

# GATI - विधि

-LAW IN ACTION



## Legal Updates

Delhi High Court vide judgement dated 22.11.2022 in FAO (COMM) 5/2023 & CM APPL. 886/2023, CMAPPL 884/2023 titled Metal Engineering and Forging Company v. Central Warehousing Corporation has held that the loss of goodwill is difficult to prove and cannot be proved with mathematical precision, thereby upholding an arbitral award.

The court upheld an arbitral award allowing the penalty amount of Rs 22 crore levied on account of delay beyond 7 days in an agreement for handling and transporting containers. The penalty was levied due to loss of goodwill by the Respondent.

The award was challenged on the grounds that there is no proof of actual loss and that just because merely a sum is provided in the agreement as a penalty for breach of the agreement, the same cannot be paid without any proof of loss occurred to the aggrieved party.

The court referred to Section 74 of the Contract Act, 1872 and observed that if a compensation named in the contract for breach is a genuine pre-estimate of loss known to the parties, proof of actual loss isn't required. The court observed that loss of goodwill is challenging to prove. The held that despite the difficulty, it was obligated to establish the party had suffered a loss. In the present case, the award was granted after evaluating evidence, that the Respondent indeed suffered a loss of goodwill due to the breach of contract.

**Delhi HC has upheld an arbitral award which allowed a penalty imposed due to a loss of goodwill holding that the same cannot be established with any mathematical precision.**

The Petroleum and Natural Gas Regulation Board (**PNGRB**) vide notification dated 22.11.2023 issued PNGRB (Determination and Petroleum Products Pipeline Transportation Tariff) Third Amendment Regulations, 2023 (**Amendment Regulation**) intending to amend the Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline transportation Tariff) Regulations, 2010 (**Principal Regulation**).

The PNGRB seeks comments/views from the shareholders on the Amendment Regulation. The comments/views can be sent to the PNGRB by sending an email to [secretary@pngrb.gov.in](mailto:secretary@pngrb.gov.in) with the subject “Views/Comments on draft Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Third Amendment Regulations, 2023” or in writing through post addressed to Secretary, PNGRB, World Trade Centre, Babar Road, New Delhi-110001 latest by 13.12.2023. The Board would conduct an “Open House” on 26.12.2023 at 11:00 hours at PNGRB’s Office, based upon the inputs received by the stakeholders.

The Amendment Regulation proposes that the first paragraph of Regulation 5 of the Principal Regulation, starting with “Petroleum and Petroleum products pipeline”, shall be numbered as sub-Regulation (1)

The Amendment Regulation proposes the insertion of the following as sub-regulation (2) in Regulation 5, namely:-

*“(2) The petroleum and petroleum products pipeline transportation tariff shall be applicable from the date of commissioning of the pipeline or the date of authorization/acceptance of authorization of the pipeline by the Board or notification of these Regulations, whichever is later.”*

A copy of the notification can be accessed vide the said [LINK](#)

In exercise of the powers conferred under Section 61 read with Section 181 of the Electricity Act, 2003 and all other powers enabling it in that behalf, the Telangana State Electricity Regulatory Commission (**TSERC**) has issued the Draft Telangana State Electricity Regulatory Commission (Multi Year Tariff) Regulation, 2023 (**draft Regulation**). The draft Regulation shall be applicable to existing and future Generation Companies, Transmission Licensees, Distribution Licensees, deemed distribution licensees, distribution/retail supply utilities exempted from Licence, State Load Dispatch Centre (**SLDC**), and their successors for determination of Aggregate Revenue Requirement, Tariff, and SLDC Charges in all matters covered under this Regulation for the period commencing from 01.04.2024 onwards.

Part I of the draft Regulation deals with the scope of the Regulation. The draft Regulation provides that TSERC shall determine the Aggregate Revenue Requirement, Tariff and Charges, including terms and conditions thereof, in accordance with the draft Regulation for all the matters for which TSERC has jurisdiction under the Electricity Act, 2003 which includes *inter alia* supply of electricity by a generating entity, except from Renewable Sources of energy, to a distribution licensee, Intra-State transmission of electricity, Wheeling of electricity, retail supply of electricity etc.

Part II of the draft Regulation deals with Multi Year Tariff Framework. The Control Period under the draft Regulation shall be of five (5) financial years starting from 01.04.2024 to 31.03.2029. The draft Regulation states that the Multi Year Tariff petition shall be filed by the generating entity, transmission licensee, distribution licensee (for wheeling business), distribution licensee (for retail business) and SLDC by 30<sup>th</sup> November of the year preceding the first year of the Control Period. However, the Multi Year Tariff petitions for the Control Period commencing from 01.04.2024 shall be filed by the generating entity, transmission licensee, distribution licensee and SLDC by 30.12.2023. Part II of the draft Regulation further provides for procedure for filing petition, capital investment plan, filing of petition for determination tariff, determination of generation tariff, tariff order, mechanism for pass through of gains or losses on account of uncontrollable factors, mechanism for sharing of gains or losses on account of controllable factors etc.

**PNGRB issues  
PNGRB  
(Determination and  
Petroleum Products  
Pipeline  
Transportation Tariff)  
Third Amendment  
Regulations, 2023 for  
Stakeholders’  
Comments/inputs.**

**TSERC issues Draft  
Telangana State  
Electricity Regulatory  
Commission (Multi  
Year Tariff)  
Regulation, 2023**



Part III of the draft Regulation deals with power procurement. It provides that the provisions contained in Part III shall apply to power procurement by a distribution licensee from a generating entity or trading licensee or distribution licensee or from any other source through agreement or arrangement for purchase of power for distribution and supply within the State. Part III further provides for the Power procurement plan to be prepared by the Distribution Licensee for procurement of power to serve the demand for electricity in its area of supply, approval of the long-term/medium-term power purchase agreement/arrangement by TSERC and provisions for additional power procurement.

