

# GATI - विधि

-LAW IN ACTION



## Legal Updates

The Central Electricity Regulatory Commission (“**CERC**”) in exercise of the powers conferred under Section 178 of the Electricity Act, 2003 has issued Draft CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019 (“**Draft Regulations**”). Key features of the Draft Regulations are as follows:

- (a) Transmission charges shall be shared amongst the Designated ISTS Customers (“**DIC**”) such that yearly transmission charges are fully recovered and any adjustment towards transmission charges on account of revision of transmission charges as allowed by CERC are recovered;
- (b) The computation of sharing of transmission charges for each DIC shall be based on the technical and commercial information provided by the DICs, inter-state transmission licensees, national load despatch centres, regional load despatch centres and state load despatch centres to the Implementing Agency;
- (c) Transmission charges for each DIC shall have National Component, Regional Component, Transformers Component and AC System Component;
- (d) No transmission charges and losses for the use of Inter State Transmission System (“**ISTS**”) shall be payable for solar generation for the useful life of the projects commissioned from 01.07.2011 to 30.06.2017;
- (e) No transmission charges and losses for the use of ISTS shall be payable for the capacity of the generation projects based on solar or wind resources for a period of 25 years from the date of commercial operation of such generation projects if the generation capacity has been awarded through competitive bidding, such generation capacity has been declared under commercial operation between 01.07.2017 and 12.02.2018 for solar based resources or between 30.09.2016 till 12.02.2018 for wind based resources and power purchase agreements (“**PPAs**”) have been executed for sale of power from such generation capacity to the Distribution Companies for compliance of their renewable purchase obligation;

**CERC issues Draft CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019**

- (f) Implementing Agency shall notify total transmission charges payable by the DICs for the billing month for each State by dividing total transmission charges payable by the State by its quantum of long term access and medium term open access;
- (g) Regional Transmission Accounts for the DICs shall be prepared and issued by the respective Regional Power Committee Secretariat;
- (h) No transmission charges shall be levied for ISTS in respect of STOA.

CERC has invited comments / suggestions / objections on or before **02.12.2019**.

Ministry of Power (“**MoP**”) vide order dated 06.11.2019, with respect to ‘*Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy under para 6.4(6) of the revised Tariff Policy, 2016*’ has granted waiver of inter-state transmission charges and losses for projects to be commissioned till 31.12.2022. Para 4.0 (i) of earlier order dated 13.02.2019 wherein the waiver was provided to projects to be commissioned till 31.03.2022 has now been extended to read as 31.12.2022. Para 4.0 (i) now reads as follows:

*“For generation projects based on solar and wind resources, no interstate transmission charges and losses will be levied on transmission of the electricity through the inter-state transmission system for sale of power by such projects commissioned till 31<sup>st</sup> December, 2022.*

*Provided that the above waiver will be available for a period of 25 years from the date of commissioning of such projects.*

*Provided further that the above waiver will be available for solar and wind projects entering into PPAs with all entities, including Distribution Companies, for sale of power from solar and wind power projects for compliance of their renewable purchase obligation.*

*Provided further that the above waiver will be allowed only to those solar and wind projects that are awarded through competitive bidding process in accordance with these guidelines issued by Central Government.”*

**MoP grants waiver of inter-state transmission charges and losses for projects commissioned till 31.12.2022**

Public Notice has been issued by the Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) in respect of the Petition filed by Southern Power Distribution Company of Andhra Pradesh Limited (“**APSPDCL**”) & Eastern Power Distribution Company of Andhra Pradesh Limited (“**APEPDCL**”) under Section 86 (1) (b) of the Electricity Act, 2003 read with Clauses 55 & 59 of APERC (Conduct of Business) Regulations, 1999 for seeking revision of tariff payable to Solar Power Developers who entered into PPA/ Power Sale Agreements (“**PSAs**”) during 2012-2016 with the Distribution Companies. APERC has decided to conduct a public hearing and has invited views/ suggestions/ objections from interested persons/ stakeholders. The petition will be taken up for public hearing by APERC on 07.12.2019 at 11.00 AM in the Court Hall at Hyderabad.

