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-LAW IN ACTION



Legal Updates

The Central Electricity Regulatory Commission (“**CERC**”) issued the CERC (Regulation of Power Supply) (First Amendment) Regulations, 2020 (“**Amendment Regulations**”), which shall come into effect from the date of its publication in the Official Gazette. It aims to amend the CERC (Regulation of Power Supply) Regulations, 2010 (“**Principal Regulations**”) in the following manner:

1. Proposes to amend the term "*Beneficiary*" under Regulation 2(1)(c) of the Principal Regulations to mean as “*the person who has been allocated electricity from a Central generating station or is being supplied electricity generated from an inter-State generating station through long term access or medium-term open access or who is a user of the inter-State transmission system, as the case may be*”;
2. It aims to substitute the meaning of term "*Defaulting entity*" as “*the entity which has defaulted in making payment by due date to a generating company or a transmission licensee or in maintaining Letter of Credit or any other agreed Payment Security Mechanism in terms of the Agreement or the applicable Regulations*”;
3. Proposes to substitute the provisions pertaining to “*Default Trigger Date*”, and “*Outstanding dues*”. It further recommends adding provisions with respect to “*Due date*” and Reference to “*transmission licensee*” in the Principal Regulations.
4. Proposes to enlarge the “*Scope and Applicability*” of the Principal Regulations by making it applicable to generating station, transmission system and beneficiary, having specific provision in the Agreement, for regulation of power supply in case of non-payment of outstanding dues or non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism.
5. It further aims to amend Regulations 5, 6, 8 and 11 of the Principal Regulations dealing with “*Procedure for Regulation of Power Supply*” and recommends amending the provisions pertaining

CERC issues the CERC (Regulation of Power Supply) (First Amendment) Regulations, 2020

to “*Regulation by Generating Company*” and “*Regulation by Transmission Licensee*” under the Principal Regulations.

With respect to the Amendment Regulations, the CERC has invited comments/ suggestions/ objections from the stakeholders which may be sent on or before 16.08.2020.

The Central Electricity Regulatory Commission (“**CERC**”) has issued CERC (Power Market) Regulations, 2020 (“**Draft Regulations**”), which will come into force from the date of their publication in the Official Gazette. Some of the salient features of the Draft Regulations are as follows:

1. The Draft Regulations stipulate that the Power Exchanges shall be established and operated with the objectives to design electricity contracts and facilitate transactions of such contracts and to facilitate extensive, quick and efficient price discovery and dissemination.
2. The Draft Regulations proposes the “criteria”, “procedures”, “ownership and governance structure” to be fulfilled for registration of Power Exchange by an applicant. It further prescribes terms for “qualifications and disqualifications for appointment as Director on the Board of Power Exchange”, “the Bye-laws, rules, business rules”, “membership rules” of the Power Exchanges.
3. The Draft Regulations shall apply to the Power Exchange, Market Participants other than Power Exchange and OTC Market. The Draft Regulations shall be applicable on Contracts transacted on the Power Exchange, Delivery based electricity contracts - Day Ahead Contracts and Real-time Contracts, Intraday, Contingency, Term Ahead and any other contracts, including Capacity Contracts and Ancillary Services Contracts, as may be approved by the Commission. It shall also be applicable on the Contracts relating to Renewable Energy Certificates, Energy Saving Certificates; Contracts in the OTC Market and any other contracts, as may be approved by the Commission.
4. The Draft Regulations further recommend operational and registration norms for “OTC Platform”. The OTC Platform shall be created to provide an electronic platform with the information of potential buyers and sellers of electricity. It aims to maintain a repository of data related to buyers and sellers and provide such historical data to Market Participants and to provide such services as advanced data analysis tools to Market Participants.
5. The Draft Regulations also enumerates procedures for market oversight in order to detect and prevent market manipulation, insider trading, cartelization and abuse of dominant position by any Market Participant. It further seeks to ensure that Market Participants have confidence in the integrity and fairness of power markets, and that the prices are discovered in a transparent and competitive manner.
6. The Draft Regulations, *inter alia*, stipulate provisions pertaining to saving of inherent powers of the Commission, the Commission’s power to remove difficulties, power to relax, and repeal and savings.

In this regard, the CERC has invited comments/ suggestions/ objections from the stakeholders. The Comments/ suggestions/ objections may be sent on or before 07.08.2020.

