

# GATI - विधि

-LAW IN ACTION



## Legal Updates

The Ministry of Power (“MOP”) vide notification dated 15.04.2025 has issued a set of draft amendments to the Model Bidding Documents for Procurement of Power for Long Term from Thermal Power Stations set up on Design, Build, Finance, Own, and Operate (DBFOO) basis.

### Key Proposed Changes:

1. Minimum bid size revised to 25% of required capacity or 100 MW, whichever is lower.
2. Scheduled Completion Date revised to the 1,460<sup>th</sup> day from the Appointed Date.
3. Suppliers are entitled to recover 15% of Fixed Charges if Commercial Operation Date is delayed due to the Utility.
4. Change in Law is now defined as per the Change in Law Rules, 2021 and includes events occurring from seven days prior to bid submission.
5. Repudiation of the Power Supply Agreement by the Utility is deleted from the list of ‘Utility Default’.
6. Termination Payments:
  - o Supplier Default: Utility entitled to one year of Fixed Charges or remaining term, whichever is less.
  - o Utility Default: Supplier entitled to one year of Fixed Charges or remaining term, whichever is less.
7. Interest for delayed payment is aligned with the Late Payment Surcharge Rules, 2022.
8. Units must achieve full capacity within 8 hours from cold start.

Comments have been solicited by 14 May 2025 and can be emailed at [rr1-mop@gov.in](mailto:rr1-mop@gov.in) . The draft Amendment can be accessed from the following [link](#).

**Ministry of Power issues  
Draft Amendments to  
Model Bidding Documents  
for Procurement of Power  
for Long Term from  
Thermal Power Stations  
set up on Design, Build,  
Finance, Own, and  
Operate (DBFOO) basis**

**APTEL sets aside APERC  
Tariff Order for Excessive  
Cross-Subsidization,  
Directs Recalculation of  
Cost of Supply**

In Appeal No. 199 of 2017, the Andhra Pradesh Spinning Mills Association challenged the tariff order dated 31.03.2017 issued by the Andhra Pradesh Electricity Regulatory Commission (APERC) determining the retail electricity tariff for FY 2017–18. The grievance centered on the Commission's decision to waive 60% of the power purchase-related fixed cost for agricultural consumers without any such request from the distribution licensees—Southern Power Distribution Company (APSPDCL) and Eastern Power Distribution Company (APEPDCL) and despite applying a coincidental demand adjustment factor of only 40%. The appellant contended that this discrepancy led to an undue burden on industrial and domestic consumers due to excessive cross-subsidization.

The Appellate Tribunal for Electricity (APTEL) reviewed the methodology used by APERC, which was based on an Embedded Cost Model to allocate fixed, energy, and consumer-related costs among categories. However, the Tribunal observed that while the Commission claimed to adjust agricultural coincidental demand by 40%, the actual allocation reflected a 60% waiver, causing an unjustified subsidy to agricultural consumers. The Tribunal also noted that APERC did not provide any rational or data-backed justification for using the 40% adjustment factor in the first place. Furthermore, the Commission failed to adhere to the National Tariff Policies of 2005 and 2016, which mandate that tariffs must progressively reflect the cost of supply and restrict cross-subsidies within  $\pm 20\%$  of the average cost.

It was further found that even domestic consumers were granted subsidies far exceeding the permitted limits. The approved cost of supply (CoS) per unit for domestic consumers was ₹6.20 (APEPDCL) and ₹6.15 (APSPDCL), yet the tariffs were set at ₹3.75 and ₹3.88, resulting in under-recoveries of over 36%–39%. The Tribunal concluded that such excessive subsidies lacked legal and policy basis and contravened the Electricity Act, 2003, and the national tariff framework. Accordingly, the Tribunal set aside the Commission's findings related to CoS determination and remanded the case back to APERC for fresh computation of CoS in line with statutory provisions and tariff policy guidelines, with a directive to conclude the exercise within three months.

**APTEL upholds Carrying  
Cost for EPGL in GST  
Change in Law Claim, sets  
aside GERC's decision on  
belated Interest plea**

The appeal arose from the GERC's orders in Petition No. 1680 of 2017 (dated 23.12.2019) and Review Petition No. 1866 of 2020 (dated 18.03.2023), concerning the applicability of carrying cost (i.e., interest) on the compensation awarded for a Change in Law event under Article 13 of the Power Purchase Agreement (PPA) dated 26.02.2007 between EPGL and GUVNL. The Change in Law related to the enactment of the GST Act, 2017, effective from 01.07.2017, which replaced various pre-existing taxes and levies. While GERC acknowledged GST as a Change in Law event and allowed compensation in its 2019 order (later extended to 19.11.2021 via review), it denied EPGL's claim for carrying cost on the grounds that the interest prayer was raised belatedly in an additional affidavit during the review process and not part of the original or review petition prayers.

