariff Orders for FY 2020-2021. The total cost of power purchase considered for computation of APPC excludes cost of generation or procurement from renewable energy sources and transmission charges in alignment with the objective of determining APPC, which is to ascertain the average cost of power from conventional

MoP on reduction of Contract Performance Guarantee for Tariff Based Competitive Bidding transmission projects

CERC notifies Average Power Purchase Cost at the national level

sources of electricity. This APPC shall be applicable during FY 2021-22 or until further orders for the purpose of deviation settlement in respect of the open access and captive wind and solar generators fulfilling the requirement of regional entities, in terms of the provisions of sub-clause (v) of clause (1) of Regulation 5 of the CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014.

The CERC in Petition No. 03/SM/2021 (Suo Motu) vide its order dated 31.03.2021 decided to extend the implementation of the Security Constrained Economic Despatch (“**SCED**”) pilot till 30.09.2021. It is to be noted that the CERC had earlier vide order dated 31.01.2019 had directed the Power System Operation Corporation (“**POSOCO**”) to implement a pilot on Security Constrained Economic Despatch (“**SCED**”) for thermal Inter-State Generating Stations which was further extended up to 31.03.2021.

The prime driver behind the pilot was to explore the scope of optimisation and, therefore, the possibility of minimising the system cost without major structural changes in the existing system. The CERC also observed that SCED has helped gain experience in the scope of optimisation at the Inter-State Generating Station (ISGS) level and has proved to be an important tool in optimising the available resources in the power system to reduce system cost. The Commission also noted that the pan-India lockdown for containment of COVID-19 had an impact on SCED pilot as a significant portion of generation capacity went under reserve shut down due to demand reduction. However, despite that, the significant savings of Rs 1624 crores in generation cost from start of the SCED pilot in April 2019 up to January 2021 was achieved.

Therefore, the CERC has extended the implementation of the SCED pilot till 30.10.2021, on the same terms as contained in the order dated 18.04.2020 in Petition No. 08/SM/2020. Furthermore, the CERC directed POSOCO to apprise it on the operation of the SCED on the monthly basis so that the CERC can carry out any modification, as required and submit a detailed feedback report.

The Rajasthan Electricity Regulatory Commission (“**RERC**”) vide its suo-motu Order dated 24.03.2021 issued clarification with respect to Draft Regulation 3.4 of the Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2020 as notified on 21.12.2020.

RERC vide the above said Order clarified that till the RERC proposes finalised Grid Interactive Regulations, the Rooftop and Small Solar Grid Interactive Systems commissioned under Net Metering agreements up to 30.06.2021, shall continue to operate under the Net Metering arrangement till the period of Connection Agreement, as per the provisions of the Rajasthan Electricity Regulatory Commission (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015 and subsequent amendments thereof. The Draft Grid Interactive Regulations have been amended to this extent.

The Ministry of Corporate Affairs (“**MCA**”) has notified the Companies (Audit and Auditors) Amendment Rules, 2021 which shall come into force with effect from 01.04.2021. The MCA has deleted the clause relating to dealings in Specified Bank Notes during the prescribed time period from the Auditors Report and inserted the clause relating to the funds advanced/received or loaned or invested by the company to or in any other person(s) or entity(ies), including foreign entities with the understanding that the intermediary shall lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Company. Further, the Auditors are required to comment *that* the status of the dividend declared or paid during the year by the company follows section 123 of the Companies Act, 2013. The Auditors are also required to comment on accounting software used by the Company for maintaining its books of accounts which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software.

**CERC extends
Security
Constrained
Economic Despatch
pilot till 30.10.2021**

**RERC issues
clarification
regarding the Draft
RERC (Grid
Interactive
Distributed
Renewable Energy
Generating
Systems)
Regulations, 2020**

**MCA notifies
Companies (Audit
and Auditors)
Amendment Rules,
2021**

**MCA notifies
Companies
(Accounts)
Amendment Rules,
2021**

MCA has notified the Companies (Accounts) Amendment Rules, 2021 which shall come into force with effect from the 01.04.2021. Accordingly, MCA has mandated that for the financial year commencing on or after the 01.04.2021, every company which uses accounting software for maintaining its books of accounts shall use only such accounting software which has a feature of recording audit trail of every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled. Further, the notification also specified that Board Report should contain the following additional information's relating to the details of an application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year and the details of the difference between the amount of the valuation is done at the time of one-time settlement and the valuation done while taking a loan from the Banks or Financial Institutions along with the reasons thereof.

**Insolvency process
maintainable
against Corporate
Guarantor even if
Principal Borrower
is not a 'Corporate
Person'**

The Supreme Court vide its order dated 26.03.2021 in *Laxmi Pat Surana v. UoI and Ors.* [Civil Appeal no. 2734 of 2020] held that the principal borrower need not be a 'corporate person' for insolvency process to be initiated against a company that stood as its guarantor and the guarantor would still be covered within the meaning of expression "corporate debtor" in Section 3(8) of the Insolvency and Bankruptcy Code ("the Code"). The Supreme Court further added that the liability and obligation of the guarantor to pay the outstanding dues is coextensive and coterminous with that of the principal borrower and hence, there is no reason to limit the width of Section 7 of the Code despite law permitting initiation of corporate insolvency resolution procedure against the corporate debtor.

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