

THE TARIFF NEXUS TEST: MASTERING JURISDICTION IN POWER SECTOR

Understanding regulatory frameworks for effective power
tariffs

OVERVIEW AND IMPORTANCE



Purpose of Tariff Nexus Test

The test guides power-sector leaders on dispute adjudication between regulatory commissions and arbitration.

Importance in Regulatory Framework

It simplifies jurisdiction decisions under the Electricity Act, enhancing clarity and reducing delays.

Universal Application Across Power Sectors

The test applies to renewable, thermal, hydro, and other power generation sectors for strategic planning.

Benefits for Stakeholders

Mastering the test helps avoid litigation delays, make informed decisions, and protect project value.

CORE PRINCIPLE

Tariff-Linked Disputes

Disputes directly linked to tariffs fall under CERC or SERC jurisdiction for resolution.

Contractual Disputes

Purely contractual disputes must be resolved through arbitration outside regulatory bodies.

Universal Application

The test applies broadly to power sector agreements like PPAs and EPC contracts.





EXAMPLES OF TARIFF-LINKED ISSUES

Tariff Regulation Interpretation


Disputes involving the interpretation of tariff regulations fall under commission jurisdiction and influence tariff calculations.

Compensation and Adjustments

Change in law compensation and adjustments to capital costs or operational parameters affect tariff parameters directly.

Regulatory Compliance Impact

Pass-through of statutory charges and CUF norms impact regulatory compliance and tariff construction decisions.

A desk with a contract on a clipboard, a yellow pen, a yellow hard hat, and orange gloves.

EXAMPLES OF PURELY CONTRACTUAL ISSUES

Arbitration for Contract Disputes

Arbitration resolves disputes purely based on contractual obligations without involving tariff regulation analysis.

Common Contractual Disputes

Examples include liquidated damages, milestone delays, performance shortfalls, termination, and payment disputes.

Importance of Early Identification

Early detection ensures disputes go to arbitration, reducing litigation risks and lowering costs.

THE 2 MINUTES TARIFF NEXUS CHECKLIST



Step 1: Tariff Assessment

Check if the issue involves a change in tariff or its parameters to determine jurisdiction.

Step 2: Regulatory Disputes

Evaluate if the dispute is related to regulatory functions like changes in law or statutory charges.

Step 3: Contractual Issues

Identify if the matter is a pure contract issue such as liquidated damages or milestone disputes.

Step 4: Role of Commissions

Note that commissions may adjudicate or refer disputes but cannot act as arbitrators themselves.

THE 2 MINUTES TARIFF NEXUS CHECKLIST



Step 1 — Tariff Impact Test

Does the issue:

change tariff or its parameters?

alter capital cost / CUF / availability / O&M?

require interpreting CERC/SERC tariff regulations?

If YES → Commission (CERC/SERC).

Step 2 — Regulatory Function Test

Is the dispute tied to:

Change in Law

pass-through of statutory charges

regulatory approvals

If YES → Commission.

Step 3 — Pure Contract Test

Does the issue involve:

LD, delay, milestones

EPC obligations

performance/shortfall

termination

billing disputes without tariff analysis

If YES → Arbitration.

Step 4 — Statutory Reminder (The Golden Line)

Under Sections 79(1)(f) and 86(1)(f):

Commissions may adjudicate OR refer a dispute to arbitration.

They cannot act as arbitrators themselves.

(Supreme Court: Gujarat Urja; PPN Power; Energy Watchdog.)



KEY MESSAGE FOR LEADERS

Strategic Decision-Making

The Tariff Nexus Test accelerates decision-making by providing clear legal guidance and strategic insights.

Litigation Risk Minimization

Applying the test helps minimize litigation risks, protecting project value and enhancing stability.

Compliance and Negotiation

Mastery of the test enables effective negotiation while ensuring regulatory compliance in complex sectors.

Sustaining Performance

Using the test supports operational and financial performance by avoiding delays and disputes.