The Tribunal traced the history from EPGL's initial bid in 2006, selection to supply 1000 MW of imported coal-based power, signing of the PPA in 2007, and commissioning of its units in 2012. EPGL filed Petition No. 1680 of 2017 seeking recognition of GST-related duties—such as IGST, compensation cess, and freight charges—as Change in Law events under the PPA. The GERC, by its order dated 23.12.2019, upheld GST as a Change in Law event and granted limited compensation until 14.10.2018, citing the effective date of a Supplementary PPA executed later. The Tribunal noted that EPGL had not initially claimed interest or carrying cost on the compensation. However, EPGL filed a Review Petition (No. 1866 of 2020) and subsequently, in a 2021 affidavit, sought interest from April 2019 to March 2021. GERC rejected this claim, arguing that it could not consider new grounds in a review, and confined the relief to the principal amount.

The Tribunal considered legal precedents, including *BESCOM v. Hirehalli Solar*, *GMR Kamalanga*, and *Adani Power*, emphasizing that carrying cost is inherent in restitutive compensation for Change in Law under Article 13. It rejected GUVNL's argument that absence of a specific interest prayer should bar such relief, stating that carrying cost is intrinsic to full restitution, and courts have discretion to grant it even if not specifically pleaded. The Tribunal also cited Supreme Court judgments that recognized appellate courts' power to mold relief and acknowledged that an appeal is a continuation of the original proceedings.

Ultimately, the Tribunal held that the GERC erred in not granting carrying cost on the awarded compensation despite EPGL's substantiated claim and evolving jurisprudence. The Tribunal allowed the appeal and directed GUVNL to pay carrying cost to EPGL for the period between April 2019 and March 2021, on a compounding basis as per the PPA, alongside the already paid principal compensation of ₹150.98 crores.

**APTEL directs CERC to relax NAPAF for NTECL Vallur plant, citing unjustified Denial and Coal Supply Constraints**

Vide judgement dated 08.04.2025, the Appellate Tribunal for Electricity delivered its judgment in *Appeal No. 318 of 2019*, filed by NTPC Tamil Nadu Energy Company Ltd. (NTECL) against the Central Electricity Regulatory Commission (CERC) and others. The core issue in the appeal was whether CERC should have exercised its power under Regulation 54 of the CERC Tariff Regulations, 2014 to relax the Normative Annual Plant Availability Factor (NAPAF) from 85% to 83% for NTECL's Vallur Thermal Power Station for the financial years 2017–18 and 2018–19.

NTECL, a joint venture between NTPC and TANGEDCO, had been facing continued coal shortages due to revised coal distribution policies and restrictions on coal import by the Government of India. Although CERC had previously granted NTECL a relaxation to 83% NAPAF for the 2014–17 period, it refused to extend the same for the subsequent two years, citing lack of sufficient grounds and discretionary limits of the relaxation provision. The Tribunal, however, held that NTECL had made genuine efforts to secure adequate coal supply from Mahanadi Coalfields Limited (MCL), and import was not a viable alternative due to governmental directives. The Tribunal found that CERC failed to conduct the mandated review post-April 2017 despite continued adverse coal supply conditions, and unreasonably denied the relaxation, causing financial hardship to NTECL. The Tribunal ruled that CERC's refusal was unjustified, caused miscarriage of justice, and accordingly set aside the Commission's impugned order. It directed CERC to relax the NAPAF from 85% to 83% for NTECL for FYs 2017–18 and 2018–19, allowing full recovery of fixed charges for the said period.

**MPERC determines Aggregate Revenue Requirement and Retail Supply Tariff for FY 2025-26**

The Madhya Pradesh Electricity Regulatory Commission (MPERC), vide order dated 08.04.2025, in Petition No. 73 of 2024 determined the Aggregate Revenue Requirement (ARR) and retail supply tariff for FY 2025-26. The Petition was filed by the Madhya Pradesh Industrial Development Corporation (MPIDC) for its Special Economic Zone (SEZ) in Pithampur, Indore.

MPIDC initially projected a net ARR of ₹246.49 crore and a revenue gap of ₹16.85 crore based on the existing tariff, proposing a 7.34% tariff hike to recover the shortfall. After scrutinizing the petition, including power procurement costs, capital expenditure plans, O&M expenses, and compliance with regulatory obligations like Renewable Purchase Obligation (RPO), the Commission admitted a reduced ARR of ₹234.32 crore. At the existing tariff, revenue was estimated at ₹229.65 crore, resulting in a standalone gap of ₹4.67 crore. Additionally, the Commission accounted for true-up revenue gaps of ₹6.84 crore (MP Transco) and ₹0.67 crore MPIDC from FY 2023-24, leading to a total revenue gap of ₹12.19 crore. To bridge this, a tariff hike of 5.31% was approved.

