

## **KEY DEVELOPMENTS IN POWER SECTOR IN FY 2024-25**

### **INTRODUCTION**

India's power sector has seen major changes in the past few years, creating numerous opportunities across its entire value chain in both regulated and unregulated markets. With the fifth-largest power generation capacity globally and the third-largest network, India is well-positioned for growth. FY 2024-25 has also seen some key developments in the power sector including regulatory & policy developments, along with governmental and judicial developments. The brief of the key developments in power sector in India for FY 2024-25 (till date) are provided below:

### **I. REGULATORY & POLICY DEVELOPMENTS**

#### **APERC notified the Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulations, 2024.**

Andhra Pradesh Electricity Regulatory Commission ("APERC") through its notification dated 02.05.2024 notified the Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulations 2024<sup>1</sup> ("APERC Green Energy Regulations, 2024"). The objective of the APERC Green Energy Regulations 2024 is to facilitate open access for electricity generated from renewable energy sources for utilization within the state through Intra-State Transmission Systems and/or distribution systems of the licensed entities.

The APERC Green Energy Regulations 2024 aims to enhance accessibility for energy consumers and producers to invest and engage in green energy initiatives. The APERC Green Energy Regulations, 2024 also revises the charges associated with green energy procurement. APERC has established a structured tariff system to incentivize the adoption of renewable energy sources, rendering them more economical for consumers.

Further, the APERC Green Energy Regulations 2024 introduces new banking rules related to energy production and consumption. As per the APERC Green Energy Regulations 2024, banking facilities will be provided to consumers utilizing Green Energy Open Access, subject to specific conditions. This provision of the APERC Green Energy Regulations 2024 addresses the intermittency of renewable energy by enabling the storage and utilization of excess energy generated during peak production periods to be used during the low production times.

#### **CERC notified CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2024.**

Central Electricity Regulatory Commission ("CERC") through its notification dated 05.08.2024 notified CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2024<sup>2</sup> ("DSM Regulations") to ensure that the grid users do not deviate from the prescribed schedule of drawl and injection of electricity in the interest of the security and stability of the grid. The key features of the DSM Regulations are as follows:

- (i). DSM Regulations shall apply to all grid-connected regional entities and other entities engaged in the inter-state purchase and sale of electricity.
- (ii). DSM Regulations provides for computation of deviation in a time block for general sellers, Wind or Solar ("WS") sellers and buyers. Pertinently, deviation in time block for WS sellers (as defined under DSM Regulations) shall be computed at different formulas for the period of commencement of this DSM Regulation up till 01.04.2026 and for the period of 01.04.2026 and onwards.
- (iii). Various charges for deviation for the sellers and the buyers are also provided under the DSM Regulations. The charges shall be receivable or payable by the seller if the deviation is by way of over injection or by way of under injection, as the case may be. Further, these charges are separate for each type of seller. Similarly, for a buyer, the charges are either receivable or payable depending on the type of deviation i.e., by way of under-drawal or over-drawal.

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<sup>1</sup> Andhra Pradesh Electricity Regulatory Commission (Green Energy Open Access, Charges, and Banking) Regulation, 2024.

<sup>2</sup> CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2024.

- (iv). The Regional Load Despatch Centres (“RLDC”) will provide the data for deviation calculated in terms of Regulation 6 of the DSM Regulations to the respective regional power committees, wherein the secretariat of the regional power committee shall prepare the statement of charges and will thereafter issue the weekly statement of deviation charges.
- (v). The payment of charges for deviation shall have a high priority and the regional entity shall pay the due amount within 10 days of issuance of the statement of surcharge for deviation, failing which the entity will be levied with late payment surcharge at 0.04% for each day. The entity which fails to make the payment within the time stipulated under DSM Regulation will be required to open a letter of credit equal to 110% of its average payable weekly liability. Further, the RLDC will have the power to encash the letter of credit of the concerned regional entity if the entity fails to pay the amounts in the deviation and ancillary service pool account.
- (vi). CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 stands repealed from the date of commencement of DSM Regulations.