Part IV of the draft Regulation deals with Financial Principles which provides that the generating entity or licensee or SLDC shall manage its finances in an optimum and prudent manner. In determining the Aggregate Revenue Requirement and Tariff of the generating station or licensee or SLDC, TSERC shall assess the financial prudence exercised with regard to revenue, revenue expenditure and capital expenditure. It further provides the parameters on which the revenue, revenue expenditure and capital expenditure shall be assessed. Part IV further provides for capital cost, additional capitalization, de-capitalization, depreciation, return on equity, tax on return on equity, interest on working capital, carrying cost or holding cost, rebates and penalties etc.

Part V of the draft Regulation deals with Generation and provides that provisions specified therein shall apply to the determination of Tariff for supply of electricity to a distribution licensee from conventional sources of generation and hydel generating stations of capacity exceeding 25 MW. It further provides that the determination of Tariff for supply of electricity to a distribution licensee from Renewable Energy sources of generation shall be in accordance with the relevant Regulations/Orders of the Commission. Part V of the draft Regulation further provides for the provisions for filing of Petition by the generating entity for determination of tariff for supply of electricity to distribution licensees, the components which shall form part of the tariff for sale of electricity from a thermal power generating station and hydel power generating station, components which shall form part of the Annual Fixed Charges, sale of infirm power, Non-tariff Income, operational norms for Thermal Generating Stations, Operation and Maintenance Expenses, computation and payment of capacity charges and energy charges for Thermal Generating Stations, computation and payment of capacity charges for Hydro Generating Stations etc.

Part VI of the draft Regulation provides for determination of input price of coal from integrated mines. Part VI provides in detail the provisions for input price of coal for energy charges, capital cost of integrated mines, additional capital expenditure for integrated mines, Run of Mine (**ROM**) cost, annual extraction cost, depreciation, operation and maintenance expenses, mine closure expenses, additional charges, recovery of input charges etc.

Part VII of the draft Regulation provides for the determination of tariff for access and use of the intra-State transmission system pursuant to a Bulk Power Transmission Agreement or other arrangement entered into with a Transmission System User. It further provides that the transmission licensee shall submit a detailed capital investment plan, financing plan and physical targets for each year of the Control Period. It further provides for the factors that shall be included in Operation and Maintenance expenses, the Non-Tariff Income. It states that in the event a licensee engages in any other business for optimum utilisation of the assets, the licensee shall give prior intimation in writing to the Commission of such Other Business, along with the details as specified therein.

Part VIII of the draft Regulation deals with Distribution Wheeling Business which states that every distribution licensee shall maintain separate accounting records for the Wheeling Business and Retail Supply Business and shall prepare an Allocation Statement to enable the Commission to determine the Tariff separately for Distribution Wheeling Business and Retail Supply of electricity. It provides for the Components of Aggregate Revenue Requirement for distribution of Wheeling Business. It provides for the components that shall form part of the Operation and Maintenance expenses for Distribution Licensee. It provides that the amount of Non-Tariff Income relating to the Distribution Wheeling Business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining the Wheeling Charges of the Distribution Wheeling Business and

provides a list of factors which shall form part of the Non-Tariff Income. It states that in the event a licensee engages in any other business for optimum utilisation of the assets, the licensee shall give prior intimation in writing to the Commission of such Other Business, along with the details as specified therein.

Part IX of the draft Regulation deals with Retail Supply of Electricity and shall apply to the determination of Tariff for retail supply of electricity by a distribution licensee to its consumers. It provides for the components that shall form part of the Aggregate Revenue Requirement of the Retail Supply Business. It further provides that the distribution licensee shall submit a month-wise forecast of the expected sales of electricity to each Tariff category/sub-category and to each Tariff slab within such Tariff category/sub-category to the Commission for approval along with the Multi-Year Tariff Petition. It provides for the components that shall form part of the Operation and Maintenance expenses for Distribution Licensee. It provides that the amount of Non-Tariff Income relating to the Distribution Wheeling Business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining the Tariff for retail supply of electricity by the distribution licensee and provides a list of factors which shall form part of the Non-Tariff Income. It states that in the event a licensee engages in any other business for optimum utilisation of the assets, the licensee shall give prior intimation in writing to the Commission of such Other Business, along with the details as specified therein.

Part X of the draft Regulation deals with SLDC charges and the provisions contained therein shall apply in determining the SLDC Charges to be levied by the SLDC after 01.04.2024. It provides for the factors that shall form part of the Operation and Maintenance expenses of the SLDC. It further provides that the amount of Non-Tariff Income relating to the SLDC as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining the SLDC charges and provides a list of factors which shall form part of the Non-Tariff Income. The SLDC Charges shall be payable by generating companies (including captive generating plants), distribution licensees and trading licensees using the intra-State transmission network under any agreement or arrangement with the transmission licensee in proportion to the capacity contracted.

The TSERC has uploaded a copy of the draft Regulation on its website and has invited comments/suggestions/objections from the stakeholders and interested persons. Comments/suggestions/objections may be submitted before 5 P.M. on or before 07.12.2023 to TSERC either in writing addressed to the Secretary, TSERC or by email to [secy@tserc.gov.in](mailto:secy@tserc.gov.in). A copy of the draft Regulation can be accessed [here](#)

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