



# REGULATORY INSIGHTS



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## Editorial

The Hon'ble Supreme Court of India directed SERCs, in response to a statutory appeal u/s 125 of the Electricity Act 2003 (The Act), to frame Regulations u/s 181 of the Act on modalities for the determination of tariff. CER's analysis reveals that a large number of states have notified criteria for choosing the modalities for tariff determination for transmission projects. However, a few have done so in the context of generation and distribution segments. CER's analysis shows that there is wide variation in scope of the criteria for applicability to the transmission projects. It is important to note that while some states have notified the criteria after the order of Hon'ble Supreme Court, some of the states had specified the same before the order.

While the directions are specific to the SERCs, a framework for such modalities for tariff determination for generation as well as transmission projects under the central level jurisdiction should also be issued by CERC. This would avoid potential disputes of similar nature at the central level. Terms like “critical state project”, “compelling circumstance”, etc. without proper definition may create an ambiguity and may introduce a possibility of circumventing the spirit of the order passed by the Hon'ble Supreme Court.

Grant of Green Energy Open Access should come with minimal barriers that may be in the form of minimum one-year duration for the open access, and that too with a specified quantum. Given the uncertainty associated with RE generation, some amount of flexibility would address the consumer's concerns as well. However, to ensure that the regime also does not impose additional uncertainty on the discom, a continuous block of time, say a minimum of 6-8 blocks may be mandated for the same.

To ensure that green energy utilisation is promoted through the open access rules, the value embedded in the energy banked but not utilised at the end of the financial year may be paid at par with the rate applicable under net metering Regulations.

In the absence of a guarantee of origin, implementation of green energy open access for the production of green hydrogen/ ammonia would also face a challenge. The REC registry can play a vital role in ensuring such a guarantee for the origin of green energy and hence for the produced green hydrogen/ ammonia.

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The Centre is hosted in the Department of Industrial and Management Engineering, IIT Kanpur and was seed funded by Government of United Kingdom through a project titled ‘Supporting Structural Reforms in the Indian Power Sector’ under Power Sector Reforms (PSR) program.

## Brief Overview of the Hon'ble Supreme Court Order on Civil Appeal No. 1933 of 2022

Appellate Tribunal For Electricity (APTEL), by its judgment dated 18<sup>th</sup> February, 2022, dismissed an appeal u/s 111 of the Act instituted by TATA Power Company Limited Transmission (TPC-T) against a decision of Maharashtra Electricity Regulatory Commission (MERC) dated 21<sup>st</sup> March, 2021.

On 21<sup>st</sup> March, 2021, MERC granted a transmission license to Adani Electricity Mumbai Infra Limited (AEMIL) u/s 14 and 15 of the Act for setting up a 1000 MW HVDC (Voltage Source Converter based) link between 400 kV Maharashtra State Electricity Transmission Company (MSETCL) Kudus and 220 kV Adani Electricity Mumbai Limited (AEMIL) Aarey EHV Station.

TPC-T challenged MERC's order before APTEL, inter alia, on the ground that the grant of the license was not preceded by a Tariff Based Competitive Bidding (TBCB) process. TPC-T contended that the failure to adhere to a TBCB process pursuant to Section 63 was contrary to public interest and statutory mandate. APTEL dismissed the appeal. This has given rise to a statutory appeal u/s 125 of the Act.

### **Issues identified and corresponding conclusions by the Hon'ble Supreme Court in the matter of the statutory appeal :**

- One of the issues that came in the light of Hon'ble Supreme Court was whether the Act envisages the TBCB route u/s 63 as the dominant method to determine tariff. In response to the issue, the Hon'ble Supreme Court points out that the non-obstante Clause in Section 63 cannot be interpreted to mean that Section 63 would take precedence over Section 62 at the stage of choosing the modality of tariff determination. The criteria for the determination of the modality of the tariff determination ought to be notified by Appropriate State Commission either through Regulations u/s 181 of the Act or guidelines u/s 61 of the Act.
- The other issue was whether the National Tariff Policy (NTP) framed u/s 3 of the Act is binding on the State Regulatory Commissions, particularly in view of the observations made by this Hon'ble Supreme Court in Energy Watchdog (supra). Another issue in front of the Hon'ble Supreme Court was to identify the Regulatory Commissions have the power to prescribe the modalities to determine the tariff under the provisions of the Act (and the Regulations framed under it). It was pointed out that MERC had not notified or framed Regulations or guidelines prescribing the criteria for choosing the modalities to determine the tariff. Hence, MERC shall determine the tariff while exercising its general regulatory powers u/s 86(1)(a) of the Act which shall be guided by the NTP 2016. The NTP requires the intra-state transmission projects above the threshold limit to be allotted through the TBCB route and that threshold limit should be notified by the Appropriate SERC. MERC has not notified such threshold as on the date of Hon'ble Supreme Court Order.
- It was also important for the Court to know whether MERC was bound to decide the tariff for the 1000 MW HVDC Aarey-Kudus Project through TBCB u/s 63 in view of Government of Maharashtra's Resolution dated 4<sup>th</sup> January, 2019 (GR) notifying the decision to allocate new intra-state transmission projects through TBCB route and setting up an Empowered Committee. Regarding the same, MERC and APTEL have arrived at concurrent findings that the 1000 MW HVDC Aarey-Kudus project is an 'existing project', hence the project can be implemented u/s 62 of the Act. The statutory appeal u/s 125 of the Act cannot interfere with the concurrent findings on a question of fact. The independent assessment of facts also supports that the HVDC project is an 'existing project'.
- It was important for the Court to know whether MSETCL's decision to not refer the HVDC Project to the Empowered Committee for holding bidding under the TBCB route was in breach of the GR. It comes into the light that MSETCL has acted in terms of the Government of Maharashtra's Government Resolution dated 04.01.2019 (GoM's GR) as it has referred the HVDC project to the Empowered Committee and the decision to not refer the HVDC project under the TBCB route was in line with the Empowered Committee's directions, hence MSETCL's decision was not in the breach of the GR.