#### **DERC notified the DERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024.**

The Delhi Electricity Regulatory Commission (“DERC”) on 09.10.2024 notified the DERC (Terms and Conditions for Green Energy Open Access) Regulations 2024<sup>3</sup> (“GEOA Regulations”) for implementing a comprehensive framework for Green Energy Open Access (“GEOA”) in the National Capital Territory of Delhi. The salient features of the GEOA Regulations are as follows:

- (i). The GEOA Regulations shall be applicable to electricity generated from green energy sources as well as energy from non-fossil fuel based municipal solid waste-to-energy or refuse-derived fuel plants for use of Intra-State Transmission System (“InSTS”) or distribution system, or both in the state, including InSTS and/ or distribution systems incidental to the inter-state transmission of electricity.
- (ii). All applicants seeking open access are required to submit an undertaking that they have not entered into a Power Purchase Agreement (“PPA”) or any other bilateral agreement with more than one person for the capacity for which open access is sought. However, the drawee shall be eligible to enter into PPA or any other bilateral agreement with more than one person within the quantum of open access granted or sought by it.
- (iii). Any consumer having contracted demand or sanctioned load of 100 KW or above, connected at 11kV, either through single or multiple connection aggregating to 100KW in the area of the distribution licensee shall be eligible for open access for sourcing green energy under these GEOA Regulations.
- (iv). The existing consumers/ generators including green energy shall continue to be governed under existing open access granted to them and they shall avail the open access for green energy/ customer/ licensee/ generator under existing open access regulations as per the existing agreements for the period specified in those agreements or orders of the DERC for the open access already granted.
- (v). The charges in respect of GEOA consumers will be payable directly to the state nodal agency and distribution licensees in accordance with the terms and conditions of payments specified in the GEOA Regulations. The state nodal agency is required to disburse the amount received to the appropriate licensees.

#### **CERC notified CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2024**

CERC by its notification dated 23.10.2024 issued CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2024<sup>4</sup> (“IEGC First Amendment 2024”) amending the CERC (Indian Electricity Grid Code) Regulations, 2023 (“IEGC”). The IEGC First Amendment 2024 will come into force from the date of publication in the official gazette except for the amendment to Clause 12 of Regulation 45 of IEGC which shall come into force from 01.04.2024. The key highlights of the IEGC First Amendment 2024 are as follows:

- (i). Regulation 19(2)(b) of IEGC has been substituted with sub-Clauses (b) and (c) which provides that the period for injecting infirm power shall not exceed 1 (one) year from the date of first synchronisation for generating stations other than R.E. Energy Generating Stations (“REG”) and

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<sup>3</sup> DERC (Terms and Conditions for Green Energy Open Access) Regulations 2024.

<sup>4</sup> CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2024.

Energy Storage Systems (“ESS”) as per, and the period for injection of infirm power shall not exceed 45 (forty-five) days from date of first time energization and integration approval for REGs and ESSs, (except for hydro pump storage projects ESS).

- (ii). A proviso has been inserted in Regulation 19(3) of IEGC whereby request can be made for extending the aforesaid stipulated period up to three (3) months through an application to the Regional Load Despatch Center at least 10 (ten) days in advance of the completion of the stipulated period. For extension beyond three (3) months, an application has to be submitted to the commission by generating station or ESS (except for hydro pump storage projects ESS) least 15 (fifteen) days in advance of the completion of the stipulated period.
- (iii). Regulation 22(3)(d) of IEGC has been amended whereby the successful trial run of a wind turbine(s) shall now mean the flow of power and communication signal for a period of not less than four (4) hours on a cumulative basis in a single day.
- (iv). Regulation 27(2) of IEGC has been amended and now on declaration of commercial operation date, the scheduling of a generating station or unit will now start from 0000 hours of D+2 (where D is the date when a generating station intimates the commercial operation of the generating station or unit thereof) or the COD date declared by the Generator, whichever is later.
- (v). The Third Proviso to Regulation 45(12) of IEGC has been amended to provides for compensation to regional entity thermal generating stations whose tariffs are adopted under Section 63 of the Electricity Act 2003 (“EA 2003”) for part load operations, in terms of the contract entered into with the beneficiaries, and in the absence of such provision in the contract, as per the mechanism already in force under CERC (IEGC) Regulations 2010. Further, the Fourth Proviso under Regulation 45(12) of IEGC has been amended to provide for compensation for part load operation for thermal generating stations whose tariffs are determined as per Section 62 of the EA 2003 as per the provisions of the applicable tariff regulations.
- (vi). Regulation 49(1)(l) of IEGC has been amended and now allows a generating station whose tariff is determined under Section 62 of the EA 2003 to sell its un-requisitioned surplus as available at 9:45 AM in the day-ahead market without the consent of the beneficiaries.
- (vii). A new sub-clause (v-a) has been added in Regulation 49(2) of IEGC which provides that in case a regional entity generating station, whose tariff has been determined under Section 62 of EA Act, 2003, a schedule below Minimum Turndown Level (“MTL”) for Off-Peak Hours but above MTL for Peak-Hours, can request NLDC to adjust the schedule below the MTL in the manner provided thereunder.
- (viii). Regulation 49(2)(a)(vi)(b) of IEGC has been amended whereby the condition for accommodation under the Security Constrained Economic Dispatch (“SCED”) of the entire drawal schedule of the regional entity thermal generating station getting schedule below MTL and wishes to arrange power scheduled by its buyers through SCED, has been deleted.
- (ix). Proviso to Regulation 49(4)(a) of IEGC has been amended and now provides for scheduled transactions under temporary general network access can now also be revised in case of partial outages as per Regulation 49(7-a) of IEGC.