**CERC issues the
CERC (Power
Market)
Regulations, 2020**



APERC issues directions regarding procurement of power from LANCO and Spectrum on short-term basis

The Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) has, vide order dated 17.07.2020 (*uploaded on website on 23.07.2020*), issued directions regarding procurement of power from Lanco Kondapalli Power Ltd. (“**LANCO**”) and Spectrum Power Generation Limited (“**Spectrum**”) on short-term basis from 01.06.2020.

The APERC has directed that if LANCO is not willing to supply power at the tariffs approved in APERC’s order dated 06.04.2020, for the power supplied by them from 01.06.2020 and also for the future, the distribution companies (“**DISCOMs**”) shall stop taking power from LANCO if they have not already done so, with immediate effect on receipt of the present order and shall report compliance accordingly. With respect to Spectrum, the APERC has noted that since they have furnished an unconditional undertaking to supply power at tariff Rs. 2.71 ps per unit till 30.09.2020, the DISCOMs are permitted to continue procurement at the said price till 30.09.2020. In case the DISCOMs intend to procure power from Spectrum after 30.09.2020, they will be required to approach the APERC with proper justification on or before 15.09.2020.

The APERC has further directed that the Andhra Pradesh Power Coordination Committee and DISCOMs cannot procure any short-term power either from LANCO and Spectrum or from any other generator in the future, without prior approval. Any request seeking permission to procure short-term power shall be required to be made at least 15 days in advance to enable APERC to examine and pass appropriate orders, keeping in view the DISCOMs’ as well as consumers’ public interests.

Further, the APERC observed that DISCOMs have purchased power from power exchanges at large scale in the last few months deviating from the approved sources in Tariff Order for FY 2020-21. Therefore, such DISCOMs have been directed to place material justifying their decision to show savings achieved or that such purchases have not imposed any additional burden on DISCOMs due to existing binding agreements, within one month.

Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) has proposed amendment to the “*Petroleum and Natural Gas Regulatory Board (Integrity Management System for Natural Gas Pipelines) Regulations, 2012* (“**Regulations**”)”. The views/ comments from all stakeholders are sought on the proposed amendments within sixty (60) days from 14.07.2020, i.e. the date of issue of the notice.

Amendments proposed to the Regulations are provided hereinbelow:

1. In Schedule V of the captioned Regulations, Regulation 5.1.4, i.e. ‘Other Integrity Assessment Methodology’, has been proposed to be added. The newly inserted provision provides that, other proven integrity assessment methods for pipeline may exist for use in managing the integrity of pipeline. It further provides that, it is acceptable for an operator to use these inspections as an alternative to pressure testing or direct assessment (and where ILI is not feasible due to operational or other constraints) of pipeline.
2. Under Regulation 6.1.2 under Schedule VI, which deals with ‘Threat Identification’, ‘Hydro technical’, ‘Geotechnical’ and ‘High wind threat’ have been added under the heading dealing with ‘time independent threat’.
3. Regulation 6.1.6 (c) under Schedule VI of the captioned Regulations now also provides for ‘Review of existing pipeline Class Locations’.
4. Schedule 9 containing ‘Review of the Integrity Management System’ has been revised to the effect that under ‘Periodicity of review of Integrity Management System Entities’, the entities “*may review their existing Integrity Management System from time to time but not exceeding an interval of every 3 years and update the same if required in accordance with the provisions of Schedule 7 based on the performance of Integrity Management Program and /or changes if any in the statutory / regulatory requirements. However, changes of dynamic nature such as addition, deletion, modification of assets, key personnel, interfaces with other utilities etc. may not require revision in the IMS and the same can be kept updated periodically by the concern entity*”.

Proposed amendments to PNGRB (Integrity Management System for Natural Gas Pipelines) Regulations, 2012

In order to facilitate early resolution of Right of Way (“RoW”) issues for laying of transmission lines, Ministry of Power (“MoP”) vide OM dated 15.10.2015 had issued guidelines for payment of compensation towards damages with regard to RoW for transmission lines (“Guidelines”). The Guidelines *inter alia* had recommended compensation for 85% of the land value for tower footing and up to 15% of the land value for RoW of the line for transmission system of 66 kV and above voltage level. A Committee was constituted under the chairmanship of Additional Secretary, MoP to analyse the issues relating to RoW for laying of transmission lines in the urban areas of the country and to suggest a methodology for payment of compensation on this account.