Based on the research and analysis of the case, the Hon'ble Supreme Court finds that while the State and the Central Government have framed statutory policies and guidelines regulating the electricity sector, the Regulatory Commissions have not framed the necessary Regulations to put into effect the principles prescribed under the Act. All State Regulatory Commissions were directed to frame Regulations u/s 181 of the Act on terms and conditions for determination of tariff within three months from the date of the judgment on this case. The Appropriate Commission shall be guided by the principles prescribed in Section 61, hence NTP and National Electricity Policy (NEP) shall be kept in perspective while framing the necessary guidelines. If the Appropriate Commission have already framed Regulations, they shall be amended

to include the provisions on criteria for choosing the modalities for tariff determination, if they are not already included. The Regulatory Commission shall curate to the specific needs of the State while framing these Regulations.

The following table includes the compilation for modalities of tariff determination in various states:

Entity	Document Title	Notification Date	New Intra-State Transmission Projects	
			u/s 62 <sup>1</sup>	u/s 63
<b>UPERC*</b>	(Modalities of Tariff Determination), Regulations, 2022 [Draft]	21 <sup>st</sup> December, 2022	< 220 kV	>= 220 kV
<b>JSERC*</b>	(Modalities of Tariff Determination), Regulations, 2022 [Draft]	2 <sup>nd</sup> February, 2023	< Rs. 175 Cr.	>= Rs. 175 Cr.
<b>PSERC</b>	(Terms and Conditions for determination of Generation, Transmission Wheeling and Retail Supply Tariff) (1 <sup>st</sup> Amd.) Regulations, 2022 [Draft]	3 <sup>rd</sup> January, 2023	<= Rs. 50 Cr.	> Rs. 50 Cr.
<b>MERC</b>	Multi Year Tariff (MYT) (1 <sup>st</sup> Amd.) Regulations, 2023 <sup>2</sup>	10 <sup>th</sup> February, 2023	< Rs. 500 Cr.	>= Rs. 500 Cr.
<b>RERC</b>	Terms and Conditions for Determination of Tariff (2 <sup>nd</sup> Amd.) Regulations, 2023 <sup>2</sup>	28 <sup>th</sup> February, 2023	< Rs. 250 Cr.	>= Rs. 250 Cr.
<b>UERC</b>	Terms and Conditions for Determination of MYT (1 <sup>st</sup> Amd.) Regulations, 2022 <sup>2</sup>	11 <sup>th</sup> June, 2022	< Rs. 100 Cr.	>= Rs. 100 Cr.
<b>HERC</b>	Introduction of Competitive Bidding based Transmission Projects and fixing benchmark project cost thereto <sup>3</sup>	26 <sup>th</sup> April, 2021		
<b>OERC</b>	(Development of Intra-State Transmission Projects through Tariff Based Competitive Bidding) Order, 2022	23 <sup>rd</sup> November, 2022		
<b>HPERC</b>	(Development of Intra-State Transmission System through Tariff Based Competitive Bidding Process) Order, 2022	21 <sup>st</sup> May, 2022		
<b>JERC (Goa &amp; UTs)</b>	(Determination of 'Threshold Limit' for the development of Intra-State Transmission Projects through Tariff Based Competitive Bidding) Draft, 2023 <sup>3</sup> [Draft]	25 <sup>th</sup> February, 2023	<= Rs. 25 Cr.	> Rs. 25 Cr.
<b>BERC</b>	(MYT Tariff & SLDC Charges) Regulations, 2018 <sup>3</sup>	23 <sup>rd</sup> December, 2019	<= Rs. 100 Cr.	> Rs. 100 Cr.
<b>AERC</b>	Fixation of Threshold Limit for any Intra-State Transmission Projects as per Clause 5.3 of The Tariff Policy Dated 28 <sup>th</sup> January 2016 <sup>3</sup>	12 <sup>th</sup> January, 2022		
<b>CSERC</b>	Terms and Conditions for determination of tariff according to MYT principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) (1 <sup>st</sup> Amd.) Regulations, 2023 [Draft]	24 <sup>th</sup> February, 2023	<= Rs. 250 Cr.	> Rs. 250 Cr.

**\*Note:**

- In case of **Generation**, for the state of Uttar Pradesh and Jharkhand, tariff determination of the existing and expansion projects will be allowed u/s 62 of the Act. Further, any deviation from Section 63 require approval of the commission.
- In case of **Distribution**, for Uttar Pradesh and Jharkhand, retail Tariff for the consumers of the state shall be determined u/s 62 of the Act.

<sup>1</sup> For UPERC and JSERC augmentation/ strengthening works implementation; For MERC, new Intra-State Transmission System (Project) for which application for in-principle approval is already submitted to the Commission.

<sup>2</sup> U/s 63, new projects for which Commission's approval is yet to be accorded and entire Intra-state independent transmission systems including any upstream/downstream project shall be designed as single project for development of project.

<sup>3</sup> Threshold Limit is applicable for augmentation projects u/s 63.

