

COMPENSATORY TARRIF in POWER SECTOR: A CRITICAL ANALYSIS

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CERTIFICATE

This is to certify that the research work entitled “COMPENSATORY TARRIF in POWER SECTOR: A CRITICAL ANALYSIS” is the work done by Harsh Vardhan Singh Chauhan under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation entitled “COMPENSATORY TARRIF in POWER SECTOR: A CRITICAL ANALYSIS” is the outcome of my own work conducted under the supervision of Ms Sabina Mary Peters, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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TABLE OF CONTENTS

- Abbreviations.....	5-6
- Table of Cases.....	7
- Acknowledgement.....	8
1. Introduction.....	9
2. Coal And Power.....	10
3. Evolution of Power And its Regulatory framework.....	11-20
4. Changes in scenario of power sector.....	21-25
5. Determination of tariff and role of PPA.....	26-38
6. Revision of tariff.....	39-43
7. Implication of compensatory tariff	44-47
8. Compensation in issue.....	48-51
9. Conclusion and suggestion.....	52-56
- Bibliography.....	57-58

ABBREVIATIONS

PPA	POWER PURCHASE AGREEMENT
APTEL	APPELLATE TRIBUNAL
CERC	CENTRAL ELECTRICITY REGULATORY COMMISSION
SERC	STATE ELECTRICITY REGULATORY COMMISSION
RERC	RAJASTHAN ELECTRICITY REGULATORY COMMISSION
MERC	MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
CEA	CENTRAL ELECTRICITY AUTHORITY
SEA	STATE ELECTRICITY AUTHORITY
CGPL	COSTAL GUJRAT POWER LIMITED
GUVNL	GUJRAT UURJA VIKAS NIGAM LIMITED
UMPP	ULTRA MEGA POWER PROJECT
RFP	REQUEST FOR PROPOSAL
RFQ	REQUEST FOR QUASHING
UHBVNL	UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED
DHBVNL	DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED
JVVNL	JAIPUR VIDHYUT VITRAN NIGAM LIMITED
AVVNL	AJMER VIDHYUT VITRAN NIGAM LIMITED
MYT	MULTI YEAR TARIFF
NEP	NATIONAL ELECTRICITY POLICY
NTP	NATIONAL TARIFF POLICY
NPCL	NATIONAL POWER COORORATION LIMITED
NGPT	NATIONAL GIRD POWER TRANSMISSION
ABT	AVALIBITY BASED TARIFF
EC	ENGENIEERING CONTRACTS
SCC	SUPREME COURT CASES
AIR	ALL INDIA REPOTER

UHD	UNITED STATES DOLLAR
MW	MEGA WATT
MWH	MEGA WATT HOUR
EA	ELECTRICITY ACT
ESA	ELECTRICITY SUPPLY ACT
GOI	GOVERNMENT OF INDIA
CIL	COAL INDIA LIMITED
APL	ADANI POWER LIMITED

TABLE OF CASES

- **Adani power limited versus UHBVNL DHBVNL & GUVNL 155/MP/2012 CERC.gov.in**
- **Adani Power Rajasthan Limited (APRL) versus JVVNL AVVNL JVVNL**
- **Costal Gujrat Power Ltd. Versus GUVNL 159/MP/2012 CERC.gov.in**
- **GMR-Kamlanga Energy Limited, Bangalore VERSUS Dakshin Haryana Bijili Vitran Nigam Limited and others**
- **Sasan Power Limited, Mumbai VERSUS MP Power Management Company Ltd. & Others**
- **JSW Energy Limited VERSUS Maharashtra Electricity Distribution Company Limited (MSEDCL)**
- **CERC versus CGPL & OTHERS..APTEL 2014**

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INTRODUCTION

Energy has been generally perceived as a standout amongst the most imperative inputs for financial development and human improvement. There is a solid two-path relationship between financial improvement and energy utilization. On one hand, development of an economy, with its worldwide aggressiveness, depends on the accessibility of savvy and naturally benevolent energy sources, and then again, the level of monetary improvement has been seen to be dependent on the energy request. Energy security is defined in terms of reasonable assurance of access to energy and relevant technologies at all times with an ability to cope with sudden shocks. Energy security does not mean complete energy independence, it only means an ability to meet reasonable requirements with reasonable assurance of stable supply or an ability to pay for import needs.¹

Energy is one of the real drivers of a developing economy like India and is a crucial building piece of monetary advancement. With an end goal to meet the requests of a creating country, the Indian energy part has seen a fast development. Zones like the asset investigation and misuse, limit increments, and energy area changes have been upset. Be that as it may, asset enlargement and development in energy supply have neglected to meet the always expanding requests applied by the reproducing populace, fast urbanization and advancing economy. Consequently, genuine energy deficiencies keep on plaguing India, constraining it to depend intensely on imports. India is plentifully supplied with both modest and renewable energy assets. Coal, oil, and regular gas are the three essential business energy sources. Presently, India is one of the main three most quickest developing economies of the World; As a characteristic culmination, it is irreplaceable that the energy needs too might grow, with tremendous augmentation of capacity in power generation, which heavily and abundantly relies on 'Coal', as a primary source of energy. As per the latest National Inventory on Indian Coal Resources published by Geological Survey of India, the total coal resources assessed in the country stand at 301.56 Billion Tonnes as on 1st April, 2014.²

¹ Power and Energy, Planning Commission, Government of India
<http://planningcommission.nic.in/sectors/index.php?sectors=energy>

² Press Information Bureau, Government of India, Ministry of Coal, Stock of Coal Reserves,
<http://pib.nic.in/newsite/PrintRelease.aspx?relid=116572>

COAL & POWER

Coal is India's primary source of energy (equaling 44% of total energy consumption), and the country ranked as the third-largest global coal producer, consumer, and importer of coal in 2012.³ Although production has increased by about 4% per year since 2007, producers have failed to reach the government's production targets. Meanwhile, demand grew more than 7% annually over the past five years with the rise of electricity demand and lower power generation from natural gas and hydroelectricity as a result of recent supply disruptions.⁴

Coal is the most critical & inexhaustible fossil fuel in India and records for 55% of India's energy need. India's modern legacy was based upon indigenous coal, to a great extent mined in the eastern and the focal districts of the nation. Coal has been perceived as the most critical wellspring of energy for power generation in India. Around 75% of the coal in India is devoured in the force division.

³ Energy Information Administration, Today in Energy, 'India is increasingly dependant on imported Fossil fuels as the demand continues to rise', <http://www.eia.gov/todayinenergy/detail.cfm?id=17551>

⁴ Id.

Evolution of Power sector & its regulatory framework

Power is a fundamental prerequisite for all aspects of our life and has been perceived as an essential human need. It is the basic base on which the financial advancement of the nation depends. The development of the economy and its worldwide aggressiveness depends on the accessibility of solid and quality power at focused rates. The interest of power in India is colossal and is becoming relentlessly. The endless Indian power market, today offers one of the most noteworthy development open doors for private engineers.

India is invested with an abundance of rich regular assets and wellsprings of energy. Assets for power generation are unevenly scattered the nation over. This can be fittingly and ideally used to make accessible dependable supply of power to every last family unit. Power is viewed as key driver for focused on 8 to 10% monetary development of India. Power supply at internationally focused rates would likewise make financial movement in the nation aggressive in the globalized environment.

According to the Indian Constitution, the power area is a simultaneous subject and is the joint obligation of the State and Central Governments. The power division in India is commanded by the administration. The State and Central Government areas represent 58% and 32% of the generation limit individually while the private division represents around 10%. The majority of the transmission and appropriation capacities are with State utilities. The private sector has a little however developing vicinity in circulation and is making a section into transmission. Power Sector which had been subsidized basically through budgetary backing and outer borrowings was opened to private part in 1991.

Evolution

Taking into account the administration's regulations and arrangements, the evolution of the Indian power industry can be separated into two wide stages, prereform and post-change stages. The prereform stage (up to 1991) can be partitioned into preindependence stage (before 1947) and post-freedom stage (1947-1990) and post-change stage can be separated into three stages

Pre-Reform Framework (before 1991)

Preindependence Generation (upto 1947)

The primary occasion of business generation of power in India goes back to 1879 in Kolkata (then Calcutta). In 1897, the administration of Bengal conceded a selective 21-year permit to the Calcutta Electricity Supply Corporation to supply power to Calcutta. Mumbai (then Bombay) was the second city to get power and as time advanced, privately owned businesses set up power supply frameworks in major urban ranges under establishments, which permitted them a sensible rate of return. The interest for power amid this stage was driven by interest from commercial enterprises, business undertakings (counting tramways) furthermore household utilization. A large portion of the prior privately owned businesses in the power division stop to exist today as they were amalgamated into state-possessed ventures; on the other hand, a couple of them keep on existing as private players.

The Electricity Act 1910 was the first demonstration (one of the most punctual regulation) in the power business, which was presented before autonomy in 1910. The Act gave the essential structure to supply of power in India. The division was at an incipient stage amid this time and there was an immense speculation necessity for setting down fundamental framework. The Act supported the development of the business by issuing licenses to privately owned businesses. Hence, amid this stage, power generation was mostly in the private division and power generation was to a great extent in view of coal and hydropower.

The power business experienced enormous expenses and wide variety in power voltage amid this period. As the specialized information in the household business was not decently grown, the majority of the tasks were in view of foreign innovation and along these lines involved gigantic expenses.

Post-Independence Generation (1947-1990)

At the time of freedom, power generation and supply was packed in the hands of private power suppliers, and to a great extent in urban ranges. Power supply was an unquestionable requirement the nation over to advance general development and advancement; thus, the Electricity (Supply) Act 1948, which was in light of the UK Electricity Supply Act 1926, was presented. Under this Act the Central Electricity Authority (CEA) was created at the focal level and the State Electricity Boards (SEBs) at the state level. The target of the CEA was to build up a sound, sufficient, and uniform national power approach to organize improvement of the power area in India.