## **II. GOVERNMENT NOTIFICATIONS**

### **MNRE revived the Approved List of Models and Manufacturers mandate with effect from 01.04.2024.**

The Ministry of New & Renewable Energy (“MNRE”) through its notification dated 29.03.2024<sup>5</sup> has stated that the Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019 (“ALMM Order”) will come into effect from 01.04.2024, following a one-year abeyance period for financial year 2023-2024, imposed through its order dated 10.03.2023.

Further, each project where the solar photovoltaic modules have been received at the project site by 31.03.2024 and is unable to commission the project by 31.03.2024 on account of reasons beyond the control of the renewable power developers, shall be examined separately.

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<sup>5</sup> Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for Compulsory Registration) Order, 2019.

### **MOP constitutes Thermal Project Monitoring Group for monitoring the execution of Thermal Power Projects.**

The Ministry of Power (“MOP”) through its office memorandum dated 02.04.2024<sup>6</sup> constituted an independent Thermal Project Monitoring Group (“TPMG”) for monitoring the execution of Thermal Power Projects (“TPPs”) to conduct site inspections and provide an assessment of each site of the TPP under implementation by a central/state utility and Independent Power Plants (“IPPs”)

The Office Memorandum directs the members of TPMG to undertake site visits of all the TPPs’ of the central/state sector as well as IPPs’ which are under implementation. The members of TPMG are required to conduct a site inspection of the project and based on their assessment, submit a progress report to TPMG. TPMG shall be required to compare this progress report with the progress being reported by project proponents directly to Central Electricity Agency (“CEA”).

Based on both reports, CEA shall submit the realistic position about the progress of the projects during regular capacity addition review meetings. Additionally, TPMG is tasked with the responsibility to identify any challenges or obstacles encountered during the implementation phase and accordingly evaluate the effectiveness of the mitigation strategies employed by the project proponents.

### **MNRE issued clarifications and updates regarding ALMM Order.**

MNRE through office memorandum dated 20.05.2024<sup>7</sup> issued clarification regarding ALMM Order where it has been clarified that ALMM Order in respect of List I (Manufacturers and Modules of Solar PV Modules) shall be applicable on such bids whose last date of bid submission is on or after 10.04.2021 i.e., projects where last date of bid submission was prior to 10.04.2021, ALMM Order in respect of List I (Manufacturers and Modules of Solar PV Modules) shall not be applicable.

MNRE through office memorandum dated 24.05.2024 has further revised the List I (Manufacturers and Modules of Solar PV Modules) of the ALMM Order. The List I of the ALMM Order was last updated on 29.04.2024.

MNRE through an earlier office memorandum had granted exemption to renewable energy plants located inside a Special Economic Zone (“SEZ”) or Export Oriented Unit has granted similar exemption to renewable energy plants from the purview of Revised List of Models and Manufacturers for Wind Turbine Models, issued by MNRE under the Guidelines for Development of Onshore Wind Power Projects issued on 22.10.2016.