## PSERC (Terms and Conditions for Determination of Generation, Transmission Wheeling and Retail Supply Tariff) (1<sup>st</sup> Amendment) Regulations, 2022 [Draft]

PSERC notified draft on Terms and Conditions for Determination of Generation, Transmission Wheeling and Retail Supply Tariff (1<sup>st</sup> Amendment) Regulations, 2022 on 3<sup>rd</sup> January, 2023. The key highlights of the draft are mentioned below:-

**Objective:** The objective of this Regulation is to determine the modality of tariff determination for Punjab State Electricity Regulatory Commission. These Regulations have incorporated the modalities for tariff determination of intra-state transmission projects under which tariff for projects costing more than Rs. 50 Cr. will be determined u/s 63 of the Act, otherwise the tariff will be determined u/s 62 of the Act.

### CER Opinion

**CER Tariff Modalities for Generating Stations and Distribution Licensees:** The modalities for the determination of tariff have been laid down only for the transmission licensees in the document. Similar provisions should be included for generating stations and the distribution licensees, such that any possible conflict involving tariff determination of the corresponding projects as per Regulated Tariff Mechanism (RTM) Framework u/s 62 of the Act and TBCB Framework u/s 63 of the Act in the future may be avoided.

**CER Incorporating the Possibility of Multiple Distribution Licensees:** The retail tariff of the consumers will be determined u/s 62 of the Act. The recent Electricity (Amendment) Bill, 2022 have proposed the idea of having multiple retailers in the area of supply in order to increase the competition in the distribution sector. Hence, the possibility of existence of multiple distribution licensees should be kept in perspective, while framing the modalities for distribution licensees.

**CER Provision for Expansion of Existing Transmission Lines (Clause No. 9.20):** The modalities for determination of tariff for new transmission projects have been laid down in draft Clause. However, no provision is included for determination of tariff for augmentation/strengthening works at the intra-state transmission systems.

Some possible scenarios may occur under which substantial expansion of transmission line may be required due to increased requirement of power transfer, for e.g., upgrading a 220 kV transmission line to 400 kV line, increasing the capacity of the existing system, etc. Provisions for these should be included accordingly.

**CER Objectivity for Exclusion (Clause No. 9.20):** The proposed draft Clause states “All new intra-state transmission projects costing more than Rs. 50 Crore, approved by the Commission after notification of these Regulations, shall be developed by State Govt./STU through tariff based competitive bidding under Section 63 of the Act.

*Provided that in case of critical projects connected with security of the State or **to avoid any delay in commissioning of critical State project or any other compelling circumstance**, STU may seek prior approval of the Commission to execute that specific project costing above Rs. 50 Crore under Section 62”.*

While the Clause No. 9.20 have laid down the modalities of tariff determination for the intra-state transmission lines, the proviso of the draft Clause has introduced a room for subjectivity to some ambiguous terms like “critical state project” or “compelling circumstance”. CER suggested that the terms “to avoid any delay in commissioning”, “critical State project” or “compelling circumstance” should be objectively defined otherwise it may be applied on virtually all kinds of projects to circumvent the order (which led to this draft Regulation) given by the Hon’ble Supreme Court<sup>4</sup>. This may also lead to further legal disputes also raising the risk for the investors/project developers.

## JSERC (Modalities of Tariff Determination) Regulations, 2023 [Draft]

JSERC notified a draft on Modalities of Tariff Determination Regulations, 2022 on 27<sup>th</sup> January, 2023. Some of the important insights are given below:-

**Objective:** The objective of this Regulation is to determine the modality of tariff determination for JSERC. These

<sup>4</sup> Civil Appeal No. 1933 of 2022 (The Tata Power Company Limited Transmission (Appellant) vs Maharashtra Electricity Regulatory Commission & Ors. (Respondents))  
[https://main.sci.gov.in/supremecourt/2022/7499/7499\\_2022\\_1\\_1501\\_39982\\_Judgement\\_23-Nov-2022.pdf](https://main.sci.gov.in/supremecourt/2022/7499/7499_2022_1_1501_39982_Judgement_23-Nov-2022.pdf)



Regulations have incorporated the modalities for tariff determination of intra-state power generating projects, intra-state transmission projects as well as the retail tariff of consumers.

- The existing projects and their expansion, Waste-to-Energy plants set up as per approved PPA and Hydro Power Plants for which PPA has been approved by the Commission will be determined in accordance with RTM framework u/s 62 of the Act.
- All new greenfield intra-state transmission projects of Cost **Rs. 175 Cr. & above** being part of the STU transmission plan shall be implemented through TBCB.
- Retail tariff for the consumers of the state shall be determined in accordance with Section 62 of the Act.

## CER Opinion

**CER** The proviso to the Clause 3.2 states “*Provided that in case of expansion of generating capacity by private developers, the tariffs for the incremental generating capacity would be determined in accordance with the RTM framework under Section 62. However, such expansion under the RTM framework would be restricted up to the quantum of power approved under their existing PPA with the distribution licensee(s) in the state*”

The expansion of existing intra-state generating projects under the RTM framework is limited to the existing quantum of power approved as in the existing PPA with the licensees in the state. The PPA between a generating station and the distribution licensee is signed and approved by the Commission based on the quantum of power mutually agreed on through PPA. Hence, the proviso to the draft Clause may be rephrased as shown below:

“.....However, such expansion under RTM framework would be restricted up to the quantum of power, **for which PPA has been signed and approved by the Commission**, with the distribution licensee(s) in the state (emphasis added).”

