

# GATI - विधि

-LAW IN ACTION



## Legal Updates

### Central Electricity Regulatory Commission issues Draft Regulations for Electricity Trading

Central Electricity Regulatory Commission ('CERC') has published the Draft CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019 for stakeholder comments. Some of the salient proposals made in the Draft Regulations are as follows:

- CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 and CERC (Fixation of Trading Margin) Regulations, 2010 to be repealed and replaced by the Draft Regulations.
- Norms for Capital Adequacy and Liquidity Requirements to be revised both for prospective and existing trading licensees.
- Slab in the trading margin for short term contracts and contracts through power exchanges to be removed.
- A minimum trading margin of zero (0.0) paise/kWh and a maximum margin of seven (7.0) paise/kWh may be charged.
- Trading licensee to ensure timely payment of dues to the seller through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller.
- Where an escrow arrangement or irrevocable, unconditional and revolving letter of credit is not provided by trader in favour of seller, then the trading margin cannot exceed one (1.0) paise/kWh. This will apply to long term and short term contracts.
- Trading margin in back to back deals to be capped at one (1.0) paise/kWh.
- Power already committed to a buyer cannot be diverted without the prior consent of the buyer.
- Trading licensees not to engage in banking of electricity.

**Ministry of Power issues a Clarification dated 23.07.2019 to Order dated 28.06.2019 relating to 'Opening and Maintaining of Adequate Letter of Credit as Payment Security Mechanism under the Power Purchase Agreements by Distribution Licensees'.**

Ministry of Power ('MoP') issued a clarification on 23.07.2019 regarding Order dated 28.06.2019 relating to opening and maintaining of Letter of Credit ('LC') after clarifications on the applicability of the same were sought by various States. The earlier order had called attention to the fact that despite there being provisions in PPAs for adequate LCs to be maintained by distribution licensees, there was a huge outstanding on account of unpaid power bills. The order, therefore, directed NLDC and RLDC to despatch electricity only after proof of LCs were received and only up to the quantity equivalent to the value of the LCs. In the clarification issued, MoP specified that the order dated 28.06.2019 did not apply to state-owned generating stations and that the LCs shall be opened against power purchases made from 01.08.2019 onwards.

**Ministry of New and Renewable Energy issues Clarification dated 31.07.2019 to the Ministry of Power's Order dated 28.06.2019**

The Ministry of New and Renewable Energy ('MNRE') issued the O.M. No. 11/9/2019-EFM on 31.07.2019 clarifying that in cases of solar, wind and small hydro power, 'Fixed Charge', as mentioned in Clause 5 (vi) of Ministry of Power's earlier Order dated 28.06.2019, will be the tariff on which the power is being purchased by the distribution licensee as it reflects the cost of installation, operation and maintenance of the power plant. The MNRE further clarified that the energy generated during the period of non-dispatch shall be calculated on the basis of the Capacity Utilization Factor declared by the generating company in the PPA. For the projects which have been in operation for more than 1 year, the power not dispatched shall be calculated on the basis of pro-rated actual energy generated in the last 12 months.

**Ministry of New and Renewable Energy issues Clarification dated 05.08.2019 to its earlier Clarification dated 31.07.2019**

The MNRE issued the O.M. No. 11/9/2019-EFM clarifying that for projects having more than one year operation, the power not dispatched shall now be calculated on the basis of pro-rated actual energy generated in the corresponding month of the previous year, with the average generation calculated after removing the period of curtailment instead of being calculated on the basis of pro-rated actual energy generated in the last 12 months.

