

2017

REGULATORY NEWSLETTER

LEGAL UPDATES: NOVEMBER 01, 2016 TO JANUARY 20, 2017

HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

POWER SECTOR UPDATES

I. **Supreme Court rules that the consent of landowners to lay transmission lines is not necessary**

The Supreme Court has held that the consent of landowners for placing transmission lines is not necessary. This position has been declared by the Supreme Court in its judgment passed in the case of PGCIL vs. Century Textiles & Industries Ltd. & Ors. on December 14, 2016. The Court stated that the cases where transmission licensee has obtained approval under section 164 of the Electricity Act, 2003, there is no legal requirement to obtain prior consent of the landowner for placing of transmission towers and lines. This decision of the Apex Court puts to rest the continuing uncertainty on the issue of obtaining prior consent of landowners for erecting transmission lines.



PGCIL vs. Century
Textiles & Industries

II. **Supreme Court holds that parties cannot waive any provision of a PPA that affects public interest**

The Supreme Court in the case of All India Power Engineer Federation & Ors. vs. Sasan Power Ltd. decided on December 08, 2016 has held that if any element of public interest is involved and a waiver takes place of any provision of the PPA by one of the parties, such waiver will not be given effect to if it is contrary to such public interest. While deciding an appeal under section 125 of the Electricity Act, a substantial question of law arose as to whether, when public interest is involved, waiver can at all take place of a right in favour of the generator of electricity under a PPA if the right also has an impact on consumer interest. The Court, answering the question in negative, held that any provision of the PPA that affects tariff that are ultimately payable by the consumers would necessarily affect public interest and would have to pass muster of State Commission under Section 61 to 63 of the Electricity Act. The judgment has far reaching consequences in so far as it takes away autonomy of parties and gives power to the Courts to rule on the propriety and validity of any waiver which may be contrary to public interest. For more information, please visit this [Link](#).

III. **Waiver of inter-state transmission charges & losses on transmission of electricity generated from solar and wind projects**

The Central Government by its order dated September 30, 2016 waived the inter-state transmission charges and losses on transmission of electricity generated from solar and wind projects in terms of the revised National Tariff Policy issued on January 28, 2016. The waiver for wind power projects will be applicable for those projects that will be commissioned till March 31, 2019. With regard to solar projects, those projects commissioned till March 31, 2017 will be eligible for the waiver, as per the CERC (Sharing of inter-state Transmission Charges & Losses) (Third Amendment) Regulations, 2015. The waiver to be

applicable for a period of 25 years, beginning from the date of commissioning. However, the MoP made further specification by limiting the waiver to only those projects that have been (a) awarded through competitive bidding mechanism; (b) entering into PPAs with distribution companies for RPO compliance. For more information, please visit this [Link](#).

IV. GoI Proposes to amend the Electricity Rules, 2005 in relation to CGP

The MoP has proposed to amend the Electricity Rules, 2005 in so far as it relates to CGP. The salient features of the proposed amendment are provided below:

- (a) Removal of ambiguity in definition of “ownership”:
The definition of “ownership” has been proposed to be amended to be in terms of value of capital along with the voting rights and not in terms of number of shares only. This has been proposed to prevent misuse of issuing shares of small face value which actually do not represent the monetary share of the capital of the plant.
- (b) Clarificatory proviso for treatment of power beyond 51%:
If the power over and above 51% is not sold in the market but consumed by the captive user himself, the proviso provides that the same shall also be determined on annual basis in proportion to their share in ownership of the power plant within variation not exceeding 10 percent.
- (c) The terms ‘person’, ‘Company’, ‘Special Purpose Vehicle’, ‘Partnership Firm’, ‘Body of Individuals’ and ‘Body of Corporate’ have been proposed to be included in second proviso to Rule 3(a)(ii) for the sake of clarity in applicability of equity and power consumption requirement.

For more information, please visit this [Link](#).