**CER** **Absence of Provision for Repowering of Existing Power Generating Plant:** The modalities for determination of tariff for existing, new and expanding generation projects up to the capacity as signed in PPA with the distribution licensee have been laid down. The provisions for repowering of an existing generating station or new plant to be set up in place of existing plant (either renewable or non-renewable), may also be included in Clause No. 3.

It is necessary to define the relevant tariff determination mechanism (**either RTM or TBCB Framework**) which will be applicable for the repowering of generating plants before or after the end of the PPA/technical life of the project. It is suggested that such repowered generating plants should be considered as a “new plant” and provisions for the tariff determination mechanism should be laid accordingly.

**CER** **Incorporating the Possibility of Multiple Distribution Licensees:** The retail tariff of the consumers will be determined u/s 62 of the Act. The Act also provides for multiple distribution licensees, and tariff determination in this context is limited to setting up of the ceiling tariff. Hence, the possibility of multiple distribution licensees should be kept in the perspective while framing the modalities for distribution licensees and may be modified so.

## HERC (Green Energy Open Access) Regulations, 2023

The Ministry of Power, Govt. of India, notified the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 on 6<sup>th</sup> June, 2022 applicable on generation, purchase and consumption of green energy including waste-to-energy plants. In adherence to the same, HERC proposed the HERC (Green Energy Open Access) Regulations, 2023. The key highlights of the draft are mentioned below:

**Objective:** To contribute for the fulfilment of the India's target of non-fossil energy capacity of 500 GW by 2030, 5 million ton a year green hydrogen capacity by 2030 and Net Zero Carbon Emissions by 2070, HERC has proposed (Green Energy Open Access) Regulations, 2023.

### Eligibility criteria for Green Energy Open Access:

- Consumers having contract demand or sanctioned load of 100 kW and above.
- Consumer of a distribution licensee who is connected through an independent feeder emanating from a grid sub-station.

- Group of two or more consumers of a distribution licensee having a contract demand or sanctioned load of 100 kW and above connected to distribution system at 11 kV or above through an independent feeder emanating from a grid sub-station.
- Consumers of distribution licensee with contract demand of 100 kW or above who are not on independent feeders provided that they agree to the system constraints as well as the power cut restrictions imposed by the distribution licensee serving them.

## Nodal Agency:

- Grid India (formerly, POSOCO) is designated as Central Nodal Agency to set up and operate a single window green energy open access system for renewable energy.
- Nodal Agency for grant of short-term and medium-term green open access shall be SLDC, Panchkula and STU respectively.

## Banking:

- Banking of energy consumed through green open access is permitted upon entering into the banking agreement with the discom and to be settled in the same billing cycle.
- At least 30% of the total monthly energy consumed by the consumer from the discom will be allowed for banking and excess energy will be treated as dumped energy.
- Applicable banking charges shall be @ of 8% of the energy banked.

## Charges to be levied for Green Energy Open Access:

- Transmission charges
- Wheeling charges
- Cross subsidy Surcharge
- Standby charges wherever applicable
- Banking charges
- Other fees and charges

**Green certificate:** The distribution licensee shall give green certificate on yearly basis to the consumers for the green energy supplied by the licensee to consumer on his request beyond the renewable purchase obligation of the consumers.

## CER Opinion

**CER** Green Open Access: Green open access is aimed at enhancing share of green energy in the power sector for the obligated entities as well for the final consumers. Our comments on “MOP Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2021” can be found at [https://cer.iitk.ac.in/blog/new\\_blog/?id=ODgx](https://cer.iitk.ac.in/blog/new_blog/?id=ODgx)

**CER** Quantum of green energy: As per the draft Clause 4.C (d), “Any requisition for green energy from a distribution licensee shall be for a minimum period of one year;” Clause (e) further states that “The quantum of green energy shall be pre-specified for at least one year”.

The above provisions would demotivate green open access (OA) consumers to opt for the same. The option for a consumer to seek green energy from a distribution licensee should be in line with consumer's ability to secure non-green electricity, which does not come with such limitations. To ensure greater acceptability of green energy by final consumers, such limitations should be avoided at the very outset and may be reviewed later, if required.

Given that the RE sources like solar and wind are subject to variation in generation across months, it may not be possible to pre-specify the quantum for a year. **Under such circumstances, appropriate provisions to address cases of such a variation should be added. As a step towards encouraging renewables, a 10% variation (or as deemed fit by the Commission) in quantum and duration of green open access should be allowed.** This may be reviewed later based on experience. Over and above this variation, exceptions to **include force majeure conditions, and curtailment of the transmission capacity, both at the inter as well as intra-state level.**

Furthermore, the regulation should provide for part or full surrender of load by the consumers that would limit the quantum of power as well as duration of green OA.

