

GATI - विधि

-LAW IN ACTION



Legal Updates

MNRE invites proposals for developing a long-term vision, implementation plan, road map and institutional framework for implementing OSOWOG

Ministry of New and Renewable Energy (“**MNRE**”) has issued a Request for Proposal for developing a long-term vision, implementation plan, road map and institutional framework for implementing “One Sun One World One Grid” (“**OSOWOG**”), along with Terms of Reference, pursuant to an engagement between the World Bank and MNRE. MNRE has taken an initiative of building a global ecosystem of interconnected renewable energy resources to be seamlessly shared for mutual benefits and global sustainability. An interconnected grid would help all the participating entities in attracting investments in renewable energy sources as well as utilizing skills, technology and finances. The proposed integration is aimed at reducing project costs, promoting higher efficiencies and increased asset utilization for all the participating entities.

The initiative is planned across three phases:

- I. **Phase I (Middle East-South Asia-South East Asia (MESASEA) interconnection):** Indian Grid interconnection with Middle East, South Asia and South East Asian grids;
- II. **Phase II (Solar and other Renewable Energy resources rich regions’ interconnection):** MESASEA grid getting interconnected with the African power pools;
- III. **Phase III (Global interconnection):** to achieve the One Sun One World One Grid vision.

The deadline for submission of online proposals is 11:59 PM IST on 6th July, 2020 and of hard copy proposals is 17:59 PM IST on 8th July, 2020.

MNRE issues advisory to SERCs

To provide support to the renewable sector in regularizing the matters at State Electricity Regulatory Commissions (“**SERCs**”) and to safeguard the ongoing investment in the country, MNRE vide O.M. dated 18.05.2020 requested all SERCs to kindly consider allowing filing and listing of petitions online and hear urgent matters through video conferencing. This has been issued in view of the request of the

Renewable Power Developers emphasising on the need for timely filing and disposal of petitions in SERC as any delay in relief from the SERCs will adversely affect the financial viability of their projects.

MoP allows all power plants that do not have a PPA to participate for auction of short term Coal linkage

Ministry of Power (“**MoP**”) has issued an amendment in reference to the ‘Methodology for allocation of coal as per provisions of Para B (viii) (a) covering Para B(iii) of SHAKTI Policy of Ministry of Coal amended as per Para 2.1 (a) of HLEC Recommendations’ (“**Methodology**”) issued by its earlier letter dated 02.12.2019. The provision B(v) of the Methodology providing for ‘*Eligibility of Power Plants for participation in auctions*’ which earlier provided that all power plants excluding captive power plants having untied capacity of more than 50% shall be eligible to participate for auction of coal linkage for short term period, has now been modified as follows:

“v. Eligibility of Power Plants for participation in auctions: “All such power plants which do not have Power Purchase Agreements (PPAs) shall be allowed to participate for auction of Coal linkage for short term period (maximum upto one year) with conditions specified in this methodology.”

CERC reschedules the date of implementation of provisions and applicability of certain provisions of DSM Fifth Amendment Regulations, 2014

The Central Electricity Regulatory Commission (“**CERC**”) in furtherance to its order dated 27.03.2020 in Petition No. 4/SM/2020, and in exercise of powers under Regulation 13 of the CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 (“**DSM Regulations**”), has directed that the date of implementation of provisions and applicability of Regulation 7(10)(b) as amended vide CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019 (“**DSM Fifth Amendment Regulations**”), shall be rescheduled from 01.06.2020 to 01.12.2020. CERC also directed that applicability of provisions of Regulation 7(10)(a) as amended vide DSM Fifth Amendment Regulations, shall be extended up to 30.11.2020. While passing the order, CERC considered the unprecedented difficulties due to the COVID-19 pandemic and its impact on grid operation due to low demand. CERC also noted that the Real Time Market (“**RTM**”) is being implemented with effect from 01.06.2020 with the objective of providing options to stakeholders to correct their position in terms of surplus or deficit of demand/generation closer to real time, though some time may be needed for the distribution companies to adjust to this new environment. Accordingly, the CERC observed that it would be prudent to grant some more time to the stakeholders to put in place the required measures for ensuring adherence to sign change provisions, including by way of correcting their position in the RTM.