V. Revocation of amendment dated September 30, 2016 to guidelines for selection of 3000 MW grid-connected solar PV power projects

MNRE vide (O.M.) F. No. 32/8/2013-14/GSP/Pt-A2, dated October 28, 2016 revoked the amendment made to the guidelines for selection of 3000MW grid-connected solar PV power projects under NSM Phase-II, Batch-II, Tranche-I. The said amendment dated September 30, 2016 had made changes to the financial criteria for short-listing of bids thereby stating that the share premium would form an integral part of equity provided it is realized in cash or cash equivalent. But this condition was not applicable in case of listed companies.

The said memorandum dated October 28, 2016 revoked the aforesaid amendment, however, anyone who has acted on the amendment to the subject guidelines, will be protected under the good faith clause. For more information, please visit [Link 1](#) and [Link 2](#).

VI. Release of Model MOU, EPC & PPA for Installation of Roof Top Solar by Different Ministries/ Departments

In furtherance to MNRE's scheme of installation of grid connected rooftop solar PV projects on the rooftop of the buildings/offices of various Ministries and Government Departments, MNRE released model MOU, EPC agreement and PPA. The MoU is required to be entered between empaneled PSU and the concerned Ministry/Department/Government Agency. The PPA or EPC agreement is required to be entered between private developer and local Government Department /PSU owning the rooftop or ground area. The model MOU, PPA and EPC Agreement had been duly vetted by Department of Legal Affairs, Ministry of Law & Justice and the Department of Expenditure, MoF. Also, MNRE on November 30, 2016 released the revised Ministry/Department-wise allocation of expert PSUs for facilitating grid connected solar rooftop scheme. Rajasthan Electronics & Instruments Limited, Central Electronics Ltd, Solar Energy Corporation of India, PEC Ltd. are some of the PSU allotted to various other Ministries. For more information, please visit [Link 1](#) and [Link 2](#).

VII. Guidelines on cross border trade of electricity

The MoP in consultation with the MEA has issued the "Guidelines on Cross Border Trade of Electricity".

The following are the objectives of these guidelines:

- a) Facilitate cross border trade of electricity between India and neighboring countries;
- b) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimize perceptions of regulatory risks;
- c) Meet the demand of the participating countries by utilizing the available resources in the region;
- d) Reliable grid operation and transmission of electricity across the borders;
- e) Evolve a dynamic and robust electricity infrastructure for cross border transactions.

For more information, please visit this [Link](#).

VIII. CERC issues Staff Paper on Introduction of Electricity Storage System in India

CERC released a Staff Paper on Introduction of Electricity Storage System in India on January 04, 2017. The staff paper addresses the probable approaches for usage of storage system, operational and recovery aspects of storage facilities and is available for comments/suggestions of the stakeholders on the various issues covered therein till March 06, 2017. It recognizes that the increasing share of renewable generations in the grid has impacted the traditional approach of balancing and there is a need for modernizing the grid that will help the nation to meet the challenge of handling projected energy needs as well as increasing energy from renewable sources while maintaining a robust and resilient electricity delivery system. The paper states that it intends to generate discussion among the stakeholders about storage technologies and to know the user perceptions about the various issues on deployment and operations of grid level storage technologies. For more information, please visit this [Link](#).

IX. CERC allows Tata Power & Adani Power to claim compensation from procurers on account of high price of coal procured from Indonesia

CERC in two separate orders dated December 06, 2016 has allowed Adani Power Limited and Coastal Gujarat Power Limited, a subsidiary of Tata Power Company Ltd, to pass through the losses suffered by them on account of high price of coal procured from Indonesia. These orders have come following the judgment of APTEL dated April 07, 2016, remanding the matter back to CERC and directing it to arrive at compensatory tariff under the provision of force majeure. In light of this judgment, the CERC has held that Tata Power and Adani Power had Coal Sales Agreements or arrangement for the entire quantum of coal required for supply of power to the Procurers and the Indonesian Regulations had completely wiped out the premise on which these companies had quoted the tariff in the bid and accordingly, are entitled to relief for force majeure event in terms of Article 12.7 (b) of the PPA. The procurers have been held liable to pay the difference between the coal price based on the Coal Sales Agreements and the Free on Board price of coal ex-Indonesia in proportion to their share in the contracted capacity. For more information, please visit [Link 1](#) and [Link 2](#).