The Committee submitted its Report along with recommendations which have been formulated in the form of the following Guidelines for determining the compensation in “Urban Areas” towards “damages” in addition to the compensation towards normal crop and tree damages:

- i. Compensation @ 85% of land value as determined by District Magistrate or any other authority based on circle rate/ Guidelines value/ Stamp Act rates for tower base area (area bounded by concrete s visible from outside of four legs of the towers) impacted severely due to installation of tower/ pylon structure.
- ii. Compensation towards diminution of land value in the width of RoW Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/ type of land in different places of States, subject to a maximum of 15 % of land value as determined based on Circle rate/ Guidelines value/ Stamp Act rates.
- iii. Additional compensation in form of Non-Usability allowance up to 15% of the land value for the width of RoW corridor; No construction activity of any kind would be permitted under the RoW of the transmission line.
- iv. For compensation purposes, the width of RoW corridor shall not be more than that prescribed in the Table 3 (summarized) in Annexure I circulated with the Guidelines and for tower base, the compensation shall be paid for actual base width of tower (area bounded by concrete as visible from outside of four legs of the towers) prescribed under column (12) in Table-3 (Detailed) of Annexure I circulated with the Guidelines.
- v. While making choice of technology to be used for laying of transmission lines in RoW constraint area, various technological options needs to be assessed keeping in view the reduction in RoW, feasibility of implementation, overall cost of laying the line.
- vi. Payment of compensation shall be done through various digital modes of payment such as AADHAR enabled payment system (AEPS), Unified Payment Interface (UPI) etc. where feasible.
- vii. The payment towards compensation for RoW in urban areas would be onetime/upfront. In case of any other arrangement for payment of compensation, the same needs to be notified by individual states.

The above compensation amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV in notified Urban Areas. For the purposes of these guidelines, Urban Area is defined as all places with a municipality, corporation, cantonment board or notified town area committee etc.

All States/UTs etc. have been requested to take suitable decision regarding adoption of the guidelines as "Land" is a State subject.

The Gujarat Electricity Regulatory Commission (“GERC”) has notified the draft GERC (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2020 (“**Draft Amendment Regulations**”), seeking to amend the GERC (Procurement of Energy from Renewable Sources), 2010 (“**Principal Regulations**”). Stakeholders may submit their comments/objections on the Draft Amendment Regulations on or before 06.08.2020.

“Guidelines for payment of compensation in regard to Right of Way (“RoW”) for transmission lines in urban areas” issued by MoP

Public hearing in respect of the same will be held on 07.08.2020 through videoconferencing:

Salient features of the Draft Amendment Regulations are as below:

- i. The provisions for the definition and determination of “*average power purchase cost*” in Regulations 2.1 and 5.4 have been deleted.
- ii. RE generators under REC scheme supplying power for captive/third party use shall be compensated for surplus energy available after set-off for consumption by captive consumer/third party at the rate as determined by GERC from time to time.
- iii. The definition of “renewable energy sources” in Regulation 2.1 (p) has been modified to include ‘biogas’.
- iv. Quantum of Renewable Purchase Obligation (“**RPO**”) has been modified as under:
 - a. Quantum of RPO for distribution licensees as well as captive and open access users/consumers is to be calculated as a defined minimum percentage of the total consumption of its consumers including T&D losses but excluding consumption met from hydro sources of power other than mini hydel sources of power during the year.
 - b. For Captive Generating Plant (“**CGP**”) commissioned before 01.04.2016, composite RPO target with respect to the energy procured from such CGP shall be as decided by GERC for the year 2015-16.
 - c. For CGP commissioned on or after 01.04.2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned.
 - d. In case of any augmentation of the CGP, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned
- v. Regulation 11, pertaining to exemption from cross-subsidy surcharge, has been deleted.

The Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) has vide Public Notice dated 10.07.2020 issued the Draft PNGRB (Gas Exchange) Regulations, 2020 (“**Draft Regulations**”). Stakeholders may submit their comments on the Draft Regulations till **10.08.2020**.

An open house discussion on the same will be held on **17.08.2020** through videoconferencing.

Salient features of the Draft Regulations are as below:

1. Principles of Market and Market Design

The gas exchange shall function with the objectives of fair, neutral, efficient and robust price discovery; provide extensive and quick price dissemination and design contracts to increase liquidity.

Market design shall keep in view the economic principle of social welfare maximisation, creating buyer and seller surplus simultaneously during price discovery and complement the safety and reliability of natural gas pipelines. The bidding mechanism can be by auction and/or continuous trade process based on market requirement and suitability.