### **MOP issued Guidelines for payment of Compensation in regard to the Right of Way for transmission lines.**

MOP through its notification dated 14.06.2024 has issued Guidelines for payment of compensation in regard to Right of Way (“RoW”) for transmission lines<sup>8</sup> (“Compensation Guidelines”). The Compensation Guidelines have been issued in suppression of the existing guidelines dated 15.10.2015, 16.07.2020, and 27.06.2023. The key features of the Compensation Guidelines are as follows:

- (i). The Compensation Guidelines are applicable only for the payment of compensation for transmission lines supported by a tower base of 66kV voltage level and above.
- (ii). District Magistrate/ District Collector/ Deputy Commissioner will be the relevant authority to determine the compensation.
- (iii). The compensation will be based on the circle rate/ guideline value/ stamp act rates of the land. In cases where the market rate exceeds the circle rate/ guideline value/stamp act rates, the land value shall be determined based on the prevailing market rate as determined by the District Magistrate/ District

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<sup>6</sup> Office Memorandum on constitution of Thermal Project Monitoring Group.

<sup>7</sup> Clarificatory Notification regarding Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirements for compulsory registration) Order, 2019.

<sup>8</sup> Guidelines for payment of compensation in regard to Right of way for transmission lines.

Collector/ Deputy Commissioner in the manner as may be specified by the State Government. The compensation shall be payable one-time and upfront.

- (iv). The compensation for the tower base shall be 200% of the land value and for the RoW corridor shall be 30% of the land value.
- (v). In areas where landowner/owners have been offered alternate modes of compensation by the corporation/concerned municipality under the transfer of development rights policy of the State/ Union Territory, the licensee/ utility shall deposit the compensation amount with the concerned authority.
- (vi). The Compensation Guidelines also prescribe standard operating procedures provided under Annexure-III for the States/Union Territories and transmission developers.

### **Union Cabinet approves Viability Gap Funding Scheme for implementation of offshore wind energy projects.**

MNRE on 19.06.2024 issued a press release with respect to the approval accorded by the Union Cabinet to the Viability Gap Funding Scheme<sup>9</sup> (“VGF Scheme”) for implementation of Offshore Wind Energy Projects (“OWEP”) at a total outlay of Rs.7453 Crores, including an outlay of Rs. 6853 Crores for installation and commissioning of 1 GW of OWEP (500 MW each off the coast of Gujarat and Tamil Nadu). The VGF Scheme is implemented with an objective to set-up the first-ever offshore wind energy project in India.

The VGF Scheme is a major step towards the implementation of the National Offshore Wind Energy Policy, 2015 (“NOWE Policy”). The VGF Scheme seeks to provide support in reducing the cost of power from OWEP and make it viable for purchase by DISCOMs. Further, the wind energy projects will be established by private developers selected through a transparent bidding process and the power evacuation infrastructure, including the offshore substations, will be constructed by Power Grid Corporation of India Ltd. MNRE will act as a nodal ministry for successful implementation of the VGF Scheme.

### **MOP amended the Guidelines for import/export (Cross Border) of Electricity, 2018**

MOP through its office memorandum dated 12.08.2024<sup>10</sup> issued amendment in the Guidelines for Import/Export (Cross Border) of Electricity, 2018 (“IECBE Guidelines”) allowing export of electricity to neighbouring countries. The salient aspects of the IECBE Guidelines amendment are as follows:

- (i). Generating companies/distribution companies may export electricity generated from coal or renewable energy or hydropower based generating plants to entities of neighbouring countries directly or indirectly through trading licensee after taking approval of designated authority.
- (ii). In case of coal based generating station, export of electricity is allowed only if such electricity is generated utilizing imported coal or spot e-auction coal or coal obtained from commercial mining. However, this restriction is not applicable for collective transaction through power exchanges in India.
- (iii). In case of gas based generating station, export of electricity is allowed only if such electricity is generated utilizing imported gas or gas from any other sources specified by Government of India from time to time.
- (iv). Generating Stations supplying electricity to neighbouring countries are allowed to build dedicated transmission line for connecting the transmission system of neighboring country keeping in view technical and strategic consideration.
- (v). Further, Government of India may permit connection of such generating station to India Grid (inter-State or intra-State grid) to facilitate sale of power within India in case of sustained non-scheduling of full or part capacity or default notice issued by generator for any default including delayed payment under the power purchase agreement.