**CER Guarantee of origin of energy used for producing green hydrogen or green ammonia:** As per the draft Clause 4.F, “the obligated entity can also meet their Renewable Purchase Obligation by purchasing green hydrogen or green ammonia and the quantum of such green hydrogen or green ammonia would be computed by considering the equivalence to the green hydrogen or green ammonia produced from one MWh of electricity from the renewable sources or its multiples, as per the norms notified by the Central Commission”. A mechanism would be required to ensure the origin of source of energy use for generation of green hydrogen or green ammonia. Similarly mechanism to verify the purchase and use of green hydrogen or green ammonia by the obligated entity would also be required for considering them for meeting the RPO. **The existing REC registry may be empowered to certify the same. Relevant procedures, protocols and accounting framework would be required to be specified for the same under the relevant CERC Regulations.**

**CER Limitations of contracted demand or sanctioned load for captive consumers:** The draft Clause 5, “The consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall **be no limit of supply of power** for the captive consumers taking power under Green Energy Open Access (emphasis added).” may be rephrased as “The consumers who have contracted demand or sanctioned load of one hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall **be no such limit of supply of power** for the captive consumers taking power under Green Energy Open Access.” (emphasis added)

**CER Energy requirement through green open access :** As per the 1<sup>st</sup> proviso to the draft Clause 5, “Provided that such open access shall be for **a minimum twelve time blocks** of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access (emphasis added).” may be rephrased as “Provided that such open access shall be for **a minimum twelve continuous time blocks** of 15 minutes time interval during a day, for which the consumer shall not change the quantum of power consumed through open access” (emphasis added). Our previous comments MoP<sup>5</sup> in this context may also be considered.

**CER Grant of green energy through green open access:** As per the 2<sup>nd</sup> proviso to the draft Clause 5, “Provided further that all applications for open access of green energy shall be allowed by the State Nodal Agency within a period of fifteen days.” It is suggested that the green open access should be deemed to have been granted in case there is no action on the **completed** applications submitted with required documents and fee, as may be required.

Also, the fifteen days’ timeline, specified in the draft Clause, may be utilised to scrutinize the application and inform/ask the applicant for further information, if required, from the applicant in case of incomplete application. The above specified limit of fifteen days’ would apply from the date of re-submission of the complete application form with the Commission. The technical feasibility check of such requirement may be assessed prior to grant of green open access to such applicants, which may require more than fifteen days’ time. Hence, appropriate clarification is required on the same.

**CER Type of consumers:** Eligibility criteria for green open access as define under Clause 5, may be clearly segregated for different types of consumers as on reading it as one may lose the applicability of the relevant proviso to the different types of consumers or group of consumers discussed in the said Clause.

**CER Energy Accounting between power drawn through green open access and distribution licensee:** It is suggested that provisions for appropriate energy accounting for energy drawal through a single meter but from two different energy contracts i.e. through green open access and distribution licensee should be clearly mentioned in the draft Clause 5. **A dispute similar to M/s. Lords Chloro Alkali Ltd. Vs. JVVNL<sup>6</sup>, for excess drawl from one source due to failure of another, may arise.**

**CER Digitalisation and Central Green Open Access Registry:** The whole application process as well as the status of the open access and quantum of thereof should be transparently visible to the applicant as well as be archived at the public domain through a common portal.

<sup>5</sup> CER comments on “MOP Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2021.” [https://cer.iitk.ac.in/blog/new\\_blog/?id=ODgx](https://cer.iitk.ac.in/blog/new_blog/?id=ODgx)

<sup>6</sup> Case of M/s. Lords Chloro Alkali Ltd. Vs. JVVNL, DFR No. 101/2020 pending at APTEL for penalty imposed by the Discom due to excess drawal from Discom in the event of failure of power supply from IEX. (RERC Order on Petition no 1547/2020, dt. 15/01/2020. <https://rerc.rajasthan.gov.in/rerc-user-files/office-orders>)

Further, it is suggested that an appropriate reference to the **centralised registry for Green Energy Open Access as mentioned in the Clause 6(2) of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022<sup>7</sup>**, may be included in the draft Regulations or appropriate provision for same be introduced.

**CER Banking of Green Energy (Clause 8):** It is suggested that TOD based banking and withdrawal of green energy should be provided for green open access consumers, as also mentioned in our suggestion given to MoP<sup>8</sup>.

**CER Un-utilised surplus banked energy:** As per the draft Clause 8(4), *“Provided further that the un-utilised surplus banked energy shall be considered as lapsed at the end of each banking cycle and the renewable energy generating station shall be entitled to get renewable energy certificates to the extent of the lapsed banked energy.”* The provision of providing REC for the lapsed banked energy, in this draft Clause, does not ensure the eligibility of the generator for receiving of REC in case the generator is not registered with and accredited by the nodal agency. Furthermore, as per Clause 11(6)(iii) of the HERC (Rooftop Solar Grid interactive System Based on Net Metering/ Gross Metering), Regulations, 2021<sup>9</sup>, each unit (kWh) of energy generated and injected into the grid by eligible consumers/ prosumer shall be paid by the Discom at Rs. 3.11/kWh. It is, thus, suggested that instead of giving REC for the lapsed banked energy, the generator may be paid at a rate applicable under the net metering framework (Rs. 3.11/kWh at present).

### Regulatory Updates

#### Tariff



KSERC approved total income, expenditure, and revenue surplus of Rs. 11331.95 lakh, Rs. 9637.89 lakh and Rs. 1694.06 lakh respectively for the petition filed by Thrissur Corporation Electricity Department for truing up for FY 2020-21.

The cumulative revenue surplus at the beginning of FY 2020-21 was Rs. 16910.50 lakh.

KSERC approved the petition filed by KSEB Ltd. and allowed the fuel surcharge to be recovered from the consumers at the rate of Rs. 0.09/kWh, over a period of 4 months for the consumption from 1<sup>st</sup> February, 2023 till 31<sup>st</sup> May, 2023 or until the approved amount of Rs. 87.07 Cr. is fully realized.