CERC approves RTM contracts

CERC in *Power Exchange India Limited (PXIL) vs Power System Operation Corporation Limited*, Petition no. 304/MP/2020, after examining the RTM contract specifications, Business Rules for RTM and responses submitted by Power Exchange India Limited (“**PXIL**”) along with the comments of stakeholders, observed that the design of RTM contracts submitted by PXIL is aligned with Power Market Regulations, Open Access Regulations and Indian Electricity Grid Code Regulations and that it has been suitably incorporated to the Business Rules for RTM. Accordingly, the CERC approved the proposed RTM Contracts and the Business Rules for RTM.

The salient features for the RTM contract are provided as below:

1. It is based on trading methodology of double-sided closed bid auction with uniform market clearing price for all buyers and sellers.
2. The auction shall be held at two different 15-minute time blocks of each hour of the day commencing at hh:15 hrs and hh:45 hrs. The timeline for auction and delivery of contract shall be on rolling basis.
3. 96 Contracts of 15 minutes duration per days shall be allowed with Minimum Bid Volume of 0.1 MW or as decided by exchange from time to time. Minimum Volume Quotation Step shall be 0.01 MW and Minimum Value Quotation Step shall be Rs. 1 per MWh.
4. Transmission charges for Inter-State Transmission System shall be as per CERC (Open Access in inter State Transmission) Regulations, 2008 and CERC (Sharing of Inter-State Transmission

Charges and Losses) Regulations, 2010 as amended from time to time and relevant orders of the CERC. Whereas the transmission charges for State Transmission System shall be as per concerned State Electricity Regulatory Commission's Regulations/ CERC (Open Access) Regulations, 2008, as amended from time to time and relevant orders of the CERC.

5. Transmission losses shall be payable in kind from delivery point to its grid connection point.
6. Settlement Price(s) shall be the Market Clearing Prices of the respective Bid Zones

CERC has already decided the allocation of transmission corridor between the power exchanges for implementation of Real Time Market in electricity vide order dated 28.5.2020 in Petition No.10/SM/2020(Suo-Motu).

Petitioner, PXIL, was represented by Neeti Niyaman before CERC.

The Karnataka Electricity Regulatory Commission ("**KERC**") has extended the time for complying with renewable purchase obligation ("**RPO**") for FY 2019-20 by three months in view of the prevailing COVID-19 pandemic situation and the consequent lockdown.

Obligated entities, i.e. distribution licensees, grid-connected captive consumers and open access consumers, are therefore allowed to meet their RPO for FY 2019-20 by 31.08.2020. KERC has further directed that any obligated entity failing to meet the RPO or any part of it for FY 2019-20 within such time as specified above shall purchase renewable energy certificates to the extent of 110% of quantum of shortfall in meeting RPO by 30.09.2020, failing which the obligated entity shall be liable for action under Section 142 of the Electricity Act, 2003.

The Appellate Tribunal for Electricity ("**APTEL**") in *Century Rayon v. MERC & Anr.*, Appeal no. 380 of 2019, partly allowed the appeal filed by the appellant/ consumer, and held that Appellant would be entitled to the benefit of lower wheeling charges with effect from the date of filing of the application before MERC i.e., 18.09.2017 and that the excess wheeling charges already paid by the Appellant since 18.09.2017, would be adjusted from the future wheeling charges.

The Appellant, a consumer, was entitled to be connected at 33kV voltage level, however, due to the lack of provision of requisite infrastructure by Maharashtra State Electricity Distribution Co. Ltd. ("**MSEDCL**"), got connected at 22kV voltage level. On 03.11.2016, MERC passed the Multi Year Tariff order ("**MYT Order**"), where for the first time, unbundling of tariff came to be made, and which created wheeling charges which were significantly lower for consumers connected at 33 kV voltage level than those connected at other levels. When the Appellant approached the MERC for relief, and prayed that the benefit of lower wheeling charges should be granted from the date of the MYT Order where such unbundling had been provided, MERC rejected this contention and held that providing such relief would amount to retrospective application of rule/regulation and therefore, Appellant would be entitled to the relief from the date of the Impugned Order i.e. from 25.04.2018, which was subsequently affirmed in the Review Order, as well. Upon moving the APTEL, the Appeal was partially allowed on the ground that no one including the Appellant had approached MERC for extension of such benefit after unbundling of the tariff in the MYT order, hence, Appellant is not entitled to grant of benefit from the date of MYT Order. APTEL further clarified that MSEDCL is merely required to interpret the existing regulation and orders of MERC and that it is not retrospectively applying a Regulation/Stipulation as the relevant regulations and the MYT Order were very much in existence as on the date the application was filed.