PETROLEUM & NATURAL GAS SECTOR UPDATES

I. PNGRB issues notice for 8th Round of CGD Bidding

PNGRB announced the dates for opening of 8th Round of CGD Bidding in various districts of Haryana, Goa, Uttar Pradesh, Puducherry and Maharashtra. These bids are invited for laying down of pipeline networks and including expansion of the same. PNGRB proposes to expand the existing CGD network with the current round and provide LNG to masses. Last date of bid issuance has now been extended up to February 16, 2017 till 15:00 Hrs. For more information, please visit this [Link](#).

II. PNGRB issues draft Regulation in relation to technical standards and safety measures to be followed by Retail Outlets

PNGRB notified draft Regulations in relation to technical standards and safety measures to be followed by Retail Outlets selling Petroleum, Natural Gas and other PNG Products. The Regulatory Board aims to provide minimum requirements and ensure standards in relation to engineering and safety considerations in layout, design, operating procedures, maintenance, inspection, safety equipment, electrical power distribution system, automation, competence assurance, emergency management plan, customer safety and awareness at Retail Outlets dispensing Petroleum products and their variants. These Regulations, once notified will be applicable on both existing and prospective outlets. The compliance has to be ensured by the entity, building and operating such Retail Outlets. In case of non-compliance, such entity may attract penal actions which may also include termination of operation or termination of authorization to conduct business. Interested entities may provide their comments on the draft by February 18, 2017. For more information, please visit this [Link](#).

COAL SECTOR UPDATE

I. Coal Mitra- A Web Portal for swapping of Coal

The Union Minister of State for Power, Coal, New & Renewable Energy and Mines, Shri Piyush Goyal on December 21, 2016 launched a web portal called 'Coal Mitra' which is meant to act as the medium to facilitate coal swapping inter se PSUs, private sector companies and between a PSU and a private sector company. The launch of the portal has been in furtherance to the coal swapping mechanism envisioned in a report titled 'Report of the new IMTF on rationalization of source of coal to power sector' issued by the Ministry of Coal on February 02, 2015. The cabinet approved the proposal i.e., flexibility in utilization of domestic coal between electricity generating stations on May 04, 2016. Thereafter, the CEA issued a Methodology Report on June 08, 2016 for implementing the proposal on coal swapping. Pursuant to this, the MoP also issued a direction to all the relevant stakeholders on June 10, 2016.

The portal provides a platform wherein, the coal reserves can be transferred from a less cost efficient generating station to a more cost efficient generating station, which in turn will result in benefit to the electricity consumers at large. The Methodology Report and the MoP Direction are available on the Coal Mitra portal. For more information, please visit [Link 1](#) and [Link 2](#).

II. Draft Coal Blocks Allocation Rules

Ministry of Coal vide OM dated January 20, 2017 has issued a public notice inviting comments from public and concerned stakeholders on Draft Coal Blocks Allocation Rules which seeks to replace existing Competitive Bidding of Coal Mines Rules, 2012. The Draft Coal Blocks Allocation Rules have been framed to bring parity with the provisions of Coal Mines (Special Provisions) Rules, 2014 and to avoid any dichotomy between the rules. The deadline to submit any comments or suggestions is upto 16:00 hours of February 20, 2017. For more information, please visit this [Link](#).

ENVIRONMENT SECTOR UPDATES

I. Amendment in the EIA notification, 2006 in relation to expansion, modernization or change of product mix in existing projects

The EIA Notification, 2006 amended by MoEF&CC on November 23, 2016, simplifying the EC process for expansion, modernization and change of product mix. Prior the EC process for expansion/ modernization/ change of product mix in existing projects:

- (a) Applications for EC for expansion, modernization or change in product mix with respect to which EC has been granted shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee.
- (b) Change in configuration of the plant during execution of the project after detailed engineering shall be exempt from the requirement of EC subject to the condition that there is no change in production and pollution load.
- (c) Change in product-mix, change in quantities in the same category for which environmental clearance has been granted shall be exempt from the requirement of prior to EC.

For more information, please visit this [Link](#).