KSERC has approved the tariff order as well as the schedule of tariff and terms and conditions for retail supply of electricity submitted by KSEB Ltd. and all other licensees and will be in effect from 26<sup>th</sup> June, 2022 to 31<sup>st</sup> March, 2023. After carefully considering all of the

factors, KSERC has chosen to extend the current tariff order's validity through the truing up petition for FY 2021-22 and the tariff petition for the period from FY 2023-24 to FY 2026-27 by a few more months.

KSERC orders the levelised tariff for the electricity generated from the 4.5 MW SHEP installed by CIAL Infrastructures Ltd. at Arippara, Kozhikode and is approved at Rs. 4.30/kWh duly considering the benefit of accelerated depreciation.

KSERC has reviewed the petition filed by Rubber Park India Pvt. Ltd. on the truing up of accounts for FY 2020-21 and approved depreciation of Rs. 23.49 lakh and Rs. 24.44 lakh is approved for FY 2019-20 and FY 2020-21 respectively. The total cumulative revenue surplus till FY 2020-21 will be Rs. 540.99 lakh.



KERC approved the tariff of Rs. 4.79/kWh is allowed as agreed in PPA for establishing the 20 MW (AC) capacity of the solar PV ground mount project at Kollegala Taluk. The CESC is entitled for interest at the rate of 10% p.a. for the

<sup>7</sup> MoP (Promoting Renewable Energy through Green Energy Open Access) Rules, 2021.

[https://greenopenaccess.in/assets/files/Green%20Energy%20Open%20Access\\_rules.pdf](https://greenopenaccess.in/assets/files/Green%20Energy%20Open%20Access_rules.pdf)

<sup>8</sup> CER comments no MOP Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2021.

[https://cer.iitk.ac.in/blog/new\\_blog/?id=ODgx](https://cer.iitk.ac.in/blog/new_blog/?id=ODgx)

<sup>9</sup> HERC (Rooftop Solar Grid interactive System Based on net Metering/Gross Metering), Regulations, 2021

<https://herc.gov.in/WriteReadData/Pdf/R20210430.pdf>



## Regulatory Updates

difference of the tariff for the period from the date of COD till the passing of this order.

KERC entitled Azure Power (RAJ) Pvt. Ltd. to supply energy to HESCOM at a tariff of Rs. 6.93/kWh from the date of COD. The HESCOM shall pay Azure Power (RAJ) Pvt. Ltd. differential tariff between Rs. 6.93/kWh and Rs. 6.51/kWh from the date of COD.



RERC allowed RUVNL to procure power from the RE projects at its discretion. However, before doing so it may have to consider three aspects in respect of the overall energy requirement and energy availability from various sources, to meet

RPO targets for the year and tariff for such procurement is to be equivalent to the latest tariff discovered through competitive bidding for relevant technology.

RERC directed JVVNL Limited that, for the categories where rebates/surcharge are offered, the power factor rebate/surcharge shall be worked out on energy charges arrived at after availing all rebates/surcharge except power factor rebate/surcharge.



WBERC directed Haldia Energy that the insurance, rates and taxes are uncontrollable elements and are subjected to truing up at the time of APR.

HERC approved HPPC for the power procurement of 179 MW from NTPC's Dadri-Stage I Thermal Power Plant, allocated by MoP for a period of 6 months at CERC regulated tariff.



HERC observed that in case connection is released at 11 kV instead of 33 kV/66 kV, differential cost of 11 kV system will include cost of 33 kV/66 kV bay, difference in cost of 33 kV/66 kV line considering length from the substation

where it is actually proposed to be released and difference in cost of 33 kV/66 kV substation of appropriate capacity as per load norms and 11 kV equipment as per the cost data book.



PSERC approved the Capital Investment and Capitalization for FY 2023-24 to FY 2025-26 i.e. for the 3<sup>rd</sup> MYT Control Period as proposed by the PSPCL subject to final true up of actual expenditure as indicated in Annexure-I and Annexure-II.

### Annexure-I: Capital Investment approved for FY 2023-24 to FY 2025-26

Sr. No.	Particulars	Approved by the Commission (Rs. Cr.)			
		FY-24	FY-25	FY-26	Total
1.	Generation Business	483.69	413.33	341.72	1238.74
2.	Distribution Business	1382.25	1594.77	1831.57	4808.59
3.	Total Capital Investment	1865.94	2008.10	2173.29	6047.33

### Annexure-II: Capitalization approved for FY 2023-24 to FY 2025-26

Sr. No.	Particulars	Approved by the Commission (Rs. Cr.)			
		FY-24	FY-25	FY-26	Total
1.	Generation Business	367.28	528.42	277.25	1172.95
2.	Distribution Business	1312.40	1452.49	1668.72	4433.61
3.	Total Capital Investment	1679.68	1980.91	1945.97	5606.56



UPERC approves the Agreement for Procurement of Power (APP) dated 17<sup>th</sup> December, 2022 between NPCL and M/s TPTCL at the tariff for Rs. 4.05/kWh for the period from 1<sup>st</sup> April, 2023 to 31<sup>st</sup> March, 2026 as per Section 63 of the Act.

UPERC after examining the details submitted by DIL, approves the claim of Rs. 0.42 Cr. as cost of additional coal procured by DIL in FY 2020-21 for the supply of contracted capacity to NPCL. DIL is also entitled to obtain carrying cost on balance of Rs. 0.04 Cr. claimed amount by applying the Bank Rate.



2022.

DERC directed NDMC to pay annual/license fee at 0.05% annual amount billed with effect from FY 2003-04 onwards along with accrued interest at 1% per month on account of delayed payment up to the date 31<sup>st</sup> December,

## Power Procurement



UPERC allows the segregation of 500 MW of hydropower for imported and domestic hydropower source appropriately with the option of procuring imported hydro power in the case of unavailability of domestic hydro

power.