Membership in gas exchanges shall be of the following categories: a) Trading Members, b) Clearing Members, c) Trading and Clearing Members, d) Proprietary Members

In case of any discrepancies in the transactions of members in contravention of these Regulations, PNGRB may, after giving such member(s) an opportunity of being heard in the matter, direct the gas exchange to revoke the membership of such member.

A gas exchange may, at its discretion, stipulate any criteria for membership to the gas exchange including net worth, minimum base capital/ security deposit requirement, liquid asset requirement. However, under all circumstances, the gas exchange has to seek the approval of PNGRB.

**Comments invited
on Draft GERC
(Procurement of
Energy from
Renewable Sources)
(Third Amendment)
Regulations, 2020**

**PNGRB invites
comments invited
on the Draft
PNGRB (Gas
Exchange)
Regulations, 2020**

2. Authorization of gas exchange

Chapter III provides the detailed application procedure and conditions that require to be fulfilled by an applicant seeking authorization as a gas exchange or a clearing corporation.

The application for authorisation as a gas exchange or as a clearing corporation shall be submitted in Form A of Schedule -1 to these Regulations. The said chapter also provides details of the fees and the documents to be submitted along with such Application, grant of authorisation, Annual Authorization Charge and other Charges, Withdrawal of Registration and Exit Scheme.

3. Net worth and ownership requirements

Every authorized gas exchange or clearing corporation shall have a minimum net worth of Rs. 25 Crores at all times.

4. Governance structure

The board of directors of every authorized gas exchange and every authorized clearing corporation shall include: (a) Shareholder directors; (b) Independent directors; and (c) A managing director.

Regulations 19-22 provide the shareholding pattern for equity holders in the gas exchange and clearing corporation as well as the criteria of fit and proper person for directors and key managerial personnel. Schedule 2 Part A provides the Code of Conduct for the directors on the board of directors of gas exchanges or clearing corporations and Schedule 2 Part B provides the Code of Ethics for directors and key management personnel of gas Exchanges or clearing corporations.

Further, Regulations 24-28 provide for the conditions of appointment of directors, code of conduct and compensation and tenure of key managerial personnel. In addition to functional committees, every authorized gas exchange and clearing corporation shall constitute oversight committees, comprising of: (a) Standing committee on technology; (b) Advisory committee; (c) Regulatory oversight committee; and (d) Risk management committee.

5. Default Remedy Mechanism

Regulation 35(1) provides for conditions for declaration of default by members. A member may be declared a defaulter by a direction or circular of the gas exchange or clearing corporation for any of the following reasons: (a) Inability to fulfill clearing or settlement obligations; (b) Admission or disclosure of inability to fulfill or discharge duties, obligations and liabilities; (c) Failure/inability to pay within the specified time the damages and the money difference due on a closing-out effected against them; (d) Failure to pay any sum due to the gas exchange or clearing corporation which may be prescribed; (e) Failure to pay or deliver all moneys, gas or other related assets due to a member who has been declared a defaulter within the directed time and manner; (f) Failure to abide by the arbitration award as laid down under the bye-laws and regulations of gas exchange or clearing corporation; (g) Any other circumstances as may be decided by the gas exchange or clearing corporation.

Regulation 35(2) provides for the default remedy mechanism, including measures such as liquidation of collateral, contributions or deposits, including margins in any form, by the defaulting member; liquidation of security deposit of the defaulting member, etc.

6. Settlement Guarantee Fund (SGF)

Regulations 41 and 42 provide for establishment, maintenance, and contributions to the SGF. Every authorized clearing corporation or gas exchange, as the case may be, shall establish and maintain an SGF for each category product authorized by the Board as per Regulation 41, to guarantee the settlement of trades executed. The contribution to the SGF shall be made by the authorized gas exchange, the authorized clearing corporation and the clearing members, in the manner as may be specified by PNGRB from time to time.

7. Inspection, inquiries and enforcement

Chapters VIII and IX contain provisions for directions to maintain market oversight, investigation of matters, circumstances requiring intervention of PNGRB, market surveillance, transaction reporting, whistle blowers' policy and insider trading policy.

The Hon'ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.* has settled the position in respect of requirement of a certificate under Section 65B of the Indian Evidence Act, 1872 ("**Evidence Act**") by holding that a certificate under Section 65B(4) of the Evidence Act is a condition precedent to the admissibility of evidence by way of electronic record. A brief note with respect to the Supreme Court's analysis and reasoning in arriving at this decision can be accessed [here](#).

**Certificate under
Section 65B is
Condition Precedent
to Admissibility of
Electronic Evidence**

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