**Ministry of Power notifies Amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects**

An amendment was notified by MoP to the Guidelines issued on 03.08.2017 and the subsequent amendments issued on 15.06.2018 and 7.01.2019, wherein the following amendments have been made-

- Instead of passing on the damages/dues recovered by Intermediary Procurer to the End Procurer, they shall now be credited to the Payment Security Fund to be maintained by the Intermediary Procurer;
- Time period for ensuring that the shareholding in the project company does not fall below 51% has been increased from 1 year to 3 years in case of both single company as well as a consortium;
- Successful bidder shall ensure that its promoters shall not cede control (which has been defined to mean ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors) of the bidding company/ consortium till 3 years from the COD, except with the prior approval of the Procurer;
- Any modifications to the Guidelines shall now be done only after due approval of MNRE.

**Ministry of Power notifies amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Project**

An amendment was notified by MoP on 16.07.2019 to the Guidelines issued on 08.12.2017 wherein the following changes have been notified-

- Scheduled Commissioning Date is defined to mean 18 months from the date of execution of the PPA or PSA, whichever is later;
- Time for land acquisition by Wind Power Generators ('WPG') is increased from 7 months to 18 months;
- WPGs are now allowed to revise their declared Capacity Utilisation Factor once within three years of Commercial Operation Date;
- Penalty for shortfall in energy is to be calculated at 50% of the PPA tariff and such penalty shall now be required to be passed on by the Intermediary Procurer to the End Procurer, after deducting losses of Intermediary procurer;
- In case of part-commissioning of the Project, land is to be demonstrated by the WPG prior to declaration of commissioning;
- Procurer, in cases of early part commissioning, is now allowed to purchase generation at a full PPA tariff.

These developments assume significance as they will help project developers in States where there are delays in land acquisition.

**Gujarat High Court stops Gujarat Urja Vikas Nigam Ltd. from vicariously recovering Gujarat Energy Transmission Corporation Limited's claims already made under Insolvency and Bankruptcy Code from energy bills payable to generator**

LSGPL had approached the High Court of Gujarat challenging Gujarat Urja Vikas Nigam Ltd.'s ('GUVNL') decision to adjust the energy bills raised by Lanco Solar (Gujarat) Pvt. Ltd. ('LSGPL') on GUVNL towards outstanding claim of Gujarat Energy Transmission Corporation Limited ('GETCO') against Lanco Infratech Ltd. ('LIL'), which is the parent company of LSGPL.

By an interim order passed on 29.07.2019, the High Court has restrained GUVNL from adjusting the dues of GETCO against LIL from the invoices payable to LSGPL for energy supplied by latter to GUVNL. The High Court was of the view that the impugned adjustments by GUVNL is merely duplication of the claim raised by GETCO against LIL as an operational creditor, in proceedings initiated under the Insolvency and Bankruptcy Code, and thus, the method adopted, by GUVNL at the instance of GETCO, was prima-facie found to be a device to bypass the mechanism provided under the Insolvency and Bankruptcy Code.

**Solar Safeguard Duty is 'Change in Law' and Reimbursable on Actuals - Reiterates Maharashtra Electricity Regulatory Commission**

The Maharashtra Electricity Regulatory Commission has passed a common order dated 18.07.2019 in petitions filed by Juniper Green Energy Private Limited and its special purpose vehicle Nisagra Renewable Energy Private Limited against Maharashtra State Electricity Distribution Company Limited, seeking declaration of imposition of safeguard duty by government notification dated 30.07.2018, as a change in law event and determination of mechanism for award of compensation for the losses incurred. The State Commission held that the imposition of safeguard duty vide Government Notification dated 30.07.2018 is a "Change of Law" event. The State Commission also added that additional expenditure and other consequential impact shall be considered on actual basis, as and when accrued, for reimbursement under Change in Law.

A-142, Neeti Bagh  
New Delhi – 110 049, India  
T: +91 11 4579 2925 F: +91 11 4659 2925  
E: mail@neetiniyaman.com  
W: www.neetiniyaman.com

Office No. 51, 4<sup>th</sup> Floor, Nawab Building,  
327, Dr. D.N. Road,  
Opp. Thomas Cook, Flora Fountain  
Mumbai – 400 023, India  
T: +91 22 4973 9114

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