SEBs got to be incorporated utilities with vicinity in generation, transmission, and dispersion in their particular states. Amid this period, the advancement and arranging was carried out by the SEBs at the state level, while the CEA was in charge of arranging at the national level and it furnished the SEBs with wide direction, arranging, and improvement. The Act likewise expounded the financing standards and institutional structure for the power business in India.

The SEBs assumed control over the privately owned businesses in their individual states and the recently made state power sheets were interconnected to improve framework dependability and to guarantee more extensive topographical scope. The power sector moved into the general population division space from the private hands, and throughout the years, people in general area picked up conspicuousness in the power part.

In the introductory period, the SEBs' execution was acceptable and they assumed a key part in the advancement of the sector. The SEBs had the capacity produce the

base returns for a long time, however, later on their execution floundered and they needed to look for budgetary support from the state as awards, sponsorships, delicate advances, and so forth. The mid seventies were stamped by episodes of power outages and framework breakdown. Hydropower generation endured particularly, as accessibility of water assets was vigorously subject to the storm season. Besides, there were defers in common works, postpones in the supply of power plant hardware, and the base increases as far as transmission and appropriation were likewise not sufficient. In its endeavor to help the states, the Central government secured a couple of privately owned businesses that could indulge more than one state.

The Central government corrected the Electricity (Supply) Act 1948 and secured the National Hydropower Corporation (NHPC) in 1975 to construct hydropower plants and the National Thermal Power Corporation (NTPC) to set up coal-based power plants to supplement the generation limits of the SEBs and privately owned businesses.

NTPC constructed its own particular transmission system to transmit power to diverse SEBs. In 1981, the administration chose to incorporate operations of the focal and state transmission frameworks to structure a national power lattice to encourage transmission of power created by non-SEB generators; these endeavors prompted the fuse of the National Power Transmission Corporation in 1981. At first the organization was occupied with dealing with the transmission resources of the focal producing organizations, NTPC, NHPC and North-Eastern Electric Power Corporation; however in 1992, this substance was renamed as Power Grid Corporation of India Ltd and all the transmission resources of the three aforementioned creating organizations were exchanged to it under a statute. Besides the administration set up the Power Finance Corporation (PFC) in 1986 as a monetary organization committed to power division financing to supplement arranged consumption on power plants, particularly new power plants.

Amid this stage, parcel of accentuation was laid on setting up hydropower plants, as the administration wanted to build up the watering system and power divisions at the same time. The introduced limit in the hydropower area did witness critical development up to 1970; notwithstanding, the lesser-than-anticipated development rate and more growth period diminished it's partake altogether power generation

limit. In the in the mean time coal-based power plants kept on growing and the offer of warm power limit expanded in the aggregate limit.

While the SEBs helped the development in the Indian power sector, before the end of the stage under audit, they endured gigantic budgetary and specialized misfortunes (poor income accumulation and charging, poor metering and energy bookkeeping, power robbery, cross sponsorships and SEB staff's inefficiencies were the fundamental explanations behind their misfortunes); as a consequence of these misfortunes, they gave poor power administration to end buyers in light of the fact that the state-possessed organization power plants were running at low plant burden component (PLF) and the SEBs did not have enough finances for redesign and modernization of their plants. The interest supply crevice was expanding and numerous states were confronting power emergency. These circumstances constrained the administration to rebuild the sector in a staged way, and this cleared path for allotting power changes in 1991.

Post–Reform Phase (after 1991)

The weakening strength of the SEBs made it unthinkable for them to implant new speculations into the part. Also, the nation was confronting a macroeconomic budgetary emergency that made it troublesome for the administrations, both the Central and state governments, to store power extend through budgetary backing. Because of these occasions, the administration chose to rebuild the power part in a staged way in 1991; thusly, it opened up the power area (change) and welcomed outside privately owned businesses to get stores and innovation into the Indian power sector.

The post-change stage can be divided into three

Initially Phase (Started in 1991)

Independent Power Producers (IPP)

Speculations were an unquestionable requirement in the power division to empower it to create power in accordance with the normal financial development. The legislature changed the part and opened it for remote and private speculations to build the

accessibility of stores for the power area. For permitting autonomous power makers to work in the part, the legislature made a change to the Electricity Act 1910 and the Electricity (Supply) Act 1948 through the Electricity Laws (Amendment) Act of 1991. The alteration permitted private support in warm, hydro, wind, and sunlight based power ventures, furthermore permitted them to work as IPPs. Outside possession up to 100% was permitted. IPPs were to work on an expenses in addition to model wherein the duty was controlled by the Central government and the IPPs were ensured a 16% post-assessment form on value, full repatriation of benefits, among others. The administrators and the SEBs went into power buy understandings (PPAs) as the SEBs was in charge of transmission and circulation of power created by private players.

Mega Power Policy 1995

In 1995, the administration acquainted the Mega Power Policy with expansion private interests in more than 1,000-MW generation extends that would supply power to more than one state; consequently, the name super power ventures. The ventures were to be granted on the premise of focused offering and the CEA, Power Grid, and NTPC were to give backing to these activities. CEA was to give support in distinguishing potential locales for setting up the plants, while Power Grid and NTPC were to give aid to transmission of power and planning of possibility report, individually.

The encounters of the first stage were not extraordinary and the Enron disaster is an impression of this announcement. In the Enron Dabhol Power Project need was given to FDI instead of the expense of producing power.

The fundamental target of changes was to guarantee solid and quality power supply at a financial expense. It was crucial to guarantee that the sector was fiscally suitable and sufficiently alluring for private speculators to put in their cash. The SEBs was coordinated utilities with vicinity in generation, transmission, and appropriation in their particular states. The SEBs were under enormous misfortunes and it was seen that unbundling the SEBs and isolating generation, transmission and dispersion into diverse companies could make it conceivable to screen effectiveness levels in each of the zones. Numerous states launched the rebuilding methodology..

The principal period of the change fizzled as the goal of pulling in private players did not accomplish the sought results. Private players did not enter the sector, as the SEBs, who were to transmit and circulate the power created by the private players, were all the while running in misfortunes. Private players were indeterminate about their profits because of poor money related soundness of the SEBs.

Second Phase (began in 1996)

The 1995 Mega Power Policy did not propose any monetary concession, subsequently in 1998, the updated Mega Power Policy 1998 incorporated these concessions. The Power Trading Corporation (PTC) was likewise situated up after this modification to buy power from recognized tasks and to offer to distinguish SEBs. Securing regulatory commissions and privatizing power conveyance in urban areas (with populace of more than 1 mn) were the preconditions included in the modified arrangement.

In December 1996 the Common Minimum National Action Program (CMNAP) was organized in meeting with the state governments, and rules were built to hurry the part's advancement. Notwithstanding conceiving setting up of regulatory commissions, the CMNAP repeated the requirement for defense of tax and that no part was to pay under half of the normal expense of supply.

Amid this stage the part's execution enhanced as contrasted and the first stage as the PLF stretched around 70%; then again, business misfortunes kept on representing a real obstacle in the sector's improvement. Amid this period private sector speculations were at that point being made for limit expansion in generation however the need was felt for private support in transmission also; hence, the Electricity Laws (Amendment) Act was gone in 1998 to empower private investment in the power transmission division. The focal transmission utility (CTU) and the state transmission utility (STU) were situated up under this Act. The support and development action of transmission system was directed by CTU at the between state level and by the state transmission utility (STU) at the intra-state level. These utilities likewise prescribed regulatory commissions on allocation of licenses to diverse players.

The CERC issued the first Indian Electricity Grid Code (IEGC) in January 2000 to guarantee network discipline and to set operation and administration parameters for players in the transmission and dispersion (T&D) areas.

Third Phase (2003 onwards)

The Electricity Act 2003, which became effective from June 10, 2003, supplanted the prior laws, acts administering the Indian power sector, in particular, the Indian Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commissions Act 1998. The bill looked to give a legitimate structure to empowering changes and rebuilding the power sector. The Electricity Bill was gone by the Parliament in 2003; this Bill looked to give a lawful structure to empowering changes and rebuilding of the power part. The Bill turned into an Act with impact from June 10, 2003 and supplanted the before laws administering the power division, in particular, the Indian Electricity Act 1910, the Electricity (Supply) Act 1948, and the Electricity Regulatory Commission Act 1998.

Power Act 2003

The Act tried to make a liberal system for advancement of the power business, advancing rivalry, ensuring hobbies of customers and supply of power to all territories, legitimization of power duty and guaranteeing straightforward arrangements and advancement of effectiveness, among others. The Act turned out with the National Electricity Policy, obligatory production of SERCs, accentuation on provincial charge, open access in transmission and conveyance and some different procurements. It ordered the regulatory commissions to control the levy and issues of permit. This Act concentrated on laws identifying with generation, transmission, dissemination, exchanging, and employments of power. The Act was corrected on May 28, 2007 and the Electricity Act 2003 was authorized with stronger power and clarity and with more prominent accentuation on evaluation, fines, and legitimate structure to check the business misfortunes because of burglary and unapproved utilization of power.

Generation

The generation section was opened for private players in 1991. Nonetheless, even through the years, the generation limit from private players did not achieve the sought level. The legislature presented certain arrangement measures in generation in the Electricity Act 2003 to guarantee more private investment and to diminish the interest supply hole. Generation of power was de-authorized and the necessity of techno-financial freedom for warm power producing plants by CEA was shed, which cleared route for passage of more players in warm generation. The Act likewise evacuated limitations on hostage power generation and rearranged the techniques. Open access was permitted quickly in transmission, which gave the privilege to private power makers or some other producing utility to offer its power to any element utilizing transmission system (with no separation). Because of these progressions, businesses could set up hostage power generation units and the privilege to open access permitted them to offer power to any customer utilizing the transmission system. Hostage units could accordingly offer their surplus power to the clients of their decision.