### **MNRE issued Scheme Guidelines for Offshore Wind Energy Projects and Competitive Bidding for 1000 MW under Viability Gap Funding Scheme.**

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<sup>9</sup> MNRE Press Release - Cabinet approves Viability Gap Funding (VGF) scheme for implementation of Offshore Wind Energy Projects.

<sup>10</sup> Amendment to the Guidelines for Import / Export (Cross Border) of Electricity, 2018.

MNRE on 11.09.2024 issued Scheme Guidelines for Implementation of Viability Gap Funding Scheme for Offshore Wind Energy Projects <sup>11</sup>(“Guidelines for Implementation of OWE Projects”) for 1000 MW Capacity for the period till financial year 2031-32 with a financial outlay of INR 6853 Crores. Further, MNRE has also issued Competitive Bidding Guidelines Process for award of Offshore Wind Power Projects<sup>12</sup> (“Bidding Guidelines for OWE Projects”) under VGF Scheme.

The key highlights are as follows:

- (i). Implementation: The Solar Energy Corporation of India Limited (“SECI”) will implement the scheme and manage administrative tasks, submitting quarterly progress reports to MNRE.
- (ii). Project Details: SECI will initiate bids for a 500 MW offshore project in Gujarat, with a second 500 MW project in Tamil Nadu pending site data verification from the National Institute of Wind Energy (“NIWE”).
- (iii). Technical Support: NIWE will provide necessary technical assistance for project installation.
- (iv). Power Purchase Agreements: SECI will sign long-term PPAs with Offshore Wind Power Developers (“OWPDs”) and Distribution Companies (“DISCOMs”).
- (v). Bidding Process: The bidding will be conducted through international competitive bidding, where bidders must specify their required VGF per MW.
- (vi). Payment Structure: Milestone-based payments will be made at various stages of project completion, with a portion retained for successful operation after one year.
- (vii). Monitoring and Governance: A Scheme Monitoring Committee will oversee project implementation, comprising representatives from multiple government agencies.
- (viii). Bidding Guidelines: These guidelines promote renewable energy growth and competitive bidding, detailing bid structures, penalties for underperformance, and shareholding requirements for successful bidders.
- (ix). Dispute Resolution: Disputes will be handled by the CERC or state bodies, which will be on case-to-case basis.

### **III. JUDICIAL DEVELOPMENTS**

**Supreme Court held that entities not covered under the third and fourth proviso to Section 14 of the Electricity Act, 2003 need to obtain license to be declared as a ‘deemed licensee’ and get exemption from complying with Regulation 12 of the APERC Regulations, 2013.**

The Supreme Court by its order dated 17.05.2024 in the matter of *M/s Sundew Properties Limited v. Telangana State Electricity Regulatory Commission & Anr.*<sup>13</sup> held that entities not covered under the third and fourth proviso to Section 14 of the Electricity Act, 2003 (“Electricity Act”) i.e., Appropriate Government and Damodar Valley Corporation, need to obtain license to be declared as a deemed distribution licensee. The Supreme Court further held that a deemed distribution licensee is exempt from the concomitant obligation of complying with Regulation 12 of the APERC (Distribution Licence) Regulations, 2013 (“APERC 2013 Regulations”).

The Supreme Court noted that provisos to Section 14 of the Electricity Act distinguishes between entities that are *ipso facto* deemed distribution licensee and those that are merely declared as deemed distribution licensee without clarity on the necessity of making an application to obtain a license. The Supreme Court accordingly held that entities not covered by these specific provisos would, therefore, be required to obtain a licence.

The Supreme Court noted that Regulation 12 of the APERC 2013 Regulations stipulates that an applicant seeking a distribution licence shall, in addition to Regulations 4 to 11 of the APERC 2013 Regulations, comply with the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. On the other hand, Regulation 13 of the APERC 2013

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<sup>11</sup> Scheme Guidelines for Implementation of Viability Gap Funding Scheme for Offshore Wind Energy Projects.

<sup>12</sup> Competitive Bidding Guidelines Process for award of Offshore Wind Power Projects.

<sup>13</sup> Civil Appeal No. 8978 of 2019.