**O.P. No. 67/2019 APSPDCL & Anr. vs. M/s. Abhedya Power Pvt. Ltd. & Ors.**

Public Notice has been issued by the APERC in respect of the Petition filed by APSPDCL & APEPDCL under Section 86 (1) (b) of the Electricity Act, 2003 read with Clauses 55 & 59 of APERC (Conduct of Business) Regulations, 1999 for seeking revision/ amendment of tariff order dated 15.11.2012 passed in O.P No. 13 of 2012 and to restrict the PPA period to 5-10 years from the date of COD (Wind Power Generators). APERC has decided to conduct a public hearing and has invited views/ suggestions/ objections from interested persons/ stakeholders. The petition will be taken up for public hearing by APERC on 07.12.2019 at 11.00 AM in the Court Hall at Hyderabad.

**O.P. No. 66/2019 APSPDCL & Anr. vs. M/s. Sri KPR Infra & Projects Ltd & Ors.**

The Ministry of New and Renewable Energy (“**MNRE**”) vide O.M. dated 06.11.2019 issued a clarification regarding National Wind-Solar Hybrid Policy dated 14.05.2018. It was clarified that the Renewable Purchase Obligation contribution of Obligated Entities (“**OE**”) consuming energy from the hybrid wind-solar power plant shall be based on the relative proportion of energy contributed by each source. The calculation shall be based on the ratio of declared capacity of each source in the PPA. If there is difference in the installed capacity and declared capacity PPA, then the OE would have the option to choose the proportion of each source based on actual ratios of capacities installed of each source, and not as indicated in the PPA.

**MNRE issues Office Memorandum regarding “Solar Wind-Hybrid projects – proportioning Renewable Purchase obligation”**

**MNRE issues  
Advisory/  
Clarification  
regarding D.C.  
Capacity of Solar  
PV Power Plants**

MNRE issued an Advisory/Clarification on 05.11.2019 w.r.t. D.C. Capacity of Solar PV Power Plants after receiving representations from various Solar Developers/Solar Developer Associations that had raised questions around globally adopted practice of installing DC capacity over and above the nameplate/contracted AC capacity, with the objective of meeting the committed Capacity Utilization Factor (“**CUF**”) in PPAs/PSAs. Furthermore, State Governments feel that installation of such additional capacity serves as a medium for additional revenue generation for the developers and that such additional DC capacity cannot be allowed. Upon examining the present practice, MNRE advised the following:

- (a) As long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on CUF requirements, the design and installation of solar capacity on the DC side should be left to the generator / developer;
- (b) Even if the installed DC capacity (MW<sub>p</sub>) [expressed as the sum of the nominal DC rating (W<sub>p</sub>) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, unless there is any specific clause in the PPA restricting such D.C. capacity;
- (c) The contracting party is not obliged to buy any power in excess of the contracted quantum. There is provision of penalty in case the supply falls short of the contracted quantity;
- (d) As per law, the setting up of generation capacity is an unlicensed activity and therefore any person is entitled to set up any capacity which he desires to set up and sell power to any entity which may want to buy it.

**TRAI issues  
Consultation Paper  
on “Interoperability  
of Set Top Box”**

The Telecom Regulatory Authority of India (“**TRAI**”) has issued a consultation paper on “Interoperability of Set Top Box” on 11.11.2019 (“**Consultation Paper**”). The set top boxes (“**STBs**”) enable subscribers to receive TV signals (which are decoded into a viewable form for the TV set) and view only those TV channels to which such subscriber has subscribed. The STBs presently deployed in the network are non-interoperable i.e. the same STB cannot be used interchangeably across different service providers. TRAI is of the view that non-interoperability of STBs creates captive consumers who cannot exercise their freedom to change service providers due to an artificial barrier created by a non-interoperable device, thus, acting as a major hindrance to competition in the pay-TV market, technological innovation, improvement in service quality and sector growth.