Transmission

The Electricity Act 2003 presented a non-oppressive open access in the transmission portion, which empowered the generators to offer power to any client and gave the purchaser the alternative to pick the generator utilizing the transmission system. The transmission utility was not permitted to decline utilization of its transmission system aside from in cases of limit impediment. At the national level, Power Grid, which was the focal transmission utility, could give open access, and at the state level, the state transmission utilities could give open access. The open access clients are arranged as fleeting clients (up to one year) and long haul clients (for a long time). The opening up of the transmission system is liable to affect rivalry among generators and also purchasers.

Distribution

The Electricity Act 2003 thought of measures that could enhance the execution of the distribution sector on all fronts. The allots distributed included more than one distribution licenses allowed in the same zone, which expanded rivalry among the

distribution licensees, and guaranteed better administrations for the end shopper. The best instance of different licenses was recognized in Delhi after privatization in 2002, which brought about enhanced operational execution, decrease in AT&C misfortunes, and diminishment in rates of burden shedding. NDPL, BSES, and BRPL, the three distribution organizations, started to be and assumed responsibility of power distribution in distinctive territories of Delhi.

The idea of distribution franchisees was presented under the Electricity Act 2003, under which a distribution licensee could convey power through another player inside the distribution territory. The opposition to robbery procurements under the Act brought down the business misfortunes of utilities as power misfortunes emerging from burglary diminished ceaselessly and financial specialists began to show recharged hobby. In the distribution portion, open access was presented, which opened up another time of decision for shoppers to pick their supplier. Numerous SERCs like Jharkhand, Madhya Pradesh, and Punjab have issued rules for open get to and permitted it up to 1 MW limit or more.

Changing Scenario of Power Sector

With the institution of the Electricity Act 2003 and usage of open get to, the business structure in the power part transformed from the old single purchaser structure to a multi-purchaser model. The generator could offer power to any purchaser utilizing the open access procurement as a part of transmission and clients had the decision to pick their supplier. Since the time that the Electricity Act 2003 was presented, there was expanded competition among generators and suppliers, which enhanced the sector's execution. As of now numerous states, which have unbundled the SEBs, have reported enhancements in their operational effectiveness and have the capacity to guarantee dependable power supply to consumers.

Despite the fact that SEBs are taking care of the regulatory operations, the Act has ordered the making of regulatory commissions in every state; these commissions have assumed a critical part in passing distinctive regulations and observing exhibitions of the state utilities. Few of the state regulatory bodies have set focuses for their utilities, and accomplishment of these focuses before the planned time which gets them impetuses and any postponement gets them punished. Subsequently, the structure is more managed.

The business structure, which has come to fruition after the Electricity Act 2003, looks encouraging as it gives the privilege of decision to the supplier and in addition purchaser while endeavoring to guarantee quality and normal supply of power.

Ministry of Power (MOP): The MOP is in charge of improvement of the electrical energy area in India. It began working as a free substance from July 1992. Prior, the power part was administered by the Ministry of Energy, which had offices for power, coal and non-ordinary energy assets. The fundamental elements of the MOP is arranging, forming strategies, organization and sanctioning of enactment for warm and hydropower generation, transmission and distribution. The Ministry additionally takes care of handling of tasks for speculation choice as likewise checking the execution of power ventures. It likewise deals with preparing and manpower advancement of the power sector and is in charge of organization of the Electricity Act 2003 and the Energy Conservation Act 2001 and to make revisions to these Acts, to keep up understanding with the government's policy goals.

Central Electricity Authority (CEA): The CEA was constituted under the Electricity (Supply) Act 1948, the Act altered by the Electricity Act 2003. The elements of CEA are portrayed under Sec 73 of the Electricity Act 2003

Regulatory Bodies: The CERC and the SERC are the two fundamental regulatory bodies that represent the power division. These regulatory bodies were shaped in 1998 when the Electricity Regulatory Commission Act 1998 came into power; so far these bodies have a created course of action for security and advancement of consumer interest, fair competition, straightforwardness, and for giving a level-playing-field for all players in the sector.

Contribution of Regulatory Bodies

The regulatory framework was not viable in the power sector in India before 1997. The SEBs execution was not agreeable; they were experiencing tremendous budgetary and business misfortunes; there was no regulatory body to manage the working of SEBs and regulations were not tending to core issues like customer interest, supply of sensible power, and nature of power. The area was confronting a critical need of regulatory bodies, which would manage the part productively. Along these lines, with a specific end goal to make focused, straightforward, and buyer benevolent environment, a free CERC at the Centre and autonomous SERC at the state level were considered as the need of great importance for controlling the power sector.

The separate commissions assumed control over the part of a Regulatory body for the area. The Regulatory bodies set up straightforward techniques for tariff obsession keeping in view the enthusiasm of both the supplier and the recipient and did the tariff arranges in an effective way. Regulatory commissions passed various regulations and gave a lawful system to players to lead their business in the business.

Status of Reforms

Reforms have assumed a significant part in every portion of the power sector. In the generation sector, de-licensing of thermal and captive power generation and generation in rustic regions has permitted private players to put resources into power generation. The administration made distribution a different portion to enhance the sector's execution

After the foundation of regulatory commissions, a few regulations have been passed; the most imperative ones being Availability-Based Tariff Order (2002), Terms and Conditions of Tariff (2004), Multi-Year Tariff (MYT) Norms (2004), Electricity Grid Code (2006), and Open Access in Inter-State Transmission (2008). Under the ABT administration, the generator and the recipient (purchaser) set up PPAs on the premise of which generators feed power to the network and the recipient draws the power. On the off chance that recipient overdraws power it needs to pay unscheduled exchange (UI) charges and if generator overloads to the lattice it will need to pay the UI charges. The component helps in keeping up network health and supports the market work at ideal productivity. Numerous states like Gujarat, Karnataka, Delhi, Maharashtra, and soon have executed intra-state ABT and have improved their power purchase cost.

The terms and conditions of tariff were presented in 2004, according to which numerous standards were set down to determine the tariff for generation, transmission, and distribution. The MYT was situated to diminish the regulatory danger and incentivise proficient execution of utility. It was situated up for a fixed number of years called the control period (Delhi's MYT period is 3 years) amid which, altered charges stay unaltered while energy charges change. The MYT structure was composed in such a path, to the point that if the utility attained to the target set-up under MYT system it would get a motivation. In 2006 the Electricity Grid Codes set down specialized standards covering all the utilities joined through market or utilizing between state transmission frameworks. These codes guaranteed the effective working of power framework and punished the client for maintaining a strategic distance from the principles. CERC is the regulatory body that screens these codes at the central level while SERC screens it at the state level. The reforms in the division have advanced well in this way; then again, the worry that is as yet winning in the part is government strength over the administrative commission. The government has directed the part for over 50 years and numerous a times, it has been unwilling to exchange the power to administrative commissions. Tariff setting still has a part of sponsorships that is given by the government; thus, disregarding clear standards and regulations, business feasibility of tariff remains a question mark.

Likewise, reforms must be more serious and turn out with more measures in uprooting chances of the sector.

Government of India Policy

The Electricity Act 2003 states that, "the Central government should, occasionally, set up the national electricity approach and tariff arrangement, in counsel with the state governments and the power of improvement of power framework in view of discretionary use of assets, for example, coal, common gas, atomic substances or materials, hydro and renewable wellsprings of energy."

National Electricity Policy (NEP)

This strategy, which was presented in February 2005, goes for laying rules for quickened improvement of the power sector, giving electricity to all ranges and securing hobbies of purchasers keeping in view the accessibility of energy assets, innovation accessible to adventure these assets, financial aspects of generation utilizing distinctive assets, and energy security issues.

The strategy was arranged in interview with the state governments, CEA and different partners. As per the National Electricity Policy, the CEA forms the NEP once in 5 years. The arrangement does the project in transient and planned periods. This arrangement works out as the standard reference report for distinctive players in the division. It incorporates: transient and long haul interest figure for distinctive districts; proposed regions/areas for limit increments in generation and transmission keeping in view the financial aspects of generation and transmission; misfortunes in the framework; burden focus necessities; matrix soundness; security of supply; nature of power including voltage profile and so forth and ecological contemplations including recovery and resettlement; reconciliation of such conceivable areas with transmission framework and improvement of national network including kind of transmission frameworks and necessity of redundancies; and diverse advances accessible for effective generation, transmission and distribution; fuel decisions in light of economy, energy security, and natural contemplations.

National Tariff Policy (NTP)

The arrangement sets out the rules for drawing in sufficient ventures to the area and guaranteeing sensible charges for the customers. These rules weight on focused acquisition of power. The Central government detailed this approach in discussion with administrative commissions and CEA. Administrative bodies are guided by tariff approach in encircling the tariff regulation.

Highlights of NTP

- **Tariff by bidding methodology:** Under this procedure, new tasks are permitted to dispense power to SEBs on the premise of aggressive bidding yet extension activities are a special case as they as of now have tie ups for their supply. This technique offers right to purchasers and merchants to set tariff of their value range.
- **Returns to draw in new venture:** This arrangement guarantees appealing returns so that interest in power part is higher than different parts.
- **Peak and off-top hour's tariff:** Tariff of top hours and off-crest hours is the capacity of ABT, which is actualized in all districts. The rates are distinctive for top and off-top hours and are chosen by the CERC. This tariff is valuable for both generator and the purchaser as generator gets higher rates of top hours while the purchaser tries to move towards off-top hours to pay less.