UPERC approves the amended PPA dated 13<sup>th</sup> October, 2022 only for change of name of the company to M/s Dhampur Bio Organics Limited, Unit-Mansurpur with other terms of the PPA & SPPA i.e., financial, technical etc. remaining unaltered.

UPERC using its power and in terms of section 86(1)(e) of the Act allows CUF of grid connected Solar PV power project to be changed from 28% to 24% from 10<sup>th</sup> December, 2021. Further, UPERC directs the parties to sign supplementary PPA to this effect including the project site details within two weeks from 29<sup>th</sup> March, 2023.

MERC has adopted Short Term Power Procurement from 1<sup>st</sup> February, 2023 to 31<sup>st</sup> January, 2024 by Nidar Utilities Panvel LLP u/s 63 of the Act. Subsequently, PPA is initiated with successful bidder at approved tariff of Rs. 5/kWh at Maharashtra State Periphery.

## Regulatory Updates

MERC has approved the Power Procurement plan for Aurangabad Industrial Township Limited (AITL) for the period of 1<sup>st</sup> April, 2023 to 31<sup>st</sup> March, 2024. Further, AITL is directed by MERC to issue a tender for short-term power procurement as per the MoP Guidelines of 2016 & its amendments and to file a petition for the adoption of the short-term PPA arrived at on that basis.

DERC approved BRPL for the adoption of weighted average tariff of Rs. 7.49/kWh for procurement of Short-term power up to 500 MW for period of April, 2023 and September, 2023. Also, BRPL is directed to maintain 24x7 supply during summer 2023 period and expedite process of medium-term PPA of 500 MW approved.

### Renewable Energy, RPO and REC

MERC directs MSEDCL to pay Ghatge Patil Industries Ltd the amount of Rs. 26.16 lakh within 1 month from the date of Order as interest on delayed payment of DPC.

DERC approved TPDDL for procurement of 510 MW Wind-Solar Hybrid Power for a period of 25 years from COD of the plant subject to the conditions based on actual demand, the three plants based on imported coal Maithon Power, CLP Jhajjar and Aravali Jhajjar stations will operate at 55% MTL and deficit power if any will be recouped by additional 255 MW Wind-Solar Hybrid Power.

### Others

UPERC decides that ASECOL is entitled to raise the bill for claimed amount of Change in Law. The documents submitted by ASECOL will be verified by NPCL. The LPS provision of the PPA shall be applicable after the ASECOL has raised the bill for Claimed amount of Change in Law.

UPPCL suggested following modifications/ amendments proposed in the RfS Documents:

- Capital Subsidy of Rs. 2.50 Cr. per MW will be

provided to utility-scale Solar Power Projects set up with 4 hours battery storage system for sale to UPPCL.

- Allowing a Round Trip Efficiency (RtE) of 85%.
- For  $70\% \leq \text{RtE} \leq 85\%$ , there shall be a liquidated damage @ APPC charge of previous financial year of Discoms of excess conversion losses considering system RtE equal to 85%.
- For  $\text{RtE} < 70\%$ , there shall be a liquidated damage levied @ APPC charge of previous FY of the Discoms of excess conversion losses considering system RtE equal to 85% and tariff payment for the corresponding month shall not be made to BESS.
- Modification of Annual Availability to 95%.

UPERC acknowledges that the BESS is at initial stage in Uttar Pradesh, hence approves the proposed amendments made by UPPCL.

DERC allowed 22.18% PPAC to NDMC on provisional basis and at the same time recover 5.82% of balance PPAC for a period of 3 months while the existing 22.18% allowed will be subsumed appropriately in the ensuring tariff order.

DERC allows TPDDL to recover half of the balance PPAC i.e., 2.84% for a period of 3 months and above existing PPAC of 24.80% and the above mentioned 2.84% will be subsumed appropriately in ensuing tariff order.

RERC directed that, allowing carrying cost and interest on carrying cost on the approved change in law events in absence of precise details and supporting documents may lead to undue enrichment to M/s APRL.

RERC observed that the RRVPNL is not getting the transmission charges on the cumulative contracted capacity as per connectivity agreement. There is a huge gap between the contracted capacity as per connectivity agreement and open access availed and the matter has been referred to MoP for clarification. RERC directed both the RRVPNL and Indian Railways through North Western Railway to get the issue resolved through MoP.

## Tariff Orders

State/Union Territory (SERC)	Licensee/Utility	True-up	Annual Performance Review (APR)	Aggregate Revenue Requirement (ARR)	Tariff
Haryana (HERC)	UHBVNL, DHBVNL	FY 2021-22	FY 2022-23	FY 2023-24	
Haryana (HERC)	HVPNL	FY 2021- 22	FY 2021-22	FY 2023-24	
Haryana (HERC)	HPGCL	FY 2021 -22	FY 2022-23		FY 2023-24
Arunachal Pradesh (APSERC)	APSERC			FY 2020-21	FY 2020-21
Chhattisgarh (CSERC)	CSERC	FY 2021-22		FY 2021-22	
Manipur and Mizoram (JERC)	JERC	FY 2020-21	FY 2021-22	FY 2022-23	FY 2021-22