The order also includes comprehensive analysis on sales projections, power procurement strategies (including 60 MW from MPPMCL and renewable sources to meet a 30.97% RPO),

transmission losses, intra-state charges, and financial prudence across cost components, ensuring alignment with the MYT Regulations, 2021. The MPERC Tariff Order can be accessed from the following [link](#).

**CERC has invited comments on the proposal submitted by the Indian Energy Exchange to introduce Green Real Time Market (G-RTM) in the Real Time Market (RTM) segment for exclusive trading in Renewable Energy**

Indian Energy Exchange (“**IEX**”) has filed a Petition (No. 277/MP/2024) seeking approval of the Central Electricity Regulatory Commission (“**CERC**”) to introduce Green Real Time Market (G-RTM) in the Real Time Market (RTM) segment on its platform for providing exclusive trading in Renewable Energy.

CERC has, vide public notice dated 07.04.2025, invited comments, suggestions and objections from the stakeholders on the proposal submitted by IEX by **23.04.2025**.

The public notice can be accessed from the following [link](#). The Petition filed by IEX can be accessed from the following [link](#).

**KERC passes a Suo Moto order in the matter of withdrawal of restriction on Transfer of Captive Power Plant Ownership**

The Kerala Electricity Regulatory Commission (“**KERC**”), vide its communication dated 18.09.2018, had informed the ESCOMs that unless a Power Plant is set up by Group Captive Users themselves, primarily for their own use, they cannot claim the status of ‘Group Captive Generators / Group Captive Users’. KERC also directed the ESCOMs to monitor the status of group captive generators / consumers to ensure that they have acquired their status and to fulfil the requirement of consumption of electricity. The said communication has been challenged in WP No. 947/2019 before the Karnataka High Court, which is pending.

In the meanwhile, in Civil Appeal Nos. 8527-8529/2009, the Supreme Court held that the ownership of a Captive Power Plant can be transferred but the plant retains its captive status as long as the new owners meet the eligibility criteria under Rule 3 of the Electricity Rules, 2005, specifically in terms of ownership and electricity consumption. In view of the decision of the Supreme Court, KERC has withdrawn its communication dated 18.09.2018 vide *suo motu* order dated 08.04.2025.

The *suo motu* order dated 08.04.2025 can be accessed from the following [link](#).

**APERC has extended the timeline for submitting suggestions and objections to the draft amendments to various Regulations with a view to successfully implement the Integrated Clean Energy (ICE) Policy**

In order to successfully implement the Integrated Clean Energy (ICE) Policy, 2024, the Government of Andhra Pradesh proposed certain amendments *inter alia* to the certain Regulations and requested APERC to incorporate the same (*refer previous update*).

APERC had, vide its public notice dated 26.03.2025, invited suggestions and objections to the draft amendments on or before **16.04.2025** for consideration. Upon requests of the APDISCOMs and other interested persons, APERC has extended the timeline for submission up to **28.04.2025**.

The public notice can be accessed from the following [link](#).

**UERC determines additional surcharge to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the open access consumers for the period April 2025 to September 2025**

The Uttarakhand Power Corporation Ltd. (“**UPCL**”) had filed a Petition under Section 42(4) of the Electricity Act, 2003, Clause 8.5.4 of the Tariff Policy issued by the Ministry of Power, and Regulation 23 of UERC (Terms and conditions for Determination of Tariff) Regulations, 2015, seeking determination of additional surcharge in accordance with the provisions of UERC (Terms and Conditions of intra-State Open Access) Regulations, 2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the open access consumers for the period April 2025 to September 2025.

As per UPCL, it made arrangement to supply power to the Consumers including Open Access Consumers, which they were buying earlier through Open Access. Due to power purchase

through Open Access by the consumers, the fixed power purchase cost of UPCL became stranded, which needed to be recovered from the Open Access Consumers as per the provisions of the Electricity Act, 2003.

After perusing the Petition filed by UPCL, the objections / suggestions / comments received from the stakeholders and response of UPCL and further replies of the stakeholders, UERC has determined Additional Surcharge as Rs. 1.14 per Unit, which shall be effective for the period 01.04.2005 to 30.09.2025.

The order dated 08.04.2025 passed by UERC can be accessed from the following [link](#).

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