The reforms in the area have rebuilt the vertically-coordinated business sector structure to a focused structure. Market effectiveness has been enhanced over the long run the same number of laws and regulations have attained to the fancied result. Portability has expanded in the power business sector thus have the quantity of players; the regulation has made a focused commercial center, which in future will acquire open business power sector.

Determination of Tariff & Role of PPA

Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees

1. Preamble

“Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003 (the Act). Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement of power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity and in significant benefits for consumers.

Section 61 & 62 of the Act provide for tariff regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. Section 63 of the Act states that –

“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

These guidelines have been framed under the above provisions of section 63 of the Act. The specific objectives of these guidelines are as follows:

- 1. Promote competitive procurement of electricity by distribution licensees;*
- 2. Facilitate transparency and fairness in procurement processes;*
- 3. Facilitate reduction of information asymmetries for various bidders;*
- 4. Protect consumer interests by facilitating competitive conditions in procurement of electricity;*
- 5. Enhance standardization and reduce ambiguity and hence time for materialization of projects;*
- 6. Provide flexibility to suppliers on internal operations while ensuring certainty*

on availability of power and tariffs for buyers.

2. Scope of the Guidelines

2.1. These guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for procurement of electricity by distribution licensees (Procurer) for:

- a. long-term procurement of electricity for a period of 7 years and above;*
- b. Medium term procurement for a period of upto 7 years but exceeding 1 year.*

2.2. The guidelines shall apply for procurement of base-load, peak-load and seasonal power requirements through competitive bidding, through the following mechanisms:

- (i) Where the location, technology, or fuel is not specified by the procurer (Case 1);*
- (ii) For hydro-power projects, load centre projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process (Case 2).*

2.3. Unless explicitly specified in these guidelines, the provisions of these guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these guidelines is specified later in these guidelines under para 5.16.

2.4. Procurement by more than one distribution licensee through a combined bid process shall be permitted. For such combined procurement, each procurer shall provide the necessary information required as per these guidelines. To ensure standardization in evaluation of bids, the payment security and other commercial terms offered to the bidders by the various procurers shall not vary. The price offered by the bidders shall also be the same for the distribution licensees inviting the bid.

2.5. All obligations on part of the procurers for the bid process shall be considered to be met only when each and every procurer meets such obligations set out in the Request for Proposal (RFP). This shall, however, not preclude the bidder from waiving such stipulation if the bidder finds it reasonable to do so, and the same shall not be construed to be violation of these guidelines.

3. Preparation for inviting bids

3.1. To expedite the bid process, the following conditions shall be met by the

procurer:

- i. The bid documentation shall be prepared in accordance with these guidelines and the approval of the appropriate Regulatory Commission shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In such cases, an intimation shall be sent by the procurer to the appropriate Regulatory Commission about initiation of the bidding process.*
- ii. Approval of the Appropriate Commission shall be sought in event of the deviations from the bidding conditions contained in these guidelines, following the process described in para 5.16 of these guidelines.*
- iii. Approval of the Appropriate Commission shall be sought prior to initiating the bidding process in respect of the following aspects:*
 - (a) For the quantum of capacity / energy to be procured, in case the same is exceeding the projected additional demand forecast for next three years (Both for Case 1 and Case 2).*
 - (b) For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, government approved mechanism or a fuel regulator (under Case 2).*

3.2. For long-term procurement from hydroelectric projects or for projects for which pre-identified sites are to be utilized (Case 2), the following activities should be completed by the procurer, or authorized representative of the procurer, before commencing the bid process:

- Site identification and land acquisition required for the project*
- Environmental clearance*
- Fuel linkage, if required (may also be asked from bidder)*
- Water linkage*
- Requisite Hydrological, geological, meteorological and seismological data necessary for preparation of Detailed Project Report (DPR), where applicable.*

The bidder shall be free to verify geological data through his own sources, as the

geological risk would lie with the project developer.

The project site shall be transferred to the successful bidder at a declared price.

3.3. It is recommended that the procurer should obtain the transmission clearances necessary for receiving power at the delivery points prior to inviting bids. However this shall not be a binding condition for the bid process. Unless otherwise specified in the bid documents, it shall be the responsibility of the selected bidder to obtain transmission linkage for evacuation and inter-State transmission of power (where applicable).

4. Tariff Structure

4.1. For procurement of electricity under these guidelines, tariff shall be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure featuring separate capacity and energy components of tariff shall ordinarily form the basis for bidding. However, for medium term procurement the procurer may, at his option, permit bids on a single part basis, and the same shall be clearly specified in the Request for Qualification (RFQ) / Request for Proposal (RFP).

4.2. In case of long term procurement with specific fuel allocation (Case 2), the procurer shall invite bids on the basis of capacity charge and net quoted heat rate. The net heat rate shall be ex-bus taking into account internal power consumption of the power station. The energy charges shall be payable as per the following formula :

Energy Charges = Net quoted heat rate X Scheduled Generation X Monthly Weighted Average Price of Fuel / Monthly Average Gross Calorific Value of Fuel.

If the price of the fuel has not been determined by the Government of India, government approved mechanism or the Fuel Regulator, the same shall have to be approved by the appropriate Regulatory Commission.

In case of coal / lignite fuel, the cost of secondary fuel oil shall be factored in the capacity charges.

4.3. Tariffs shall be designated in Indian Rupees only. Foreign exchange risks, if any, shall be borne by the supplier. Transmission charges in all cases shall be borne by the procurer.

Capacity charges

4.4. Capacity charge shall be paid based on actual availability in kwh, as per charges quoted in Rs/kwh and shall be limited to the normative availability (or normative capacity index for hydro electric stations). The normative availability shall be aligned to the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process, and shall be computed on annual basis. The capacity component of tariffs may feature separate non-escalable (fixed) and escalable (indexed) components. The indices to be adopted for escalation of the escalable component shall only be Wholesale Price Index (WPI) or Consumer Price Index (CPI) and the Base year shall be specified in the bid document.

4.5. Capacity charges for supply beyond the normative availability shall be a pre-specified percentage of the non-escalable component of the capacity charges, and shall be based on the availability of the plant beyond the normative availability. The percentage applicable shall be specified in the RFP, and shall be limited to a 40% of the non-escalable component of the capacity charges. For procurement of Case-2 type (in reference to para 2.2.), the procurer shall have first right of refusal on energy generated beyond normative availability. In case actual availability is less than the normative availability, capacity charges shall not be payable for the shortfall compared to the normative availability. In such case a penalty at the rate of 20% of the capacity charge shall be applicable to the extent of the shortfall in availability.

4.6. The seller (successful bidder) shall declare availability on a daily basis in accordance with the scheduling procedure as stipulated in the Indian Electricity Grid Code (IEGC) from time to time. Further the seller and procurer shall comply with all relevant provisions of the IEGC. If the procurer does not avail generation up to declared availability, the same can be sold in market by the seller, and sale realization in excess of variable charges shall be equally shared with the procurer.

4.7. Any change in tax on generation or sale of electricity as a result of any change in Law with respect to that applicable on the date of bid submission shall be adjusted separately.

4.8. Ratio of minimum and maximum capacity charge for any year shall not be less than 0.7 to avoid excessive front loading or back loading during the period of contract.

4.9. *In case peakload or seasonal requirements are distinct from baseload requirements, the bidders shall indicate distinct prices for such peakload or seasonal supply which shall be evaluated separately. Differential rates quoted for the same source of power for base and peak/seasonal load shall not constitute violation of guideline or unfair practice.*

4.10. *Adequate payment security shall be made available to the bidders. The payment security may constitute:*

(i) Letter of Credit (LC).

(ii) Letter of Credit (LC) backed by credible escrow mechanism.

In the case the seller does not realize full payment from the procurer by the due date as per payment cycle, the seller may after 7 days, take recourse to payment security mechanism by encashing the LC to the extent of short fall or take recourse to escrow mechanism. The procurer shall restore the payment security mechanism prior to the next date of payment. Failure to realize payment even through payment security mechanism shall constitute an event of payment default. In the event of payment default the seller, after giving 7 days' notice, can sell up to 25% of the contracted power to other parties without losing claim on the capacity charges due from the procurer. If the payment security mechanism is not fully restored within 30 days of the event of the payment default, the seller can sell full contracted power to other parties without losing claim on the capacity charges due from the procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the procurer. In case the surplus over energy charges is higher than the capacity charge liability of the procurer, such excess over the capacity charge liability shall be retained by the seller.

Energy Charges

4.11. *Where applicable, the energy charges payable during the operation of the contract shall be related on the base energy charges specified in the bid with suitable provision for escalation. In case the bidder provides firm energy charge rates for each of the years of the contract term, the same shall be permitted in the tariffs. In other cases, the energy charges shall be payable in accordance with fuel escalation index used for evaluation of the bid. In case of bids based on net heat rate, the price*

of fuel shall be taken as stipulated under Para 4.2. However, the fuel escalation will be subject to any administered price mechanism of Government or independent regulatory price fixation in case of fuel produced within the country. The applicable indices for various fuels shall be identified in the RFP documents.

4.12. No adjustment shall be provided for heat rate degradation of the generating stations. Even in case of bids based on net heat rate, the bidder shall factor in site conditions, loading conditions, frequency variations etc and no adjustment shall be allowed on the quoted net heat rate for the duration of the contract.

4.13. In case a bidder offers hydro power, under Case 1 or the procurer invites bids of hydro power under Case 2, the hydrological risk shall be borne by the Procurer, provided the hydrological data of such a project is based on authentic sources and is known to the parties in advance. Any hydrological advantages resulting in energy availability beyond the design energy shall be passed on to the Procurer without any charge. The geological risk for the hydro project shall be borne by the developer.

