



South Asia Regional Energy Partnership (SAREP)

Presentation

on

Draft Terms of Reference (TOR) of the Knowledge Study

on

“Developing Regional Dispute Settlement Framework, Mechanism and associated procedure for Advancing Cross Border Electricity Trade in South Asian Region”

Session 3: Updates on the planned Interventions of the SAREP Task Force-I on “Coordination of Policies, Legal and Regulatory Frameworks for CBET”

**11th Meeting of SAREP Task Force-I on “Coordination of Policies, Legal and Regulatory Frameworks for Cross Border Electricity Trade”
Maitland State Room, 9th October 2023, Mount Lavinia Hotel, Mount Lavinia, Colombo, Sri Lanka**

**Presented by
Rajiv Ratna Panda, Power Market Specialist, SAREP**



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Overview of disputes in Regional Energy Markets and CBET

In regional energy trade, disputes can involve multiple areas and sources of law and subject matters

General disputes

Disputes concerning the interpretation implementation of specific provisions of a treaty or contract

Transit & Transmission

Disputes around transit of energy materials and products (eg: access to transmission network or charges)

Information sharing obligation

Disputes concerning the vaguely worded sharing of data, knowledge or research when not complied by a State



Trade disputes

Arise where there are obstacles imposed on the flow of energy products across borders.

Competition disputes

Competition disputes can arise under a treaty relating to CBET where State Parties have included obligations relating to anti-competitive energy practices and legislation

Environmental disputes

Environmental disputes can arise where the production, supply, trade, and consumption of energy have knock-on effects on the environment

South Asia (SA): Background and Context



Task Force-I, Commissioned a demand driven study on “Review of Electricity Laws, Regulations, Policies and legal structure of South Asia countries” and Regional Regulatory Guidelines for Promoting Cross-Border Electricity Trade in South Asia

- ❖ The study **recognized that the Dispute resolution procedures for the settlement of disputes** through conciliation and arbitration, create conditions favourable for fostering greater investment by investors of one Member State in the territory of another Member State.
- ❖ The Study **recommended the need for a transparent, fair, commonly accepted legal framework and clearly defined regional dispute resolution framework** procedures as an absolute necessity to promote CBET in the region.

Dispute resolution in South Asian Regional Energy Trade : Currently due to **lack of effective regional solutions**, dispute resolution tends to rely on **Negotiation, Mediation, Conciliation, Intergovernmental arrangements and International Arbitration in third country (mostly Singapore)**

Functioning Regional Dispute Settlement Mechanism in Regional Power Grids around the Globe

Arbitration – Norway, London or Germany

**NORD
POOL**



ACER

European Union Agency for the Cooperation of Energy Regulators

ACER acts as
Dispute Settlement
Authority



West African Power Pool

ECOWAS Regional
Electricity Regulatory
Authority
ECOWAS court of Justice



**Gulf Cooperation Council
Interconnection Authority (GCCIA)**

Dispute Settlement Commission*



South African Power Pool (SAPP)

Dispute Settlement by SADC Tribunal

**Central American Interconnection
System (SIEPAC)**



Between Market Agents – By Regional Regulator CRIE
Between Governments - Arbitration through Central
American Court of Justice

* As per the need Note: Maps are only indicative

Objective

To carry out a Knowledge Study on

“Developing a Regional Dispute Settlement Framework, Mechanism and associated Procedure for cost-effective and timely resolution of disputes in a fair and transparent manner for advancing Cross Border Electricity Trade (CBET) and creating an enabling system conditions for investment in CBET projects in South Asian Region”



03

Terms of Reference of the Knowledge Study

Developing Regional Dispute Settlement Framework, Mechanism and associated procedure for Advancing Cross Border Electricity Trade in South Asian Region



Terms of Reference of the Knowledge Study

1

To analyse & assess the existing Dispute Resolution/Settlement Mechanisms/Procedure/Regulations in South Asia (SA) including Bilateral/Multilateral agreements & legal arrangements both for domestic power trade and for the Cross Border Electricity Trade (CBET).

2

The above includes provisions in cross border Power Purchase Agreements, Arbitration Procedures, Alternative Dispute Settlement Mechanisms etc. in power/energy sector from the perspective of how the disputes are being resolved with respect to CBET in SA Region and its associated Regional Dispute Resolution/Settlement Framework along with mechanism, procedure/regulations/bilateral-multilateral agreements and legal arrangements if any.

3

Conduct a SWOT analyse of various existing Forums and Institutional Mechanisms (if any) in SA region vis-à-vis their role & function with respect to Dispute Settlement if any. This includes but is not limited to SAARC, SAARC Arbitration Council, Appellate Electricity Tribunals.

4

Review and analyse the international experiences & best practices in Dispute Resolution Mechanisms in Europe, Southern Africa (SAAP), Western Africa (WAPP), US (PJM and other markets), and Central America etc. and document their learnings from the perspective of Cross Border Electricity Trade.

5

The above international review should specifically cover:-Key drivers, enabling factors, barriers, key challenges and issues faced and how these were addressed, philosophy of dispute settlement, details of the strategic, policy, regulatory, legal and institutional framework and commonalities and differences amongst the different models etc.

Terms of Reference of the Knowledge Study

6

Taking in consideration the findings of 1 to 5, Undertake a high-level Landscape Questionnaire Survey/Interview among Legal Authorities, Policy Makers, Regulators and other South Asian Energy stakeholders on Regional Dispute Settlement Framework for CBET.

7

Taking in consideration the findings of 1 to 6, Prepare the Draft Report covering recommend Appropriate Regional Dispute Settlement Framework along with the detailed procedure and mechanism, and associated institutional arrangements from the perspective of resolution of disputes related to CBET in South Asia.

8

Present the Draft Report, Regional Dispute Settlement Framework, Summary for Judges, Policy Makers and Regulators and Roadmap in the 12th Meeting of Task Force-1 and in the “Regional Workshop on Dispute Settlement Mechanism for CBET in SA Region” and incorporate the suggestions/comments

9

Submit the Final Comprehensive Report, Regional Dispute Settlement Framework (RDSF), Summary for Judges, Policy Makers, Regulators, Strategy and Road Map (Regional & Country wise) for RDSF Implementation.

10

Organise a dissemination workshop to release the Report, Regional Dispute Settlement Framework, Summary for Judges, Policy Makers and Regulators and Roadmap and present findings of the study.



Tentative Timeline of the Knowledge Study

04

Developing Regional Dispute Settlement Framework/Procedure and Mechanism for Advancing Cross Border Electricity Trade in South Asian Region



ARBITRATION

Timeline of the Knowledge Study

Tentative Timeline : Nine Month

SL NO	Deliverable	TIMELINE
1	Consultant On board	T
2	Inception Report	T+1
3	Draft Report , Regional Dispute Settlement Framework , Summary for Judges, Policy Makers and Regulators and Roadmap	T+5
4	Present the Draft Report , Regional Dispute Settlement Framework , Summary for Judges, Policy Makers and Regulators and Roadmap in the 12 th Meeting of Task Force-I and in the “Regional Workshop on Dispute Settlement Mechanism for CBET in SA Region” and incorporate the suggestions/comments	T+7
6	Final Report, Regional Dispute Settlement Framework , Summary for Judges, Policy Makers and Regulators and Roadmap	T+8
7	Report Release and Dissemination Workshop	T+9

Thank You



Contact: rpanda@sarep-southasia.org
rajivratnapanda@gmail.com
+91-9650598697



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