Regulations provides that nothing in Regulations 4 to 11 of the APERC 2013 Regulations shall apply to the deemed licensee. In this regard, the Supreme Court held that having been exempted from complying with Regulations 4 to 11 of the APERC 2013 Regulations, the deemed distribution licensee would also be exempt from obligations under Regulation 12 of the APERC 2013 Regulations.

The Supreme Court observed that Regulation 12 of the APERC 2013 Regulations deals solely with regular distribution licensees and not deemed distribution licensees. 'Reading up' Regulation 12 of the APERC 2013 Regulations so as to expand its ambit to include within its scope deemed distribution licensees, especially when the Electricity Act does not stipulate any such inclusion, runs contrary to the subsequently added proviso to clause (b) of Section 14 the Electricity Act. Therefore, the recognition of the status of a deemed distribution licensee cannot hinge on compliance with Rule 3(2) of the 2005 Rules read with Regulation 12 of the APERC 2013 Regulations.

**Supreme Court clarified that only a substantial question of law can be raised while challenging an order of APTEL under Section 125 of the Electricity Act, 2003.**

The Supreme Court through its judgement dated 27.08.2024 in the matter of *Bangalore Electricity Supply Company Limited v. Hirehalli Solar Power Project LLP & Others*<sup>14</sup> held that the restrictive scope of appellate jurisdiction does not signify the statutory precondition but is also required to enable freedom to statutory regulator and tribunal to develop sectorial laws by way of a consistent approach.

The Supreme Court, referring to the judgment of *SEBI v. Mega Corporation Limited (Civil Appeal No. 2104 of 2009)*, noted that appellate jurisdiction under Section 125 of the Electricity Act requires addressing not just any legal question, but a substantial question of law. The Supreme Court also observed that the Electricity Act envisaged the establishment of State Electricity Regulatory Commissions ("SERCs") and the CERC as expert and specialized bodies discharging advisory, regulatory, and adjudicatory functions. Further, Appellate Tribunal for Electricity ("APTEL") was formed to hear appeals against orders of the Appropriate Commission. Thus, in deciding appeals under Section 125 of the Electricity Act, it was held that the Supreme Court must be mindful so to enable a systematic and coherent development of electricity law by the Appropriate Commissions and APTEL.

The Supreme Court upheld the findings of APTEL and held that APTEL has duly reappreciated the evidence to find that the delay was not attributable to the solar power developers but to the governing bodies and relevant authorities. Lastly, it was held that there is no substantial question of law in the present case and the findings of APTEL are neither illegal nor unreasonable.

**APTEL held that a party is entitled to liquidated damages when a PPA is terminated due to failure to comply with the 'conditions subsequent'.**

APTEL by its judgement dated 30.05.2024 in the matter of *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Anr*<sup>15</sup>, set aside the order passed by Maharashtra Electricity Regulatory Commission ("MERC") on the grounds that the order did not align with the contractual and legal framework provided under the Power Purchase Agreement ("PPA").

APTEL observed that the PPA in the instant case provided for termination in the event of failure to meet the condition subsequent and that the deferment of Schedule Commercial Operation Date ("SCOD") was not due to any event of default.

Further, APTEL observed that in terms of the PPA, the party could have avoided liquidated damages by sourcing contracted capacity from other providers. However, the lack of effort by such party highlighted its failure to mitigate the consequences of delay, thus entitling payment of liquidated damages in terms of the PPA.

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<sup>14</sup> Civil Appeal No. 7595 of 2021.

<sup>15</sup> Appeal No. 161 of 2018.

**APTEL held that DISCOMs raising supplementary bills upon Generating Companies is contrary to the State Regulations and the Tariff Order.**

APTEL through its judgement dated 09.07.2024 in the matter of *M/s. Orange Bercha Wind Power Pvt. Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Ors.*<sup>16</sup> rejected the contention of the DISCOMs that the bills were raised due to inadvertence only as per HV-7 tariff irrespective of the fact whether the Wind Energy Generators (“WEG”) were drawing power for two hours or for the period beyond two hours. Accordingly supplementary bills were raised for adopting correct methodology of billing. The issue pertained to two types of billing methodology for power drawn for synchronisation purposes and “other-than synchronization” purposes. The DISCOMs were facing difficulty in implementing the said billing methodology. APTEL agreed with the view that the difficulties arose in billing due to the inability to identify the purpose of power drawl by WEG and further observed that the two-hour synchronization limitation is impractical and incorrect, leading to billing based on assumptions rather than actual service provided.