4.14. Energy charges shall be payable by the procurer to the seller for the scheduled energy. Deviations beyond agreed energy schedules shall be settled under the ABT/UI mechanism.

Combined capacity and energy charges

4.15. In cases where the procurement process permits bidders to submit combined capacity and energy charges, the charges proposed shall be firm for each of the years of the term of the Power Purchase Agreement (PPA), and no escalation of tariffs shall be permitted over and above the rates proposed by the seller in the price bid.

4.16. The bidder shall specify the normative availability from the project on an annual basis. The model PPA made available to the bidders at the RFQ/RFP stage shall feature appropriate provisions for penalties in event of the normative availability not being met by the seller. The RFQ/RFP shall also specify minimum off take conditions for procurement from such stations.

4.17. The per kwh rates payable to the seller for off take by the procurer over and above the normative levels shall be the same as the rates applicable till normative availability. In case the procurer does not schedule the energy made available by the seller as per the contract, the seller shall be free to sell to other parties. The seller

shall not be required to make any payments to the procurer for such sales to third parties.

5. Bidding Process

Two-stage process

5.1. For long-term procurement under these guidelines, a two-stage process featuring separate Request for Qualification (RFQ) and Request for Proposal (RFP) stages shall be adopted for the bid process under these guidelines. The procurer may, at his option, adopt a single stage tender process for medium term procurement, combining the RFP and RFQ processes. Procurer or authorized representative shall prepare bid documents including the RFQ and RFP in line with these guidelines and standard bid documents.

5.2. The procurer shall publish a RFQ notice in at least two national newspapers, company website and preferably in trade magazines also to accord it wide publicity. The bidding shall necessarily be by way of International Competitive Bidding (ICB). For the purpose of issue of RFQ minimum conditions to be met by the bidder shall be specified by the procurer in the RFQ notice.

5.3. Procurer shall provide only written interpretation of the tender document to any bidder / participant and the same shall be made available to all other bidders. All parties shall rely solely on the written communication and acceptances from the bidders.

5.4. Standard documentation to be provided by the procurer in the RFQ shall include,

(i) Definition of Procurer's requirements, including:

- Quantum of electricity proposed to be bought in MW. To provide flexibility to the bidders, this may be specified as a range, within which bids would be accepted. Further, the procurer may also provide the bidders the flexibility to bid for a part of the tendered quantity, subject to a given minimum quantity.*
- The procurer may separately specify distinct base load requirements and peakload requirements through the same bid process. Seasonal power requirements, if any, shall also be specified;*
- Term of contract proposed; (as far as possible, it is advisable to go for*

contract coinciding with life of the project in case of long term procurement). The bidder shall be required to quote tariff structure for expected life of the project depending upon fuel proposed by him. The expected life project is estimated to be 15 years for gas/liquid fuel based projects, 25 years for coal based projects and 35 years for hydro projects.

- *Normative availability requirement to be met by seller (separately for peak and off-peak hours, if necessary);*
- *Definition of peak and off-peak hours;*
- *Expected date of commencement of supply;*
- *Point(s) where electricity is to be delivered;*
- *Wherever applicable, the procurer may require construction milestones to be specified by the bidders;*
- *Financial requirements to be met by bidders including, minimum net-worth, revenues, etc with necessary proof of the same, as outlined in the bid documents;*

(ii) Model PPA proposed to be entered into with the seller of electricity. The PPA shall include necessary details on:

- *Risk allocation between parties;*
- *Technical requirements on minimum load conditions;*
- *Assured off take levels;*
- *Force majeure clauses as per industry standards;*
- *Lead times for scheduling of power;*
- *Default conditions and cure thereof, and penalties;*
- *Payment security proposed to be offered by the procurer.*

(iii) Period of validity of offer of bidder;

(iv) Requirement of transfer of assets by the selected bidder (if any) to the procurer at the end of the term of the PPA.

(v) *Other technical, operational and safety criteria to be met by bidder, including the provisions of the IEGC/State Grid Code, relevant orders of the Appropriate Commission (e.g – the ABT Order of the CERC), emission norms, etc., as applicable.*

(vi) *The procurer may, at his option, require demonstration of financial commitments from lenders at the time of submission of the bids. This would accelerate the process of financial closure and delivery of electricity;*

(vii) *The procurer and the supplier may exercise exit option subject to the condition that the new player satisfies all RFP conditions.*

5.5. RFP shall be issued to all bidders who have qualified at the RFQ stage. In case the bidders seek any deviations and procurer finds that deviations are reasonable, the procurer shall obtain approval of the Appropriate Commission before agreeing to deviation. The clarification/revised-bidding document shall be distributed to all who had sought the RFQ document informing about the deviations and clarifications. Wherever revised bidding documents are issued, the procurer shall provide bidders at least two months after issue of such documents for submission of bids.

5.6. Standard documentation to be provided by the procurer in the RFP shall include,

(i) Structure of tariff to be detailed by bidders;

*(ii) **PPA proposed to be entered with the selected bidder.** The model PPA proposed in the RFQ stage may be amended based on the inputs received from the interested parties, and shall be provided to all parties responding to the RFP. No further amendments shall be carried out beyond the RFP stage;*

*(iii) **Payment security to be made available by the procurer.** The payment security indicated in the RFQ stage could be modified based on feedback received in the RFQ stage. However no further amendment to payment security would be permissible beyond the RFP stage.*

*(iv) **Bid evaluation methodology to be adopted by the procurer including the discount rates for evaluating the bids.***

The bids shall be evaluated for the composite levelized tariffs combining the capacity and energy components of the tariff quoted by the bidder. In case of assorted enquiry for procurement of base load, peak load and seasonal power, the bid evaluation for each type of requirement shall be carried out separately. The capacity component of

tariffs may feature separate non-escalable (fixed) and escalable (indexed) components. The index to be adopted for escalation of the escalable component shall be specified in the RFP. For the purpose of bid evaluation, median escalation rate of the relevant fuel index in the international market for the last 30 years for coal and 15 years for gas / LNG (as per CERC's notification in (vi) below) shall be used for escalating the energy charge quoted by the bidder. However this shall not apply for cases where the bidder quotes firm energy charges for each of the years of proposed supply, and in such case the energy charges proposed by the bidder shall be adopted for bid evaluation. The rate for discounting the combination of fixed and variable charges for computing the levelized tariff shall be the prevailing rate for 10 year GoI securities;

(v) The RFP shall provide the maximum period within which the selected bidder must commence supplies after the PPA is entered into by the procurer with the selected bidder, subject to the obligations of the procurer being met. This shall ordinarily not be less than four years from the date of signing of the PPA with the selected bidder in case supply is called for long term procurement. The RFP shall also specify the liquidated damages that would apply in event of delay in supplies.

(vi) Following shall be notified and updated by the CERC every six months for the purpose of bid evaluation:

- 1. Applicable discount rate*
- 2. Escalation rate for coal*
- 3. Escalation rate for gas /LNG*
- 4. Inflation rate to be applied to indexed capacity charge component.*

Bid submission and evaluation

5.7. To ensure competitiveness, the minimum number of qualified bidders should be at least two other than any affiliate company or companies of the procurer. If the number of qualified bidders responding to the RFQ/RFP is less than two, and procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

5.8. Formation of consortium by bidders shall be permitted. In such cases the consortium shall identify a lead member and all correspondence for the bid process

shall be done through the lead member. The procurer may specify technical and financial criteria, and lock in requirements for the lead member of the consortium, if required.

5.9. The procurer shall constitute a committee for evaluation of the bids with at least one member external to the procurer's organisation and affiliates. The external member shall have expertise in financial matters / bid evaluation. The procurer shall reveal past associations with the external member - directly or through its affiliates - that could create potential conflict of interest.

5.10. Eligible bidders shall be required to submit separate technical and price bids. Bidders shall also be required to furnish necessary bid-guarantee along with the bids. Adequate and reasonable bid-guarantee shall be called for to eliminate non-serious bids. The bids shall be opened in public and representatives of bidders desiring to participate shall be allowed to remain present.

5.11. The technical bids shall be scored to ensure that the bids submitted meet minimum eligibility criteria set out in the RFP documents on all technical evaluation parameters. Only the bids that meet all elements of the minimum technical criteria set out in the RFP shall be considered for further evaluation on the price bids.

5.12. The price bid shall be rejected if it contains any deviation from the tender conditions for submission of price bids.

5.13. Wherever applicable, the price bid shall also specify the terminal value payable by the Procurer for the transfer of assets by the selected bidder in accordance with the terms of the RFP.

5.14. The bidder may quote the price of electricity at the generating station bus-bar (net of auxiliaries), or at the interface point with the State transmission network. For purposes of standardization in bid evaluation, the tariffs shall be compared at the interface point of the generator/supplier with the State transmission network. In case the bidder quotes his rate at the generating station bus-bar, normative transmission charges for the regional/inter-regional network, if applicable, based on the prevailing CERC orders shall be added to the price bid submitted. The charges for the State transmission network shall be payable by the procurer, and shall not be a part of the evaluation criteria.

5.15. *The bidder who has quoted lowest levelised tariff as per evaluation procedure shall be considered for the award. The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.*

Deviation from process defined in the guidelines

5.16. *In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.*

Arbitration

5.17. *The procurer will establish an Amicable Dispute Resolution (ADR) mechanism in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The ADR shall be mandatory and time-bound to minimize disputes regarding the bid process and the documentation thereof.*

If the ADR fails to resolve the dispute, the same will be subject to jurisdiction of the appropriate Regulatory Commission under the provisions of the Electricity Act 2003.