II. Amendment in the EIA Notification, 2006 in relation to integration of environmental condition in building bye-laws

MoEF&CC by way of notification dated December 09, 2016 amended the EIA Notification, 2006 by which the MoEF&CC exempted building and construction projects of all sizes from the process of EIA and prior EC before beginning construction. The MoEF&CC has divided the buildings in three categories based on the area of the same. For smaller projects that have an area of less than 20,000 sq. meters, a "self-declaration" clause is provided under notification, which will ensure issuance of permission from urban local bodies. Further, in relation to larger projects having an area of more than 20,000 sq. meters in size, the EC and building permission will be given by urban local bodies simultaneously in an integrated format. For more information, please visit this [Link](#).

III. Amendment to the Wetlands (Conservation and Management) Rules 2010

The MoEF&CC vide notification dated December 14, 2016 amended the Wetlands (Conservation and Management) Rules 2010 to the effect that the Authority defined under the said rules shall mean Central Wetlands Regulatory Authority as notified under sub-section (3) of Section 3 of the Environmental Protection Act, 1986. The MoEF&CC further, vide the said notification omitted sub-rules (1) and (2) of Rule 5 from the said Rules, which provided for constitution of Central Wetlands Authority and the term of the Central Wetlands Authority respectively. For more information, please visit this [Link](#).

IV. Constitution of Central Wetlands Regulatory Authority

The MoEF&CC vide notification dated December 14, 2016 has listed out the members who constitute the Central Wetlands Regulatory Authority. For more information, please visit this [Link](#).

V. Imposition of strict liability by NGT for not following the parameters as prescribed under the Environment Protection Rules, 1986 with respect to stone crushing unit

NGT vide judgement dated November 23, 2016 in Mathala Chandrapati Rao Vs. Member Secretary, Odisha State Pollution Control Board (OSPCB) and Ors. imposed strict liability on stone crushing units located in Odisha for not adhering to the parameters as prescribed under the Environmental Protection Act, 1986. NGT vide the said judgment decided that the absence of safeguards to be followed by the project proponent, in running the stone crusher unit and the hot mix plant, in close proximity to human habitation, has caused pollution and has failed to adhere to the parameters prescribed under the Environmental Protection Act, 1986. Therefore, NGT applied the principle of strict liability and directed the project proponent to pay damages for the pollution caused. For more information, please visit this [Link](#).

AVIATION SECTOR UPDATES

I. **AAI revises charges for Airport Services for Non-Major Airports and Air Navigation Services effective from December 16 2016**

AAI revised the tariff for the period December 01, 2016 - March 31, 2017 on October 31, 2016. By a subsequent notification, the revised charges for airport services as well as those related to air navigation at non-major aerodromes will be applicable from December 16, 2016 instead of December 01, 2016. Generally, airports serving less than 12 lakh passengers annually are considered as non-major. The charges for these aerodromes are fixed by the DGCA whereas for major airports the rates are determined by AERA. For more information, please visit [Link 1](#) and [Link 2](#).

II. **Aircrafts Act, 1934 has been amended with the objective to improve the effectiveness of the Regulatory Bodies and to ensure they are consistent with the international norms in the Civil Aviation Sector**

The Aircrafts Act, 1934 amended with the objective to improve the effectiveness of the Regulatory Bodies such as the DGCA, BCAS and AAIB. The Act has been amended to ensure that the Regulatory Bodies are consistent with the international norms in the Civil Aviation Sector.

The major amendments pertain to defining the Safety Regulator (DGCA), Security Regulator (BCAS) and Accident Investigation Agency (AAIB) and their functions. The Amendment also provides for imposition of fine and enhancing the quantum of fines. For more information, please visit this [Link](#).

III. **MoCA launched the RCS - UDAN to provide connectivity to un-served and under-served airports**

The RCS – UDAN launched by the MoCA on October 21, 2016 with the objective of providing connectivity to un-served and under-served airports of the country and to facilitate and stimulate regional air connectivity by making it affordable.

Affordable regional air connectivity will be provided by supporting airline operators by way of concessions by Central Government, State Governments and airport operators to reduce the cost of airline operations on regional routes and financial support (VGF) to meet the gap, if any, between the cost of airline operations and expected revenues on such routes. For more information, please visit this [Link](#).