## Regulations

Title	Date of Approval/Notification
KERC (Recovery of Expenditure for Supply of Electricity) (Twelfth Amendment) Regulations, 2023	12 <sup>th</sup> January, 2023
KERC (Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS)) (Eleventh Amendment) Regulations, 2023	11 <sup>th</sup> January, 2023
TSERC (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulations, 2023	18 <sup>th</sup> January, 2023
WBERC (Terms and Conditions of Tariff) (Fourth Amendment) Regulations, 2023	17 <sup>th</sup> February, 2023
RERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023	27 <sup>th</sup> January, 2023
MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (First Amendment) Regulations, 2021	20 <sup>th</sup> January, 2023
MPERC (Power Purchase and Procurement Process) Regulations, 2023	24 <sup>th</sup> February, 2023
MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (First Amendment) Regulations, 2021	20 <sup>th</sup> January, 2023
MPERC (Terms and Conditions for determination of Generation Tariff) (First Amendment) Regulations, 2020	27 <sup>th</sup> January, 2023
MPERC (Terms and Conditions for determination of Generation Tariff) (Second Amendment) Regulations, 2020	24 <sup>th</sup> February, 2023
MPERC (Terms & Conditions for Determination of Transmission Tariff) (First Amendment) Regulations, 2020	27 <sup>th</sup> January, 2023
MPERC (Terms and conditions for Tariff determination for energy from Renewable Energy Sources) (First Amendment) Regulations, 2017	27 <sup>th</sup> January, 2023
HERC (Officer and Employees Condition of Service) Regulations, 2016	4 <sup>th</sup> January, 2023
MERC (Multi Year Tariff) (First Amendment) Regulations, 2023	10 <sup>th</sup> February, 2023
HPERC (Transmission Performance Standards) Regulations, 2023	2 <sup>nd</sup> March, 2023
HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2023	24 <sup>th</sup> February, 2023
TNERC (Procedure for payment of subsidy by the State Government) Regulations, 2023	22 <sup>nd</sup> February, 2023
JSERC (Modalities of Tariff Determination) Regulations, 2023	17 <sup>th</sup> February, 2023
WBERC (Terms and Conditions of Tariff) (Fourth Amendment) Regulations, 2023	13 <sup>th</sup> March, 2023
RERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023	27 <sup>th</sup> January, 2023

**\*Disclaimer:** The information provided herein is extracted/reproduced from Order/ Regulation/ Document etc, of the respective Commissions. This is for information purpose only and does not in any matter reflect opinion or analysis thereon.



## Capacity Building Program



CER IIT Kanpur in association with Forum of Regulators, successfully completed the 16<sup>th</sup> Capacity Building Program (CBP) for officers of SERCs and CBP for JERCs & CERC on **“Regulatory Perspectives on Network, Renewable Energy and Market Development”**. The session was held at IIT Kanpur Noida Outreach Centre from 3<sup>rd</sup> February to 4<sup>th</sup> February, 2023 & Melbourne, Australia from 7<sup>th</sup> February to 9<sup>th</sup> February, 2023. The program was designed to help all SERCs officers to understand and analyse the key issues in the power sector from Economics on Governance Structure, Energy Market & regulatory prospective. The distribution of prizes was officiated by Dr. Sushil Kumar (Consul General, Australia). The key speakers were Mr. G. Srinivasan (CEO, Tata Power), Ms. S. Agarwal (Jt. Chief (Engg.), CERC), Mr. C. Popple (Comm'r, AEMC), Ms. C. Eddy (G.M., (Dist.), Ausnet Services), Dr. J. Hamill (CEO, ESC), Mr. K. Funston (Exec. G.M., AER), Mr. K. Huynh (Director, AER) & Ms. S. Sheppard (Director, ESC). For further program details including program duration, key topics, please visit <https://cer.iitk.ac.in/cbp16>.

## Regulatory Certification Program - Power Sector Regulation



CER in association with EAL, successfully completed the Regulatory Certification Program (RCP) on **“Power Sector Regulation: Theory and Practice (PSR)”** dated 19<sup>th</sup> February, 2023 to 5<sup>th</sup> March, 2023. The valedictory session held on 15<sup>th</sup> March, 2023 was graced by “Dr. M. V. Rao, (Chairperson, WBERC)” along with other eminent speakers. The program was designed to help the understanding of the participants and the analysis of key issues in the power sector from economic, legal and regulatory prospective. The speakers included Mr. G. Prasad (Jt. Sec, MoP), Mr. S. C. Shrivastava (Jt. Chief (Engg.), CERC), Mr. H. T. Gandhi (Sr. Advisor, CERC), Prof. J.M. Glachant (President, IAEEE), Mr. Buddy A. Ranganathan (Lawyer, Supreme Court), Mr. A. Dutta (Director (Engg.), WBERC), Prof. T. Jamasb (Prof., CSEI), Mr. B. K. Sahoo (

Project Exec. officer, IIT Kanpur) & Dr. Anoop Singh (Prof., IIT Kanpur). The Program was hosted at CER's Online Learning Environment and Tools (OLET) platform under the aegis of Centre for Continuing Education, IIT Kanpur. For further program details including program duration, key topics, etc. please visit [https://cer.iitk.ac.in/psr\\_reg/?id=1](https://cer.iitk.ac.in/psr_reg/?id=1).

We invite readers to register at CER's web portal to access CER's publications and resource material. This would also help us design CER's activities and deliver a more relevant output by engaging with stakeholders. We also request your inputs on the newsletter and the activities of the Centre.

*Regulatory Insights Team*

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### Other Initiatives





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**Note:** Additional information can be accessed through the hyperlinks provided in the online version of this newsletter.