6. Contract award

6.11. *The PPA shall be signed with the selected bidder consequent to the selection process in accordance with the terms and conditions as finalized in the bid document before the RFP stage.*

6.12. *Consequent to the signing of the PPA between the parties, the evaluation committee shall provide appropriate certification on adherence to these guidelines and to the bid process established by the procurer.*

6.13. *The procurer shall make evaluation of bid public by indicating terms of winning bid and anonymous comparison of all other bids. The procurer shall also make public all contracts signed with the successful bidders.*

6.14. *The final PPA along with the certification by the evaluation committee shall be forwarded to the Appropriate Commission for adoption of tariffs in terms of Section 63 of the Act”.*⁵

⁵ Electricity act 2003 & CERC.gov.in

Revision of Tariff & Related Case Laws

Rather than decently explained guidelines and legitimate Policies & Regulations presented by Government there is an interest of tariff revision by producing companys in the majority of the cases why? What is the purpose for it?

CERC Order in the Adani Power Case

Compensatory tariff is determined and decide on case to case basis. In adani powers case the balanced judgment given by CERC is appreciable. The main issues in this case were as mentioned below:

1. Is it possible to supply power to the states on same bidding prices?
2. Is the situation is covered under the force majeure situation or change in law under Electricity Act 2003?
3. Is the CERC is having powers to deal with such issue and grant relief for the same under Electricity Act 2003?

Facts

Adani power entered into an agreement with GUVNL and UHBVNL & DHBVNL separately. So here adani does have to supply power to these states. For the generation of electricity under this project they need coal, as it is not available in domestic market because of which they approached outside India so they entered into agreement with Indonesia. As they started working after sometime the price of coal increases due to change in policies of Indonesia because of this reason adani power is not able to supply power at the same bided rate.

Decision

The first question is largely a factual matter that the CERC considered in detail. It found that the non-availability of coal from domestic sources and the lack of attractiveness of sourcing from the international markets meant that the Indonesian markets were the most feasible. However, due to the Indonesian regulations, the viability of sourcing coal from Indonesia has been put to serious doubt as it has altered the basic premise upon which Adani Power had quoted the tariff to the state

utilities.

Given the affirmative response of the CERC to the first question, it became necessary to deal with the legal matters that arose in the second question, i.e. whether the force majeure or “change in law” provisions in the PPAs would be attracted in this case. The CERC interpreted force majeure narrowly such that it can be invoked only “where any event or circumstance or combination of events or circumstances wholly or partly prevents or unavoidably delays the affected parties in the performance of its obligations”. Since there is no prohibition as such on Adani Power buying coal from Indonesian sources, the CERC came to the conclusion that the force majeure clause is not attracted. Mere rise in price of a commodity does not result in impossibility of performance. As regards “change in law”, the CERC interpreted the terms of the PPAs. “Law” was defined to mean the laws in India, and was not meant to include foreign laws. Hence, a change in Indonesian law was not covered by the “change in law” clause. No protection was afforded to Adani Power on account of such measures that would have resulted in a situation akin to a frustration of contract.

That led to the CERC’s determination in the third question of whether it had inherent powers under law to accord relief to Adani Power. The CERC found that since there was no price escalation clause in the PPAs, in its view “ways and means need to be found to compensate [Adani Power] for the loss or additional expenditure incurred by it on account of procurement of coal from Indonesia as the international benchmark price ...” [emphasis added]. The CERC analyzed the objective and scheme of the Electricity Act and related laws and policies, and rationalized its decision as follows:

82. “The common threads running along the length and breadth of the statutory scheme under the Act and the statutory instruments framed there under are the protection of the consumers’ interest and ensuring adequate return on the investments in the sector. The consumers’ interest is protected not only by fixing competitive tariff but it is equally imperative to ensure continuous, uninterrupted and reliable supply of electricity. ... Therefore, in the final analysis, the recovery of costs of the investors serves the consumers’ interest by attracting investments in the sector by improving quality of supply of electricity to the consumers. Thus, twin objectives of protection of

consumers' interest and recovery of cost of services provided are complementary. All the authorities established under the Act, have to strive towards achieving these objectives. This Commission as the apex regulatory body for power sector has the additional responsibility for meeting the objectives of law.

Relying upon "its statutory responsibility to balance the interest of the consumers with the interest of the project developers while regulating the tariff of the generating companies", the CERC granted a compensatory tariff to Adani Power. It also ordered the establishment of a committee to undertake a consultative process to find an acceptable solution in the form of the compensatory tariff.

The dissenting order, however disagrees with the majority on the first issue, i.e. on the impact of the Indonesian regulations on Adani Power's ability to continue with its obligations under the PPA. However, it agrees with the majority as regards the non-applicability of the force majeure and "change in law" clauses. More importantly, the dissenting view finds that the case primarily involves an adjudication of specific disputes and does not justify a general exercise of regulatory power by the CERC as it "amounts to an invasion on the exercise of free will by the parties".⁶

Analysis

Responding to the first issue CERC is somewhere not balanced the matter, as it is known to every bidder before entering into the bidding process that adequate coal is not available in the domestic market so you have to purchase it from international market. So if parties import it from international market than they should also include the risk in there bidding rate. Suppose if the second highest bidder is including it in there bidding rates then the chance should be given to him. so here the judgment seems to be partial.

Now if we talk about the second issue it is very clear through laws so here CERC finds it no more difficult and they wisely advised the adani's that not to touch this issue as no where this situation is covered under the force majeure situation or change

⁶ 155|MP|2012 CERC.gov.in

in laws. The approach taken by CERC is appreciable as there is no impossibility or change in law of India as far as we talk about hike in price of coal it cannot be the reason for impossibilities of performing contract. And as escalation clause is not a part of PPA. So there is no change on the basis change in policies of Indonesia.

Finally in the third issue court balanced it by not directly revising the tariff but by introducing compensatory tariff granting such relief to Adani Power as it is needed in the interest of Consumer and in interest of Investor for a continuous supply of the power.

Now the point on which this judgment is lacking is what about the other close bidders? It will also affect the sanctity of the contract or the values of bidding process because if the main part changes i.e. tariff if it changes or being compensated or can be revised than what is the need of bidding process? Is the PPA will become so flexible that it can be changed in between? These were some questions hitting this sector badly after this judgment.

This Judgment passed dated 2.04.2013 by CERC is being challenged through an appeal filed in Appellate Tribunal in 2014.

Tata Power case:-

Tata Power had emerged as the L1 bidder for the Mundra UMPP (4000MW) by quoting a levelised tariff of Rs2.26/kWh for the supply of 3800MW to various state DISCOMs⁷. The project was envisaged to be operated on imported coal for which the company also purchased a 30% stake in an Indonesian mining company⁸. In any case, because of unanticipated change in the Indonesian law in September, 2011, the increment in the expense of coal was far more noteworthy than expected at the time of offering which undermined the venture suitability. Subsequently, the company recorded a levy build request of before the CERC.

Hence, CERC has conceived a recipe for computing the gross compensatory tax, which will be connected to the Indonesian coal reference file for the significant calorific worth. The fuel under-recuperation has as of now been measured by the

⁷ DISCOMs of Gujarat, Maharashtra, Haryana, Rajasthan and Punjab

⁸ Bumi Resources - PT Kaltim Prima coal (KPC) and PT Arutmin

CERC at Rs3.3 bn or 29paise/kWh for FY13. For FY14, tax overdue debts to be recuperated from DISCOMs, must be ascertained inside 2 months from the end of monetary year. From FY15 onwards temporary gross compensatory tax will be figured utilizing the Indonesian coal reference list toward the start of every budgetary year. The company might then submit quarterly articulations of genuine expenses inside 30 days and accommodate the expenses toward the end of every quarter.

Implications of 'Compensatory Tariff Awards'

The tariff requests are broadly known as the 'Compensatory Tariffs Cases' ; in the midst of the truth as the private financial specialists, could mystically guarantee that utility costs could expand enormously while the nature of administration diminished and the benefits streamed back to the guardian organization, was bound to disappointment. By and large, the political association in tariff procedure brought about award of compensatory tariffs. It is essential to investigate the development of 'Compensatory Tariff', not as a term, however as a theoretical understanding, rendered in a plenty of Orders by Appropriate Regulatory Commissions, running from 2010 to 2014.

Unraveling the bunch—Profitable for the Power Producing Companies

After Adani and Tata Power Company had consented to the Power Purchasing Arrangements (PPA's), Indonesia had presented new arrangement of guidelines and regulations , which set a 'base fare cost' for coal, connected to universal benchmarks. Viably, this however pushed the cost of coal for any element or Company importing the "item" from Indonesia, however for the two organizations being referred to, the effect was lower, since they possessed 40% value stakes in the mines they purchased coal from.

This change in the Indonesian standards and regulations, forced the current direct deals foremen and the term builders (long haul) to follow the Indonesian Regulations; bringing about Adani's representation of failure to conform to the same, while the Regulations additionally went for changing the coal supply standards according to the bearings of the Indonesian Government, while any disparagement from the principles might prompt suspension of the permit of the long haul builders. Appropriately, the Indonesian Regulations were to come into power in admiration of term deal contract (long haul) with impact from 23.9.2011 ,coupled with the sharp ascent in universal coal costs for a break period, while the frail supplies of residential coal or absence of sufficient coal linkage streams adding to a vaccum between Coal India Limited (CIL) and the forthcoming power makers, made the organizations lift their hands and tell their clients that the power tariffs they had offered were unviable, and that these ought

to be re-arranged or re-decided and the current Power Purchasing Agreement(PPA) ought to be reestablished to build the tariff prior or prior decided under the agreement.

Exacerbating to the 'lost energy expenses costs' or to repay the fuel effectiveness costs or to accomplish a higher Return on value (ROE) or Return on Interest (ROI), the organizations requested a trekked remuneration for the power they had supplied at the current tariffs under the current assention refering to real misfortunes.