IV. **AERA files early hearing Application before AERAAT in the Petition against DIAL for collecting Rs. 9,450 crore extra charges from IGI Airport flyers since 2014**

AERA has filed an Application for early hearing of the Petition filed before the AERAAT over DIAL continuing to charge higher charges pertaining to the first control period and raised questions regarding the extra charges collected by airlines from the passengers and paid to IGI Airport totaling to around Rs 9,450 crore in just over three years and the refund of the same to flyers. For more information, please visit this [Link](#).

V. MoCA grants 'in-principle' approval for Construction and Up-gradation of Airports Approved.

MoCA granted 'in-principle' approval for setting up of 18 Greenfield Airports, namely, Pakyong in Sikkim, Navi Mumbai, Sindhudurg and Shirdi in Maharashtra, Mopa in Goa, Bijapur, Gulbarga, Hasan and Shimoga in Karnataka, Kannur in Kerala, Kushinagar in Uttar Pradesh, Dholera in Gujarat, Dagadathi (Nellore), Bhogapuram (Vizianagram) and Oravakallu (Kurnool) in Andhra Pradesh, Durgapur in West Bengal, Gwalior and Karaikal in Madhya Pradesh. For more information, please visit this [Link](#).

VI. Government imposes Levy on scheduled flights for RCF

The Central Government decided to impose a levy on scheduled flights operated within India to fund RCF. The National Civil Aviation Policy – 2016 which provides that payment of VGF will be made to the selected airline operators from the RCF and the State Governments will be asked to reimburse the applicable share (20% for States other than for North-Eastern States and Union Territories of India, where the ratio will be 10%) towards VGF for respective RCS routes. For more information, please visit this [Link](#).

GLOSSARY OF TERMS

AAI	Airports Authority of India
AAIB	Aircraft Accident Investigation Bureau
AERA	Airports Economic Regulatory Authority of India
AERAAT	Airports Economic Regulatory Authority Appellate Tribunal
Anr.	Another
APERC	Andhra Pradesh Electricity Regulatory Commission
APSPDCL	Andhra Pradesh Southern Power Distribution Company Limited.
APEPDCL	Andhra Pradesh Eastern Power Distribution Company Limited
APTEL	Appellate Tribunal for Electricity
ARR	Aggregate Revenue Requirement
BCAS	Bureau of Civil Aviation Security
CEA	Central Electricity Authority
CERC	Central Electricity Regulatory Commission
CGD	City Gas Distribution
CGP	Captive Generating Plant
COD	Commercial Operation Date
CSS	Cross Subsidy Surcharge
DGCA	Directorate General of Civil Aviation
DIAL	Delhi International Airport Private Limited
EC	Environmental Clearance
EIA	Environment Impact Assessment
EPC	Engineering, Procurement & Construction
FoB	Freight on Board
FPT	Filing for Proposed Tariff
GoI	Government of India
IMTF	Inter-Ministerial Task Force
JJ	Justices
KERC	Karnataka Electricity Regulatory Commission

LNG	Liquefied Natural Gas
Ltd.	Limited
MCA	Ministry of Corporate Affairs
MEA	Ministry of External Affairs
MNRE	Ministry of New and Renewable Energy
MoCA	Ministry of Civil Aviation
MoEF&CC	Ministry of Environment, Forest & Climate Change
MoF	Ministry of Finance
MoP	Ministry of Power
MOU	Memorandum of Understanding
MW	Megawatt
NEP	National Electricity Plan
NGT	National Green Tribunal
NSM	National Solar Mission
O.M.	Office Memorandum
Ors.	Others
PNG	Pipelined Natural Gas
PNGRB	Petroleum and Natural Gas Regulatory Board
PPA	Power Purchase Agreement
PSU	Public Sector Undertaking
PV	Photovoltaic
RCF	Regional Air Connectivity Fund.
RCS	Regional Connectivity Scheme
RPO	Renewable Purchase Obligation
Rs.	Rupees
Sq.	Square
TPDDL	Tata Power Delhi Distribution Limited
UDAN	Ude Desh ka Aam Nagrik
UDAY	Ujwal DISCOM Assurance Yojana
UMPP	Ultra-Mega Power Project
VGf	Viability Gap Funding

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