

UPERC (Modalities of Tariff Determination) 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.

UPERC notified a draft on “(Modalities of Tariff Determination) Regulations, 2022” on 21st December, 2022. The 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 document can be accessed [here](#).

CER Opinion

1. The proviso of the draft 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 RTM framework under section 62. However, such expansion under 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 Regulated Tariff Mechanism (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 Clause may be modified as shown below:

*of’.....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’*

2. **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 3.

It is necessary to define the relevant tariff determination mechanism (**either RTM or Tariff Based Competitive Bidding (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.

3. **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 enables multiple retailers in the area of license in order to increase the competition in the distribution sector. Hence, the possibility of multiple distribution licensees should be kept in the perspective while framing the modalities for distribution licensees.