The expanding expense of coal, and other related energizes were thought to be far more prominent than what was foreseen under the stipulated understanding by the concerned gatherings to the assention, offering ascent to numerous such silly petitions, deliberately recorded by numerous power makers to gain higher tariff for the sake of 'compensatory package', as India bulls Power is now being permitted a Rs 1.55 a unit 'compensatory tariff' for utilizing foreign made coal as go through for its plant at Amravati in Maharashtra. On sixteenth February, 2013 the Maharashtra Electricity Regulatory Commission (MERC) passed a request conceding IndiaBulls Power the estimating adaptability by method for 'compensatory tariff', however not utilizing the term 'compensatory energy fuel'.

The Maharashtra State Electricity Regulatory Commission (MERC) had allowed the honor, by computing the Baseline Quantity, Baseline Gross Calorific Value, the amount which is in lac, and conceived a recipe (altered), as proposed might have been:

Amount of Alternate Coal in MTPA## = Shortfall Quantity in MTPA x Baseline Gross Calorific Value in kcal/kg partitioned by Revised Gross Calorific Value in kcal/kg

The Commission considered the part of contriving a substitution expense of shortage in the residential coal by virtue of foreign coal, for which the Commission may consider the escalable and the non-escalable parts.

The main relief the Distribution Companies and the customers are left with is to approach the suitable Commission to get satisfactory help; where proper benchmarks and different governing rules have been considered in the technique embraced by the Commission in order to guarantee that there is no profiteering on this record. Further, the Procurer or different partners have the equivalent freedom to approach the

Commission irregularly for survey of any part of the compensatory fuel accuses of changing business sector interest structure.

Despite the fact that the choice of the Commission was invited by the Generators, yet the keep focused procedures by the Supreme Court, coordinating the Appellate Tribunal for Electricity (APTEL) to arrange off the cases; made a corrupt condition of issues for the Generators, and numerous others which made a going stone for them make such cases to the controller.

The Commission (CERC) had allowed Reliance Power's Sasan ultra uber power venture, requesting compensatory tariffs taking after what it called "uncommon" devaluation in the swapping scale of the rupee versus the dollar after it marked PPAs with states, for example, Haryana, Gujarat and Madhya Pradesh in 2007⁹. Since the deterioration in the rupee, against the sharp ascent in the Dollar was thought to be a 'power majeure', prompting a bump whole measure of Compensation for the same.

Likewise, in different cases governed by Maharashtra Electricity Regulatory Commission (MERC) on an arrangement of three petitions, concerning the supply of power by Adani, Indiabulls Power and JSW Energy to Maharashtra, which permitted compensatory tariffs to these organizations on the grounds of a decrease in supplies of household coal, and higher costs of foreign coal¹⁰. The organizations presented the explanation behind documenting the cases that the Union Cabinet's choice in 2013 to alter the Coal Distribution Policy, 2007 taking into account lesser coal to be supplied by Coal India to every power plant, having the Letter of Assuarance (LOA) or the Fuel Supply Agreement(FSA) with the equalization to be made up by transported in coal, fit the bill for being considered as a 'change in law', subsequently permitting them to case remuneration; further confining them to meet all requirements for any fuel supply concurrence with any power organization with limit under 78000 MW.

For some such Generators who are remaining in line to achieve a gainful position by

⁹ Sasan Power Limited, Mumbai vs. MP Power Management Company Limited & Ors., Petition No. 14/MP/2013, Central Electricity Regulatory Commission, <http://www.cercind.gov.in/2014/orders/SO14.pdf>;Supra n.59

¹⁰ Adani Power Maharashtra Limited & Ors. Vs. Maharashtra Electricity Distribution Company Limited, Case No.140 of 2014, Maharashtra Electricity Regulatory Commission, http://www.mercindia.org.in/pdf/Order%2058%2042/Order_Case%20140%20of%202014.pdf; JSW Energy Limitedvs. Maharashtra Electricity Distribution Company Limited (MSEDCL),Case No.145 of 2014, Maharashtra Electricity Regulatory Commission, http://www.mercindia.org.in/pdf/Order%2058%2042/Order_2014.pdf

method for an addition in the fuel costs, the Appropriate Commission has been given regional jurisdictionary powers to mediate on matters and gift 'compensatory package', as a help to them, and subsequently if the Commission permits such organizations to trek the tariff, even with compensatory change,, which sounds more temperate, than comparable up and coming circumstances.

Broader Issues soiling 'Compensatory Tariff'

The Ministry of Coal should correct the New Coal Distribution Policy (NCDP), while the Ministry of Power might empower the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERC) to allow the go through of foreign coal expenses¹¹. The CERC is obliged to determine an itemized system to permit such expenses. It was further discovered that the said strategy will likewise request coal imports through Coal India and in addition imports attempted by power plants themselves.

¹¹ 'CEA permits pass-through of imported coal cost by power plants', PRS Legislative Research, Monthly Policy Review June(2013), <http://www.prsindia.org/administrator/uploads/general/1372826755--June%202013%20-%20MPR.pdf>

Compensation in Issue

Prior to decisions rendered by the Appellate Tribunal and the Commission that allowed Tata Power Limited and Adani Power to charge compensatory tariff from various procurers with whom they have signed Power Purchasing Agreements. The Appellate Tribunal on July 21st, 2014, allowed Tata Power and Adani Power to recover power dues from March 2013 on account of rise in imported fuel cost.¹²

In any case, the decision would give a pad to the organizations against acceleration in expense of foreign coal for the plant, as rendered after death by the Tribunal, as to the degree of passing the choice to the disservice of the Distribution Companies, the same number of the organizations, comprehensively classified under the umbrella meaning of 'Affected Consumers'.

According to an estimate, pre-March, 2013 dues for Tata Power's 4,000 megawatt Mundra Plant in Gujarat stand at Rs 330 crore, while the same for Adani's 1,980-MW Mundra project in Gujarat is Rs 830 crore. While post March 2013, Tata Mundra UMPP will be awarded compensatory tariff at 52 paise per unit, which will fetch the company Rs 25,000 crore over the remaining life of the plant¹³ to the insignificant financial and corporate commercial losses incurred by the Discoms.

In the case of Adani's Mundra project, the power company will receive compensatory tariff at 41 paise per unit, more than ascertained in the contract, a move that will fetch the company Rs 18,500 crore over the remaining life of the project, over and above the tariff estimated in the project.¹⁴ These firms had sought relief on account of adverse impact of the 'unforeseen', 'uncontrollable' and 'unprecedented' escalation in the imported coal price, while still in various petitions, IndiaBulls claims compensatory tariff, under 'zero price escalation'.

¹² 'Discoms to challenge APTEL Order on Adani Power, Tata Power', July 2014, http://articles.economictimes.indiatimes.com/2014-07-27/news/52089019_1_compensatory-tariff-adani-power-central-electricity-regulatory-commission

¹³ Id.

¹⁴ Petition No.155/MP/2012

In April last year, Central Electricity Regulatory Commission (CERC) said in its orders that Adani Power should be granted compensation packages for their projects.¹⁵

According to the Order, 2012, the Commission asked the states which purchase electricity from Tata Power's Mundra plant to structure a specialist board to choose repaying the firm for higher expense of coal imports from Indonesia, describing the guileless, and discriminative demonstration of giving requests to the Discoms to pay an overwhelming sum, and just as climb the tariff far beyond the charge stipulated under the Power Purchasing Agreement, since the Commission has requested tariff help just by virtue of progress in Indonesian coal estimating Rules and Regulations & shortage in residential coal supply from Coal India (CIL) under the Fuel Supply Agreement (FSA) connected by APL for Mundra-III (PPA with Haryana Discoms).

It thus turns into a state of disillusionment to acknowledge the request, subsequent to the CERC has not gone into the benefits of the case, and has not considered the under-recuperation of settled expenses, said in the Deepak Parekh Committee report, constituted by the Commission, esteeming it to be past the extent of the Committee's command. Also, it is hereby contended that the compensation for 'change in law' should be outrightly excluded, while the Commission asks the Haryana Discoms to settle the matter in terms of the Power Purchasing Agreement.¹⁶

It is hereby observed that the inordinate delay in passing stay on the orders by the Honorable Supreme Court could have a negative impact on the company's earnings, as against the power plant which depends entirely on imported coal, which turned unviable following a change in Indonesian laws in 2011 that made coal imports from the country expensive.¹⁷

Amidst the theories of the requests went by the APTEL and the CERC, a couple Distribution organizations have acknowledged the request, without dissenting the same before some other controller or Court of law. According to the Committee

¹⁵ Supra, n.76

¹⁶ 'CERC quantifies Tariff relief in Mundra PPA's', Key Aspects of Compensatory Tariff awarded, 24th February, 2014, http://breport.myiris.com/NFASIPL/ADAPOWER_20140224.pdf

¹⁷ 'Uncertainty in Tariff Hike haunts power stocks', 26th August, 2014, <http://www.thehindubusinessline.com/companies/uncertainty-in-tariff-hike-haunts-power-stocks/article6353494.ece>

Report put together by the adhoc-board constituted by the Commission which further remarked that, "These tariffs still stay inside the scope of 25-50 every penny of legitimacy request dispatch for all the Discoms. Consequently, Discoms stand to increase even after compensatory tariff climbs as the greater part of late Case-1 and Case-2 offers are being secured at higher tariffs Rs. 4.5-5 every unit."

