

PSERC (Terms and Conditions for determination of Generation, Transmission Wheeling and Retail Supply Tariff) (1st Amendment) Regulations, 2022 [Draft]

The Hon'ble Supreme Court of India gave its judgement on 23rd November, 2022 on Case (Civil Appeal No. 1933 of 2022) in which it rejected the plea of TATA Power Company Limited Transmission challenging the awarding of Rs. 7000 Cr. transmission infrastructure project without a tariff-based competitive bidding to Adani Power by the Maharashtra Electricity Regulatory Commission (MERC). As per TATA Power Company Limited Transmission, MERC should not have awarded such a large transmission project without following the process of tariff-based competitive bidding.

While the verdict was being announced, the Hon'ble Supreme Court had also asked all the State Electricity Regulatory Commissions to frame Regulations under Section 181 of the Act on the terms and conditions for determination of tariff within three months from the date of the judgement.

Objective: The objective of these Regulations is the determination of the modality of tariff determination for each State Electricity Regulatory Commission.

PSERC notified a draft on “(Terms and Conditions for determination of Generation, Transmission Wheeling and Retail Supply Tariff)(1st Amendment) Regulations, 2022” on 3rd January, 2023. The 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 under Section 63 of the Act, otherwise the tariff will be determined under Section 62 of the Act.

The document can be accessed [here](#).

CER Opinion

- 1. 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 Tariff-Based Competitive Bidding (TBCB) Framework u/s 63 of the Act in the future may be avoided.
- 2. Incorporating the Possibility of multiple Distribution Licensees:** The retail tariff of the consumers will be determined u/s 62 of the Electricity Act, 2003. 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.
- 3. Provision for Expansion of Existing Transmission Lines:** The modalities for determination of tariff for new transmission projects have been laid down in Clause 9.20. However, no provision is included for determination of tariff for augmentation/ strengthening works at the intra-State transmission system.
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.
- 4. Objectivity for Exclusion:** The proposed Clause 9.20 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 9.20 have laid down the modalities of tariff determination for the intra-state transmission lines, the proviso of the Clause has introduced a room for subjectivity to . . . some ambiguous terms like “critical State project” or “compelling circumstance”. It is 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.¹ This may also lead to further legal disputes also raising the risk for the investors/project developers.

¹ 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