Appellant, Century Rayon, was represented by Neeti Niyaman before APTEL.

APTEL in *NLC India Ltd. v. CERC & Ors.* Appeal No. 291 of 2016 and Appeal no. 344 of 2016 held that the rejection of the appellant's prayer for adoption of decision dated 10.07.2015 passed in Petition No. 285/MP/2013 ("**NTPC case**"), for the benefit of similar method of energy charge rate ("**ECR**") calculation on the ground that the decision in NTPC cannot be used to "reopen settled cases", was

KERC extends time for complying with renewable purchase obligation for FY 2019-20

APTEL allows consumer to pay lower wheeling charges resulting from unbundling of tariff under the MERC MYT Order dated 03.11.2016

APTEL insists on consistency in judgments to avoid

**the element of
arbitrariness**

inappropriate on part of the Central Electricity Regulatory Commission (“**Commission/CERC**”). APTEL opined that if a formula had been accepted as sound in the previous case, there is no reason why it should not apply universally. The matters before the CERC in which the impugned orders were passed relate to truing-up and, therefore, it cannot be said that they are cases which had been “settled” earlier. The Tribunal held that the CERC has fallen in error by declining to follow the principle laid down in the NTPC case, and thus, the impugned orders get vitiated by the element of arbitrariness.

**Advisory on
disclosure of
material impact of
COVID-19
pandemic on listed
entities under SEBI
LODR Regulations,
2015**

In exercise of the powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI (LODR) Regulations, 2015**”), SEBI has issued circular dated 20 May, 2020 (“**Advisory**”) advising the listed entities to evaluate the impact of the COVID-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same. Such disclosure is required to fill in the gaps in information available about the operations of a listed entity which can lead to distortion in the market and also to ensure that all information about the impact of COVID-19 events on the entities is available to investors and stakeholders. To read more about the Advisory, [click here](#).

**NCLT Kolkata
holds IBC
Notification dated
24.03.2020 raising
minimum default
limit to be
considered to have
prospective
application**

The National Company Law Tribunal (“**NCLT**”), Kolkata, vide order dated 20.05.2020 passed in *Foseco India Ltd. v. Om Boseco Rail Products Ltd.*, has held that the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs which enhanced the minimum amount of default from Rs. 1 lakh to Rs. 1 crore for initiating corporate insolvency resolution process (“**CIRP**”) against small and medium scale industries (“**Notification**”) shall be considered to have prospective application.

The NCLT, Kolkata, in response to the question whether the Notification raising the minimum default limit would be applicable to applications pending for admission, observed that it is settled law that a statute is presumed to be prospective unless it is held to be retrospective, either expressly or by necessary implication. The NCLT, Kolkata observed that nowhere in the Notification was it mentioned that its application will be retrospective. Therefore, the amendment to Section 4 of the IBC vide the Notification should be considered to have prospective application. The NCLT, Kolkata thus admitted the Application filed by the operational creditor for initiating CIRP against the corporate debtor.

**TRAI responds to
MIB’s back
reference dated
13.05.2020 on
TRAI’s
recommendations
on “Platform
Services offered by
DTH Operators”
dated 13.11.2019**

The Ministry of Information and Broadcasting (“**MIB**”), vide letter dated 13.05.2020 to the Telecom Regulatory Authority of India (“**TRAI**”), has accepted recommendations on “Platform Services offered by DTH Operators” dated 13.11.2019 issued by TRAI (“**Recommendations**”) with certain modifications, viz.: (a) DTH operators may be permitted to operate to a maximum of 5% of their total channel carrying capacity as permitted platform service (“**PS**”) channels without any limit on maximum number of PS channels; (b) in case the same programme is found available on the PS of any other distribution platform operator (“**DPO**”), only MIB should have the power to issue direction to immediately stop the transmission of such programme / cancel registration of such PS of the DTH operator; and (c) except in respect of powers hitherto exercised by TRAI in respect of DPOs, issues pertaining to DTH operators as per licence should be regulated by MIB.

However, TRAI has, vide letter dated 26.05.2020, reiterated its earlier recommendations in each case, including in respect of capping of total number of permitted PS for DTH operators at 3% of the total channel carrying capacity of the DTH operator platform and subject to a maximum of 15 PS channels.

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