APTEL held that the DISCOMs were aware of the provision contained in the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from RE Sources of Energy (Revision-I) Regulations, 2010 and the tariff order i.e., the condition of the two-hour restriction, however, the DISCOMs failed to bill accordingly. APTEL thus rejected the claims of DISCOMs of inadvertent error in original bills and set aside the supplementary bills raised by DISCOMs.

**APTEL held that the SERCs are not justified in directing generators to participate in negotiation exercise or to unilaterally determine tariff in proceedings under Section 63 of the Electricity Act.**

APTEL through its judgment dated 05.08.2024 in the matter of *Mr. Rama Shanker Awasthi v. Uttar Pradesh Electricity Regulatory Commission & Ors.*<sup>17</sup> held that SERCs can refuse adoption of tariff under Section 63 of the Electricity Act if they are satisfied that the quoted tariffs were not aligned with the then prevailing market rates, subject to SERC providing reasons to the parties based on the material on record and affording them a reasonable opportunity of being heard.

APTEL held that Section 63 of the Electricity Act does not empower the SERCs to force the successful bidders (generators), under the guise of protecting consumer interest, to enter into negotiations for the purposes of reduction of tariff quoted in the bid and unilaterally reduce the tariff below the quoted tariff. Further, SERCs do not have the power to force the unwilling generators to supply power at a lower tariff than what was quoted in the bid as same would amount to determination of tariff under Section 62 of the Electricity Act. APTEL also held that SERCs, cannot force an unwilling generator to enter into negotiations with the procurer or unilaterally reduce the tariff below what was quoted.

**APTEL held that SERCs do not have jurisdiction under Section 86(1)(b) of the Electricity Act, 2003 to adjudicate disputes involving a distribution franchisee.**

APTEL by its judgment dated 10.10.2024 in the matter of *City Corporation Limited v. Maharashtra Electricity Regulatory Commission*<sup>18</sup> held that the SERC under Section 86(1)(f) of the Electricity Act does not have the jurisdiction to adjudicate upon the dispute between a distribution licensee and a distribution franchisee.

APTEL opined that in terms of Section 86(1)(f) of the Electricity Act, the SERC’s jurisdiction is limited to adjudication of disputes between licensees and generators. APTEL further observed that “franchisee”, as defined under Section 2(27) of the Electricity Act, can be any person authorized by the distribution licensee to distribute electricity in the area of supply of the distribution licensee and under seventh proviso to Section 14 of the Electricity Act, a franchisee authorized by the distribution licensee need not obtain any separate license to distribute electricity.

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<sup>16</sup> Appeal No. 55 of 2021.

<sup>17</sup> Appeal No. 88 of 2018.

<sup>18</sup> Appeal No. 447 of 2024.

APTEL concluded that a “franchisee” does not fall within the ambit of a “licensee” and therefore any dispute involving a distribution franchisee cannot be adjudicated

**MERC held that captive generating plants based on fossil fuel-based co-generation are not entitled for exemption from Renewable Purchase Obligation.**

MERC through its judgment dated 12.04.2024 in the matter of *M/s Tata Steel Limited v. Maharashtra Energy Development Agency*<sup>19</sup> examined the inherent powers under the provisions of ‘Power to Relax’ and ‘Power to Remove Difficulties’. MERC held that there is no regulatory vacuum in the regulations which can be addressed by invoking the provisions under Power to Relax and Powers under Removal of Difficulties. Thus, MERC held that captive generating plants based on fossil fuel-based co-generation are not entitled for exemption from Renewable Purchase Obligations (“RPO”).

MERC held that MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016 (“RPO Regulations, 2016”), enacted under Section 86(4) of the Electricity Act, do not exempt captive users of fossil-fuel based co-generation units from RPO. Further, the same dispensation is carried forward while notifying MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019. Therefore, no relaxation can be granted to fossil fuel-based co-generation units from meeting RPO.

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<sup>19</sup> Case No. 125 of 2023