Through the Consultation Paper, TRAI has invited responses from all stakeholders for suggesting optimal and cost-effective solutions to implement interoperability of STBs. Stakeholders are requested to provide their comments on the Consultation Paper by **09.12.2019**, and counter-comments are to be submitted by **23.12.2019**.

**TRAI releases the  
Telecommunication  
(Broadcasting and  
Cable) Services  
Digital Addressable  
Systems Audit  
Manual**

TRAI has issued the Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual on 08.11.2019 (“**Audit Manual**”). The Audit Manual addresses issues relating to audit of systems of distribution platform operators in terms of Regulations 10 and 15 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 dated 03.03.2017. The Audit Manual outlines *inter alia* the provisions relating to scheduling, scope of work, methodology to be adopted for conducting audit, procedure to be followed for inspection and timelines in respect of pre-signal or compliance audits and subscription audits.

The Audit Manual is proposed as a guiding document for stakeholders and does not supersede any provisions of the extant regulations. In case of any discrepancy between the provisions of the extant regulations and the Audit Manual, the provisions of the extant regulations shall prevail.

TRAI released its recommendations on “Platform Services offered by DTH Operators” on 13.11.2019 (“**Recommendations**”), pursuant to a reference received from the Ministry of Information and Broadcasting (“**MIB**”) vide its letter dated 02.07.2019, seeking TRAI’s recommendations on inclusion of issues regarding platform services with reference to direct-to-home (“**DTH**”) guidelines. The salient features of the Recommendations are as follows, *inter alia*:

- (a) TRAI has reiterated the definition of platform services as recommended in the ‘Regulatory Framework for Platform Services’ dated 19.11.2014. Platform services for DTH operators shall be defined as: “*Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.*”;
- (b) The programme transmitted by the DTH operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other distribution platform operator (“DPO”). The DTH operator is to provide an undertaking to MIB in the format prescribed by MIB to such effect. In case the same programme is found available on the platform services of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such platform services of the DTH operator;
- (c) The total number of permitted platform services for a DTH operator shall be capped to 3% of the total channel carrying capacity of the DTH operator platform and subject to a maximum of 15 platform services channels. A one-time non-refundable registration fee of Rs.10,000 per platform service channel shall be charged from a DTH operator;
- (d) The DTH operators shall provide an option of activation/deactivation of platform services as prescribed in the orders/ directions/ regulations issued by TRAI from time to time;
- (e) Subject to orders/ directions/ regulations issued by TRAI from time to time, the platform services channels shall be categorised under the genre ‘Platform Services’ in the Electronic Programmable Guide (“EPG”) and the respective maximum retail price of the platform service shall be displayed in the EPG against each platform service. A provision for putting a caption as ‘Platform Services’ may be required to distinguish the platform services from the linear channels.

CERC in Petition No. 324/MP/2018 & Petition No. 325/MP/2018 titled as *Udupi Power Corporation Ltd. vs. Power Company of Karnataka Ltd & Ors.*, observed that the Petitioner performed its obligations under the PPA as regards supplying electricity to the Respondents and raised bills against supply of regular power and infirm power. Though no supplementary invoices were raised by the Petitioner for claiming Late Payment Surcharge (“**LPS**”) prior to January 2018, the Commission observed that the Petitioner has kept the Respondents informed about the LPS payable by them at the end of each financial year by way of various communications including the quantification of amount payable. The Commission further noted that Power Company of Karnataka Ltd or the Distribution Companies of the State of Karnataka (KESCOMs) never disputed their liability to pay LPS for delayed payment of Tariff as communicated by the Petitioner. The Commission while agreeing with the Petitioner that neither the provisions of the PPA nor the CERC Tariff Regulations stipulate any specific methodology to claim LPS, held that Petitioner is entitled to claim LPS on delay in payments of invoices of regular power supply as well as delay in payment of invoices of infirm power.

**TRAI releases its recommendations on “Platform Services offered by DTH Operators”**

**CERC observes that Generators can claim Late Payment Surcharge for supply of regular power even if no supplementary invoices were raised earlier**

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