The Appellate Tribunal has also rejected return on equity (RoE) on inflated equity of Punjab State Power Corporation Ltd (PSPCL) and Punjab State Transmission Corporation Ltd. (PSTCL) and has directed the Punjab State Electricity Regulatory Commission (PSERC) to re-determine the Rate on Equity and the excess amount allowed to the PSPCL with carrying cost shall be adjusted in the next Annual revenue requirement (ARR).¹⁸ The claim in this petition was to increase the rate of return of equity (ROE) causing increased distress to the Distributors on account of increased tariff.

Aggrieved by the CERC Orders, other Discoms like the Rajasthan Corporation Limited have now filed a composite petition along with other Discoms before the CERC, where many they have compositely claimed that the Commission had 'erred' in considering the 'reduced price' considered by Tata Power during bid, though there was no firmed up coal supply agreement for supply at the discounted price.¹⁹

It has now considered as a suggestion for conceiving another model offer records by the government to take into consideration fuel value go through, yet deficiently regarding importing coal. It is under extraordinary theory, albeit, regardless of the fact that the fuel costs are for a thought completely gone on to the clients, it scarcely changes occasions in situ, given that each expense info into a power supply contract is currently up for renegotiation, as saw in the continuous cases documented by the power makers and the bothered wholesalers; yet passing by the current yield of cases pending in different controllers the nation over.

This by a long shot gives minimal impetus to States to issue focused offers to acquire

¹⁸ M/s Mawana Sugars Ltd. vs. Punjab State Electricity Regulatory Commission, Appeal No.s 142 of 2013 & 168 of 2013, http://aptel.gov.in/judgements/Appeal%20Nos.%20142%20of%202013%20&%20168%20of%202013_17.12.2014.pdf

¹⁹ 'Rajasthan moves APTEL against CERC's order for Adani and Tata', 8th April, 2014, <http://www.kseboa.org/news/rajasthan-moves-aptel-against-cercs-order-for-adani-and-tata-08043239.html>

electricity at all under the given principles and regulations, representing determination of tariff. Aside from these, there are other essential issues. It is advocated because of the monetary and valuable misfortunes which the Distributors have endured by virtue of the installment forced upon them by the controller keeping in mind the end goal to control the interest supply circumstance, as even saw in the current plan for the year (01st April, 2014-31st March, 2015). For long, and regularly legitimately in this way, Industry has censured government for disregarding the sacredness of agreement, keeping up as the base contention.

CONCLUSION AND SUGGESTIONS

Advancement of competition in the electricity business in India is one of the key destinations of the Electricity Act, 2003 (the Act). It is to spare the customers interest on the grounds that if there is a competition the bidder will cite the most minimal tariff rates as they considers fit which is at last advantages the customer's . Be that as it may the late choices by APTEL and CERC on one hand is an adjusting judgment on other hand it is hampering the buyer's advantage.

AS it is demonstrated in the event of adani'stariff modification that the request is not secured under all these circumstance than additionally permitting there appeal and presenting compensatory tariff statement. it is not suitable in light of the fact that this will make a disappointment of bidding process as they will cite less cost at the time of awaiting and will attempt to reexamine the tariff after the PPA is agreed upon. Furthermore, it will likewise hamper the trust of the other bidder from the bidding process and will turn into a greatest test before power division.

at the point when a bidder goes into a PPA he is knowledgeable with all the dangers in regards to tariff and different exercises then there is no necessity to permit remuneration to the bidder on the off chance that it is not secured under circumstances set down for pay or end.

Then again, the whole judgment gives useful and valuable case material for India going ahead utilizing private capital as a bedrock for framework advancement, giving certainty to engineers and speculators and managing the chaperon issues of offer sacredness, open private association renegotiation, and life-cycle reasonability of infra resources and, in particular, adjusting clashing requests.

Energy sector is the critical piece of economy it needs more consideration from government of India and if something ailing in their strategies, regulations and acts it ought to be corrected.

Compensatory Tariff is seen as a 'household benchmark' for contract re-transaction or for re-determination of tax in future foundation ventures; and is apparent from the enlarged expense of prosecution that power firms cause, proactively demonstrates that the fight in court is still on. The cushion available to acclimatize forex instability has

been eaten up by change in coal expenses and the change in the wellspring of coal.

At the heart of the cases said and examined before are two offers dispatched in 2007 and 2008 by the States, for instance, Haryana and Gujarat, among others — approaching a period of creating organizations to look for the benefit to supply power (the champ in any specific occasion that offers for the minimum tax). Adani and Tata won those two offers, and they offer levies on the reason that they would absorb changes in the expense of coal over the life of the offer, nonetheless they had the choice to make the offer in a way keeping in mind the end goal to go on the fuel costs to the costumers (The Distribution Companies). Both Companies decided to import coal from Indonesian mines for the undertakings, found in Gujarat.

The Tariff Order went by the Commission in the Adani and Tata Power Limited Cases completely alludes to a post-contractual reviving of the offer, despite the fact that the Commission on grounds of financial strains is giving a 'compensatory duty alleviation' for a between time period till the issue is enough tended to.

Nonappearance of any provision in the Power Purchasing Agreement (PPA), which is inferred and is interested in any standard of development for elucidation, may be transported in for value acceleration in the agreement. This in the general sense can't be any ground for denying the pay by virtue of genuine consumption because of value rise. Accordingly, if the genuine expense of generation of electricity goes past what was concurred in the PPAs, remuneration ought not be denied simply on the ground that there is no procurement in the PPAs."

The ultra-Mega power venture (UMPP) makers have helpfully figured out how to persuade the administration, bearing the financial and forex conditions, as an imperative escalable part and the power controller or (Appropriate Authority) that they plan to build the power levy well beyond the duty said and cited in the Agreement to counterbalance the climb in cost of Indonesian coal. In being permitted to do as such, we should be forced to reflect in reverse to the times of data costs being gone through to power distribution organizations and buyers. The "guarantee" of an altered tax from UMPPs, stipulated in the power buy assentions, has been successfully set aside.

With the Discoms not able to recoup the higher expenses from the shoppers, in

particular agriculturists, industry and business who will need to shoulder the brunt, the weight to pay high remuneration adds to the expense of getting coal. Aside from the severity that the "unbundled" Distribution portion will have bear regarding the protuberance entirety compensatory costs towards the misfortune brought about to the Power Companies by virtue of foreign coal from Indonesia because of the (change in law and power majeure) the accounts of Discoms will sink radically, obliging a further infusion of help from the Center and states, thusly affecting their monetary shortage.

The extent that a top to bottom examination of the tax requests are concerned, the Orders went by the Appropriate Authority have had colossal ramifications and effect on the Indian power industry and potentially other base divisions in India, as it thus brings up critical legitimate issues, the first being 'erosion of the guideline of holiness of agreement'. While the Indian Judicial framework, containing the courts of law are normally reluctant to meddle in contractual understandings between the gatherings, however in the specific matter under control, the Commission exercised clear jurisdictional powers by venturing into change the contractual relations between the gatherings. Any Power Purchasing Contract (PPA) is not a plain-vanilla contract, however any progressions made to any of the statements of the assention, or importing intending to any of its procurement which is defenseless to industry regulation ought to be esteemed to be inappropriate.

Furthermore, this may be thought to be a 'state of obstruction' which is not contractually suggested, but instead through the activity of its general powers as an industry controller, revered under the support of the Electricity Act, 2003 (State Government and Central Government)

Case may be attracted through the 'contractual standards of disappointment' and 'outlandishness of agreement' and their pragmatic indications in the Power Purchasing Agreement (PPA) as 'power majeure' and 'change in law' which were held inapplicable thus.

Usurping the jurisdictional powers allowed to the Central Regulator on general powers to intercede in contractual matters would give a component of subjectivity to business contracting in the part. In its enthusiasm to determine a question in a current circumstance, it stays to be seen whether it has opened a Pandora's Box that is liable

to cause some instability and shakiness in the division.

In looking to ensure and secure the business feasibility of the electricity part through the culmination of the Power Purchasing Agreements (PPAs) and the entrance to power to the masses in the states under intense pain are included, the Commission in its requests have hosed the assumption. A Consistent methodology may induce power generators to convey the danger, which may cause extra concerns to the division.

The issue of good risk has habitually been raised. The excellent method for tending to hazard is through contract, forcing the danger distribution errand on the shoulders of the Commission to choose.

For India, the circumstance will be nuanced by solid stagnation in the residential creation even as interest for coal has expanded massively.

Local coal generation has been not able to keep pace with the interest from power makers. However in 2010, local generation has stayed at a level, while there has been a sudden increment in the quantum of imports by Indian power organizations, from Indonesian Coal firms, and with such considerable piece of the transported in coal prerequisite in arranging foreign from Indonesia, India's vitality appetite is required to quicken the development of India, regarding coal necessities.

In 2010, it surpassed Japan to turn into the second biggest shipper of Indonesian coal after China, as examined the elements encompassing such commencement. The proclamation of the new Regulation No.17 in regards to coal benchmark evaluating is liable to expand the cost of coal predominantly for all Indian Power Projects utilizing transported in coal from Indonesia. The effect on the duty of such activities may shift, contingent on the nature of transported in coal and fuel blend, subsequent to Indonesia fares coal with low Gross Calorific Value.

The component of cynicism included with such business exchange, is that, all current supply concurrences with Indonesian mining firms will must be acquired line with this new benchmark by 23rd September 2011, as examined before in the past sections.

The execution of this new regulation will antagonistically affect all current and future Coal based power plants importing Coal from Indonesia. The new regulations will permit the Indonesian government to get the perfect measure of eminence, and the

assessable incomes.

Given the long haul request basics and forecasts, the current high coal value situation may keep on crushing edges of Indian power makers, unless the legislature readies a report on the budgetary status of the Discoms, to address their grievances taking after the customer hobbies thereof, and by embracing and actualizing the past choice of 'Monetary Structuring' of the Companies occupied with distribution and generation.

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