



**APEL SETS ASIDE CERC'S ORDER, WHICH
MANDATED SPDS TO ENTER INTO POWER
PURCHASE AGREEMENT FOR DRAWL OF POWER
DURING NIGHT HOURS / NON-GENERATION
HOURS**

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APTEL sets aside CERC's Order, Which Mandated SPDS to Enter into Power Purchase Agreement for Drawl of Power During Night Hours / Non-Generation Hours

The Hon'ble Appellate Tribunal for Electricity ("**Hon'ble APTEL**") in the batch of appeals preferred by various Solar Power Developers ("**SPDs**"), set aside the Order dated 25.04.2022 passed by Learned Central Electricity Regulatory Commission ("**Ld. CERC**") in Petition No. 345/MP/2018, wherein, Ld. CERC had directed the SPDs to immediately enter into power purchase Arrangement for drawl of power either with the distribution licensee of the State or with any other entity through open access.

BACKGROUND FACTS

The Rewa Ultra Mega Solar ("**RUMS**") Project, a 750 MW solar park scheme in Rewa district, Madhya Pradesh, was initiated by the Government of Madhya Pradesh as part of the solar park scheme of the Government of India. The project involved the development of grid-connected solar photovoltaic power plants totaling 750 MW, divided into three units of 250 MW each.

However, a dispute arose regarding the billing of energy drawn from the ISTS Grid during non-generation hours. Pertinently, MPPMCL proposed to bill the SPDs at the HT Industrial rate (as per Clause 10 of the 7th Amendment to the MPERC Regulations 2010). On the contrary, WRLDC clarified that the RUMS Project falls under its jurisdiction and that power drawn by the SPDs is billed according to the 2nd amendment of CERC (Deviation and Settlement Mechanism and related matters) Regulations, 2014 (“**DSM Regulations, 2014**”) and there is no imposition of additional charges for power drawn during non-generation hours.

In batch of appeals, the main plank of argument of the SPDs was that there cannot be absolute compliance of CERC's Order on account of prevailing regulations, as the SPDs cannot procure power during night/non-generation hours through open access/GNA, and that only renewable generators connected to the state transmission or distribution system can draw power from the distribution licensee for their own use as per MPERC RE Regulations, 2021. However, Ld. CERC by its order has arbitrarily restrained SPDs from procuring power from grid and has been directed to sign alternative arrangement with the State Distribution Licensee or any other entity through open access.

Furthermore, SPDs contended that such direction is also bad in law as only the handful of other generators operating in Western Region have been directed to enter into power purchase agreement with the distribution licensee or any other open access supplier for the purposes of drawl of power during night hours / non-generation hours, and has virtually allowed the solar generators operating in other regions to draw such power and account it under the DSM Regulations, 2014.

ISSUE AT HAND

Pertinently, DSM Regulations 2022 *inter alia* read along with IEGC 2023 enables the SPDs to avail its requirements of power during non-generation hours by paying deviation charges under the DSM Regulations. Thus, the period post 05.12.2022 is covered under DSM Regulations 2022 read long with IEGC 2023, and the period till passing of the Order plus 30 days (i.e., till 25.05.2022) has already been regularized by the Ld. CERC in the Order and the period post

05.12.2022 is covered under DSM Regulation 2022, the only period concerned in the present Appeal was between 26.05.2022 to 05.12.2022.

Therefore, the only issue remaining before the Hon'ble APTEL for adjudication was the treatment of such power for the period between 26.05.2022 to 05.12.2022.

DECISION OF HON'BLE APTEL

Under the above said background, Hon'ble APTEL held that the State Regulations are not applicable to the power project as the Solar Power Project is not connected to the State Transmission or Distribution grid (since they are connected to the ISTS Grid being part of the CTU network). Furthermore, Hon'ble APTEL observed that except few generators operating in Western Region, all other are SPDs are drawing power under un-scheduled interchange mechanism and the Ld. CERC has not passed any such order against those generators, in spite, has notified the IEGC 2023 Regulations allowing such a drawl of power on payment of deviation charges as per the DSM Regulations.

Hon'ble APTEL further held that the drawl of power during the interregnum period i.e. from 25.05.2022 to the date of notification of IEGC 2023 Regulations shall be charged as per DSM Regulations and post coming into effect of IEGC 2023 Regulations, the same shall be in accordance with IEGC 2023 Regulations in conjunction with DSM Regulations.

Under the above gravamen, the Hon'ble APTEL held that the Order passed by Ld. CERC is unjust and unreasonable because the treating or accounting nighttime or non-generation hours drawls under the DSM Regulations by WRLDC is as per the standard practice being adopted throughout India and also approved by the Ld. CERC till 25.05.2022 which has been strengthened by Ld. CERC making a provision for accounting the same under DSM Regulations (by notifying the IEGC 2023). In fact, the Hon'ble APTEL categorically held that the Order of the LD. CERC is in violation of its own Regulation, which otherwise is binding upon the Ld. CERC.

Thus, the present ruling having sectoral importance will protect the interest of the renewable entities which is in line with the scheme of Section 61(h) of the Electricity Act, 2003. Furthermore,

the ruling of the Hon'ble APTEL will also help in maintaining the regulatory certainty in the sector across the country which is imperative for attractive investment into the renewable sector.